

No. 14663

Supreme Court of Illinois

Ross et al

vs.

Innes

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 168

J. W. Middleton & Co., Stationers, 196 Lake St.

1864

*James
Russ*

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the 9th day of September in the year of our Lord One Thousand Eight Hundred and Sixty three and of the Independence of the United States of America the Eighty Eighth

Present, The Honorable John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

David H. Higgins } Judges.
Grant Goodrich }

Joseph J. Tracy Prosecuting Attorney.

David O. Hammond Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that heretofore brought on Thirty first day of December in the year of our Lord one Thousand Eight Hundred and Sixty three Adam G. Sonip by Henry Anthony & Co. for attorneys filed in the Clerk's office of the Superior Court of Chicago in compliance for summons which in words and figures following to wit

The Superior Court of Chicago
of the February Term 1863

State of Illinois } ss
Cook County }

Adam G. Sonip & Co

vs

William M. Robt. and John H. Robt & Co

The Clerk of the Court will please give
a summons in the above entitled Cause &
directed to the Sheriff of Cook County, returnable
as above in a plea of trespass on the case
to the damage of the said Plaintiff of
Twenty Thousand Dollars

Henry Anthony & Co.
Attys for Plff.

And afterwards to wit on the day and year
aforesaid there issued out of the Clerk's office
of said Court, The People's writ of summons
which with the return of the Sheriff endor-
sed thereon is in words and figures following
to wit.

State of Illinois }
County of Cook } ss

The People of the state
of Illinois To the Sheriff of said County greeting
We command you that of our common
William M. Rof, and John St. Rof. if they
shall be found in your County personally to
be and appear before the Superior Court of
Chicago of said Cook County on the first
day of the term thereof to be holden at the
Court House in the City of Chicago in said
Cook County on the first Monday of February
next to answer unto Adam G. Linnep in
a plea of trespass on the case, to the damage

of said Plaintiff as he says in the sum of
Twenty 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
31st day of Dec. A.D. 1859

Edw. J.

Walter Kimball
Clerk

(Return of Sheriff)
Served by reading to the within named de-
fendants this 5th day of January 1860
John Gray Sheriff
By A. C. Messing deputy.

And afterwards to wit on the days of
 in the year of our Lord one thousand
Eight hundred and sixty. the said ad-
am^d Innis by Henry Anthony & Gal. ~~sons~~
his attorneys filed in said Clerk's office of
said Court his declaration which is in words
and figures following to wit.

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The Superior Court of Chicago
of the February Term 1860

State of Illinois)
Cook County) ss

I dau G. Amey Plaintiff
in this suit by Henry Anthony & Gal. his
attorneys Complainants of William M. Rob. and
John H. Rob defendants in this suit who are
summoned &c. of a plea of trespass on the
Case In that whereas the said Plaintiff
now is a good true honest just and faithful
Citizen of the State of Illinois and as such
hath always behaved and conducted himself
and hath not even been guilty or under the
impe of committing of the several grievances by
the said defendants as hereinafter mentioned
been suspected to have been guilty of em-
bezzlement or of any other such crime by
means whereof the said Plaintiff before
the committing of the said several grievances
by the said defendants as hereinafter mentioned
had deservedly obtained and acquired the
good opinion and credit of all his neigh-
bors and other good and worthy Citizens of
this State to wit at the County of Cook
yet the said defendant well knowing
the premises list conspiring and combining
together and contriving and maliciously intend

ing to & injure the said Plaintiff in his of
said good name fame and credit and to
bring him into public scandal infamy and
disgrace and to cause the said Plaintiff
to be imprisoned for a long space of time
and thereby to impoverish oppress and wholly
ruin him heretofore to wit on the twenty
seventh day of December A.D. 1859 at the
County of Cook and in pursuance of their
said unlawful combination and conspiracy
caused and procured the said defendant
William M Rob to go and appear and said
William M Rob in further pursuance of
the unlawful combination and conspiracy
of said defendants went and appeared before
one Isaac L Milliken Esquire then and
there being one of the Justices of the Peace
for the County ^{of Cook} and State ^{of Illinois} assigned
to keep the Peace of the People of the State of
Illinois in and for the County of Cook and
also to hear and determine divers felonies tres-
passes and other misdemeanors committed
in the said County and the said Wm
M Rob did in further pursuance of
the said unlawful conspiracy of the
said defendants then and there before the
said Isaac L Milliken so bring such justice
as aforesaid to wit at the County of Cook

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aforsaid falsely and maliciously and without any reasonable or probable cause whatsoever Charge the said Plaintiff with having embezzled the sum of one hundred and sixty six dollars of the moneys of the said defendants and upon such charge the said defendants falsely and maliciously and without any reasonable or probable cause whatsoever and in further pursuance of their said unlawful conspiracy and combination caused and procured the said Isaac L. Milliken to bring such justice as aforesaid to make and grant his return Warrant under his hand and seal for the apprehending and carrying up the said Plaintiff before him the said Isaac L. Milliken or some other Justice of the Peace in and for the said County of Cook to be dealt with according to law for the said supposed offence. And the said defendants in further pursuance of their said unlawful combination and conspiracy against the said Plaintiff under and by virtue of the said Warrant afterwards took on the day and year aforesaid at the County of Cook aforesaid wrongfully and unjustly and without any reasonable or probable cause whatsoever and in further pursuance of the

said unlawful conspiracy of said defendants
caused and procured the said Plaintiff to be
arrested by his body and to be kept and de-
tained under arrest for a long space of
time to wit for the space of two days then
next following and until they the said
defendants afterwards went on the day and
year aforesaid to the County of Cook
aforesaid falsely and maliciously and with-
out any reasonable or probable cause what-
soever and in further pursuance of their said
unlawful combination and conspiracy caused
and procured the said Plaintiff to be carried
and conveyed in custody before the said
Joao L. Miller as being such Justice
aforesaid to be examined before the said
Justice touching and concerning the said
supposed crime

Which said Justice having heard and
considered all that the said defendants
could say or allege against the said
Plaintiff touching and concerning the said
supposed offence then and there to wit on the
day and year last aforesaid at the County
of Cook aforesaid adjudged and determined
that the said Plaintiff was not guilty of the
said supposed offence and then and there
caused the said Plaintiff to be discharged

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out of custody fully acquitted and discharged of the said supposed offence, and the said defendants have not further prosecuted the said complainant against the said Plaintiff as made by the said William M. Rep. in pursuance of the said unlawful conspiracy and continuation of the said defendants but have deserted and abandoned the same and the said complaint and prosecution is wholly ended and determined both at the County of Cook aforesaid

And whereas also the said defendants further continuing and maliciously and maliciously intending as aforesaid heretofore both on the day and year aforesaid at the County of Cook aforesaid falsely and maliciously and without any reasonable or probable cause whatever charged the said Plaintiff with having committed a certain offence punishable by law both enticement and upon such last mentioned charge they the said defendants then and there both on the same day and year last aforesaid at the County of Cook aforesaid falsely and maliciously and without any reasonable or probable cause whatever caused and procured the said Plaintiff to be arrested

by his body, and to be kept and detained in
Custody for a long space of time but for the
space of two days then next following, and
at the expiration of which said time he the
said Plaintiff was duly discharged and
fully acquitted of the said last mentioned
offence but at the County of Cook of said
By means of which said several premises
he the said Plaintiff hath been and is
greatly injured in his said credit and
reputation and brought into public scandal
infamy and disgrace, with and amongst
all his neighbors and other good and worthy
Citizens of this state and divers of those
neighbors and Citizens to whom his innocence
in the premises was unknown hath on occasion
of the premises suspected and believed
and still do suspect and believe that the
said Plaintiff hath been and is guilty of
Embezzlement and also the said Plaintiff hath
by means of the premises suffered great
anxiety and pain of body and mind and
hath been forced and obliged to lay out
and expend and hath laid out and expended
divers large sums of money in the whole amounting
to a large sum of money but the sum of two
hundred Dollars in and about the procuring
his discharge from the said arrest and +

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defending of himself in the premises and the
manifestation of his innocence in that behalf
in prosecuting this suit for counsel and expenses
and hath been greatly hindered and prevented
by reason of the premises from following and
transacting his lawful and necessary affairs
and business and hath been hindered and
prevented from getting a situation in business
for a long time to wit from thence hitherto and
also by reason and by means of the said
premises the said Plaintiff hath been and
is otherwise greatly injured in his credit
and circumstances both at the County of
Cook, of the said Wharf and the said Plaintiff
saith that he is injured and hath sustained
damages to the amount of Twenty Thousand
Dollars and therefore he brings his Bill &c
Henry. Anthony & Gaet.
Atty of a Puff,

And afterwards to wit on the fourth
day of July in the year of our Lord one
Thousand Eight Hundred and Sixty
the said William M. Rob and John
H. Rob by Beckwith Murdock & Cassin
his attorneys filed in said Clerk's office of
said Court their plea which in words
and figures following to wit.

Superior Court of Chicago
July Term A.D. 1865.

William M Pop.
and John H Pop
vs

Adam G Imcep.

And the said defend-
ants by Beckwith Merrick & Cassin their attorneys
Come and defend the Wrong and injury where
and say that they are not nor is either of them
guilty of the said supposed grievances above
laid to their charge or any or either of them
or any part thereof in manner and form as
the said Plaintiff hath above thereof com-
plained against them and of this they put
themselves upon the Country, &c

Beckwith Merrick & Cassin
attys for Defs

And the said Plaintiff
doth the like.

Henry Anthony & Co.
attys for Plff.

And afterwards on the fifteenth day
of May. in the year of our Lord one thousand
said Eight hundred and sixty three, the
said William M Rob. and John H Rob
plea in the Court office of said Court an
affidavit which is in words and figures
following to wit,

State of Illinois }
County of Cook } ss

In the Superior Court
of Chicago May term A.D. 1863

Adam G Jones

vs
Wm M Rob & John H Rob

In Case

William M Rob. having been first duly
sworn saith that he is one of the defendants
in the above entitled Cause named. That
said Cause was called and now stands for
trial at the present Term of said Court.
That the same was instituted and commen-
ced by said Plaintiff Adam G Jones to
recover damages from this defendant and
said John H Rob. on account of an alleged
malicious prosecution instituted against
said Plaintiff under the Statute of the

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State of Illinois at the instance and
upon the affidavit of this affiant on or
about the 27th day of December A.D. 1859
for the converting, appropriating and
embezzling of \$166. in Bank Bills or
notes of said Plaintiff on the 12th day of
December A.D. 1859 while acting as cashier
in the employ of said defendants as set
forth in the affidavit of said 27th day of
December 1859

That affiant cannot safely
proceed to the trial of said cause at the pre-
sent term of said Court on account of the
sickness and absence of Robert O. Blackburn
Esq. who lives in the City of Chicago in
said County & State and is a very necessary
and material witness for this affiant in his
defense to said suit That affiant upon
the trial of said cause expects to be able to
prove by Robert O. Blackburn Esq. who is
an attorney and Counsellor at Law of this
Court that in the month of December A.D.
1859 between the 12th and 27th days of
said month this affiant consulted him
as such attorney and Counsellor at Law
and stated to him fully and unreservedly
all the facts and circumstances connected
with the taking of the \$166. as aforesaid

and desired his opinion whether to proceed
civilly or criminally against said plaintiff
James Atreps - that the said Blackwell
listened to the statement of facts as given to
him by the affiant and then told the affi-
ant that he could not give him an opinion
upon the question submitted until after
he said Blackwell had examined the
account of said James on the books of
the affiant and his partner in business
the defendant John St. Rob and learned
the Rules of the business by which the Club
in this affiant's establishment were governed
and the usages of the establishment and
conferred with the Club who were Com-
mittee of the rules and usages with reference
to the question of evidence involved in the
case growing out of the taking of said money
by said plaintiff James that the affiant
thereupon suggested to him said Blackwell
to go down to affiant's store and talk with
the Club and examine the books and
find out the facts that affiant then
left him after making an appointment
to meet him at affiant's store after
12 o'clock of the same day that accord-
ingly he said Blackwell went to
affiant's store between 12 and 2 P.M.

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that day that affiant was not in the store
at the time and that he said Blackwell
spoke to affiant's Book Keeper and asked
him if affiant was in the store, and being in-
formed that affiant was not he said +
Blackwell told his business, and the books
were produced before him and that he
made a complete and thorough examination
thereof and then inquired of the said
Book Keeper the Cashier and his or their
other clerks in the employ of affiant with
reference to the rules of the store as to the
payment of money, and that compiling the
facts to be obtained at the said store with
the statement of affiant to him he advised
the affiant to proceed criminally against
said Plaintiff James and that he gave
his opinion in good faith, and that affiant
acted thereon solely, that the statement
which affiant made to him said Black-
well upon consulting him as a friend
was that the said Plaintiff Adam L.
James was his clerk or Cashier, and had
charge in affiant's store of the funds which
were received from the daily sales of the
establishment that it was his duty as
such Cashier to deposit the money by
him received and on hand each afternoon

at the time the bank closed, and that no money should be paid to any person over five dollars except on a check on the bank and that all checks over five dollars were Dollars were to be signed by said Jmep and endorsed by the affiant if at home, and if not at home to be endorsed by the defendant John St Rep that no Clerk or employee of the establishment could receive a greater sum than five dollars without conforming to the rules and that the Plaintiff Jmep was fully cognizant of the rules and had acted upon them that said Plaintiff Jmep had a brother named Alexander Jmep residing and doing business in Quincy Illinois who had occasionally brought goods for his store at Quincy from this affiant and his copartner and said that affiant and his copartner were not satisfied with their course of dealing with said Alexander Jmep and that in consequence of their dissatisfaction they declined to sell him any more goods until a satisfactory arrangement was made - that they stated these facts to the plaintiff Adam G. Jmep who acted as the agent of said Alexander in making purchases and payments and that being so advised

said plaintiff Adam G. Jemep agreed with
the affiant and his copartner aforesaid
that he said Adam G. Jemep would
personally guarantee the payment of such
bills or goods or balances as might exist &
between the said Alexander Jemep and
the affiant and his copartner. aforesaid from
time to time as they were willing to sell
said Alexander. That the affiant then also
further stated to him said Blackwell that
in pursuance of the said oral agreement
with said Adam G. Jemep and relying
upon and trusting to him for payment the
affiant and his copartner delivered goods
to said Alexander Jemep and also shipped
him some to Quincy that said Alexander
Jemep failed and refused to pay for the
goods so delivered and shipped to him
when the price thereof became due accord-
ing to the terms of sale whereupon the affi-
ant informed the said Plaintiff Adam G.
Jemep of the failure and refusal of his
brother Alexander Jemep as aforesaid
and that they should look to him said
Adam G. Jemep for the price and payment
thereof, and that said Adam G. Jemep
on being so informed made no complaint
as to his liability therefor. That affiant stated

to him said Blackwell that in the month
of November A.D. 1859 and just before this
affiant went to New York he again told
said Adam & Innep that the bills of goods
delivered to Alexander Inness as aforesaid
had not been paid and that he made no
complaint as to his liability but directed
the affiant the amount thereof to him
said Adam & Innep that affiant then
also stated to him said Blackwell that
affiant when leaving for New York as
aforesaid he told the defendant John
R. Pop his copartner aforesaid to see that
the rule was strictly observed with regard
to drawing money from the bank that while
in New York the affiant received a
letter from his partner said John R.
Pop informing him of the act of said
plaintiffs Adam & Innep in taking the
money as aforesaid that after the state-
ment of affiant to him he made said
Blackwell examined the books and questioned
the clerk of the affiant as aforesaid
and that being so informed by the affiant
and by his own personal examination as
aforesaid he said Blackwell advised
the affiant to proceed criminally against
said Adam & Innep under the statute

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that affiant acted upon his advice and
that he said Blackwell told the affiant
and Impey was arrested examined and
discharged That before the Magistrate
James L. Mulliken the affiant swore to
the same facts (upon the examination of
said Adam G. Impey at which he said
Blackwell was present.) that he had
previously stated to him That he said
Blackwell was present all through the ex-
amination of said Plaintiff Impey before
said Mulliken and that one Adam Murray
was called as a witness on behalf of said
Adam G. Impey and testified on his
examination in chief that the affiant
in a conversation with him stated ^{that} if said
Impey did not settle the matter ~~the~~ ^{that} affiant
would ruin him That whereupon he said
Blackwell at the suggestion of affiant
put a particular question to said Mur-
ray "Whether the affiant had stated
that he would ruin Impey or that the effect
of a Criminal prosecution would be to
ruin him? that said Murray replied
he was not certain which form of Ex-
pulsion the affiant used but his impres-
sion was that ~~it was~~ a Criminal pro-
secution would have the effect to ruin

him.

That at the time he said Blackwell went to affrauto store as aforesaid to examine the books & there he examined the account of Amess particularly that the off receipt aforesaid was written & soon after he had been to the store and that he ~~was~~ found the entry in the books of affiant of the money in Controversy that he was then and there shown while, at the store the very entry of plaintiff himself in his own handwriting of the \$100. taken by him as aforesaid that during his examination of matters & books at affrauto store the statements of affrauto to him were fully corroborated by all the persons he met and latterly while there that he found the rule with regard to paying out money to be exactly as stated to him by affiant and that in pressing instances the rule had been violated but as a general thing in the absence of affiant or his copartner or after working hours but that every one in the store understood what the rule was. That this point has been tried three several times at each of which he said Blackwell was present as a

metres and heard the testimony of all the witnesses for the Plaintiff and that their testimony so far as the same relates to the taking of the money by the Plaintiff and his reasons for ordering the rules of the house as to paying money and the agreement of guaranty by the Plaintiff was substantially the same as stated to him by the affiant and as he himself learned at the store and that the affiant also told him said Blackwell at the time he first consulted him in December 1859 that said Adam L. Jervis claimed the said \$166 so taken by him as a balance due him for services and that he had a right to take it and charge himself therewith as he did which statement was also confirmed by the clerk at the store and that affiant also stated to him and the same was affirmed by the clerk at the store during his examination that said Jervis insisted that he did not agree to pay his brother's debt as aforesaid.

And that affiant further said that before the present term of this Court he saw and conversed with said Blackwell who is an attorney of this Court and resides in the City of Chicago aforesaid.

and that this affiant then told said Blackwell that affiant would want him as a witness when the case was tried and that said Blackwell told him that he would attend at any time by having a few hours notice that on Thursday the 14th day of May 1863 this affiant learned from his counsel that this case would likely be tried on the trial thereof commence in the afternoon of said day. That affiant immediately caused a subpoena to be issued for said Blackwell from said Court. ~~to testify~~ commanding him to appear in person at the said Court to testify as a witness on behalf of this affiant and his codefendant that affiant on the said day and year took said subpoena and went to the residence of said Blackwell on the corner of Adams street and Wabash Avenue in said City of Chicago and County of Cook. that upon enquiring for said Blackwell this affiant was informed by the said of said Blackwell that he said Blackwell was then laying sick and was in a state of insensibility & could not be seen. and had been so for some days and affiant then produced and handed said subpoena to said Blackwell

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son who read the same and then told af-
fiant that he said Blackwell could not &
possibly appear as Commanded in said
subpoena that he was unable to move about
or travel and was wholly incapable and
that he was under medical care and treatment
and dare not move out. Affiant further
saith that the best knowledge or information
that he had or receives of the said sickness
of said Blackwell, or of his inability to attend
as a witness was on the day and year last
aforesaid and that owing to the very great
sickness and indisposition of said Black-
well it is impossible for affiant to procure
his attendance or testimony as a witness at
this term of said Court and that with-
out the testimony of said Blackwell he
cannot safely proceed to hear of said
Cause and that he knows of no other per-
son or persons but said Blackwell by
whom he can prove the facts hereinbefore
set forth and that affiant has done &
every thing in his power to procure the
attendance and testimony of said Blackwell
and cannot for the reasons aforesaid
Affiant further saith that he expects
to be able to procure the attendance of
said Blackwell as a witness in said

cause for this affidavit and his co defendant
or at least his testimony by deposition or otherwise
by the next term of this Honorable Court, and
that he will use all means in his power
to do and that he does not make this
affidavit for the purpose of delay or aggra-
vation but for the sole purpose of enabling him
to procure the attendance and testimony of
said Blackwell on said trial without &
which he cannot safely by the same or pre-
sent his defence to said action and there-
fore prays a continuance of said cause in
accordance with the provisions of the statute
and further such not

Subscribed and sworn to W M Ross.
Bene me this 15th day of May A.D. 1863.
J B Leaster, clerk
"

And afterward to wit on the nineteenth day
of May in the year aforesaid, the said
Plaintiff, and the said defendants by their
attorneys respectively filed in said Circuit Court
of said Court their stipulation which is in
words and figures following to wit
In the Circuit Court of Chicago
Adam L. Jannet Off }
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²⁵
 William M Robt & Co } May Term 1863
 John A Robt & Co } Defs

It is hereby stipulated and
 agreed that this cause shall be set for trial on
 Tuesday the ninth day of June next. On which
 day it is agreed that this cause shall be tried
 and that no further application for a postponement
 or continuance thereof shall be made by the defend-
 ants on any account; and in case of the continu-
 ance or absence of Robert J. Blackwell that
 the said defendants shall be prepared with
 his deposition ready to be used on the trial of
 this cause at the time fixed by this stipula-
 tion.

Chicago May 13th 1863

Henry Smith my agent
for Pitt

Munick & McPherson

attys for Defs

And afterwards took on the tenth day
of June, in the year of our Lord one thousand
Eight hundred and fifty three. the same
being one of the days of June term of said
court the following among other proceedings
were had and entered of record in said
court to wit.

Adam G. Innes

vs

Case

William M. Rap and
John P. Rap

This cause being this day called
for trial comes said Plaintiff by Henry Anthony
against his attorneys and said defendants
by Munnell & McPherson his attorneys also
come and appear being joined herein it is
ordered that a jury come whereupon comes
the jury of good and lawful men to wit
C. Becker Robert Lurgus Stephen Jefferson
William Linton Philip Gueller J. B. Malcom
J. Nicholson C. R. Clark James Burnett
John Wallace Joseph Waudhausen and
J. E. Kellock who being duly elected, tried
and sworn to by the issues joined herein
as aforesaid after hearing part of the testimony
and the time of adjournment having arrived
it is ordered upon agreement of the parties

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that the Jury separate and meet the Court.
on coming in and opening thereof tomorrow mor-
ning.

And afterwards Court on the Eleventh day
of the month and year last aforesaid the
same being one of the days of the same term
of said Court the following among other
proceedings were had and entered of record
in said Court to Wit.

Adam G. Inness

vs.
William M. Pop and
John H. Pop

} Case.

And now at this day
again come the parties to this Cause by
their attorneys as aforesaid and the Jury
impanelled herein on yesterday for the
trial of said Cause also come as on yesterday
and having heard all the testimony argu-
ments of Counsel and instructions of the
Court the Cause is submitted and the
Jury retire to consider of their verdict and
the hour of adjournment having arrived
it is ordered upon agreement of parties
that when the Jury shall have agreed upon
a verdict they shall reduce the same
to writing sign and seal the same and

afterwards separate and meet the Court on
Coming and opening thereof tomorrow morning

And afterwards trait on the Twelfth day
of the month and year last aforesaid the
same being one of the days of the same term
of said Court. The following among other
proceedings were had and entered of record
in said Court book.

Adam G. Tompess

vs

Case

William M. Rob and
John St. Rob

And now at this day again
come the said parties to this cause by their
respective attorneys as aforesaid and the
jury heretofore empanelled herein for the
trial of said cause. Also come as on
yesterday and submit their verdict and
say we the jury find the said defendants
guilty and we assess the Plaintiffs damages
herein against both of the said defend-
ants to the sum of ten thousand dollars.
And thereupon the said defendants by
their counsel submit their motion herein
for a new trial in said cause.

And afterwards went on the Twelfth day of September in the year last aforesaid the same being one of the days of the September Term of said Court to wit the following among other proceedings were had and entered of record in said Court to wit

Wm G Impey

vs

Case

William M Robt
 vs John A Robt And now at this day again comes said Plaintiff by Henry Anthony & Gaet his attorneys and said defendants by Richard F Munnell their attorney also come and this cause coming on now to be heard upon the motion of the said defendants heretofore submitted herein on the Twelfth day of June 1863 for a new trial in said cause and because being heard thereon and the Court being fully advised on the premises it is considered by the Court that the motion of said defendants is and the same is hereby overruled and that said defendants be and are hereby refused a new trial in said cause and thereupon the said defendants move the Court on arrest of Judgment

upon the verdict heretofore rendered herein by the Jury as aforesaid and Counsel being heard thereon and the Court being fully advised in the premises it is considered by the Court that the motion of said defendants in arrest of judgment on said verdict be and do remain hereby overruled and the Court refuses to arrest judgment on said verdict.

Wherefore said Plaintiff ought now to have judgment entered herein against said & defendants for his damages upon the verdict of guilty rendered herein by the Jury as aforesaid.

Therefore it is considered that said Plaintiff do have and receive of and from said defendants his damages of Ten Thousand Dollars in form aforesaid by the Jury hereof made and assessed and also his costs and charges in this behalf expended and thereof have execution &c. And the undersigned defendants pray an appeal herein to the Supreme Court of this State from the judgment of this Court which is allowed to them on condition of filing bond in the sum of Twelve Thousand Dollars with security to be approved by one of the Judges of this Court and to be filed with their bill of Exceptions during the

present term ⁽³²⁾ of this Court.

And afterwards took on the twenty sixth
day of the month and year last aforesaid
the said Defendants William M. Rob
and John A. Rob by Richard L. Munnick
their attorney, file in said clerk's office of
said Court their bill of Exception which
is in words and figures following to wit,

State of Illinois }
County of Cook } ss

In the Superior Court
of Chicago,

Adam G. Innis plaintiff }
vs } In Case
William M. Rob. and
John H. Rob defendants }

Be it remembered that at do some term
A.D. 1863. of said Superior Court of Chicago
held in the City of Chicago in said County
& State on the 12th day of June A.D. 1863,
before the Honorable Jav. or Higgins one of the
Judges of said Court. the above entitled Cause
being at issue came on to be tried by a jury
of said County for that purpose duly im-
pannelled; at which day, came as well
the said Plaintiff with his attorneys Messrs
Henry Anthony & Gaet. & Hon. B. J. Morris as
the said defendants with their attorneys
Messrs. F. McKimmon, and the Jurors
of the Jury aforeaid impannelled to try
the said issue being called also came,
and were then and there in due manner
Chosen & sworn the same issue to try
and thereupon the Verdict for the Plam-

iff opened and stated to the Jury the
 nature and substance of the Plaintiff's
 case, as well as the evidence to be adduced in
 support thereof. and also stated & commented
 to the Jury upon what he expected would be
 the defence. Whereupon the defendants,
 by their Counsel intimated and stated to
 the Court that they would not open and
 state their defence to the Jury until after the
 Plaintiff had closed his proofs in chief and
 rested his case. & then & then also insisted
 and claimed, as a well established legal
 right their privilege so to do. But the said
 Court ruled and gave as its opinion &
 that the said defendants had no such
 right and that the said defendants should
 state their defence to the Jury & before the
 Plaintiff introduced any testimony
 in the case on his behalf. and that if
 the said defendants failed so to state their
 defence to the Jury they could not do so at all
 by way of an opening statement, to which
 ruling and opinion of the Court the said
 defendants demurred and there excepted. The
 Counsel for the defendants then stated
 their case to the Jury. And thereupon
 the Counsel for the Plaintiff to maintain and
 prove the case on his part. after the defend

and Council under the ruling of the Court,
aforesaid had stated their defence in the
Case to the Jury called Samuel Shaw
as a witness who testified as follows to wit,
Int. Were you a Notary Public in this City in
the month of December 1859?

Ans. Yes Sir

Int. Look at this affidavit and say whether
you ever saw it before or if it was sworn to
before of so by whom & when it was sworn to

Ans. It was signed and sworn to before me by
Wm. W. Rob. on 27th December 1859 that
of my signature and seal

Int. You administered the oath?

Ans. Yes Sir

Int. Mr. Wm. W. Rob. is one of the partners in the
firm of Wm. W. Ross & Co.?

Ans. Yes Sir

Int. You know Mr. Ross.

Ans. Yes Sir

Examination by Mr. Mumford,

Int. Whose handwriting is the body of the affidavit in

Ans. Well that is more than I can say, under
oath so much as I know by me that Mr.
Blackwell came in with Mr. Ross.

Mr. Dewey. We admit it to be in Mr. Blackwell's
handwriting

(36)

Mr Hervey. of Counsel for Plaintiff then offered
in evidence and read to the Jury the affida-
vit aforesaid. which is in Words & figures fol-
lowing to wit.

State of Illinois }
Cook County } ss

William M Rop one of the
firm of William M Rop & Co a Merchants
Co. Partnership in the City of Chicago in
said County and State composed of the
said William M Rop and John H. Rop being
duly sworn upon his oath deposes and says
that on the 29th day of September A.D. 1855
the said firm of Wm M Rop & Co employed
in their said service one Adam G Jones as
their Cashier and the said Adam G Jones
continued in their said employment as such
Cashier from the said 29th day of September
A.D. 1855 unto and including the 12th
day of December A.D. 1859 And the affiant
further deposes and says that at then and
there he came and was and continued to be
during the said service or employment of
the said Adam G Jones his duty to receive
safely keep and disburse all monies which
came to the possession of the said William M Rop
& Co and ~~and~~ ~~the~~ ~~same~~ ~~for~~ for the use and

benefit of the said Mr M Robt Co and under
their directions and in pursuance of their orders
and against further deposit and says that by
means of the premises the said Adam G Immis
then and there became and was the servant
trust agent of the said Mr M Robt Co. And
against further ^{deposits} says that afterwards and during
the continuance of the said employment the
said Adam G Immis was entrusted by the
said William M Robt Co with the sum of
one hundred and sixty six dollars in bank
bills or notes upon various banks and of various
denominations which are severally mentioned to
this against and to his said firm and that
afterwards to wit on the 12th day of December A.D.
1859 the said Adam G. Immis did then and
there without the knowledge or consent of the said
Mr M Robt Co and against their then felon-
iously consent and appropriate to his own use
and embezzle from the said William M Robt Co
with intent then and there to steal the same
the said sum of one hundred and sixty six
dollars where said sum of one hundred and
sixty six dollars in bank bills or notes was then
and there the property of the said William M.
Robt Co. Contrary to the form of the statute in
such case made and provided and against
the peace and dignity of the People of

the said State of Illinois And further
 this deponent hath not

subscribed & sworn to
 before me this 27th day
 of December AD 1859

W. M. Rip.

Read

Jammal Shams
 Notary Public

and the Plaintiff further to maintain and
prove the said issue called J. L. Milliken
who testified as follows to wit,
Int. Were you a Justice of the Peace for this County
in December 1859?

Ans. I was Sir.

Int. Look at this affiant, state whether you
ever saw it, whether it was ever presented to
you in your capacity of Justice of the Peace
and whether you issued any process upon it.

Ans. I issued a warrant upon this affiant.

Int. It was shown to you and you issued a warrant
upon it?

Ans. Yes Sir.

Int. Do you recollect who brought it to you to
have a warrant issued?

Ans. I do not positively. It strikes me it was Mr.
Blackwell, but I am not sure.

Int. You think it was Mr. Blackwell?

Ans. I have that impression but I am not positive.

Int. What capacity was he acting in, in bringing
that affiant to you.

Ans. He acted as prosecuting attorney in the
case before me. I am inclined to think
he was present and brought this to me in
the first instance but I am not positive.

Int. When it was brought before you by him did
they request you to take any action upon it.

Ans yes sir

Int What were you requested to do?

Ans I was requested to issue a warrant,

Int Which you did?

Ans yes sir.

Int. Is that the Warrant you issued upon that affiant?

Ans yes sir

Int Is that your signature?

Ans yes sir

Int. To whom did you deliver the Warrant which you issued on this affiant?

Ans This Warrant I think it was to Mrs. M. Douglas

Int Was he an officer?

Ans yes sir

Int. Do you know whether this Warrant was acted upon by the officer to whom you delivered it, if you delivered it to an officer?

Ans. Yes sir, I know there was an arrest made.

Int. Was the party brought before you?

Ans yes sir.

Int. When was that & what was done when he was first brought before you?

Ans I think he was brought to my house in the evening after sunset hours.

Int The same day the warrant was issued.

Ans The same evening I think I doubt he gave bail the same evening for his appearance.

ance at some future day.

Int. Did you require him to give bond for his appearance?

Ans yes sir,

Int. Is that the bond?

Ans yes sir

Int. It was executed in your presence by the then Defendant and his bail Mr. Munday?

Ans It was sir

Int. Was Mr. Inniss subsequently brought before you for examination upon that charge?

Ans He was.

Int. How long afterwards was it?

Ans. Well I am not sure. It was probably within a few days after the time. It might have been the following day. I am not sure.

Int. Now I think he was brought before you shortly after?

Ans yes sir very shortly after

Int. Was there an investigation had

Ans There was.

Int. Were witnesses examined?

Ans yes sir

Int. What was the result?

Ans The result was that the defendant was discharged the result of the examination

Int. Were either of the present defendants present at the examination

Ans I think they were during some portions of it

Int. Were they both, or was either of them examined

as a witness on that examination?
Ans. I am sure one was I think both but I
am not positive.

Int. Your recollection now is that they were both examined
Ans. I think so sir

Int. Were there any other witnesses examined?

Ans. Yes sir there were several

Int. Were there any other proceedings after the
discharge of Mr Inniss up on this examination
you have spoken of taken before you upon that
charge?

Ans. I think not sir

Int. Do you recollect sir after Mr Inniss was discharg-
ed of either of the Defendants making any state-
ment in your presence in your Court Room as to
the Plaintiff Mr Inniss as to his character?

Ans. I do not sir

Crop Examined by Mr Merrick.

Int. What was testified to before you as near as
you recollect it?

Ans. I cannot recollect now what was stated,
perhaps by the Ross's that was not stated by other
witnesses. That is I can perhaps state the
substance of one of the Ross's testimony a portion
of it. but the language I could not.

Int. Let us have it as near as you can give it?

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Ans. My recollection is that it was testified to before me by one of the Rep's that there was an arrangement made between them the Rep's and Immis Int. Which Immis

Ans. The then defendant Immis to assume & that he did assume the debt contracted by his brother, & that it was charged to him upon the books of the concern. with his consent

Int. That was told to you under oath by one of Rep's:

Ans. That is my recollection. that is the substance it amounted to that.

Int. Do you recollect the amount?

Ans. I do not. It was perhaps in the neighborhood of \$200. somewhere. more or less.

Int. Was there any testimony by the Reps. with regard to the manner in which this debt so assumed by Immis was to be paid as to how much he was to draw of his salary & how much was to be charged upon this debt?

Ans. I can only recollect upon that point that Immis was to pay a portion of the debt. along monthly that is that a portion of his salary should be used

Int. To apply on the debt?

Ans. That is my recollection now.

By Mr. Anthony

Int. Which one of the Reps was that?

Ans. I cannot state?

By the Judge.

(14.14)

Int. one of these defendants,

Ans yes sir It was one of the Props one of the firm's

Int He says it was one of these defendants,

Ans yes sir.

Cross Examination Resumed by Mr Merrick.

Int you say you discharged Innis?

Ans yes sir.

Int What has paid at the time you discharge him
what was paid by you or by him?

Ans I do not recollect.

Int. What was the ground upon which he was discharged
(Question objected to by Plaintiffs Counsel.
and objection overruled by Court.)

Ans The ground on which he was discharged
was that the parties had not made out the
case against him.

Int. In what particulars had they failed to
make out the case against him?

Ans In my opinion they had not proved a guilty
intent that is an intent to steal

Int you discharged him on the ground of "intent" alone?

Ans yes sir

Int. State whether or not you deliberated over the
matter personally?

Ans. My recollection is that I had no difficulty
in coming to a conclusion readily

Int As to the want of intent?

Ans. yes sir.

Int. And you do not recollect whether you deliberated upon the opinion when you discharged him

Ans. I can recollect what my opinion was at that time

Int. But not what was your own opinion when you discharged him

Ans. No sir I cannot

Int. Have you read this affidavit offered in evidence

Ans. I heard it read and I read a portion of it.

Int. Do you recollect whether in the examination of either of the Ropes or both of them there was any thing stated about the Plaintiff Adam Innis having been the assignee of his brother Alexander whose debt was said to be assumed.

Ans. I recollect there was such testimony given but I don't remember by whom my impression is it was by one of the Ropes.

And the plaintiff's Counsel further to maintain & prove the said issue called

Mr. M. Douglass who being examined by Mr. Sturvey testified as follows to wit.

Int. Were you an officer in December 1859?

Ans. yes sir.

Int. What were you deputy sheriff?

Ans. I was deputy sheriff and police officer.

Int. State whether that warrant was placed
in your hands for execution if so by whom when.
Ans. It was placed in my hands by the Clerk or
the Chief of Police I arrested Mr. Imms on that warrant.
Int. What time of the day:

Ans. Pretty near night.

Int. What did you do with it

Ans. Mr. Dodgson was Clerk then & he told me
if I would go to Mr. Ropes & he would show
me the man. I went there & they sent a
boy with me over to West Lake street where he
lived. He was not in. The boy described him to
me & then came back. I came along about a
block to a saloon & saw Mr. Imms coming up.
I went across the street and arrested him.

Int. Had you known him before:

Ans. No sir I had nothing but the description of this boy.

Int. Did you tell the Ropes your business when
you went over there.

Ans. Yes sir I told them that the Clerk had
put me down with a warrant & I did not know
him & I wanted them to show me. They said
they would send a boy with me to point him out.

Int. When you arrested him, where did you arrest him

Ans. On West Lake street.

Int. The same day?

Ans. Yes sir.

Int. What time of the day

4
Ans. I could not say but I came right from there
over here, & it was after 6 o'clock when I got
back. for I know Mr Driliken had his office
there & exp. the hall & had gone away
Int. Did you call at Robt & Co's store as you returned
with him in custody.

Ans. I sent word in for them to come up and appear
against him for I had arrested him.

Int. Was James in your custody?

Ans. yes sir he was with me I told him I wanted
to go into the store, but he did not like to go in.
so I sent in by some one who was there at the time.

Int. Did any of them come out?

Ans. not then I brought him up stairs and Mr
Driliken had gone home I was going away &
on the Court House steps I met Mr Mr Robt & told
him the case would not be tried till tomorrow
the Justice was gone home.

Int. Did you understand from him what he
came to the Court House for?

Ans. He came there to prosecute Mr James. I
suppose on this charge.

Int. And where did Mr Mr Robt go then?

Ans. I do not know where he did go I know
I went off. with Mr James he wanted to go
to your office

Int. What did you do with Mr James?

Ans. I went with him over to your office.

Int And then;

Ans. I went with him on the north side to Mr. Munay to get bail.

Int Did you find Mr Munay;

Ans. Yes sir & he came over we came back to your office & from there we went to 144 State St. where Mr Milliken lived.

Int. Mr. Munay I am myself & myself;

Ans. Yes sir and Mr Milliken came over to the police Court Room. and made out a bond & Mr Munay, & Mr Innis I don't look of them signed.

Int. And he was then discharged;

Ans. Yes sir

Int. What time of the night was that;

Ans. Not far from 11 o'clock. I don't I mean not tell exactly.

Int. Do you recognize that as the bond;

Ans. Well it is the same date I arrested him and it is signed Milliken's writing I have no doubt that is the bond.

Int. Upon the giving of a bond similar to that, he was discharged,

Ans. He was discharged from that arrest.

Int. you made your return

Ans. Yes. Sir. that is my handwriting

Int. Were you present at the examination afterwards,

Ans. Yes sir

Int. How long after was it.

Ans. It was a few days. how many I could not tell.

Int. Were you present at the whole of the examination;

Ans. Most of the time

Int. Did you see either of the defendants present on that occasion

Ans. yes sir

Int. one or both.

Ans. I don't both Mr Pop was there and I don't both of them.

Int. Do you recollect whether either or both were examined as witnesses

Ans. I do not recollect exactly but I don't Mr Pop was examined

Int. Do you recollect whether Mr. St. Pop was;

Ans. He might have been I don't they both were but I am not positive

Int. Were there any other witnesses examined;

Ans. I don't recollect. I believe there were but I do not recollect.

Int. Who.

Ans. I do not recollect.

Int. Do you recollect Mr Murray

Ans. I don't he was.

Int. Do you recollect Mr Kennedy the book keeper

Ans. I recollect. there were some other witnesses but who they were. I do not remember

Int. Do you recollect what disposition Mr Milson

made of the case.

And she discharged him

P3

But do you recollect after Justice Milliken had discharged the prisoner from this arrest. on this examination hearing either of the Rep. make any remarks about the character of this plaintiff Mr. McShannon. I object to the question.

Mr. Denny. I address it to show malice. The Judge. I should hardly think unless it may be presumed that his mind was influenced by some malicious motive, that it would be admissible but being just at the time I do not know whether that would not be regarded as a continuing act. If it had been next day I should say no.

Mr. Denny. In that case I should not offer it but being immediately after I thought it competent to show the animus with which this prosecution was actuated.

And thereupon the Judge over ruled the objection. To which ruling of the Court the Counsel for the Defendants, then and there excepted.

Hand pointing

Ans. They were both a little warm. but talking a little fast & William Pop told him he was a peonard. and that he would injure him if he wanted to get any berth any place in the town. I cannot read it word for word.

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Int what do you say were the words:
Ans. That he was a Commodore that he was dyspho-
nest. and that if he got any back, any other
place. that he would injure him, that he would
have him discharged. I took it from that. I
cannot word it but that was about the substance.

Recd examined by Mr Menick.

Int Have you stated positively as the substance
of that conversation what you stated as the sub-
stance of it on former trials?

Ans. I do not recollect. It has been so long since
I have thought of it but that is my opinion of
what it was.

Int. That it is about the substance of it.

Ans yes sir

Int That is your recollection?

Ans yes sir

Int. Is that the statement you made upon former
trials

Ans I think it is that is it is about the substance of it.

Int Did you not say on a former trial that Mr Rob.
said he was a Commodore & if any body asked
him he would say he was a Commodore?

Ans Well I can not recollect.

Int. I know it is difficult & I want to help you
along a little. Did you not say on a former

him that Mr Rob said. you are a scoundrel,
and if any body asks me I will say you are
a scoundrel:

Ans. It might have been that I said that before.

Int. Is what you state in the substance of the
language used or your inference from the language
used? You may state exactly what he did
say & leave me to infer what he meant. To do
that you not stated that his language was
that you are a scoundrel and if any body
asks me. about your character I will say
you are a scoundrel.

Ans. I don't think that was about the substance of
it. It is so long since I have other things
to attend to that I cannot keep these things in my
mind.

By Mr Morris

Int. Was there not a little addition to it besides that

Ans. I do not recollect now.

By Mr Ingersoll.

Int. you say they were all a little irritated:

Ans. I thought they were

Int. Was Mr. Ingersoll

Ans. They all seemed to be pretty hard with one another

Int. It was a generally angry conversation:

Ans. Well I should suppose it was.

Int. They were mad were not they?

Ans. Yes even they looked so to me

By Mr. Harvey.

Int. Do you not recollect the words "that if he were
got another situation" or "that he would prevent
him getting a better situation." does not
in addition to the word "second" "that he +
would injure him" or "that if he got another
situation he could not keep it"?

Ans. I don't think that is about the words.

Int. Do you recollect whether he used the word "chief"?

Ans. Yes sir.

By Mr. Menick.

Int. Have you ever said before on any of these
trials that Pop said that he would prevent
him getting a situation & if he did get one he
would have him turned out?

Ans. I don't think I did as to his calling him a chief.

Int. As to his injuring him?

Ans. I do not recollect but that is my impression.

Int. Did you ever testify so before.

Ans. That I cannot recollect.

Int. Is your recollection better now than it was
when it was first tried.

Ans. No sir.

Int. Did you state so then.

Ans. It seems to me as if I stated so before.

And the Plaintiff's counsel further to maintain
from the said Pop called George Kennedy

(54)
who being examined by Mr. Henry testified as follows
to wit.

Int. Were you book keeper for Messrs W. M. Robt & Co. in
December. 1859.

Ans I was.

Int. How long had you been employed in that
capacity at that time?

Ans About 8 years

Int Were you book keeper on the 10th December. 1859.

Ans I was.

Int. Do you know the Plaintiff Adam G. Imms.

Ans I do.

Int. Was he in the employment of Defendants at that time
Ans He was.

Int In what capacity?

Ans As Cashier

Int How long had he been in the employment of de-
fendants previous to 10th December 1859. in the ca-
pacity of Cashier

Ans I think about 4 years. but I could not say positively

Int. Was it your business to make up the accounts of
persons connected with the establishment?

Ans It was

Int State whether on or about the 10th December 1859
you were requested by the Plaintiff to furnish him
with his account.

Ans. I was on the Saturday evening previous to his
leaving. I do not know what day of the month

it was

Int. What day of the week was it

Ans. Saturday.

Int. State what took place on that occasion between yourself and the Plaintiff with reference to that account.

Ans. On the Saturday evening previous to Mr Imrie leaving he came to me & told me he was going to Stannibal to attend a law suit.

Mr. McPherson. I object to that. it is a conversation between Plaintiff and witness himself Mr. Murray. I have not asked for any conversation I asked him simply what took place on that occasion, and thereupon the Court overruled the objection & admitted the witness to answer the question; to which ruling of the Court defendants counsel excepted.

Ans. Mr Imrie asked me for a statement of his account & told me he was going to Stannibal on the Monday & as he had received notice from Mr Rob. that his services would not be required after the 1st of January in that case he did not think it was worth his while coming back. I gave him a statement of the account out of the books and found according to the books & that he was in debt about \$78. He said it could not be so. there must be some mistake & about it there must be between \$100. and \$200

due to him I showed him about the charge of his brother and he told me he had never agreed to pay it out of his salary, he had agreed to pay it out of that insurance money but where was William Pop. at that time?

Ans. In New York.

Int. Where was Mr. St. Pop.

Ans. on the farm I advised him to remain till Monday & on John St. Pop. Mr. Innis did remain and that is all I know about it. He remained on Monday & worked all day on Monday.

Int. Were you present on Monday evening when he left the farm? I had gone home I was in the habit of going home at seven o'clock in the evening.

Int. Were you the person who made that charge of Alexander Innis debt against the Plaintiff?

Ans. I was.

Int. How much was that charge?

Ans. Two hundred and some odd dollars I do not recollect the amount.

Now the Plaintiff's Counsel called the attention of the witness to an account on defendant's ledger which is in words and figures following to wit,

✓

Mr Adam G Imrie
In ac with Mr M. Dep. & Co.

1857	5.	Locash.	1.00
	9	" "	7.00
	13	" "	2.00
	14	" "	1.50
	18	" "	1.00
	"	Mehdise	88.
	23	" "	4.55.
Dec.	14	Cash	1.00
	19	" "	50
	24	" "	1.00
	26	" "	2.00
1858	28.	" "	50
Jan'y	4	Mhdise	4.00
	8	" "	2.38.
	9	Cash	10.00
	14	" "	7.00
	20	" "	8.00
	21	Mhdise	6.88.
	23	Alex ^r Imrie ac.	189.42
	25,	Cash	7.00
	26	" "	1.00
	28	" "	12.00
	30	" "	4.00
My	4	" "	3.00
"	"	Mhdise	1.00

Ledger. Fol. 206.

Feb	9	To Cash	10.00.
	16	" "	4.00.
	17	" "	10.00.
	19	Mh drc	4.41.
	20	Cash	2.00.
	24	" "	2.00.
	25	" "	10.00.
	"	" Mh drc	1.00.
March.	1	Cash.	.50.
	9	" "	4.00.
	12	" "	4.00.
	"	" Mh drc	63.
	17	Cash.	6.00.
	19	do	3.00.
	20	" "	4.00.
	24	" "	7.00.
	26	" "	4.00.
	27	" "	3.00.
A/mc	1	" Mh drc	5.00.
	3	" Cash.	5.00.
	7	" Mh drc.	8.00.
	9	" Cash.	10.00.
	10	" "	4.00.
	19	" "	13.00.
	23	" "	1.00.
	24	" "	2.00.
	26	" "	4.00.
	"	" Mh drc	1.00.

Jolo Ledger 207

May	3	To cash.	5.00
	10	" "	5.00
	17	" "	3.00
	18	" "	17.00
	26	" "	1.00
June	3	" "	3.00
	7	" "	4.00
	9	" "	11.00
	11	" "	63
	14	" "	.50
	16	" "	1.50
	22	" "	50.00
	23	mk dice	25
	25	do	3.00
	26	Cash	5.00
July	7	" "	5.50
	21	" "	30.00
	"	mk dice	2.48
	26	" "	31
	31	Cash	20.00
Sept.	22	" "	2.00
Oct	4	" "	2.00
	6	" "	1.00
	7	" "	30.00
	"	mk dice	9.81
	13	" "	4.00
	15	" "	11.37
	25	" "	1.00

July 207

July 261

Oct	25	To	mh disc		1.00.
"	26	"	Cash		5.00
	28	"	"		25.00
Nov.	10	"	mh disc		2.00
"	24	"	Cash		2.00
"	29	"	"		25.00
"	29	"	mh disc		14.13.
Dec	1	"	Cash		3.00
	2	"	"		2.50.
	4	"	"		1.00
	10	"	"		25.00
	11	"	"		4.00
	13	"	"		1.00
	20	"	"		7.00
	22	"	"		5.00
	"	"	mh disc		1.00.
	27	"	Cash		7.00
1859.	31	"	"		7.00
Jan'y	3	"	mh disc		40
	4	"	Cash		2.50.
	5	"	"		25.00.
	15	"	"		5.50.
	18	"	"		30.00.
	26	"	"		5.00
	"	"	mh disc		1.00
	29	"	Cash		25.00.
July	11	"	"		30.00
"	13	"	Abn ee		25.00

July 261

July 357

July	15	To Cash.	20.00
March	1	" "	30.00
"	3	" "	5.00
"	"	" Mhdise	2.50
"	14	" Cash.	10.00
"	"	" Mhdise	1.00
"	26	" Cash.	50.00
"	28	" "	10.00
April	1	" "	25.00
	13	" "	5.00
	14	" Mhdise	5.75
	"	" "	3.00
	19	" Cash.	5.00
	22	" "	1.00
	29	" "	25.00
May	3	" "	5.00
	19	" Mhdise	9.50
	24	" Cash.	6.00
	25	" "	25.00
June	7	" "	25.00
	10	" "	3.00
	"	" "	8.95
	13	" "	20.00
	29	" "	5.00
	30	" "	15.00
July	5	" "	10.00
	6	" "	11.00
	7	" Mhdise	.81

July 307

July	9	To Cash.		15.00
"	13	" "	200	11.00
"	14	" "	200	14.00
"	18	" Mh diei	300	1.00
"	19	" "		1.50.
"	20	" Cash.		5.50.
"	22	" "		25
"	25	" "		3.00
"	30	" "		10.00
Aug.	10	" "		15.00
"	"	" Mh diei.		1.50.
"	12	" Cash.		11.31
"	16	" "		25.00
"	22	" "		10.00
"	30	" "		15.00
Sept.	1	" "		25.00
"	8	" "		6.00
"	22	" Mh diei		.50.
"	27	" Cash		25.00
Oct.	15	" Mh diei		4.00
"	31	" Alex ^d Immis		241.04
Nov.	15	" Cash		5.00
"	16	" Mh diei		.50.
"	25	" Cash		5.00
"	26	" Mh diei		.50
				1720.65

Int. to that the account of Adam G. Immis:

8
1
Ans yes sir

Int. What is the amount charged as the debt.
of Alexander Innis?

Ans \$241. ⁰⁴/₁₀₀

Int. What is the date:

Ans October 31st 1859

Int. Of that same year 1859

Ans yes sir

Int. By whom were you ordered to make that charge

Ans By William Rob.

Int. Did you ever tell Mr Innis the Plaintiff
whether you should make that charge.

Ans No sir

Int. Did you ever inform him of the charge hav-
ing been made. till you rendered the account
on 10th December.

Ans No sir

Int. Do you know ^{that the Plaintiff had any notice or knowledge} of your own knowledge, of
that charge being made against him till
you rendered the account.

Ans No sir

Int. Excluding that charge what was the bal-
ance due to Mr Innis on the 10th December 1859.

Ans. \$166.

Int. Do you know what was his yearly salary
at that time?

Ans. I really forget. one time it was \$800. It
was reduced I think I cannot tell exactly now.

Int. But what was the amount of his yearly salary excluding the charge of \$241.⁰⁴ for his Holten indebtedness there was due to him \$166.
Ans. yes sir.

Int. Was Mr. Imrie in charge of the monies of the concern at that time.

Ans. He was

Int. Was it his duty to receive it & pay it out.

Ans. Of course.

Int. As Cashier

Ans. yes sir

Int. Was this money in Mr. Imrie's possession on that Saturday evening in the desk?

Ans. Certainly, the proceeds of the day.

Int. Was this money in his possession on the following Monday on the 12th?

Ans. yes sir

Int. And he had as Cashier the custody of the money during that day.

Ans. yes sir.

Int. What was the average daily proceeds of the cash sales at that time the cash sales during the day.

Ans. I should think about \$1500.

Int. What did they average daily during the four years Mr. Imrie had been Cashier previous to that time.

Ans. I should think take the year all ~~was~~ round & would average that.

Int. The whole 4 years

Ans. yes sir I should say so

Int. Was it your duty as book keeper to transfer to the general books of the Concern. Journal Pages. & Cash Book the entries you found made in the Sales Book by Mr. Jannis and other Clerks.

Ans. yes sir

Int. State whether on the 13th December you found any entry on the Sales book made by the Plaintiff.

Ans. yes sir.

Int. What was the entry

Ans. A. G. Jannis \$166.

Here Plaintiff's Counsel called attention of witness to the Sales book of the defendant. for Decr. 12, 1859. which in words & figures following to Int.

66

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
62	17 00	20	3 53	18		4 00	1 00	25	1 00	87	2 00	1 70	30	2 36	1 33	80	90	22	3 37	1 50	1 65	1 40	1 09
12	1 25	70	2 77	30		2 46	08	2 00	1 00	47	00	4 44	1 10	3 77	1 88	50	14 00	12	1 28	3 25	1 15	1 75	1 30
1 85	2 94	18 57	63	1 88		81	1 20	2 25	27	3 39	7 81	3 00	3 96	1 21	59	2 20	17 54	1 00	1 35	10	1 77	1 24	1 10
75	1 00	25	12	39		16	20		6 75	61	1 84	47	12 10	06	1 75	1 12	3 00	97	1 20	12	1 81	1 13	1 37
6 00	1 83	1 53	3 81	20		2 00	44		90	62	31	2 00	25	1 50	4 18	1 44	1 75	87	31	1 12	65	1 12	37
3 08	1 35	7 00	1 25	1 00		14	69		1 25	15	1 20	6 88	1 76	3 37	2 64	45	35	27	28	1 00	9	25	59
1 09	22 00	94	63	1 67		31	75		50	12	1 22	2 74	62	4 49	25	08	44	86	1 61	4 28	25	31	08
11 75	1 25	94	2 49	04		37	36		2 00	14	95	4 55	35	2 75	37	1 00	97 00	15	37	12 39	1 24	18	48
1 40	1 69	12 57	40	34		1 37	19		94	1 00	2 46	1 87	31	04	18	18	1 41	1 23	14	2 22	31	37	26
6 50	19	05	7 55	34		62	76		2 25	06	30	08	4 32	38	35	12	87	15	56	42	1 46	150	71
20 00	18	1 88	7 55	34		67	42		2 00	75	25	1 35	60	25	63	79	25	75	79	3 80	85	44	25
52 76	94	1 99	3 57	63		94	55		18 86	12	34	6 87	1 72	62	75	1 34	28 00	3 16	12	1 75	5 69	13	3 12
4	1 21	80	18	50		72	1 25		2 00	33	87	1 46	3 02	1 43	13	58	167 11	8 49	25	41	1 50	13	9 13
52 72	1 50	46 58	10	60		97	50		16 36	25	1 40	1 00	85	3 30	5 67	15 25	167 11	8 49	12	63	87	1 55	
	1 00		30	20		94	14			1 75	90	7 20	7 06	47	50	68	19 77	1 25	19 77	25	20	37	
	14 25		41	71		14	87			12	1 85	1 12	12	23	83	1 10	1 00	6 12	3 64	27	2 55	12	
	7 17		70	88		62	35			1 75	1 95	1 00	35	1 25	38	30 63		3 64	97	35 32	32 92	30	
	15 12		80	25		1 87	23 09			18	27 64	92	1 19	5 43	5 00	24 14		2 62			20	14	
	19 23		69	30		3 50				87		25	2 00	5 00	24 14			1 60				31	
111 91			36 58	37		18				152		37	72 95	52 97				3 00				90	
				17 57		18				1 82		75	40 75	1 17				41 04				1 00	
				18 47		37				33		61 53	40 75	54 14				41 44				1 25	
						31				1 60		63 13		54 34								2 29	
						2 50																18 64	
						31																	
						80																	
						2 25																	
						31 30																	
						1 78																	
						33 08																	

Int. state to the Jury a part of the cash transac-
tions of a December 1859.

Ans. yes sir

Int. Explain to the Jury what these various Columns
mean (pointing to Sales Book) :

Ans. That is the number of salesmen there were
28 of them at that time. Each one has a number
br. as he makes a sale, he makes a check
of the amount & hands it into the money to
the Cashier. He then enters the amount of the
sale in the Sales Book under his own number. There
is a number Book exactly like this kept outside &
it is in the book outside that the salesman
enters the amount of his sale.

Int. There were 28 of them

Ans. yes sir on that day

Int. What was the aggregate amount of sales that day

Ans. \$1026.¹⁴/₁₀₀

Int. Explain what this Column is (pointing
to sales book) :

Ans. This is an account of the cash paid out
of the desk during the day

Int. That amounts to \$196.⁰⁰/₁₀₀

Ans. yes sir. These (pointing to another part of
the page) are some old accounts paid in

Int. Making the gross receipts \$1098.⁰⁰/₁₀₀

Ans. yes sir

Int. This pointing to one part of the page being

the amount of the daily sales & then (prompting
 to another part) bring the amount paid in
 for outstanding debt.

Ans yes sir

Int Debt contracted before:

Ans yes sir

Int. These are payments (prompting to the Sales
 Book) small payments made from the daily
 receipts on that day.

Ans yes sir

Int. And in the aggregate the amount \$196 ⁶⁶/₁₀₀

Ans yes sir

Int. Including the entry which had been erased.

Ans yes sir

Int. \$166 stood there?

Ans yes sir

Int. Whose balancing is this?

Ans Mr. Imrie

Int. Showing the amount received, the amount
 paid out, and the amount on hand.

Ans yes sir

Int. Was it Imrie's duty as Cashier at the end
 of the year day to foot up the amount received
 from sales and collections & to foot up the
 amount paid out during the day

Ans yes sir

Int. Then this ~~month~~ ^{month} here was a portion of his duty and

Ans yes sir

Int. In the usual course of business?

Ans yes sir

Int. By whom was the crasmo made

Ans By me.

Int. By whose order did you do it?

Ans Mr. William Rop

Int. When was it made

Ans After his return from New York.

Int. When did you first see this entry?

Ans I saw it on the morning of the 13th:

Int. Did you transfer this entry to the general books of the concern on that day?

Ans yes sir

Int. In the Ledger, the Cash Book, the Journal.

Ans yes sir all through.

Int. It passed through in the ordinary course of business

Ans yes sir.

Int. Did it remain till William Rop's return from New York?

Ans yes sir

Int. When it was entered on the 13th

Ans yes sir

Int. How long after was it William Rop returned from New York?

Ans I think about 10 or 12 days.

Int. About the 25th then?

Ans yes sir

Int. How long after his return was it that you



was ordered to make this change;
Ans. I don't do say next day that is my impression
Int. Was it as soon as William Rob was infor-
med these changes had been made in the books
Ans. I don't do.
Int. Was the change made from all the books as
well as from the Sales Book.
Ans. I don't do.
Int. Were you ordered to erase it from all.
Ans. yes sir.
Int. you say there were 28 sales men employed
at this time in the store.
Ans. yes sir.
Int. according to this book:
Ans. yes sir.
Int. Were there any other persons employed besides
sales men.
Ans. Oh. yes. myself, John Rob (Canada John)
and Mr Jervis besides a number of Porter Boys.
Int. How many persons were employed about the es-
tablishment including the 28 salesmen on that
day 12th December 1859
Ans. I don't think there would be in the neighborhood
of 40 boys and all.
Int. How were the salesmen & other employees paid
how frequently?
Ans. At that time the salesmen were paid once
a fortnight - every alternate Saturday.

Int How were the amounts coming to them ~~was~~ ascertained, and by whom. were the pay rolls so called made up.

Ans. I made out a list of what was coming to each salesman after deducting the goods they had had during the fortnight, (they were in the habit of having goods then,) struck the balance on cash & that was paid every alternate Saturday.

Int. There was a list made out the full amount was drawn for & then paid out to the several parties Ans yes Sir

Int Was your name on these pay rolls?

Ans No Sir

Int Were you paid in that way?

Ans No Sir

Int Was Mr Jones paid in that way

Ans No Sir

Int How were you and the Plaintiff Paid

Ans We were paid just as we wanted it, could draw it.

Int. When you wanted money how did you get it?

Ans. Sometimes got it by check & sometimes from Mr. Jones from the desk.

Int. If you got a check how was it signed?

Ans. When Mr Jm Rob. was present it was signed by him, in his absence it was signed by Mr Jones and endorsed by John St. Rob.

Int. Some times you were paid in that way
 & some times in ~~that way~~ money.

Ans. Yes sir

Int. When you were paid in money who paid you.

Int. Mr. Emis from the desk

Int. Were you paid what you required without
 regard to any particular time such as once a fortnight?

Ans. Yes sir

Int. Do you know of Mr. Emis paying for money
 on other occasions besides the one the
 \$166. is talked of?

Ans. I have seen money charged to him in his
 own handwriting in this book (pointing to the sales book).

Int. Did you know Alexander Emis

Ans. I did

Int. Did you know where he was doing business
 previous to the summer of 1858.

Ans. I know he was at Quincy

Int. Was he a customer of the firm of Robt Co.?

Ans. He was.

Int. Do you know to what amount he had pur-
 chased goods from the defendants during the
 time of his residence at Quincy.

Ans. I really could not tell.

Int. Will the Ledger show.

Ans. It will show part of it due me a good
 amount of goods valued upon the approval
 book & paid for.

Int. Have you any recollection apart from the
 Ledger of the amount of transactions between him
 & defendants

Ans. I cannot say that I have. it was a con-
 siderable amount.

Int. Can you state at what time the balance
 that was due from him was struck from the Ledger.

Ans. I cannot. But the ledger may show it.

Here reference was made to the defendants
 small Ledger. p. 86, which is in words & figures
 following to wit:

Mr Alex^r Lomax

In acc mto H. M. Pop. & Co.

1856,				
June.	12.	Lo.	m h acc	75. 20
	25	Lo.	do	7. 00.
July	7	Lo.	do	13. 20
"	18	Lo.	do	15. 00
"	25	Lo.	do	15. 85
August	1	Lo.	do.	108. 28
	8.	Lo.	do	10. 13.
	13	Lo.	do	23. 35.
	23	Lo.	do	53. 75
Sept.	9	Lo.	do	719. 61
	11	Lo.	do.	72. 14
	16	Lo.	do	1. 32
	25	Lo.	do	60. 38
	26	Lo.	do	37. 40

	27	To	do.		12. 87.
	29	To	do.		100. 30.
Oct.	2	To	do		49. 00
	6	To	do		167. 50
	8	To	do		65. 94.
	22	To	do		274. 81
	30	To	do		16. 83
Nov.	5	To	do		50. 23.
	10	To	do		28. 91
	13	To	do		57. 16.
Dec.	12	To	do		43. 22
	13	To	do		43. 57.
1857	27	To	do		25. 24.
Jan'y	7	To	do		2. 00.
	19	To	do		21. 69
March	31	To	do		119. 16.
April	1	To	do		187. 30.
May	14	To	do		8. 65.
"	28	To	do		184. 45.
June	16	To	do.		2. 50.
	19	To.	do		79. 72.
	24	To	do		28. 43.
July	1	To	do		65. 18.
Aug	21	To.	do		56. 01.
Oct.	30	To.	do		110. 04.
Dec.	8	To	do		111. 56.
	28	To.	do.		77. 86

Low Petty Ledger. 2.
Total 192 & 196.

Petty Ledger. 3.
Total 41

1858				
Apr 17	To	do.		191. 31
28	To	do		32. 62.
30	To	do.		21. 36.
May. 13.	To.	do		27. 36.
June. 7	To	do		32. 52
14	To	do		53. 29
18.	To.	do		9. 56.
19	To.	do.		80
July 16.	To	do		21. 27.
30	To.	do		40. 15.
1856,	Loc.			<u>3628. 38.</u>

Pelly
Ditto
86
Leag 4

July 18	By	Cash.	157. 11	
Aug 23	By	do	128. 12.	
Sept. 10	By	do	250. 00	
16	By	Cash.	533. 83	
Octbr 22	By	do	90 00	
November 7	By	do	250. 00	
December 11	By	do.	400. 00	
1857			337. 57	
January 7	By	do	4 86.	
" 11	By	m haze.	200. 00	
May 27	By	Cash.	150. 00.	
June. 13	By	do	200. 00	
Sept. 7	By	do.	149 00	
Oct. 15	By	do.	165 69	
Dec 4	By	Adam Epshman	189. 42	
1858 Jan 23	By	m haze.	6. 10	
1859 June 16.	By	Cash.	175. 00	
Oct. 31	By	Adam & Imus.	241 04,	3628. 38.

Int. When was it made?

Ans. October 31, 1859

Int. What is the date of the last entry of goods to Alexander?

Ans. July 31st, 1858

Int. What is the date of the last credit to Alexander Inmis previous to Oct. 31, 1859

Ans. June 16th, 1858. By Cash. \$175.

Int. How dare had been no goods furnished to Alexander Inmis after July 1858.

Ans. No sir

Int. And no payments made by him after June 1858. All this credit a charge to Adam Inmis

Ans. I should suppose not.

Int. It so appears does it.

Ans. It so appears on the books

Int. Do you know when he ceased to do business at Quincy?

Ans. I do not.

Int. you stated sir that payments were made by this concern in these ways as I understood you by check signed by Mr. M. Rob. by check signed by Adam G. Inmis & endorsed by John St. Rob or in money

Ans. Yes sir

Int. These were the mode in which payments were made

Ans. Yes sir

Int. Was Iman authorized to draw checks
Ans. Of course he was

Int. to be endorsed by John Pop
Ans. yes. Sir

Int. Do you know of his doing so.

Ans. I do I have had checks from him myself;

Int. you know of his giving checks in a great many instances

Ans. yes, Sir

Int. When drawn by Mr Pop. were they endorsed at all.

Ans. No Sir

Int. Did any body else have authority to draw
Checks except Mr Pop. & A. G. Iman.

Ans. No Sir

Int. Had Mr. Imo Pop authority to draw checks in
the name of Mr. Pop. & Co

Ans. Not at that time

Int. Then the only persons who could draw &
checks were ^{Mr} Mr Pop. or Mr Iman with Mr Imo
Pop's endorsement.

Ans. yes Sir

Int. When you say the \$166. entered on the
sales book on the morning of December 13th.

Did you make any remarks or inquiry about it.

Ans. I did not. I heard no objection & I went on
in the usual way of entering up the business
of the day before.

Int. Was Mr Imo Pop in the store on the morning
of Monday Dec 12th

Ans. He was.

Int. Was he there on the 13th.

Ans. He was

Int. Was he there at the time you carried
him into the general books of the concern

Ans. He was there on the day. I do not know
whether at the time Both he and Canada
John were there

Int. Did you have any order from Mr. Jno. & Rob.
not to enter him down on the books of the concern

Ans. No sir

Int. Was there any objection made by Mr. Jno. & Rob.
to his entry of Mr. Innis

Ans. None.

Int. Did you make any remark to Mr. Jno. &
Rob. when you saw his entry in the sales book
on the morning of the 13th.

Ans. I did not.

Int. Why?

Ans. I cannot answer the question

Int. Did you know that that \$111. was an amount
coming to him for his salary

Ans. I did according to my own statement.
On the Saturday night I knew that was the

amount of it. I told him that was the balance
coming to him after deducting the \$24.⁵⁴

52 Int. That was the amount which you found
charged against him?

Ans. yes sir

Int. you made no remark about it

Ans. I did not.

Int. No. Mr. Mr. & Rep gave you no directions

Ans. No Sir

Int. You made any objections to it.

Ans. No Sir

Int. Do you recollect Mr. Blackwell coming to the store & asking you questions about this transaction

Ans. I do

Int. Can you state whether at the time Mr. Blackwell came to the store these entries had been erased from the books

Ans. They were erased.

Int. Were you present at the examination, before Justice Mellican

Ans. I was examined there myself, but I did not remain I was present for a short time

Int. you were examined as a witness

Ans. I was

Int. Do you remember whether the defendants or either of them was examined before Mr. Mellican

Ans. I did not see any of them

Int. Did you see either of them present:

Ans. I saw Mr. Mellican Rep

Int. Do you recollect whether Mr. Mr. & Rep were present

Ans. I do not recollect.

Q. Did you merely give your testimony & went away
A. I did

Q. You were then in their employ
A. I was.

Q. Was there anything said by either of
the defendants as to your giving testimony
in this case at any time

A. Yes sir

Q. State what it was:

A. On the morning the second trial came
on or was to come on Mr Rob called me.
& stated to me that he had been advised
by Mr Menick & Mr Van Buren to discharge
me from his employment on account of
the evidence I gave. I told him that I
had only told the truth, & that I was bound
to do whatever the consequences might be.

Q. Did Mr Rob say anything about discharging you

A. That is all he said and he thought he must
tell me that I might know what to expect.

Q. Was that before or after you gave your tes-
timony on the second trial

A. Before

Q. You did testify on the second trial:

A. Yes sir

Q. And on the third trial

A. Yes sir

Q. And on the whole of them:

Ans. yes sir.

Int. And on each trial you testified substantially
what you have done now.

Ans. I did.

Int. You were not present then at the time
the investigation by Mr. McMillen was conducted
and you was not.

Int. You did not hear anything that took place
at that time.

Ans. No sir.

Int. Were you in the employment of the defend-
ants at the time of the second trial?

Ans. yes sir.

Int. Was Canada John in their employ at that time
Ans. He was.

Int. In what capacity?

Ans. As cashier.

Int. In Mr. Jones's place?

Ans. yes sir.

Exp. Examined by Mr. Minette
Sales Book produced.

Int. I want you to explain this book a little
further to the Jury?

Ans. yes sir.

Int. You say there ^{were} 28 Sales men:

Ans. yes sir.

Int. Now suppose John Smith was a salesman
(81)

+ made a sale ⁽⁸²⁾ how did he proceed:

Ans. He entered the items he sold on a check and brought it up to the desk with his money he then entered the amount in another sales Book which was outside the desk.

Int. He brought up a piece of paper upon which was the amount of the sale & the money to the desk & entered the amount in his own handwriting in another book

Ans. Yes sir.

Int. Who kept this book. (The sales book)

Adam. Jones:

Ans. I do not know exactly whose handwriting this is from Canada John Schmitt but it was not kept by the cashier:

Ans. No sir

Int. There was another outside the desk exactly like this is with these sales newspapers in which book each salesman had to put in his own handwriting the amount of money he got.

Ans. Yes sir

Int. This Book had to correspond:

Ans. Yes sir

Int. What became of the Cash:

Ans. It was handed to Mr. Jones & put in the desk

Int. And then the amount of Cash had to correspond with this Book & this book into the book outside.

Ans Yes sir

Int. You told the jury in your testimony that in regard to your salary, whenever you wanted anything you drew it

Ans I did sir

Int How did you draw it.

Ans Sometimes by check & sometimes out of the desk.

Int How much did you ever draw out of the desk at any one time?

Ans Some 10 or 12 dollars probably I know on the last time I saw my name there 2 or 3 times

Int Did you ever do this without permission from Mr J. M. Rop or Mr M. S. Rop?

Ans I believe so.

Int How large a sum?

Ans I cannot tell

Int Say or recollect.

Ans That took me down.

Int. Was it not an understood rule that no money was to be drawn out of the drawer over \$5. without the permission of the proprietors?

Ans. There was a rule to that effect made at the time.

Int There were exceptions to that rule. Were there?

Ans Yes sir a good many

Int Did you endeavor to conform to that rule in drawing your salary?

Ans I took mine whenever I could get it when I asked for money if they gave it to me I

look it I went and asked for money &
look it when they gave it to me. however it was
asked you say then that it appears you drew
sums of money out of the drawer of \$5 or \$10.
Ans. Yes sir

Int. How do you know that it was not with the
Consent of Mr. Jm. W. Robt.?

Ans. It was in his absence

Int. How do you know that both the Robts were
absent when you drew these amounts?

Ans. I cannot tell positively

Int. How do you know they did not go to leave?

Ans. They might have done

Int. It was a general rule that no money over
\$5.00 should be paid out of the drawer & though
you got them paid to you. you do not know
whether they consented to these payments or not.

Ans. I do not.

Int. Did you know that Adam Jemep. had
any discretionary power to pay money out
of that drawer?

Ans. I did not know. I could not have any previous
knowledge.

Int. Did not you know that he was directed
never to pay money out of that drawer over \$5.00
without the Consent of the Robts?

Ans. I did not.

Int. Did not you know anything about that?

Ans. I heard a general order given and that is all I know about it.

Int. Did you not testify before that you were remunerated with for allowing sums over \$5.00 to go through the books?

Ans. No sir

Int. Never?

Ans. No sir.

Int. Never any thing like that?

~~Ans.~~ No sir I never did that.

Int. Did you never testify before that you were remunerated with in reference to allowing sums over \$5.00 to go through those books?

Ans. No sir, it is perfectly absurd I did not care how they were if they were \$50.00 they would have to be entered?

Int. Now you say that Erasmus was made ducty after Mr. Dr. McRob. came from New York.

Ans. Yes sir

Int. Do you know when?

Ans. No sir

Int. Do you know to a week?

Ans. No sir

Int. So a month?

Ans. No sir

Int. How many days afterwards was Erasmus made

Ans. After he was what?

Int. After he came from New York
 Ans. I think it was the next day.

Int. Are you sure you saw him the first
 day after he came back.

Ans. I presume so
 Int. Are you sure ^{that} you saw him the first day
 Ans. I should think so.

Int. Are you positive you saw him the first day
 Ans. It seems to me such an absurd question
 He might have been in the City half a dozen
 times if he did not come to the store I saw
 him the first time he came into the store he
 might have stopped away half a week be-
 fore he made his appearance in the store.

Int. How long have you known these parties
 the Plaintiff and the defendant.

Ans. I guess about 10 years
 Int. How long has Mr. Emery been living here
 Ans. I should think about 9 or 10 years

Int. Has he been in Meppis Robt & Co's employ all the time
 Ans. No sir

Int. How long had he been at the time he was discharged

Ans. I think about 4 years

Int. From 1853 to 1859 he had been in their employ
 Ans. Yes sir

Int. He went into Meppis Robt & Co's employ as
 soon as he came here.

Ans. No he did not. he was with his uncle
 Mr. Murray

Int. How long have you been with Messrs Robt & Co.
 Ans I don't know about 9 years

Int When did you leave there?

Ans I left ^{there} a year ago last January

Int Is there not a little ill feeling between you
 & the Messrs Robt?

Ans No sir not on my side

Int You bear no malice?

Ans No sir

Int Were not the relations between the Messrs
 Robt. and Imlis always friendly up to this occurrence
 Ans They appeared to be so.

Int Up to the time Mr Robt. came back from
 New York?

Ans Yes sir.

Int They were blood relations were they not?

Ans I believe so

Int During the time that Mr Imlis staid there
 in that employ did their relations general-
 ly seem harmonious & kind.

Ans They did.

Int You stated to Comtee that the amount
 of \$166. was due Mr Imlis for his salary after
 deducting the debt of his brothers?

Ans Yes sir

Int What was his salary?

Ans I really forget.

Int Did you ever know?

Ans I did

Int How?

Ans Because we had a book in the safe with a list of the salaries of all the men in the store. I guess you will find the book still in the safe.

Int I refer to that book (the sales Book) you say this entry was erased when Mr Blackwell first came to the store

Ans Yes sir

Int Did he examine that Erasure?

Ans. I do not know whether his attention was called to the erasure. I did not do so. I saw him looking at the books

Int Did you see him looking at this book?

Ans I did.

Int. And you say now positively that it was + erased when he came there?

Ans yes sir

Int You cannot be mistaken about that?

Ans I don't doubt it or lightly

Int. You were Book Keeper & therefore always in the desk where these books were you were a sort of companion to these books

Ans Pretty much I was

Int And Mr Blackwell examined these books without you seeing him do so.

Ans. I might have been engaged in something else at the time.

Int. Could he have come upon a day when you were not there?

Ans. He might possibly.

Int. On the day he came talked with you and examined these books you say that the Erasure was made.

Ans. Yes sir

Int. No mistake about it?

Ans. It was so far as I can recollect.

Int. I want to take a look at this account of James' Ledger p 244. State to me say when on that account is charged up the debt of his brother

Ans. Oct or 31st 1859

Int. He left December 12th 1859

Ans. Yes sir

Int. State whether or not there are any sums charged up on that account after his brother's account was charged up which sums he himself drew.

Ans. There are two sums of \$5. Nov. 13th and Nov. 25th \$5.

Int. These are charged after the entry of his brother's account.

Ans. Yes sir

Int. ~~xxx~~ How there are subsequent amounts of money which he drew out himself?

Ans. Yes sir

(90)
Int. Had Adam Jones accept those books?
Ans. Yes sir.

Int. Describe the sort of place you indicated
there as Book Depository.

Ans. A desk about the length of this I should
suppose. (Here the Witness pointed to the
Parlour Room the clerk's desk in Judge
Vaw's room's Court Room)

Int. Railed in?

Ans. Yes sir.

Int. Did Adam Jones hold forth there.

Ans. Yes sir.

Int. One at one ^{end} and you at the other.

Ans. Yes sir.

Int. And he had access to these books?

Ans. Yes sir.

Int. Have you ever seen him examine these books.

Ans. I have.

Int. Did you see him do so before he left
in December.

Ans. I have.

Int. Did you ever him examine his own account
particularly?

Ans. I don't know that I ever did I could not
tell what he was examining.

Int. What interest had he in examining these
books further than his own account how
that was going on?

13
4

but none that I know.

But Do you recollect any other debt of Alexander Jones that was charged up against Adam Jones but I do not recollect any thing about it but I saw it there charged but not by me.

Defendants Ledger p 206. was then produced and shown items in words & figures following to wit.

Mr Adam G Jones

Law ofc with Mr M. Roberts.

1857

Nov.	5.	To Cash	1.00,
	9.	To "	7.00
	13	" "	2.00
	16	" "	1.50
	18	" "	1.00
Dec.	"	Merch	88,
	23.	" "	4.55
	14.	Cash	1.00,
	19	" "	50
	24	" "	1.00
1858 Jan'y	26	" "	2.00
	28	" "	50
	4	Merch	4.00,
	8	" "	2.38,
	9	Cash.	10.00
	16	" "	7.00
	20	" "	8.00,

Ledger Folio 206.

1858	Jan'y	21	To Milk dice	6.88.
"	"	23	" Alex ^r . Simip ^r . a/c.	189. 42
"	"	25	" Cash	7. 00
"	"	26	" "	11. 00
"	"	29	" "	12. 00.
"	"	30	" "	4. 00
Feb'y	"	4	" "	3. 00
"	"	"	" Milk dice	1. 00



Deputy John 906

Int. whose account is that?

Ans. Adam G. Simis.

Int. Look into it and see whether you find any other debt. of Alexander Simis charged to him by Pop^r. Co.

Ans. To Alexander Simis \$189.42

Int. What date?

Ans. January 23^d. 1857.

Int. By Alexander Simis charged up against Adam Simis

Ans. I suppose it is so. It is not my writing

Int. Turn to the Petty Ledger look at Alexander's account. see how it is credited?

Ans. Alexander owes that money to Pop^r. Co. I understand.

Int. Do you know whether that is so.

Ans. I presume there is no doubt of that.

Int. It was credited to Alexander Simis in 1857 & charged up against Adam Simis, that is the way it appears.

Ans. Yes sir

Int. That Alexander Innes owed Robt Co. 189 $\frac{42}{100}$?

Ans. Yes sir. It appears so

Int. And that amount was paid by charging it to Adam Innes.

Ans. It would appear so from the books

Int. This was charged up in 1887 from the account of Adam Innes does it not appear that he paid that \$189 $\frac{42}{100}$ out of his salary?

Ans. I should presume so from the books

Int. That is paid out of the salary month by month that \$189 $\frac{42}{100}$

Ans. Not month by month.

Int. He did not pay it in a lump

Ans. I suppose it is so

Int. Paid it from time to time

Ans. Yes sir

Int. When you exhibited this account to Adam Innes I understand you to say he remonstrated?

Ans. He did

Int. Did you then modify the account?

Ans. No I did not. How modify it?

Int. Did you make the deduction?

Ans. I did just show him how the account would stand with that deduction

Int. Did you inform either Mr. or Robt. after stop of this

(94)
Ans. They were neither of them done, I
told Canada John the same evening
Sat. When did John & Rob. ^{first} come to the Star of
Wards.

Ans. On the Monday morning
Sat. Did you tell him then?

Ans. No sir Canada John did.

Sat. Did you tell John & Rob.

Ans. No sir I did not.

Sat. Did you hear any body else tell him

Ans. No sir

Sat. Then you do not know whether he was
told of your own personal knowledge

Ans. I do not.

Sat. Why did you make that declaration with-
out the knowledge & without consulting with
one of the Ropes

Ans. I thought proper to do it

Sat. Why did you think proper to do it?

Ans. That was my business I had no reason
to disclose Tom's words.

Sat. Had you any reason to disclose the
book? What right had you to take his
word as against the book?

Ans. It is a very common thing for an account
to be charged & for it to stand & at the same
time the party has a right to receive his re-
gular salary

Int. Was it not charged on the same book & same account, where this salary was entered.

Ans. Yes sir.

Int. Why did you take it out?

Ans. I did not take it out.

Int. You take his word then along with a little presumption to keep it out?

Ans. That is exactly.

Int. So this amount of Alexander James due by him charged up in your handwriting?

Ans. Yes sir of course it is \$24 ⁰⁴/₁₀₀ is

Int. Who told you to charge it.

Ans. William Rob

Int. Where was Alexander ^{James} ~~Rob~~ at that time.

Ans. I do not know.

Int. Not Alexander, but Adam James.

Ans. Yes sir he was in the store.

Int. Was not he or was he near enough to hear Mr Rob directing you.

Ans. I think not.

Int. How far was he away from you?

Ans. About as far as you are Mr Rob came right to me so far as I can recollect & he talked to me from the outside of the desk.

Int. Was it in the morning or afternoon.

Ans. In the morning.

Int. Directly after he came in the store.

Ans. Yes sir.

(96)
Int. The last thing he did?

Ans. I believe so.

Int. That was in October

Ans. Yes sir.

Int. And although you have seen Sam's examination the before you cannot say whether you ever saw him after that time?

Ans. No sir I cannot. He may have done it.

Int. How far was Mr. Samis from you when Mr. Rob gave you this direction?

Ans. About 10 to 12 feet.

Int. Were you leaning over the rail or how far was there from you to Mr. Rob?

Ans. Just the amount of the board Mr. Rob + standing outside + I standing inside about as far as from you to that gentleman (referring to Mr. McMahon who sat next to Mr. Menck).

Int. Were you at one end or at the middle of this enclosure?

Ans. I was more inclined towards the end.

Int. Were you $\frac{1}{3}$ or $\frac{2}{3}$ of the way down?

Ans. I don't know.

Int. Then we have $\frac{1}{3}$ distance from one end.

Ans. Yes sir.

Int. At which end was Mr. Samis?

Ans. At the other end to which I was.

Int. At the extreme end or a little removed from it?

Ans. At the extreme end.

Int. How many feet long a line place?

Ans. About 12 feet I should estimate

Int. Then according to that he was about 8 feet from you & Melvin Rop was about 4 or 5 feet from you

Ans. Melvin Rop was exactly opposite

Int. Sam is was about 8 ft from you & Rop about the distance of that gentleman (pointing to the reporter who sat opposite to Mr. Merrick at the table) from me

Ans. Yes sir you must understand that we were exactly opposite each other

Int. That was opposite was it not

Ans. Yes sir

Int. When he told you to charge him up

Ans. Yes sir

Int. Did you hear him when he first spoke or did you ask him what he said

Ans. I do not recollect

Int. But without further explanation you did charge

Ans. Yes sir

Int. Without telling Samis about it

Ans. Yes sir

Int. I understood you to have stated in your examination in chief that Alexander Samis was purchasing goods from Mr. W. Rop & Co.

Ans. Yes sir

Int. Who made these purchases did he make them directly himself

Ans. Partly

(98)
Int. What proportion

Ans. I have no idea

Int. you say a part of them?

Ans. yes Sir

Int. What proportion?

Ans. I cannot tell

Int. Do not you know what proportion were purchased by him personally

Ans. no I cannot tell I know part was bought by him personally

Int. Do you know whether Adam Smith purchased any goods for him

Ans. no. I do not believe he did I know that orders came through Adam Smith from his brother.

Int. Was he not in the store

Ans. yes Sir

Int. Can you not say whether he did or did not purchase

Ans. oh. he might have done it as a general rule to Mr Holliday Mr Owen. or Mr. Foley

Int. Did not Mr Foley sell a great many of these orders.

Ans. I cannot not. He was shop wacker I think Mr Wilson filled a few of them Mr Bro. Poff filled one large parcel, I remember entering it.

Int. In whose employ are you now

Ans. I am with Adam Murray at present.

By the Judge.

Int. When this entry was made upon the books what date was it.

Ans. October 31st 1859

Int. What was the date of his leaving the employ of the defendant.

Ans. December 12th 1859

Int. The time he left.

Ans. Yes Sir

Re examined by Mr. Henry

Int. When you were directed by Mr. Rob. to make the charge against the Plaintiff what was the position of the Plaintiff towards you was he standing with his back or his face towards you

Ans. His back.

Int. What was he doing?

Ans. Making change as cashier.

Int. Engaged in his usual business

Ans. Yes Sir

Int. Do you know whether he could hear what Mr. Rob. said to you

Ans. I don't not unless he was listening. If he was engaged he could not possibly

Int. Was he engaged

Ans. I don't know

Int. And he was standing with his back to you.

Ans. Yes Sir

(100)

Int. Did Mr. Rep. call to Innis to come & see what
was going on on which he was interested?

Ans. No Sir.

Int. That \$241⁰⁰ was going to be charged against him?

Ans. No Sir.

Int. Was there any thing said by which Innis could
be notified that that charge was going to be made
against him?

Ans. No Sir.

Int. You say you did not tell Mr. St. Rep. about that
charge of \$166.

Ans. I did not.

Int. You told the Cashier?

Ans. Yes Canada John.

Int. Did you not inform the Cashier, Canada
John immediately after it was made.

Ans. I told him on the Saturday evening the
same evening that Mr. Innis pretended leaving
& wanted to draw him \$166, & that I had advised
him to remain till Monday & see Mr. In. St. Rep.

Int. Why did you not tell the defendant Mr. In. St.
Rep. about that \$166.

Ans. Because I understood that Canada John
would do so and there was no question asked of me.

Int. What was Canada John whilst Innis was Cashier?

Ans. He acted as Cashier during Innis' absence.

Int. What was he when Innis was present?

Ans. He attended to almost any thing that was going

on, sometimes he sold goods & sometimes he made out accounts.

Int. Look at this entry in the account of Adam James in 1857 is it not in your handwriting

Ans. No sir

Int. Whose handwriting is it

Ans. It is Mr Skilleads

Int. Do you know when that was put there
Ans. Only as the books show.

Int. When did Canada John Robt. first come into the employment of the defendants.

Ans. I think in 1859

Int. Do you know whether that pencil entry which you see was in your handwriting

Ans. No sir it is not.

Int. In whose handwriting is it.

Ans. Canada John's

Int. Do you know when that pencil entry was put there whether it was put there before the first trial of this case or afterwards. Was that entry in this book at the time of the first trial of this case

Ans. No sir

Int. It was not.

Ans. No sir

Int. You were asked what was their rule caption in the store not to pay out any sum over \$5.00 except on a check.

Ans yes sir

Int. Take this book & I will call your attention to the dates on which this rule was broken

(Sales Book produced)

turn to August 1st 1859 (witness did so) see whether you find any violation of the rule on the 1st of August.

Ans Freight \$22.37 Freight

\$5 $\frac{34}{100}$

William Henry \$12.

Int. These payments were made in cash from the store without a check

Ans yes sir

Int. And all are sums over \$5.

Ans yes sir

Int Look at 8th August.

Ans M. L. Foster \$12. Banell \$20.

Int. Who was Foster?

Ans A Clerk in the store

Int Who was Banell?

Ans. A Clerk in the store

Int. August 3rd

Ans D. Worth \$15, Mrs Drake for Cloak \$12 $\frac{53}{100}$

Vandy Shattles \$11. W. M. R. \$15.

Int. August 3rd these seem to have been 4 sums over \$5.

Ans yes sir

Int. Without a check.

Ans yes sir W. M. R. \$25. August 4th

Int. Aug. 5th

Ans Banington \$8²⁰/₄

Int. Who was he

Ans A young man in the store \$5⁵⁰ Wm Rob

Int. August. 10th

Ans Mr. Linn \$15. In. St. Rob. \$20

Int. August. 12th

Ans Mr. Linn \$11. ³¹/₄

Int. This Plain off:

Ans yes sir

Int. And that entry before that

Ans yes sir

Int. August 13th?

Ans Merchandise \$6. Melvin Henry \$12. G. Kennedy \$15

Int. That is now

Ans yes sir John St. Rob. \$16.

Int. So that the defendant

Ans yes sir

Int. That is 4 times on the 13th of August.

Ans yes sir

Int. August. 16th

Ans. Express Charges \$6⁶⁵/₄ Joseph R Scott \$10⁵⁰/₄

Int. So that Col. Scott

Ans yes sir \$10.

Int. August. 17th

Ans. In. St. Rob. \$10.

Int. August. 18th

Ans. Express Charges \$7⁵⁰/₄ Freight \$8⁰⁰/₄

Int. August 19th

Aus Merchandise \$13.

Int. August 20th

Aus Duffy \$7⁵⁰ Freight 16⁵² Geo Kennedy \$10.

Int. August 22nd

Aus A. G. Smith \$10.

Int. August 23rd

Aus Express Charges \$7⁹⁵

Int. August 26th

Aus James Clark \$6²⁵ Merchandise \$24⁵⁰ Freight \$7¹¹

Int. Three times over that day

Aus Yes sir

Int. August 27th

Aus J. H. Rob \$27 making Collections \$11.³⁵

Int. August 30th

Aus. Freight \$22.³⁸ A. G. Smith \$8.

Int. August 31st

Aus. making goods \$12³⁰ Merchandise \$8.²⁴

Int. September 1st

Aus. Express Charges \$8²⁵ Melan Henry \$10.⁰⁰

Int. September 2nd

Aus. Flat ironing goods \$7¹⁰ Janeys scarf \$10 Geo Kennedy \$6.

Int. September 3rd

Aus making cloak \$6⁵⁰

Int. September 7th

Aus Express \$10⁵⁰ cloakmaking \$10. M. H. Rob \$10.

Int. September 10th

Aus Dr. R. Allen \$5³⁹ J. H. Rob \$12¹⁰ Geo Kennedy \$10

Int. September 14th

Ans. Geo. Kennedy \$10
 Int. September 15th
 Ans. Matting \$16¹⁹ Ino. H. Rob \$10
 Int. September 16th
 Ans. Mr. MacE. \$11⁰⁰
 Int. September 19th
 Ans. Ino. Rob \$10 Ino. H. Rob \$20. Merchandise \$52 47
 Int. These are payments out of the drawer
 Ans. yes sir
 Int. September 20th
 Ans. Merchandise \$5 50
 Int. September 21st
 Ans. Mr. M. Rob \$14³⁷ Exchange \$6³⁷
 Int. September 22nd
 Ans. Expenses \$10.
 Int. September 26th
 Ans. Mr. Henry \$10.
 Int. September 27th
 Ans. Ino. Rob Canada \$11 50
 Int. September 28th
 Ans. Ino. Rob \$25
 Int. September 29th
 Ans. Ino. Rob Canada \$10.
 Int. October 1st
 Ans. Merchandise \$54 Merchandise \$5 50 Freight \$5 27
 Beckett \$12 50 (a young man in the store) merchandise
 Int. October 4th
 Ans. Express charges \$9 85 Mr. Rob \$11

Int. October 11th

Aus. M^o Lait 7⁰⁰. Muchaudis 7⁵⁰

Int. October 15th

Aus. M^o Rob. 12⁰⁰

Int. October 17th

Aus. Butter 15³⁰ (a young man in the store).

Int. October 21st

Aus. Dying crape 8⁰⁰

Int. October 21st

Aus. Bontou 12⁰⁰ he was a young man in the store.

Int. Any otherⁿ that day?

Aus. Exchange 9⁶²

Int. October 22nd

Aus. Lee Rue 7²⁰ Jas. Duncan 7²⁴

Int. October 26th

Aus. M^o Rob. 10⁰⁰

Int. October 29th

Aus. A. N. Conitto 10⁰⁰. Geo Kennedy 6⁰⁰. M^o Rob. 10⁰⁰

Int. November 1st

Aus. M^o Rob. 11³⁹

Int. November 2nd

Aus. M^o Rob. 10⁰⁰

Int. November 3rd

Aus. M^o Rob. 7⁵⁰ James Duncan 55⁰⁰, Mottler 8⁰⁰.

Int. November 5th

Aus. M^o Rob. 10⁰⁰. M^o Rob. 10⁰⁰. M^o Rob. 10⁰⁰.

Int. Nov. 7th

Aus. Chaute 10⁰⁰. Bureaugay 6¹³

By Mr. Muncie,
Int. Charity: whose entry is that I want to
see whether the cashier has been making in
Charity on his own account.
Ans. It is Canada folks.

By Mr. Harvey direct resumed
Int. Nov 8th

Ans. James Duncan \$19 ²⁵/₁₀₀

Int. Who is he.

Ans. The man down at the farm

Int. Norman Kn 9th

Ans. Mr. Rob. \$16 ⁰⁰/₁₀₀

Int. Norman Kn. 10th

Ans. Wm. Rob. \$50.

Int. November 11th

Ans. Mr. Rob. \$11 ²⁵/₁₀₀

Int. November 12th

Ans. John Rob. \$10

Int. November 14th

Ans. merchandise \$9 ⁹⁵/₁₀₀

Int. November 15th

Ans. Freight \$43 ⁴⁷/₁₀₀

Int. November 16th

Ans. W. P. Lister \$16 (buck in the store)

Int. November 17th

Ans. James Duncan \$30.

Int. November 18th

(108)

Ans J W Smith \$10.
 Int. November 19th
 Ans Wm Robt \$7.
 Int November 29th
 Ans M^r Robt \$11.
 Int. December 2nd
 Ans W^m Henry \$11⁵⁰/₁₀₀ Merchandise \$20⁹⁸/₁₀₀
 Int. December 3rd
 Ans. Canada John \$6, Express charges \$6. W^m Robt
 \$10. W^m Robt \$10. Robert Robt. \$5⁵⁰/₁₀₀
 Int December 6th
 Ans Freight \$6⁰¹/₁₀₀
 Int. December 8th
 Ans M^r M. Robt \$25⁰⁰/₁₀₀
 Int December 9th
 Ans Jas A Robt \$9. Jas Duncan \$11⁵⁰/₁₀₀
 Int. December 10th
 Ans Geo Kennedy \$7⁵⁰/₁₀₀ M^r Graham \$6⁸¹/₁₀₀
 Merchandise \$6²⁶/₁₀₀
 Int. December 12th
 Ans James Duncan \$12⁷⁵/₁₀₀ Freight \$8⁰⁶/₁₀₀
 Int And the entry which has been erased
 Ans oyes sir

By W^m Merrick Re. crop examined,

Int. you have gone over this book and shown a
 great many cases in which more than \$5.00

paid out, but whose handwriting are the
entries in.

Ans. Different parties handwriting some mine some
Canada Johns & some Jones.

Q. Do you mean to say that whenever a man
wanted money he put one hand into the
box & took down the amount into the other hand
Ans. No sir. He went to the Cashier for the money &
then the Cashier called to whoever was there
to enter it.

Q. All these entries are yours Canada Johns or his own
Ans. Yes Sir.

Q. You entered some of these but never paid the money.

Ans. Yes Sir. Mr. Jones would call for instance
"Charge Canada Johns \$10"

Q. Do you mean to say that he had a right to
pay out of the funds in his hands any amount
of money and call upon you to enter it here
Ans. I presume so.

Q. Did not you know to the contrary, that
you not paid there was an order that no
sum above \$5 should be paid without consent
of the proprietors. How do you know he had
not consent to every one of those items above \$5.

Ans. I do not know any thing about it.

Mr. Munnick to Witness of course you don't

By Mr. Henry. Re direct Examination

Int. Do not you know that in a great many instances this rule was violated during the time you have been over this boat: that money was paid out exceeding that amount, when neither of them was there to give any authority to do it.

Ans Yes sir very frequently. I have received money myself when neither of them was there. Int. Was it understood in the store that this rule applied to yourself. Can you John Rop & Simon or that it only applies to the other clerks who were paid every fortnight.

Ans I presume it was intended for the whole Int. For the parties themselves as well as for any body else.

Ans Decidedly: For any body & every body Int. To William M Rop as well as to you

Ans Yes sir

Int. To Mr. Simon & Mr John Rop:

Ans Yes sir

By Mr. Minick Re. Crof Examined.

Int. I understand that the rule applied to other people as well as the clerks who were paid fortnightly. In your case you got what you could & kept what you got. you had nothing to do with the Rule.

Q

Ans I had nothing to do with the rule. I have heard Mr. Am. Rep. find fault with his brother for paying it out.

Int. Did you ever hear him find fault with any body else

Ans I do not know that I ever did

Int. It was a rule that applied generally to the paying of money

Ans I presume it did.

Int. State the time when you got money and they were not either of them there

Ans I cannot give the dates

Int. You have the books there find the dates from them.

Ans. I would not do any thing of the kind you can do it for yourself. That is all I can say

Int. Find the time when you drew over \$5. and tell me whether he was there at the time:

Ans I cannot tell the day

By Mr. Stacey.

Int. You cannot tell any particular time

Ans I cannot tell the day

And the Plaintiff's Council further to maintain the said point called Adam Murray who being examined by Mr. Stacey testified as follows to Int.

Int. Do you know the parties to the suit the plain

liff & the defendants

Ans yes sir.

Int. Are they relations of yours?

Ans yes sir. Nephews

Int. The Plaintiff & Defendants are first Cousins

Ans yes sir

Int. Do you ~~know~~ recollect the recurrence of James
the Plaintiff paying himself \$166. in December /59

Ans yes sir

Int. State all you know of that transaction just
as you have stated it here before. how you came
to know of it & all you said or did to the defend-
ants & plaintiffs or either of them

Ans. Shortly after James left Pop's I received a
note from Mr. St. Pop saying he wanted to see
me on very particular business immediately
I immediately went over to the store & met him
who told me that Adam James had taken
\$166. from the desk. that it was the same as
stealing it & he was resolved on prosecuting him
Criminally for it I was surprised & said there
surely must be two ways of telling that story.
He said if I thought he lied about it to make
up to the desk & saw what Mr. Kennedy and the
other clerks said about it I should go
to the desk and I said I would get the fact from
Adam James himself. He then said he had a
telegram from his brother from New York request.

ing him to arrest him if he did not pay back
that money I said I had not seen him
for several days. He said "I will bring him
back if he should go to Texas" I said "you
need not go so far as that you will find him
at Mr. Gustus' house" "Well" said he "you had
better see him & tell him I will have him, and
if he does not pay it back" For the space
of two or three days I saw Adam Smith & told
him what John Rob. threatened to do. Adam
Smith told me to tell John Rob. he would not
pay back that money that he took it as the
balance of salary due & coming to him more
and to remind John Rob. that when he did
take the money he had told him of it & charged
himself with the money upon their books & as to
attempting to arrest him they could not do it
without swearing falsely & if they did he would
take them up for it. I stated this to John Rob.
& he said "I will arrest him in a short time
& we will see how he will like to be sent to
Jail" I warned John Rob. and said he
had better be cautious, that by arresting him
he might place him in a better position than
he was in before. ^{"nonsense he ought to fight such nonsense as this" said I} John said "I have seen such
things before & if I were myself the bigger the
house the better"

In about ten days after this on going to the

Now on former business I met Melvin Rob
Int. At the time of your first and second conver-
sations with John Rob when you had the con-
versation with him in which he told you what
Samuel had done. & when you had the conver-
sation in which you told him what Samuel
said to you. Was Melvin Rob at home:

Ans No.

Int. Do you know where he was
Ans He was in New York

Int Will go on

Ans In about ten days after these interviews with
John I saw Melvin Rob in the store He told me
that Samuel Samuel had had the presumption
to take \$166. from the desk against the Well
known regulations of the store & that he was resolved
to make an example of him he would let him
see if he could play such tricks with him with
impunity & that if he did not pay it back he
would ruin him he would make him that
he would never get a situation in Chicago as
long as he lived I said that I did not know
how he could do that.

Int. After he said what you have just stated
that he would ruin him in Chicago did he
say particularly what he would do how he
would proceed against him where he would
take him

and I said, "I did not see how he could do that,"
 said he "I will arrest him take him before a
 police magistrate & if I don't indict him there
 I will send him before the Grand Jury" said
 I "What do you want him to do?" said he "I
 want him to pay back that money" I said, "If you
 like I will see Adam Smith once more" He
 said "do so & tell him my determination" In
 a few days after I saw Adam Smith
 but did he say anything.
 And he said "do so"

But what did you do afterwards

And I saw Adam Smith & I told him what Mr.
 Rob. was determined to do if he did not pay back that money.
 But when you spoke to Adam Smith did you
 tell him what William Rob. was going to do.
 And yes sir what Mr. Rob. was going to do I tried
 to convince him that no long service or relationship
 would prevent Rob. from assuming him if he
 did not pay back the money. He said no
 threats should compel him to pay back what was
 justly his own no matter what quarter the money
 from that he only took what was due to him &
 no more. that the money he had taken was
 merely the balance of salary coming to him and
 to remind Rob. that he never promised to pay
 the balance of his mother's account that what
 ever paper on that subject depended upon the

proceeds of his brother's assignment" & did not
amount to a promise.

Int Adam Imms said Mrs. told you to tell Mr. Pop.

Ans yes sir

Int Did you tell that to Mr. Pop.

Ans yes sir

Int What did he say

Ans. He said he would soon bring him to his house

Int Was that before the arrest.

Ans. yes several days before the arrest.

Int. Did you tell Adam Imms what Mr. Pop
had said that he would bring him to his house

Ans no. not that I remember

Int. Do you know of his being arrested afterwards
at the instance of Pop?

Ans yes sir

Int Do you know if he was taken before any justice
of the Peace or Magistrate

Ans yes sir Justice Mulliken

Int You became bail for his appearance

Ans yes sir

Int Were you present at the examination before Justice Mulliken

Ans yes sir

Int Was Mr. Pop.

Ans yes sir

Int. Was he examined as a Witness

Ans yes sir

Int Was John Pop?

Ans yes sir

Qnt What was the result of the investigation were you present when it was concluded?

Ans yes sir

Qnt What was the result.

Ans The result was the defendant was discharged

Qnt Mr Imms was discharged

Ans yes sir

Qnt Previous to Imms' bringing his before Justice Mullin had you any conversation with John Rob.

Ans John Rob called me aside before the case was called & asked me if it would not be better to compromise this matter before it was exposed to the world

Qnt What did you say to him

Ans. I told him that he must go on with it now, that Adam Imms would not compromise the matter now. that he must just take the odium of his own doings against my advice

Qnt. you say Imms was discharged

Ans yes sir

Qnt After he was discharged at the time in the magistrates office did you hear William Rob say any thing to him.

Ans. I heard William Rob say "if any body came to him and asked him of Adam Imms' Character he would tell them that he stole £100. from him and that he was a liar and a thief

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Crop Examined by Mr Menicko.

Int. you say you went bail for Adam Immis;

Ans. yes sir.

Int. Did you ever go bail for him before.

Ans. I do not remember

Int. Did you go bail when he was arrested for arson

Ans. I do not remember that I did

Int. Was he ever arrested for arson?

Ans. Not that I remember

Int. Was he ever put to bail for anything you want
bail for

Ans. no sir I never heard of such things at all

Int. What is your relationship to the defendants in this
case

Ans. They are both nephews of mine

Int. Do you speak to them?

Ans. Certainly I do

Int. Is there any intercourse between you at all

Ans. Certainly I am in Robt store when I want
any thing done & buy there as soon as any other place
but perfectly I mind your relations there?

Ans. I have no quarrel with the Robt.

Int. Perfectly I mind

Ans. yes sir

Int. Did you ever write to New York at the time
the Mepn Rob started business here advising parties
there not to give them credit.

Q. I never did that Mr. Menick to them nor any body else and I am astonished at such questions. I would keep them rather than otherwise. He says know that I endorsed for them much more than I ever did for Smith's such questions that he come you on.

Int. What do you understand by endorsing for them?
 Ans. I endorsed bail for them.

Int. What kind of bail was it?

Ans. The Robt. Carr told you.

Int. I ask you.

Ans. The kind of bail was a case they had in Court and they had to give bail for \$10,000. & I was one of the sureties.

Int. Now never endorsed any notes for them.

Ans. I never endorsed notes for them. What is the difference I will endorse again if they are required.

And the Plaintiff's Counsel to maintain and prove said case called Mr. Galt, one of the Plaintiff's Attorneys who being examined by Mr. Henry testified as follows to wit:

Int. Now I mean Adam Smith.

Ans. Yes sir.

Int. State if you know whether our firm was employed to defend him before Justice Sullivan on Charge of Embezzlement. prefired by Messrs. O'm Ropple?

Ans We were.

Qnt Did We defend him?

Ans yes sir you appeared for him

Qnt Do you know what charge was made against him & whether it was paid for these services?

Ans There was a charge of \$25. which Mr Innis paid to us for defending him before the Police Court.

And the Plaintiffs commenced further to maintain & prove the same case called May ander.

Innis who being examined by Mr O'Leary testified as follows to wit.

Qnt Are you the brother of the Plaintiff?

Ans yes sir

Qnt Do you know the defendants?

Ans yes sir.

Qnt State whether you have ever had any business transactions with the defendants while you were living & carrying on business at Quincey

Ans yes. I had quite a number of transactions of purchasing bills at different times

Qnt Buying goods.

Ans yes sir

Qnt To what amount in the aggregate?

Ans About \$4000. in all. I admit I bought.

Qnt When did you commence dealing with them?

Ans In 1856.

Qnt When did you cease to do business?

Ans. Yes, 1858

Int. What time in 1858.

Ans. The Fall of 1858.

Int. Do you know the month.

Ans. September

Int. Did you fail in business

Ans. Yes sir

Int. What did you do then

Ans. Made an assignment to my brother

Int. The Plaintiff

Ans. Yes sir

Int. Were you ever asked by the defendants, or either of them to give any security or guarantee for the goods you purchased of them.

Ans. No sir never upon any occasion

Int. Was there ever any guarantee or security given by any body for any purchase you made of the defendants to your knowledge.

Ans. No sir never

Int. Did the Defendants ever refuse to give you credit or give you credit without a guarantee or security

Ans. No sir

Int. What was the balance due from you to W. M. Roper & Co. at the time of your failure

Ans. About \$250.

Int. So that the amount charged to you here
\$241.04 (showing misrep the Ledger

Int. I find on another occasion that your brother paid \$189 ⁴²/₁₀₀ to Roper. Will you explain that transaction.
 Ans. Some time in 1857 I think that small amount was due & I wrote to my brother to pay it
 Int. You were then doing business
 Ans. Yes sir

Int. You wrote him to pay it for you
 Ans. Yes sir

Int. Did you repay him the money
 Ans. Yes sir I did

Int. How soon after.
 Ans. I cannot exactly say probably a month or so after
 Int. At what time after
 Ans. Yes sir

Int. From whom did you purchase goods when you were in the habit of buying from Roper. How did you make purchases.

Ans. The greater part were bought by order sent from Quincy to Chicago to my brother & settling him to fill them. Two parcels I bought myself one from John Rop & one from Mr. Holladay
 Int. How large was the bill you bought from John Rop.

Ans. \$400. to \$500

Int. Were you asked then to give any security
 Ans. No sir

Int. Were you ever asked when you purchased from Mr. Holladay

Ans No sir they were quite willing to see goods. anyone to sell more than I would buy but. Did you ever have your brother Adam having become guarantor or security before the commencement of this suit.

Ans No sir never heard a word.

Int. you never were asked to give any security

Ans No sir

Dep Examined by Mr Menick,

Int. what time was it you asked your brother to pay this debt of \$189. ⁴²/₁₀₀

Ans It was on February

Int. of what year.

Ans 1857 I think.

Int. So that the only debt you asked him to pay in this manner.

Ans That is the only debt. I ever recollect asking him to pay to Robt & Co

Int. When did you first begin dealing with them

Ans 1856.

Int. Who introduced you to them.

Ans I introduced myself.

Int. Where was your brother

Ans I think he was in Robt's house

Int. Did you go directly or approach them through your brother.

Ans I think I went through Mr Holliday I

bought goods on 30 days time, I think that
is the time Mr. Holliday allowed me.

Int. If you many bills did you buy yourself
Ans. The bill I think from Holliday and the
one from Mr. Rep. were the only bills. The bills
were trifling bills & just such articles as I
needed. I should not have had them unless
I wanted them.

Int. You sent orders for goods to your brother:
Ans. Yes sir, I think I did.

Int. Why not send to the house?

Ans. I do not know whether I did not send
some to the house but that is my opinion that
I thought they would be more likely to be promptly
filled.

Int. Your general rule was to send them to your brother?

Ans. Yes sir.

Int. When did you make the assignment?

Ans. In 1858.

Int. What month?

Ans. September.

Int. How long before had you purchased goods
from Rep & Co.

Ans. Two or three months.

Int. What was the value of your assigned estate?

Ans. About \$5,000.

Int. Your brother was assignee?

Ans. Yes sir.

Int. Had your brother any interest in your store
in Quincy

Ans. No sir

Int. Did you pay him any commission here
for managing your affairs selling your orders

Ans. No sir

Int. Did you rob your brother anything at the
time of your failure

Ans. I think I did

Int. How much did you owe him:

Ans. I forget exactly how much I did owe him

Int. Come within a reasonable range of it.

Ans. May be \$500. or less.

Int. I suppose you provided for the payment of
that debt did you not.

Ans. That is for him to say:

Int. What did you think of it.

Ans. I forget how that was

Int. Was he not provided for in the assignment:

(Question not answered by witness)

Int. How much did you rob at the time you
failed

Ans. I think about \$8000. or \$9000.

Here Plaintiffs Counsel rested

And thereupon the Counsel for defendants to
maintain and prove the case on their part
offered and read to the jury the deposition of Mr.

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Rob which is in Wills and figures following
to Wt.

Interrogatory First.

What is your name age occupation and
place of residence. and in what business
and where were you engaged in the year
1859

Answer to first Interrogatory

My name is John Rob I am thirty years
old. My occupation is merchandizing I
reside in Saint Catharines Canada West.
In the year 1859 I was in the employ of
Melvain W Rob & Co. at Chicago Illinois
as a general overseeing clerk.

Interrogatory Second

Do you know the parties plaintiffs and
defendants in the Caption to these interrogatories
mentioned or either or which of them and
how long have you known them respectively

Answer to second Interrogatory.
I know the parties Plaintiffs and Defend-
ants in the Caption to Interrogatories mentioned
I have known the Plaintiffs some four or five
years and the defendants Melvain W Rob some
four or five years and John W Rob some
ten or twelve years

Interrogatory Third.

If you know the Parties Plaintiffs and defend

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1.
ans. state if you can in what business and
where they were engaged respectively in the
year 1859?

Answer to Interrogatory Third.
In the year 1859 the Plaintiff was in the
employ of the defendants as their Cashier.
The defendants were engaged in the Wholesale
and retail dry goods business on Lake Street
in Chicago.

Interrogatory Fourth.
Do you know Alexander Smith a brother
of Plaintiff? If you state how long you
have known him, and if you can in what
business he was engaged and where in
the years 1858. and 1859.

Answer to Interrogatory Fourth.
I know Alexander Smith the brother of
Plaintiff. I have known him four or five years
and was informed by Plaintiff and others
that in the fore part of the year 1858. he,
Alexander Smith was engaged in the
mercantile business at Quincy Illinois.
Also that he failed in the summer of that
year. And I do not know in what business
he was engaged afterwards.

Interrogatory Fifth.
Were you present in the year 1859 at any
convocation between the Plaintiff Adam G.

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Smith and the defendants or either of them with regard to the taking of any money by Plaintiff from Defendants. Of yea. State when and where the conversation was had who were present. how you came to be present, and if you saw, got the conversation fully and at large.

Answer to Interrogatory Fifth.
On the night of the 12th of December 1859 which as I now remember, was Monday the defendant John St. Rob. came to me and said he wanted me to hear what he had to say to the Plaintiff Mr. Inniss I went with him to the desk where Mr. Inniss was and while there John St. Rob. forbid Inniss from taking any money without authority and he also told Mr. Inniss. if he took any money without his Consent he would subject himself to a Criminal action. Mr. Inniss left the store that evening and never came afterwards as the employee of the defendants. The conversation between them was about a balance of salary claimed by Mr. Inniss which was \$166, and about a quantity of goods that Alexander Smith had. John St. Rob. told Mr. Smith that if they owed him any thing to prevent his going and when William came home they would pay as he understood they had

an arrangement about Alexander account
Interrogatory Sixth.

If you answer you know the parties Plaintiff
and defendants and that in the year 1859
the plaintiff and yourself were in the employ
of the Defendants then please answer Did
you at any time in that year have a con-
versation with the Plaintiff about his guaran-
teeing debt due from his brother Alexander
Imrie to defendants or heard him say any
thing in regard thereto If yes state fully
how and by whom the conversation was intro-
duced when and where the same was had
and also state fully and particularly all
that the Plaintiff Mr Imrie told you or
said in regard thereto

Answer to sixth Interrogatory.
I had a conversation with Plaintiff Mr Imrie
the conversation was introduced by the Plam-
tiff Mr Imrie and was had in the store of
Phillips & Co in the City of Chicago
towards the latter part of the month of November
1859 while Phillips & Co was in New York
we were both talking about leaving Robt Co
& Mr Imrie told me that he would not stay
one hour longer in their employ only for that
damned debt of Alexander and his Plaintiff
conversation led me ^{plaintiff} to understand that he was

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security and had guaranteed the payment
of and agreed to write it out that he did not
like the way in which Mr Rob healed him

Cross Interrogatories and answers directed
by the Court on the part of the Plaintiff

Interrogatory First

In answer to the first direct Interrogatory
you say you had a conversation in the
year 1859 with the Plaintiff about his
brother Alexander debt state when and
where it was who was present and state
further if you testified to the same conversation
at two previous trials of this cause or either
of them and whether the testimony you
gave at those two trials was the truth the
whole truth and nothing but the truth

Answer to First Cross Interrogatory
The conversation about which I have testified
in answer to the first direct Interrogatory
was had in the store of the defendants, Melia
M Rob Co. in the City of Chicago I am
about the latter part of November 1859 the
Plaintiff Mr Amis and myself were the
only persons present. I do not now remember
all I testified to on the two previous trials
of this case - My recollection now is

that I was not asked anything about this
 Conversation with Mr Jamis. My answers to
 whatever questions were asked me on these
 two trials were and are true.

John Rob.

And defendants Counsel further maintained
 prove the case on their part offered in evidence
 and by agreement of parties read the short
 hand report of the late Mr Robert S. Black-
 well's testimony given on a former trial of
 said Cause which is in words and figures
 following to wit.

1. Int. Are you an Attorney and Counselor
 at Law admitted to Practice in the Court of this
 County?

Ans. Yes Sir I am.

Int. When were you admitted to the Practice
 of Law.

Ans. On the 7th of July 1843.

Int. Did William M. Rob Consult with you
 in December 1859 in relation to a case
 of Jamis? If yes so get us the result
 of it what Mr Rob said and what was done?

Ans. Mr Jamis the Plaintiff in this suit I
 don't think I knew up to that time. The
 Robes were then doing business together
 and the new firm of W M Rob & Co had

employed me in several cases before. but I was not their legal counsel. one day I do not remember when it was, but sometime in the month of December 1859 probably twenty days before the 27th of December prior to the making of this affidavit - (Affidavit handed to Githens) - John St. Ros came to my office and here in the first interview I believe he told the whole facts of the case and came to advise with me as a lawyer. As I am in the habit of doing with clients I questioned him as to the state of facts and he was personally cognizant of all that transpired in the course of the Chouard case. he said that Mr. Adam Munay was a relative of Amos' and of them, I declined giving them any advice until I had examined the matter more closely and that in the mean time he had better go and consult with Mr. Munay about the matter. Also it was said to me that he had telegraphed to his brother in New York since the transaction and that his brother had directed him to consult with a Mr. Harvey. For some reason or other that I do not now think of they did not find him, and came to consult with me. About the matter I told him that after consulting with Mr. Munay they would

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telling me the facts in the case I would give
them a definite opinion. Things packed off
in this way until Mr William M Rob returned
from New York. and thereafter Mr William
M Rob. came to my office and re-capitu-
lated the conversation with John H Rob,
He desired my opinion as to whether he
should proceed against Jimis Civilly or
Criminally. I told him I could not give
an opinion until I had examined the books
and the account of Mr Jimis and learned
the rules of business by which the clerks
in this establishment were governed. The
question to be determined was, as to the
Criminal intent in taking the money.
He said that was appropriate and said
he would meet me that day at the store
that was the morning of the 26th of
December. he would meet me between the
hours of twelve and two o'clock. I had
nothing to do after the ordinary dinner
hour and went down to the store for the
purpose of examining the books and in-
forming myself in reference to the rules of
the establishment. When I arrived at the
store Mr Wm Rob was not in I was in
a hurry to get at the books and I spoke
in the first instance to Mr Kennedy and

told him what my business was and what my engagements were with Mr Rob. He told me I could see all the books. Some other person was present, Under the direction of either John Rob. or Mr Kennedy who had charge of the books I examined. After the examination of the books which consisted of a sales book I think one or two Ledger and Cash books and looking all through I made me a memorandum in writing to which I have referred, and afterwards commenced an examination of several of the books as to the entries in reference to the payment of money and also in reference to the entries in the books. During the time that Mr Rob. came in I told him I had examined the books and the books. He asked me what my opinion was, whether he should proceed in the case civilly or criminally. I told him I wished to go home and make some further examination before expressing my opinion. He called between three and four o'clock in the afternoon after I had concluded my investigation and I told him that a criminal prosecution would lay in the case which advice I gave in good faith. Mr Wm Rob. asked me if this charge could come in. I told him no sir

that he was responsible and that he could not come it up by any entries he might make. I then wrote that affidavit and took him before the Notary Public who made out the writ and that made the transaction. I was in when the preliminary examination took place after the writ was served and the time for trial was fixed. I went there and examined witnesses and after examination on the part of defence and argument on the case the man was discharged as the Justice stated on the ground that the evidence did not show Criminal intent.

Int. Refer you got out this Warrant what was the then defendant James?

Ans. It was stated to me that he was a Clerk. Whether it was stated he was Cashier I cannot say. Int. What was said to you about a rule as in relation to the payment of money?

Ans. That they paid their clerks at stated periods - that when any one took out more Cash than £5, there was to be a check drawn upon the bank which should be signed either by Mr. W. Rob or endorsed by John A. Rob. Int. Was there anything said about the rule being violated?

Ans. Yes in some times they were allowed to be paid sum in Cash over £5. with out

chiefs but that wasly amount of the parties
but you saw these culices on the books.

Ans. yes sir that was one of the pieces of my information
but was any thing said to you about money
claiming that money as a salary?

Ans. yes sir. there was. It was a matter
of conversation with John & Rob. At first
interview with Mr M Rob after the exami-
nation of Mr Manay that Mr Innis said
that his defence would be that he had
never promised to pay the debt of his brother
who lived at Leamcy Mr Rob persisted to
me that he had thus promised both of the
Robes in fact and that was one of the facts
I had in looking at the books

but what did Mr M Rob tell you was
the agreement between them and Adam
& Innis in regard to his liability for the
and the Innis' purchase

Ans. I took my Client's statement as true
In the first place he said to me that
they were related and he was very loath
to prosecute unless he was considered as
a Criminal that he had a brother in
Leamcy and that when in business or
about to go into business I don't know
which that he had applied to him for
credit that he did not desire to trust him.

E3

§189, #2

he had some security for money, that
 Mr Adam Smith was their cashier and
 had the evidence of these facts brought
 to his knowledge and that it was agreed
 between them and Adam G. Smith that
 if he would guarantee the debt of his
 mother it was all right and they would
 furnish him goods. This was the substance
 of the agreement when Mr Rob said to me
 the fact that in pursuance of that agreement
 an entry had been made to Adam G.
 Smith's account with his knowledge and
 consent which was a ratification of that
 agreement. Then the question put to me
 the second time was whether I would advise
to a criminal prosecution. I told him
 the only objection was the state of the
 parties. The question was as to the criminal
 intent which must be underlying and
 based on the consideration of making
 the parties responsible and the question
 to decide was whether it was original
 or collateral. I decided it was original
He had violated a verbal promise. it was
evidence of criminal intent

Int. was Mr M Rob sworn before the justice
 on the oath?
 And He was.

E3

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Int. Did he testify to the same facts he had
stated to you?

Ans. Substantially the same.

Int. Were you shown the copy of 166 in
Amip's account in Mr. Amip's handwriting?

Ans. I don't know Mr. Amip's handwriting I
saw the entry.

Int. What did Mr. J. M. Rob testify to on the
subject of Amip being his clerk?

Ans. He testified he was

Int. What did he testify to as to the rule
of paying out monies?

Ans. That for sums over \$5, checks were
to be drawn on the bank signed by Mr.
J. M. Rob. or countersigned by Int. J. M. Rob.

Int. Did he testify as to the arrangement with
Adam Amip as stated to you by him?

Ans. Yes Sir

Int. He swore to that?

Ans. Yes Sir?

Int. He stated that fact when you drew the
affidavit?

Ans. The only additional fact was that
Alexander Amip had made an assignment
to some body else and I relied upon that
as an additional point in the case I ex-
amined him myself in regular chrono-
logical order commencing from the time

Mr Jomip began on their reply to his
 departure from it, and particularly upon
 the point in reference to, and bearing
 upon the allocation of this money and
"that" was testified to. I then put a further
 question as to the rules of the establishment
 and he told me in reply what the rules
 were as before. I asked him as to when
 he first received information as to this al-
 leged embezzlement and he said he
 was in New York and he received it from
 his brother.

Int. State whether or not Mr Rep after
 you had made the examination before the
 trial acted upon your advice in getting
 out the "Warrant"?

Ans Yes Sir when I had given my
 opinion I wrote that paper (affidavit)
 The Warrant was delivered by me to Mr
 Rep who put it into the hands of an officer
 and the arrest was made.
 Int. Was there any collusion between you
 and Mr Rep?

Ans No Sir

Int Did you have a conversation with
 Mr Isaac Mannay you heard him testify
 Did you put a question a particular
 question?

(1140)

Ans. Yes sir

Int. State what it was?

Ans. It was on the subject of the particular words used by Mr. Rob in speaking of ruining Mr. Smith. Mr. Minney was a witness on the part of the defence for the cause of his testimony he said in reply to a question put by me as to the words used by Mr. M. Rob that he said "If the case was not settled it would ruin him (Smith)." Mr. Rob sat by me at the time and said that was his interpretation I put the question over again. "Whether he was not certain that Mr. Rob said he would ruin him" or "Whether he said that the effect of Criminal prosecution would be to ruin him" His reply was that "he did not remember what was the form of his expression I pressed him and he could not answer positively which way it was."

Cross examination

Int. Was it the first day you went to the State of the defendant the day on which the affidavit was made?

Ans. Yes sir

Int. That was the first day you saw Mr. Rob?

Ans. That affidavit was drawn the same day.

Int. Do you know how long Mr. Rob had

been at home before you saw him?
Ans I am not certain but according
to my knowledge I think it was soon
after ~~my~~^{his} return.

Int. How soon after your first interview
with John St. Rep was it that Mr. St. Rep
returned?

Ans I think about ten days after that time
that he arrived home.

Int. Did you have any conversation with
Mr. St. Rep. before the affidavit was drawn?

Ans Yes Sir I had one interview with him.

Int. Were you ever at the store to make
any examination before the 27th of December?
Ans No Sir.

Int. How you had had no examination
of the books until the day the affidavit
was made?

Ans No Sir.

Int. Did you not state that Mr. St. Rep
had said to you that Adam Jones had
guaranteed the payment of the debt
of Alexander Linnip?

Ans Yes Sir.

Int. Did you see the entry on the Sales book
of the 7/166?

Ans I did Sir.

Int. Did you see it on the Ledger

Ans No Sir?

Int. Do you know whether it was in the Ledger or whether it was on any of the other books?
 Ans If I can look at the books I can tell you what I saw. (Here witness looks at the books takes the Ledger and opens at pages 120 or 121) Adam Immiss. account. is transferred to page 206. There is the item where he is charged to Alexander Immiss \$24.⁰⁴ I stopped there I did not go any further.

Int. Was that the state of the Ledger when you saw it?

Ans I did not look at the Credit at all. I only looked at the one side.

Int. Did not Mr M Rob Hale tell you that entry of \$24.⁰⁴ was made against him by his Consent and with his knowledge?

Ans I did not state that I stated what Mr Rob said to me was the Contract.

Int. Did you not state that Mr M Rob said to you that this entry was made with Adam Immiss knowledge & Consent?

Ans If I did I did not intend to state so.

Int. Did you state to Mr Rob as a Lawyer that if Adam Immiss intended to steal the money he could not cover it up by making an entry on the books?

Ans I did not.

Int. Did you not tell Mr Rob. that there must be an intent of stealing money?

Ans yes sir

Int. That the question was whether there was an intent of stealing you advised him there must be a criminal intent?

Ans yes sir

Int. Did you examine any other entries than the one upon which this entry was made?

Ans yes sir I did so as to get a knowledge of their manner of doing business

And the counsel for defendants further to maintain & prove the case on their part. offered and read in evidence ^{as telegrams} from Wm M Rob. to John W. Rob in Wm's and figures following to wit.

"New York December 13. 1859

To W. M. Rob. & Co

" If Henry advises arrest I am in
" for embroilment. I have telegraphed Cassin to pay
" on your signature "

W. M. Rob. "

And the defendants counsel further to maintain & prove the case on their part. read in evidence ^{referred to Chapter 20} to the Jury Section 70. of Chapter 30. which is in Wm's & figures following to wit

If any clerk, apprentice or servant whether bound or hired to whom

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any money bank bill or note or goods or
chattels shall be entrusted or delivered by him or
his master or mistress shall withdraw himself or
herself from him or his master or mistress and go
away with said money bank bill or note or
goods or chattels or any part thereof with intent
to steal the same and defraud him or his master
or mistress thereof contrary to the trust and confidence
in him or her reposed by him or his said master
or mistress or being in the service of him or her
said master or mistress shall embezzle the
said money bank bill or note goods or chattels
or any part thereof, or otherwise shall convert
the same to his or her own use, make like purpose
to steal the same every such person so offending
shall be deemed guilty of larceny and be punished
accordingly.

Whereupon the Counsel for the
defendants rested their case and then bring
no other or further evidence offered on either
side.

Whereupon the Court at the instance and re-
quest of Plaintiffs Counsel read and gave the
Jury the following instructions to read.

- (1) In Plaintiffs
The jury are instructed as matters of law
that if the Jury shall find from the evidence

by whom

that the fact that the Plaintiff, in this case dis-
puted the right of the defendants to charge him
into his brother's account and that the defend-
ants knew that fact. and if they shall also
find that the Plaintiff claimed the right to
pay himself the \$166. for his salary and that
that fact was known to the defendants at
the time when they consulted Blackwell
then the Jury are instructed that these were
material facts to be communicated to the Comtee

For the Plaintiff

*
by whom

The Jury are instructed as a matter of law
that to entitle the defence of a director of the Comtee
to avail the defendant all the material facts
and circumstances known to the party seeking
the advice or which he ought have ascer-
tained by careful and diligent enquiry must
be fairly and in good faith laid before
the Comtee for his opinion and if the
Jury shall believe from the evidence that
any material and important fact known
to the defendants or which he could have
ascertained by careful enquiry was kept
back from the Comtee then that the advice
given by Comtee on such a partial state
must in fact be a protection

Plaintiff's instructions.

9
20
21

If the Jury should find from the evidence that the Plaintiff Isaac L. Jannis up to the time of his arrest for embezzlement bore uniformly a good reputation for honesty and integrity and the defendants acknowledged that the Plaintiff bore such character in their estimation up to the time of his arrest for embezzlement then that it is evidence tending to show that the defendants had no probable cause for causing the arrest of the Plaintiff for embezzlement. 23:1 Illinois 575 unless strong circumstances of guilt existed to base a criminal charge upon as against Plaintiff Jannis

9
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21

The Jury are further instructed that the fact that the rule as to payment of sums over \$5 was frequently violated (if that fact be found by the Jury) was a material fact to be communicated to the Counsel when his advice was sought. It is so of defendants knew and remembered the fact at the time of taking counsel

If the Jury shall find from the evidence that the defendants or either of them informed Mr Blackwell when his advice was sought

by defendants as one of the facts in the case on which Blackwell was sought to advise. That the sum of two hundred and forty one dollar and four cents being the amount of Alexander Jumps indebtedness to the defendants which had been charged to the Plaintiff on the thirty first day of October 1854, had been so charged to the Plaintiff with his knowledge and consent. And if the Jury shall further find from the evidence that such statement was untrue in fact then the Jury are instructed that the advice of counsel to go on such an erroneous statement of facts is of itself no protection to the defendants.

If the Jury shall find from the evidence that the defendants or either of them informed Mr Blackwell when his advice was sought by the defendants as one of the facts on which he was sought to advise that the Plaintiff had guaranteed purchases made by his mother & that the defendants had refused to let him have goods without the Plaintiffs guarantee and if the Jury shall further find from the evidence that such statement so made to Blackwell was untrue in fact then the Jury are instructed was material.

and that a direct of counsel is given on such an erroneous statement of facts is of itself no protection to the defendants

In the giving of which instructions and each of them the counsel for defendants then and there objected, which objection of defendants counsel the said Court then and there overruled to which ruling of the Court defendants counsel then and there excepted, and thereupon the counsel for defendants asked the Court to give the following instructions to the Jury for and on behalf of defendants to wit.

In the Supreme Court of Chicago
Adam G. Smith plaintiffs
against
Mr. M. S. Robt & Robt defendants. } In case

The defendants ask the Court for the following instructions as to the law of this case on their behalf viz

1st.

If the Jury believe from the evidence that before the commencement of the prosecution against the plaintiffs Mr. Smith the defendant Sullivan M. Robt went to Mr. Blackwell then a counsellor of his and the Supreme

Refused

Court who had for many years borne a high reputation both as a civil and Criminal lawyer and stated to him all the facts of the case - fully and unreservedly and wished Mr Blackwell's advice whether to prosecute Annis civilly or criminally - and that Mr Blackwell did not venture an opinion upon Rob's own statement but went to the place examined the books and the books and after taking time for mature consideration advised the institution of the Criminal prosecution and himself drew up the affidavit upon which it was founded and that Rob acted in good faith on the advice of Mr Blackwell then the law must protect him and the Jury should find for defendants.

Refused

4th The Court further instructs the Jury as a matter of law that where the facts constituting a Crime are proved to exist it is sufficient probable cause upon which to found a Criminal proceeding although upon the trial of such Criminal proceeding it should appear that no Crime had been committed because of the absence of any Criminal intent on the part of the accused.

6th

If the Jury believe from the evidence that before the commencement of the prosecution complained of in the declaration the Plaintiff in this suit Mr Adam G Imrie by charging to his account on the books of Robt Co assumed and paid to draw the sum of £ due from his brother Alexander Imrie of Dornsey Minor and that said Plaintiff Adam G Imrie also assumed and agreed to pay to said Robt Co in the same way the further sum of £ 24.16. being the amount of a debt due Robt Co from said Alexander Imrie for goods sold him while in business at Dornsey and that he afterwards charged this account on the books of Robt Co in pursuance of said agreement, and with his knowledge and consent, and if the Jury further believe that said Plaintiff Adam G Imrie after the charging of said sum to his account on the books of Robt Co & before the 12th day of December 1857 had access to the account of books of said Robt Co and to his own account in said Books where said charge was made and that he examined said books and never made any objections to said charge until a few days before he left the employ of said Robt Co and that before leaving the employ of Robt Co said Adam G Imrie contrary to and against the Will of said Robt Co took and appropriated to his own use the sum of £166. out of their moneys in his custody and without their knowledge or consent charged the same to himself on their books and then left their employ never afterwards returning and that the defendant Mr W Robt upon learning that fact consulted with Robt. J Blackwell Esq lately an attorney and Counsellor of this Court in relation thereto and that he fully and fairly stated facts to said

Blackwell

Blackwell so far as he was able with regard to the agreement of said plaintiff Adam G. Imies to pay his brother's debt as aforesaid and that the same was charged to his account in their books in pursuance of said agreement to which books and account the said Adam G. Imies had full access and frequently examined the same and made no objections until a few days before learning the dupli of said Pop & Co when he claimed or stated that said Pop & Co had no right to charge from him with and that said Pop & Co in informing said Blackwell asked his advice how to proceed against said Adam G. Imies for the taking of the money aforesaid and that said Blackwell before advising him to proceed went to the store of Pop & Co for the purpose of examining their books and clerks and the latter informing him that in the premises and thereupon advised Mr. Williams, M. Pop to proceed criminally against said Adam G. Imies under the statute for embezzlement and Imies drew up the affidavit upon which the prosecution was commenced and that said Pop acted in good faith upon the advice of said Blackwell that the law must protect him and the jury should find for the defendants

7th

If the jury believe from the evidence that the defendants in this case fully and fairly stated the facts of this case to Robert Blackwell the same as they were sworn to on the examination before the magistrate and the only thing upon was the gross animus of Imies then the plaintiff is not entitled to recover in this case provided Pop acted in good faith on the advice of Mr Blackwell and in that case the jury should find for the defendants.

which said instructions the Court refused to give the said jury but on the

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Embarras ^{of its own motive} directed and instructed the said
Jury to return a verdict in favor of the defendant.

If the jury are satisfied by the evidence that the defendants knew at the time they advised with their attorney that the plaintiff in good faith claimed & had at least in bona fide right to pay himself the money on his salary and that he had often done so before, and did not state that fact to their attorney, then the attorney's advice is no protection to them.

This is an action of malicious prosecution and to entitle the plaintiff to recover, he ought to show first that the prosecution was ended & 2^d That the proceeding was malicious, 3^d That it was without probable cause. There seems to be no contradictory evidence with regard to the termination of the criminal proceedings against the Plaintiff & the jury will need no particular instruction on this point beyond that a discharge by the justice of the party arrested, would be a sufficient termination of the proceedings under a warrant issued by such justice. The second proposition necessary to be established by the plaintiff is that the proceedings were maliciously instituted or set on foot by the defendants. The term "malice" in this form of action is not to be considered in the sense of spite or hatred against an individual but of an evilly disposed mind and as denoting that the party was actuated by improper and sinister motives. The jury will determine from all the facts & circumstances proven in this cause whether the defendants were actuated by malice in their procuring the arrest of the plaintiff or not. The third point necessary for the plaintiff to establish in order to entitle him to recover is that the criminal proceedings instituted against him by the defendants was & without any probable cause. Proof of express malice is not enough without showing also the want of probable cause.

The burden of proof in this cause is upon the plaintiff and the jury ought to presume that the defendants, believed in the truth of the evidence given by them and of the statements contained in the warrant for arrest: unless it clearly appears from the evidence of was false, and that defendants knew it to be so, or by reasonable diligence could have ascertained that it was false. Probable cause is merely defined to be a suspicion or belief founded upon circumstances sufficiently strong to warrant a reasonable man in the belief that the charge is true. A belief that is groundless or which could not have been formed without the grossest ignorance or negligence, would not constitute probable cause, within the meaning of the law.

The law ought to apply to all the evidence in the case.

or not enough without knowing also the want of proba-
cause.

The burden of proof in this cause is upon the plaintiff, and
he may ought to presume that the defendants, believed in the
truth of the evidence given by them and of the statements con-
tained in the affidavit for arrest: unless it clearly appears
from the evidence of was false, and that defendants knew it to
be so, or by reasonable diligence could have ascertained that
it was false. Probable Cause is justly defined to be
a suspicion or belief formed upon circumstances sufficiently
strong to warrant a reasonable man in the belief that the charge
is true. A belief that is groundless or which could not have
been formed without the grossest ignorance or negligence,
would not constitute probable cause within the meaning of the
law.

The jury ought to apply to all the evidence in the case,
the rules of law, given to them by the Court; Ask your-
selves conscientiously are the facts, and circumstances
that you have found to exist so strong in themselves as to
warrant an impartial, ingenious, and reasonable
man of common capacity with the caution usually exer-
cised by such a man, in the defendants situation but
not under the influence of any improper motive to believe
the Plaintiff guilty of the crime charged against
him, if they are sufficient to warrant that belief
in such a mind that conclusion when deliberately
arrived at by you, will entitle the defendants to a
verdict of not guilty. If you find otherwise then
you will find whether defendants are guilty, and if
guilty then you will assess the damages for the
Plaintiff.

The defendants claim protection in this case, by reason
of having been advised to prosecute the Plaintiff by
Counsel.

The true rule in this matter seems to
be that the defendants may go in evidence

to show probable cause, and to negative malice, that he proceeded in the case in good faith upon the advice of counsel learned in the law given upon a full representation of the facts.

It must appear to make this a good defence that defendant communicated to such counsel all the facts bearing upon the guilt or innocence of the accused which he knew or by reasonable diligence could have ascertained, and that he in good faith acted under such advice.

If the jury are satisfied from the evidence that the defendant in good faith fully submitted to their counsel all the facts that they knew were capable of proof as above stated and acted in good faith on the advice given and did only follow & such advice given then they are not liable for an action for malicious prosecution, even if the facts did not warrant the advice and prosecution.

If Rob acted in good faith on the advice of Blackwell believing that a crime had been committed by Annep the law must protect him but if Rob resorted to the continuance of applying to counsel advice to cover up malice knowing or believing all the time that no offence had been committed then the law would not protect the defendant.

and the said Court also gave the following instructions
which are by defendants Counsel

2^d The Court instructs the Jury as a matter of law that if Rob in prosecuting Smiths action in good faith upon the advice of Robert S. Blackwell Esq. after fully and fairly advising him of all the facts of the case. Then the law must protect him and in that case the Jury should find for defendants

Ginn

3^d The Court further instructs the Jury as a matter of law that before the Plaintiff Mr Smith can recover in this case he must prove to the satisfaction of the Jury two facts viz.
1st That the defendants had no probable cause for instituting the proceedings alleged in the declaration.

2^d That the defendants were actuated by malice

and the Court further instructs the Jury that although the defendants may have acted maliciously in instituting the proceedings alleged in the declaration yet if the defendants had probable cause for so doing then their action cannot be maintained

Malice alone is not sufficient and if the defendants had an honest belief of

Ginn

the guilt of the accused founded on circumstances sufficiently strong to warrant a reasonable man in the belief ~~was~~ ~~was~~ that the charge was true, that negating the idea of a want of probable cause and the action cannot be maintained and the Jury in determining whether the defendant entertains such an honest belief will take into consideration as well the facts set forth in the affidavit made by defendant Melham. In Rep for the arrest and the facts testified to by him on the hearing before the Magistrate as the other evidence in the case.

5th If the Jury believe from the evidence that before causing the arrest of Mr. Imip the defendant Melham M. Rep. consulted with Mr. Blackwell, then an attorney and Counselor of this Court, and so far as he was able fully and fairly laid the facts of his case before Mr. Blackwell believing the same to be true and correct and that Mr. Blackwell after being so informed and after examining the books and records of Rep & Co. in relation to the said facts, advised the prosecution, and himself drew up the affidavit sworn to by Wm. M. Rep. and that Rep relying upon and honestly believing

the advice so given him to be correct and proper action thereon then the law is in favor of the defendants and the jury should find accordingly.

{ of which refusal and direction of the ^{said} Court the counsel for defendants then and there excepted and thereupon the said jury gave their verdict against the said William M. Pop and John H. Pop upon the issue aforesaid.

Whereupon the counsel for the defendants moved the said Court for a new trial upon the issue aforesaid for the reasons following to wit:

State of Illinois }
County of Cook } ss.

In the Superior Court of Chicago
Term comm. A.D. 1863.

Adam G. Smith Plaintiffs

vs.

William M. Pop and John H. Pop Defendants

} In case

And now come the above named defendants by Messrs. McPherson their attorneys and move the Court here for a new trial in this cause and that the verdict therein rendered be set aside for the reasons following to wit:

1st Because the verdict of the Jury is against the evidence and facts in the case.

2^d Because the verdict of the Jury is against the law and evidence in the case.

3^d Because the verdict of the Jury as now entered in said Cause is grossly excessive in amount and in direct violation of the law and evidence of the case.

4th Because the Court ~~excess~~ permitted improper testimony to go to the Jury upon the trial of said Cause for and on the part of the Plaintiff.

5th Because the Court refused to permit proper testimony to go to the Jury on the part of the defendants on the trial of said Cause.

6th Because the instructions given to the Jury by the Court on the part of the Plaintiff are improper.

7th Because the Court refused to give proper instructions to the Jury on the part of the defendants.

8th Because the Court verdict in said Cause is in other respects improper and illegal and for other reasons wrong and improper and

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ought to be set aside

Because the Court would not permit the counsel for defendants to withhold and make the opening statement of his case to the jury until the P^{er} had offered his evidence but compelled him to make such opening immediately after the Plaintiff's Counsel had opened and before any testimony had been offered.

R. L. Muriel
ally for Deft.

which said motion the said Court after hearing the argument of Counsel thereon took under advisement and afterwards at the September^{Term} A.D. 1863. the said Court having considered the said motion gave judgment upon the said verdict of the said Jury. against the said William M. Pop. & John B. Pop. Whereupon the Counsel for the said defendants made their exceptions to the opinion of the said Court in that behalf and there prayed an appeal to the Supreme Court of the State of Illinois which was granted. upon defendants giving bond to be approved by the Court in the sum of \$12,000 and defendants and Counsel also prayed that said Court

would sign and seal this bill of exceptions
which is done accordingly

Wm H Diggins ~~Secy~~
Judge.

And afterwards to wit, on the day and year
last aforesaid the same being one of the days
of the September Term of said Court the
following among other proceedings were
had and entered of record in said Court
to wit,

Adam G. James

vs Case,
(William M. Rob. and
John H. Rob.

And now comes said defen-
dants by Richard J. Murrell their attorney
and file herein their bill of Exceptions and
on the motion of their said attorney it is
ordered that said defendants be and they
are hereby allowed further time in which to
file their bond on appeal to the Supreme
Court and that the same be and is hereby ex-
tended from this day until the first day of
the next term of this Court, being the October
Term of this Court

And afterwards took on the thirtieth day
of the month, and year last aforesaid. the
said defendants by Merriell & McWhinn
their attorneys filed in said clerk's office of
said Court the affidavit of M^c & McWhinn
and a ~~copy~~ ^{copy of an} appeal bond, which are in words
and figures following to wit

State of Illinois }
County of Cook } ss

In the Superior Court of Chicago
& Chambers

Adam G Impey

vs
William M Robt & John St Robt

In case

John J. McWhinn

having been first duly sworn says that he is the
attorney and counsel of the above named William
M Robt and John St Robt in the above entitled cause
that on the day of September A.D. 1863. there was
entered of record in said Superior Court a judgment
in favor of said Adam G Impey and against
said Wm M Robt & John St Robt for the
sum of \$10,000 damages and also for the costs and charges
of the said Adam G Impey in that behalf expended
from which said judgment the said William M
Robt and John St Robt prayed an appeal to the
supreme Court of the State of Illinois which was
granted upon the giving of a bond by said Wm

M. Rob. and John St. Rob. in the sum of \$12,000. to be & approved by the Court. That the time ~~the~~ within which the said Bond was to be filed does not expire until Monday the 5th day of October A.D. 1863. That on the day of September A.D. 1863 the said Adam & Joseph caused execution to be issued on said Judgment directing to the Sheriff of said County to execute. That on Wednesday the 30th day of September A.D. 1863 the said Sheriff to whom the said Execution was before that time delivered called on said William M. Rob. & John St. Rob. and demanded of them property to satisfy the said execution. That on Tuesday the 29th day of September A.D. 1863 the said William M. Rob. with David B. Felt of Chicago in said County executed an appeal bond said Cause a copy whereof is hereto annexed and delivered the same to the affiant with directions to affiant to have the same approved and filed in the ^{office} of the Clerk of said Court. That immediately upon the receipt of said Bond as aforesaid affiant brought the same to the office of said Clerk and requested him to file said bond which said Clerk refused to do until after the said Bond had been approved by the Court. That affiant now holds the said Bond in his possession and is ready to file the same and intends to file the same at such time and place as the said Court may

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order or direct. Affiant further says upon
his information that the said David B. Fiske &
security in said bond. is a man of wealth and
has property unincumbered in said County worth
more than twenty thousand dollars. Wherefore
affiant as attorney &c of said prays that
said Court will order a stay of execution
in said cause. Affiant further says that said
William M. Rob is not now in the City of Chicago
but will be back there in a few days. and
further affiant says not.

Subscribed and sworn
to before me this 30th
day of Sept. 1863.

Read

H. L. Schrader
Notary Public

Jno. J. McKinnon

Revised
Stamp
& Clerk

I'm on all men by these presents that we
William M. Rob. and John H. Rob. as principals
and David B. Hook as surety of the County
of Cook and State of Illinois are held and
firmly bound unto Adam G. Smith also
of the same County and State in the penal
sum of Ten Thousand Dollars lawful
money of the United States for the payment
of which well and truly to be made we bind
ourselves our heirs executors and administrators
jointly severally. and firmly by these presents
Witness our hands and seals this Fifteenth
day of September A.D. 1863.

The condition of the above obligation is such
that whereas the said Adam G. Smith did
on the day of A.D. 186. in the Superior
Court of Chicago for and for the County of Cook
and State aforesaid and of the Term
thereof A.D. 186. recover a judgment against
the above bounden William M. Rob. and John
H. Rob. for the sum of Ten Thousand Dollars
and costs of suit. from which judgment of
said Superior Court of Chicago the
said William M. Rob. and John H. Rob. by
prayer for and obtained an appeal to the
Supreme Court of said State

Now Therefore if the said William M. Rob.

(16)
and John A. Rob. shall duly prosecute their
said appeal with effect. and more or
pay the amount of the judgment with interest
and damages rendered and to be rendered against
them in case the said judgment shall be
affirmed in said Supreme Court then the
above obligations to be and otherwise to remain
in full force and virtue

Taken and Entered into before

me, at my office in Chicago

on

day of

A.D. 186.

John A. Rob.

William M. Rob. Witness

David B. Felt Witness

And afterwards to wit on the day and year
aforesaid, at Chambers before the Honorable
Jas H. Higgins one of the Judges of said
Court. the following among other proceedings
were had. to wit.

State of Illinois 7⁰⁰
County of Cook 1⁰⁰

At Chambers before Jas H. Higgins
Judge of the Superior Court.

Adam G. Jannet

^{vs}
William M. Robt and
John H. Robt

In case

on reading and filing the
foregoing affidavit hereto
annexed it is ordered that the execution
issued in this cause & now in the hands of
the Sheriff of Cook County be stayed until
the first Monday of October next & until Cause
can be heard before the Superior Court in the
matter of the appeal to the Supreme Court of the
State of Illinois. It is hereby certified that this
is a ~~part of~~ Cause for staying further proceedings until
the order of the Court on this motion,

Given under my hand and seal this thirteenth
day of September A.D. 1863

To the Sheriff of Cook County }
State of Illinois. }

Jas H. Higgins
Judge

And afterwards to wit, on the 25th day
of October the year aforesaid the said Defenda
ants William M. Pop and John H. Pop filed
in the said Clerk's office of said Court their
appeal bond which was and figures
following to wit.

I know all men by these presents that Mr.
William M. Pop and John H. Pop as principals
and ^{Charles D. Burroughs} ~~and~~ as parties of the County
of Cook and State of Illinois are held and
firmly bound unto Adam G. Smis also
of the same County and State in the penal sum
of Twelve Thousand Dollars lawful money of
the United States for the payment of which well
and truly to be made we bind ourselves our
heirs executors and administrators jointly severally
and firmly by these presents

Witness our hands and seals this 25th day
of September A.D. 1863

The Condition of above obligation is such, that
whereas the said Adam G. Smis did on the
12th day of September A.D. 1863, in the Superior
Court of Chicago in and for the County of Cook
and State aforesaid and of the September term
of A.D. 1863, render a judgment against the
above bounden William M. Pop and John H. Pop
~~shall duly present the said appeal.~~

~~effect~~ for the sum of Ten Thousand &
Dollars. besides costs of suit from which said
judgment of the said Superior Court of
Chicago the said William M. Rob. and John
St. Rob. have prayed for and obtained an appeal
to the Supreme Court of said State

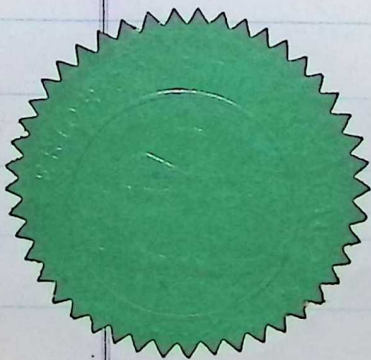
Now Therefore if the said William M.
Rob. and John St. Rob. shall duly prosecute
their said appeal with effect and moreover
pay the amount of the judgment. costs interest
and damages rendered and to be rendered against
them in case the said judgment shall be
affirmed in said Supreme Court. then the obliga-
tions to be void otherwise to remain in full
force and virtue.

Taken and entered into
before me at my office in
Chicago this day of
A.D. 186.

test

William M. Rob. *Wm M Rob*
David B. Just *David B Just*
Charles F. Buzman *Charles F Buzman*
John St. Rob. *John St Rob*

State of Illinois |
County of Cook. |^{ss} I Thomas B Carter Clerk of
the Superior Court of Chicago within and for the
County and State aforesaid do hereby certify the above
and foregoing to be a true and perfect transcript of
all the papers now on file in my office, together with
all the orders and judgments made and entered of
record in said Court in a certain cause lately &
pending in said Court on the Common law side
thereof. wherein Adam G. Amep was Plaintiff and
William M. Rob and John St. Rob were defendants
^{in the above named case} ~~The Times Whereof~~ I have hereunto set my
hand and affixed the seal of said Court at
Chicago this Eighth day of March A.D. 1864.
Thomas B Carter



Clark

Supreme Court App. Tenn 1864
Wm M. Ross &
John H. Ross

vs
Adam G. Linness } Appeal from
Cook County

And now comes appellants
by T. Lyle Dickey their attorney, & say
that in the foregoing record & proceedings
there is manifest error & asks that
said judgment & proceedings may
be reversed - set aside & for new
trial held & as specification of points
of error assign the following -

1st The Court admitted evidence
for plaintiff below which ought to
have been rejected -

2nd The ^{Court} refused to admit proper
evidence offered by defendants below

3rd The Court erred in requiring
the defendant below to state his case
before plaintiffs testimony was heard
& refusing him the right to do so afterwards

4th The ^{Court} erred in giving instructions for
plaintiffs below -

5th The Court erred in refusing instructions
asked by defendants below -

8th The Court ended in refusing
the motion for new trial

7th The Court ended in rendering
judgment against appellants

J. Lyle Driskell
Attorney for Appellants

Joined in error

Hervey Anthony Galt

For appellants per

Samuel H. H. H.

And now comes the appellee and
says that in the record & proceedings
aforesaid in this case there is no
error.

Hervey Anthony Galt
Atty for Appellee

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William M. Ross et al.

vs

Adam G. Innes

Record

Filed Apr. 18. 1864.
L.eland
Ctld.

Filed 140.55.

Dickinson

Supreme Court of Illinois
 3rd Grand Division.
 Adam J. Davis }
 vs } Appeal from Chicago Superior Ct.
 Mrs. M. Ross & John Ross.

B. J. Morris would submit to this Honorable Court the following which I had not time to read in my argument. In the case of Honeycutt vs. Freeman. 13 Irwell (N.E.) R. 320, 323 The court ^{below} ~~said~~ to the jury. "If they believed the evidence, the circumstances, as in fact existing, and as known to the defendant when he took ~~the~~ out the warrant, did not amount to probable cause." The appellate court said "upon the point of probable cause, there can be no doubt. There was not the least pretence for accusing any one of the parties concerned, and much less the present plaintiff, with a larceny. The public manner of taking the corn with the knowledge of the neighborhood and the open and distinct avowal to the defendant of the fact and of a claim of property in the corn, repelled all presumption of intention to steal." This principal applies to this Ross case.

In Kendrick vs. Cypart. 10 Heers (Denn.) 293. "On Cross Examination he said, rather unfortunately as respects the defendant's good faith in this matter, that he "thought perfectly and defendant both wanted the land" (the \$166) "as they had conflicting claims."

"Probable cause is the existence of such facts & circumstances as would excite in a reasonable mind the belief that the person charged, was guilty of the crime." p. 296. "The legal advice relied on by the defendant can avail him nothing in this case, for

" various reasons. The opinion of Counsel, to be available, must
" be honestly sought, and understandingly given." "That the
" Defendant acted upon the opinion, will not excuse him,
" if the ^{statement of} facts upon which the opinion was founded, was
" incorrect, or the opinion itself unwarranted."

"That the prosecution was resorted to by the defendant,
" not in good faith; not from motives affecting the public
" interest; not to vindicate the supposed rights of the
" Court; but as an indirect and disingenuous subter-
" fuge to aid in getting possession himself, is too apparent
" from all the facts of the case."

So is the case under consideration just such
a case in principle. It is clear that the Appellee
never either guaranteed the payments of goods purchased
by his brother Alexander or that he subsequently
agreed to pay this balance of \$241. out of his
own funds or earnings; and that the Roses knew
these facts to be so - and that the representation of
William M. Ross on both these points to Blackwell was
not true. Neither of these statements were ever made
to Adam Merry their uncle. No such pretence was
ever suggested to him. Mr. Merry told them what the
Appellee's statement of the facts ^{were} and neither of the Rosses
^{its truth, hence,} was denied this statement of the Appellee, to be ^{most} true.
Mr. Merry was acting as the mediated friend of the parties.
The Rosses stated their complaint to him and the
Appellee replied - and their statement of facts to
Merry was the only true one embracing the
grounds of complaint and this was explained
by the Appellee showing there was no real

coerce existing - He did all openly, fairly, and
justly, without any intention to steal - and
the facts in the case show it, and
the Roper knew it - R.S. Morris atty of
appellee

~~222~~
168 171

June's

or

Rep.

Additional argument
of B. D. Morris which he had
intended to say when his house
~~was~~ stopped him
Morris

Will May 12, 1864
L. L. M. D. R.