

No. 12661

Supreme Court of Illinois

Stow.

vs.

Yarwood, et al.

209-90

William C. Case

vs

Wardman C. Case

Exonors

209

1266

1858

X

Refused

United States of America

STATE OF ILLINOIS, COUNTY OF COOK, S. S.

Pleas, before the Honorable

George M. Mason

Judge of the Seventh Judicial Circuit of the State of Illinois, and Solo' Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof
begun and held at the Court House in the City of Chicago, in said County, on the

Third Monday, (being the *Twentieth* day) of
August in the year of our Lord one thousand eight hundred and
Fifty Seven and of the Independence of the said United States the
Eighty Second

Present, Honorable

George M. Mason

Judge of the 7th Judicial

Circuit of the State of Illinois.

Charles Brown

States Attorney.

John L. Wilson

Sheriff of Cook County.

Attest:

Wm. L. Church

Clerk.

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Be it Remembered that heretofore
to wit, on the 12th day of July A.D. 1843
and again on 10th day of November A.D. 1843,
there was filed in the office of the Chief of the
Circuit Court of Cook County in the State
aforesaid, a certain declaration which is
in the words and figures following, to wit:

State of Illinois

Cook County ss. & Cook County Circuit Court
August Term A.D. 1843.

John Garwood, Gardner J. Borliss and
vol. H. Parker, plaintiffs in this suit
by Smith and Walling all their attorneys
complain of William H. Stow defendant
in this suit, of a plea of trespass on the
case, for that whereas the said plaintiffs
heretofore, to wit, on the fifteenth day of April
in the year of our Lord one thousand eight
hundred and forty three at the County of
Cook in the State of Illinois, were lawfully
possessed as of their own property of certain
good chattels and effects, to wit, one Steam
Engine, consisting of two Iron Boilers and
Steam Machinery of great value, to wit, of the
value of two thousand five hundred dollars
lawful money of the United States of America
and being so possessed the said plaintiffs
afterwards, to wit, on the day and year last

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aforsaid, at the County aforsaid, casually
lost the said goods and chattels and effects out
of their possession, and the same afterwards
tourt on the day and year last aforsaid, at
the County aforsaid, came to the possession
of the said Defendant, by finding, yet
the said defendant well knowing the said
goods chattels and effects to be the property of the
said plaintiffs, and of right to belong and
appertain to them, hath not as yet delivered
the said goods chattels and effects to the said
plaintiffs, altho often requested so to do,
but wholly refuses so to do. And afterwards
to wit, on the day and year last aforsaid
at the County aforsaid the said Defendant
converted and disposed of the said goods and
chattels and effects to his own use, to the
damage of the said plaintiffs of Three
thousand Dollars.

Smith & Wallingall
Plf's. Attys -

And afterwards tourt on the 20th day of
May A.D. 1857 there was filed in the office
of the Clerk of the said Court a certain plea
to said Declaration which is in the words
and figures following, to wit,

In the Cook County Circuit Court
April Term A.D. 1857.

William H. Stow

vs

John Yarwood & al

And the said defendant
by his attorney Arthur W. Windett comes
and defends the arising and injury, where
of And says that he is not guilty of the said
supposed grievances above said to his charge
in any or either of them, or any part thereof
in manner and form as the said plaintiffs
have above thereof complained against
him. And of this he puts himself upon
the Country &c

Arthur W. Windett.
Attorney for Defendant.

And the said plaintiffs doth the like
Hoyne Miller & Lewis, for plffs.

And afterwards, to wit, at the November term
of said Court, to wit, November 16th A.D.
1857 the following amongst other pro-
ceedings in said Court were had and
entered of record in this Cause, to wit

John Yarwood, & W.

Calph & J. D. Wickers

vs

William H. Stow

Provs

This day came the

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Said Parties by their Attorneys and issue
 being joined in this Cause, It is ordered
 that a Jury come, whereupon come the
 Jurors of a Jury of good and lawful Men
 to wit, Charles Gault, J. M. Wotford Thos
Wartlett, W. Kough, A. G. Wilcox, M.
 Clarkson, E. Millistow John Gamble,
 G. Peck, O. Wheaton, Wm. Fabian J. D. Knight
 who being first duly elected tried and sworn
 well and truly to try the issue joined afore-
 said, after hearing part of the evidence
 adduced and the hour of adjournment
 having arrived it is ordered that they be allowed
 to separate, to meet the Court at the coming
 in thereof tomorrow morning -

And afterwards to wit at the Term of
 said Court last aforesaid, to wit, on the 17th
 day of the Month of year aforesaid the following
 among other proceedings in said Court,
 were had and entered of Record in this
 Cause to wit,

John Gauswood
 L. W. Corliss and
 J. D. Wickes

at
 Prover

William D. How

This day came the
 said Parties by their Attorneys and also
 came the Jury heretofore impaneled in

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this cause and they having heard further
evidence adduced and the hour of adjourn-
ment having arrived they are allowed to
separate to meet the Court at the coming
in thereof tomorrow morning.

And afterwards, to wit, at the Term
of said Court last aforesaid, to wit, on the
18th day of November in the year last
aforesaid the following among other pro-
ceedings in said Court were had and
entered of record, to wit,

John Gamwood, S.W.
Clerk & J. B. Minton,

or

William B. Stow

vs
Prover.

This day came the said
parties by their attorneys and also came
the jury heretofore sworn in this
cause, and they having heard all the
evidence adduced, arguments of counsel
and instructions of the Court, and say,
"That the jury find the Defendant guilty
& assess the Damages at eight hundred
Dollars." Whereupon the said defendant
moves the Court for a new trial of this
Cause —

And afterwards to wit, at the January
Special ^{and} term of said Court, to wit, on the
28th day of January A.D. 1858 the

7 following, among other proceedings in
said Court, were had and entered of record,
to wit,

John Garwood & H.
Corliss & J. D. Michener

v.
William B. Stow

This day again came
the said parties by their respective attorneys
and the Court, upon hearing counsel
on the said defendants motions for a new
trial of this cause, and due consideration
being thereupon had & the premises fully
understood, doth order that the said motion
be, and it hereby is overruled, and to the
ruling of the Court in overruling his motion
the said defendant by his Counsel now
here excepts.

Therefore it is considered that
the said plaintiffs do have and recover
of the said defendant their Damages,
\$800. of eight hundred Dollars, in form by the
jury aforesaid assessed, and also their costs
and charges by them in this behalf ex-
pended, and have execution therefor.

Whereupon the defendant by his
Counsel prays an appeal to the Supreme
Court of the State of Illinois which is granted
on condition that the said defendant

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within ten days, execute and file his appeal Bond with good and sufficient surety in the penal sum of \$1000 conditioned as the law directs, And it is further ordered that said defendant have until the 1st day of the next term of this Court to prepare & file his bill of exceptions in this Cause -

And afterwards, to-wit, on the 3^d day of February in the year last aforesaid the said defendant filed in the office of the Clerk of the Court aforesaid his certain appeal Bond which is in the words and figures following, to-wit,

Know all men by these presents, that we, W. D. How, J. D. Gray & C. Attebor of the County of Cook and State of Illinois are held and firmly bound unto John Garwood, J. M. Galip & J. D. Wickes also of the same County and State in the penal sum of Fifteen hundred 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 eighth day of February A.D. 1858.

The Condition of the above obligation is such that whereas the said Garwood Galip and Wickes

did on the eighteenth day of November A.D. 1857 in the Circuit Court in and for the County and State aforesaid, and of the November Term thereof A.D. 1857 recover a judgment against the above bounden William H. Stow for the sum of Eight hundred Dollars and — cents besides costs of suit, from which said judgment of the said Circuit Court the said William H. Stow has prayed for and obtained an appeal to the Supreme Court of said State. Now therefore if the said William H. Stow shall duly prosecute his said appeal with effect & moreover pay the amount of the judgment, costs interest and damages rendered, and to be rendered against him in case the said judgment shall be affirmed in said Supreme Court then the above obligation to be void, otherwise to remain in full force and virtue —

Witness my hand and seal of office before me
at my office in Chicago this third
day of February A.D. 1858.

Wm. C. Church

W. H. Stow (P)

J. D. Gray (P)

C. D. Webster (P)

Clerk

And afterwards went on the first day of March in the year last aforesaid, and as of the November term of said Court signed the said judgment and filed in the office of the Clerk of said Court his certain Bill of exceptions which is in the words & figures following, to wit:

In the Cook County Circuit
Court November Term A.D. 1858.

John Garwood
Joel H. Wicker &
Gardner T. Galiff }
vs }
William H. Stow }

Prover.

Be it remembered that on the above
entitled cause came on for trial at the
November Term of said Court A.D. 1858 and
and on the part of the Plaintiffs the following
testimony was given. —

George Mitchell being first sworn said
I believe I be acquainted with Plaintiffs,
was acquainted with them in 1840, they
were doing business under the name of John
Garwood & Co. I knew Mr. Stow, & knew the
Plaintiffs purchasing an engine in fall of
1839 purchased of a man by the name of
Allen, it was here in town at William H.
Stow's yard on South branch I mean his
foundry, it was called a twenty horse engine
It consisted of an engine for the most part,
two boilers, all was put there, I think there
was two Boilers Cylinder crank shaft, one
slide crossheads and I think five segments
of a fly wheel, a part of the pump was there

I don't recollect anything else. I know that the other parts that were missing at the time of the purchase were afterwards found & brought to the works, they were found a short time after the purchase, I think one segment of the fly wheel, rock shaft, connection Rod and crank rod connecting a valve. The engine with these things that were found were left in Mr. Stow's possession by John Yarwood & Co. for repair, this was in the month of January 1840, I never called upon Mr. Stow to know when it would be done. The plaintiff's job was on the Canal at the Sag some eighteen or twenty miles from here, I was in their employ. I was acting on the part of John Yarwood, was not employed to put up this engine. I was employed to do mill work and that kind. I have no recollection of coming to town to see about it. I recollect of parts of this engine coming on to the work after it was repaired, Cylinder, Crank shaft, parts of the fly wheel, fire front and two boilers, I was acquainted with engines at that time. It appeared to have been used before it was purchased about a year. I was present at the time the contract was made. I was acquainted with their value. I examined this engine pretty thoroughly at the time of its purchase. I should think it had been

used about a year judging from its appearance. The value I placed upon it at the time it was purchased was \$1400. It was worth at the time of purchasing \$1400. That is my judgment, its value when thoroughly repaired would be \$2000. The value of that part of the engine taken to the Sag by Yarwood & Co. was a thousand dollars.

In the Summer of 1840 I knew that tho^t J. Ferret took the most of it down, he was in the employ of Yarwood & Co. that parts were put into a storehouse. The Boilers were put into the boiler house. They were not put up a part of it was brought in about five months and parts of it as it was finished. It was finished part of it, and the remainder was to be finished so not as to inconvenience the work. — Memorandum of an agreement entered into this twenty sixth day of December one thousand eight hundred and forty, between W. H. Stow & John Yarwood & Co. Witnesses, I, W. H. Stow agree to clean put up and put in repair a certain engine (now at my furnace) in first rate condition for running, and furnish and to make new the following items to wit.

Steamer Blocks	\$0.00
Plunge to ^{the} sea pump	6.00
One slide	6.00

Grate	61. 15.
Connecting pipe	30. 00
Segment to Fly wheel	24. 00
Back shaft & arm to pump	12. 00
Stand & shaft to shift steam	30. 00
Fire fronts doors & trimmings	55. 00
Connecting Rods & trimmings	50. 00
Bolts that may be wanting	20. 00
Strap & Boxes that may be wanting	60. 00
Four try cocks to Boilers	10. 00

To new Rivet the Work, Cork & put them in good repair for use, — For which said Garwood & Co. agree to pay to said Store the sum of five hundred dollars in manner following, to wit, two hundred & fifty dollars when said work is completed & two hundred & fifty dollars at our next estimate after our next January estimate, for which said Store is to have an order of our acceptance on the Canal Commissioners for the same. And it is further understood that if the said Garwood & Co. shall furnish any of the items named above, the same is to be deducted from the above said sum of five hundred dollars. And it is further understood that the said Store is to furnish what castings said Garwood & Co. may want for water wheel &c. at the rate of six and one fourth cents per pound, and to receive pay in the same proportion and manner as above.

stated for the payment of the said sum of five hundred \$^{rs}. And I W. H. Stow agree that the said engine & Boilers together with all the fixtures shall be completed & finished in a good workmanlike manner all in good order for running on or by the fifteenth of January next. In Witness whereof we have hereunto set our names on the day & date above written.

W. H. Stow

J. Garwood & Co.

N.B. it is understood that the Boilers & Cylinder to the engine is to be completed at the time above specified, and the remainder to be finished as soon as they will be needed in putting up the engine, so that the progress will not be hindered in setting up said engine to delay the same against the interest of said Garwood & Co.

W. H. Stow

J. Garwood & Co.

Pillars blocks furnished by W. H. Stow, Plunge for the pump, or segments grates, connection pipe and fire parts furnished by Garwood & Co. the Boilers were in the boiler house, the Boilers could not be got out without cutting the building in a way to load them.

The parts made in contract were made by W. H. Stow's foreman to make the engine complete.

15- Croft &c. — I follow Millwright business
and occasionally putting up engines, I
reside now in the City of Chicago, I came from
Menomance Green Bay, have resided there
since last February, I have resided at part
of the time in Wisconsin, in Indiana, Illinois
and Michigan since 1801. I have resided in
Chicago all of a tenth of the time, I did not
come down from Menomance at Mr. Wickers
invitation. I have had a little conversation
with him to day. This suit was mentioned
two weeks ago and not before for a year, my
expenses no part of them were paid by Mr.
Wicker. I feel no interest in this suit, I was
not employed by Harwood & Co in 1840. In
1839 I acted for them. I think I was not in
their employ since the closing of the Canal
I was in Chicago until 1844. I worked part
of the time at Carpenter business and packing
work in the fall of 40. I was down on the log
packing through the Country, I went out of
the employ of the Company at the time the
work stopped. I worked at Millwright business
and Carpenter business since I was 14 years
old. I had worked at the Cabinet business
I worked at it in 1818, I commenced in 1822
at Carpenter and joiner business, stuck to
that two years, I then went into the employment
of the Peru River Company. I was employed

Part of the time in repairing Saw Mills
 Iron Mills &c I travelled West to Chicago, I
 worked making patterns and some iron
 work, I don't recollect exactly when I did the
 pattern work for Gates, I arrived at Chicago
 in 1837 in 1839 I was in John Yarwood's em-
 ploy, part of the time I was engaged in building
 frames, pumps, and malrods for excavating
 the Canal, I was employed for the most part
 of the time for 18 months by a man by the
 name of Henry Fitcher I had charge of
 the work. I had not been engaged all that
 time on Watermills, I worked at Steam
 Mills repairing the engine pumps & keeping
 it in order for three months, I first saw the
 engine in 1839, I saw parts of it in Stow
 Yard, I came in with a man by the name
 of Corliss for the purpose of purchasing an
 engine for the Canal work, I was operating
 in behalf of John Yarwood, I saw it twice
 same week, I see different parts of the engine
 I went there and examined it, I overhauled
 some parts of it with a view to purchase, the
 Boilers were rusty but not to injure them, I saw
 no sand in them, I saw the Crank shaft cylinder
 and parts of the pump I considered the engine
 an old one, I did not find any part of it
 broken, I considered the boilers safe at the
 time to use I gave this as a professional opinion

The Boilers were worth three or four hundred dollars each, the parts of the fly wheel that I saw might have been worth twenty five dollars apiece, the segments \$125.00, The crank & shaft with what was attached to it might have been worth \$100.00. The Cylinder was worth \$100.00, the slide was worth about seven or eight dollars, the pump part that I saw was worth \$25 or 30, I think the parts that were there taken as a whole were valued at \$700.00 I don't know where they came from of my own knowledge, I rather think that I was in Yarwood's employ when the engine was brought down there, I saw the parts brought down there to the Sag. I think that \$700.00 was the amount we agreed to pay for the property. I don't pretend to value what I saw in Stow's yard at \$1400.00 Tho! Thurst lived near Yarwood & drove a team, he is now in his grave to the best of my knowledge, a new engine of the same size and stroke of this at that time should think we should have had to pay \$2300.00. I presume the engine if well repaired would have been worth \$1800.00 I should say it was worth that, I was present when the purchase was made and when part of the price was paid. I think a stud horse was turned out at \$500.00 I know that this horse was turned out from the conversation Corliss.

owned the horse, I think this was in the fall
of 1839 the trade was made at the old Illinois
house. I am sure we turned out the horse
to purchase the engine, I think I am as
sure with the exception of one year of the time
I worked on the Sag. This stud horse was
spoken of as good stock and good blood and put
in at \$500⁰⁰ in the trade for the engine, I did
not know what the horse was worth at the time
a horse of that appearance and action would
bring at the time from four to five hundred
dollars. The engine was put up but rolled
into the store house, I think I was employed
in 1839 to take charge of this engine, I know
that Youwood furnished some by seeing them
on the work, I see the connecting rod on the
work. I think the rock shaft and stands.
Storv furnished the grates five feet of yellow
blocks, I don't know of my own knowledge
that Storv did not furnish all the articles,
I only know that the articles being checked off
don't know who checked them off. I swear
I saw some of these articles in Storv's possession
after the Canal stopped, I think the Canal
stopped in 40 or 41. I saw Mr. Corliss write
the Contract at the time it was signed by the
two parties. The purchase was made in the fall
of 39 am pretty sure to the best of my recollection
it was in December 39 It was (Engine)

19 brought in Spring of 40. the rest in the summer
I think I saw it. I think that four or five months
intervened. Part of it was put into a log
house that had been occupied by a family
the Boilers were put into a building on the
Canal. There was a large stone pile right in
front so that the boiler could not be gotten out
that way, the other building where the other
machinery was was fifty rods from the building
where the boilers were, I think the contract
was in 1840 Mr. Corlip wrote it. It was written
on Mr. Stow's premises - Being reexamined
he said,

Res. de: I have nothing by which I could recollect
when this was done one year or the other, I was
in the employ of Yarwood in - the contract
was made (Dec 26, 1840. helped put away the
Machinery when the Canal stopped. I was
in their employ until all the parts of the
Engine came there, that did come there, I think
the Canal stopped the next year after that
contract was made, the checks on the contract
I first saw when the first parts came into
the works, I think Corlip made the checks,
I can't say who made the checks, the contract
was in Corlip's possession when I first saw
the checks, I know directions were given to go
to Stow to get the pieces, all I know is
seeing these pieces in Stow's possession -

20. I saw a slide, a rock shaft, that worked the pump, an arm that was old, a connection rod that was old the crank rod, that was the original one. I asked Mr. Stow if he had any claims upon the Engine, he said he had no claims on it if we bought it, upon that the contract was made to repair it. It was all understood before the contract was made that Stow had no claims on it if we bought it. Corliss and I calculated that when the Engine was completed it would be worth \$2000.00 for us. being again Cross examined he said -

Corliss vs. According to the contract I valued the Engine in 1840. I came to the value by the conversation with Corliss and by examining other engines, I did say the contract was made in 1839 I saw the checks in about ten days after the contract was made, I have read about the prices in the contract when I examined the contract I did not see any date in it. I saw if the contract read 1840 I was in the employ of Garwood. I am sure the asterisks were on the contract when I saw about ten days after it was made when Corliss came from Chicago. ~

James Harnocks being first duly sworn said
I was acquainted with plaintiff & defendant

I was in his Store's employ from 1836 to 41. I continued in the establishment from 1836 until 1844. Store was in the foundry business in 1840 and 1841. I was foreman in his shop don't remember when the engine was brought there. I believe in 1838 most of it was taken away in 1841 by Yarwood & Co. I don't recollect the circumstances of taking it away. I know that the engine was being repaired by Store for Yarwood & Co. I heard of no prohibitions by Store about taking the engine away. If any instructions had been given they would have been given to me. If his Mother in law had been there the instructions would have been given to him, but am pretty sure the work went away before he came there. It was brought back the bulk of it, the Boilers, the bulk of the engine and machinery. The Boilers were brought back on sleighs in very cold weather, it was broken up and melted up, most of it, it was broken and melted immediately. It was carried into the foundry, part of it was broken up right away, immediately. I think the bulk of it was broken up, the cast iron part of it. The Boilers were cut to pieces, one of them was at any rate, I think only one. It was the same that was taken away. I should say that it was the same

value when it was brought back as when it was taken away. Engines were considerably more expensive then than they are now.

William H. Stow was about attending to business he directed matters. The Boiler was cut up by his directions. I remember of his being there when it was broken up. Stow continued to be there and give directions - He directed and managed affairs just the same.

It has been understood that engines in those cheap times were worth about \$100 per horse power. I don't recollect a single engine being bought out and out new at that time. I think that all that was broken, was broken up within a few weeks from that time. It was broken up and melted up by the steam in the shop. I saw the engine there and broken up rather hurriedly as iron was rather scarce. The engine was brought there and broken up, and melted up one of the Boilers was cut up and worked into another Boiler. Parts of the engine were left there and replevied. A segment alone is only valuable for old iron, but take the fly wheel that would be valuable.

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How will the value of the separated parts of an engine compare with their value when united with an engine?

Some parts are just as valuable if the engine was broken up, break the cylinder

and the rest would be valuable. The pump would be valuable to work into another engine.

Being cross examined he says

Crop & I live at Menasha came down this morning my expenses were paid. I told him I could not come short of twenty dollars, and he paid it right over. I was not acquainted Engnie at that time. I commenced as foreman in 1840 I was learning in 1839 I did not know a good one from a bad one then, I did not know the parts. I think it came to Mr. Stow's in 1838. Avery built the engine for the boat. Stow built some rotary engines I think the engine came there in 1838 might have been in 1839, should think in 1839. I suppose I saw the engine there for the first time it came. Can't tell whether it had been built one year or ten years, I think it had been since I saw the boilers between the time they came there and the repairs made on them, they were repaired in winter of 1840 and 1841. I kept the books. A high pressure engine consists of cylinder, crank, ways, cross head, piston, piston rod frame. The frame of that engine was not such as they build them now. Low pressure engines have all these things with a condenser. This was a high pressure engine, Boilers are a separate thing from engines, when a man orders

24. An Engine we don't furnish a Boiler.
I did not examine the quality of the
boilers. I examined them as to their form
and thickness, the Boiler was $\frac{1}{4}$ inch, and
the rivets were very small and that was
the reason why they were all knocked out.
I suppose they were not considered sufficient.
I should never have had the rivets knocked
out unless they leaked. The rivets were so
short that they did not form much of a head.
I have talked with Mr. Wicker considerable
last Spring. I don't know that he was anxious
to have me testify. I was willing to come if
he paid me for it. The bulk of this machinery
was taken to the Sag and back, I know it
from common report, know that the bulk
was broken up because I saw it, don't know
how long they were making these repairs.
There might have been fifteen or twenty men
employed there, I know it was taken away.
Can't say how long they were taking it away.
When I say the bulk of the engine I mean
the Cylinder and the ways, the cross head, the
piston I think, know that there was parts
that were not broken. They were good for nothing
when broken, but for old iron. The pump
never was broken up. The fly wheel segments.
There were more parts that were not broken up.
I mean most of it when I say bulk.

William Harris took part of the articles away, Corliss or Garwood was with him. I think they took away the force pump and one or more segments of the fly wheel, they took the eccentric rod, and all the segments of the fly wheel that was there. I could not name any other articles. Think a Boiler was taken, don't remember certain about that.

Officer came with a drag, don't think that any Boiler was taken away then, think it was in the Spring of 1843. That the officer Harris came. It was probably that day or certain. It must have been within a very few weeks that they were taken away. I stated they came from the Vag in February. I moulded a segment, it went into one to make out the fly wheel. I do not know the circumstances of the plaintiffs, they were contractors on the Canal, the Canal stopped in 1841. I kept the books, I don't think there were charged on the Books. Corliss came to look at the engine sometime in December 1840. I don't remember the second time particularly, they were there several times, don't remember they purchased, remember when Corliss contracted to have it repaired. The engine might have been there a year or two, don't think was brought there in 1837. I don't remember that the question was asked

me at the first trial if I stated that the
 Engine came there in 1837. I had something
 to fix it in my mind. Recollect of seeing
 the Cylinder and the parts attached to it
 the shaft and arms of the fly wheel the
 parts attached to Cylinder were piston, piston
 rod, one of the ways, they were of iron, don't
 remember particularly the other parts, they
 constituted the Bulk of the Engine, think
 the wooden piston was there, there were bolts,
 force pump was there and it was repaired.
 I think was there. All these would constitute
 a Steam Engine, eccentric and eccentric
 rod. There are many parts yet, there are
 pillow blocks, rock shafts, don't remember if
 that was there, there was a number of bolts
 and odd pieces, band wheel Pullys. It
 appeared to have been used but not a great
 deal, have no idea how long it had been used
 I don't remember that the boilers were filled
 with sand, don't know the condition of the
 Boiler iron after it was brought back & cut up.

I found it was more brittle than any boiler
 iron that I ever saw. There are different
 qualities of boiler iron. It was fit for use or it
 would not have been put into a Boiler. Boiler
 iron must be good enough to roll up cold, after
 it was rolled up I have no doubt that it would
 stand as great a strain as any that would

27. roll up into a small space. I stated that I should have no hesitation in using the boiler if it did not leak. I don't think brittle iron is as safe as tough iron, the shell was made into another boiler, part of the iron might have been worked into a Cupola, I think it was. I did not examine the Engine sufficient to have any very distinct idea. I could not say more than guess at it could not tell what it was worth after the repairs were made. I don't remember that I put any value on them or not. If I ordered the Engine I should not expect a Boiler by any means, I should use the term Engine and boiler. I don't remember that Glen was present at the time the Engine was taken away. I read one page of the contract only. I think the repairs mentioned in the contract were all made. There was other work done besides putting in those repairs, they are not mentioned in the contract. I think the work mentioned in the contract was all done, there was no work done but what is mentioned in the contract. I think there were castings for the water wheel, don't remember certainly how many were furnished, my best memory is that there was a set of spare requirements for water wheel twenty four feet in diameter.

if they were not made I should not be surprised. The segments would weigh about one hundred weight apiece, there were twenty four being 2400 pounds at $6\frac{3}{4}$ cents per pound. I remember one set of slay shoes they would be worth the same rate per pound they weighed about eighty pounds. I think the shaft and pinion weighed about 350 pounds, shaft would be turned, turning would be worth about six dollars, I think the gudgeons were made for the water wheel shaft, should think they would weigh 150 pounds apiece, there was two of them, don't remember, they were in wooden blocks, or there was pillow blocks made. they usually run in wood, we used to make a considerable many of these kind of wheels for the Canal don't recollect how it was drawn whether by bands or gearing.

2

I ask Mr. McAnnals if he can give an estimate of all the extra work not mentioned in the contract? answered by permission of the Court.

There were three bolts for each segment that would be 72 bolts but don't remember whether we made them or they were made on the line, if we made them they would be worth from three to four shillings each the bands for the gudgeons were of wrought

Now, would weigh 20 pounds each, there would be three of them, they would be worth a shilling a pound but cannot — that we made them or not. I think the Cylinder was broken up said so last night, don't remember that steam chest was broken up, said so last night. I am confident they were broken up, but I should not be surprised if they were not, I have no other way than by recollection to determine that the Cylinder and Steam chest was broken up. I am positive about the time but I spoke about their being broken up in haste.

The Cylinder was broken up first, the cast iron was broken up. The sale by W. B. Stow to his brother ^{Henry M. Stow} was understood at the shop to have been made in the fall of 1841. after the repairs had been made & before the engine was brought back. In 1838 the firm took the name of King and Stow. Williams and Stow was in 1839 and 1840. The name of the company was Stow & Co but King, Peck, Williams and Stow succeeded W. B. Stow. of their carrying on the works about a year Henry M. Stow succeeded and he brought it down to 1849. After 1841. Henry M. Stow carried on the business, I did not know of any sale until a long time after it was done.

William H. Stow was the man signing
 Man after Henry M. Stow bought him out.
 this change took place before the engine was
 brought back from the Sag. W^m H. Stow
 used to act as foreman, I know H. M. Stow's
 hand writing.

It is hereby agreed by and between
 W^m H. Stow & Henry M. Stow that said
 William in consideration of six hundred
 dollars a year to be paid to him by said
 Henry as hereinafter mentioned, will and
 shall give and render unto the said Henry
 his time art and skill or so much thereof
 as may be necessary to the said Henry
 in overseeing conducting directing and
 superintending the Machine & Foundry
 business for said Henry in Chicago & such
 any other business in which the said Henry
 may require his services skill & attention
 for the period of four years hereupon. And
 in consideration of the premises aforesaid the
 said Henry hereby agrees to pay the said
 William the said sum of six hundred
 dollars from time to time during said year
 at the same & any part thereof may be due
 at such times as the said William shall
 desire it. Dated this eleventh day of December
 A.D. 1841.

Witness W. W. Smith

W. H. Stow.

H. M. Stow.

they kept a Stee in town on Belmont Street. I went there and got my pay. I received it in H. M. Stow's store before he purchased out Wm. H. Stow. Wm. H. Stow was about the Shop and about town as usual. I never broke it up or had anything to do with it. I think Carlip came there, I made the entries on the Book when these repairs were made, there was a good many entries made that I did not make. don't remember that I did say that a bill of charges was rendered, I think I stated the amount of the bill of repairs in 1851. I think one segment of the fly wheel was taken away by Davis & others among the things taken.

Direct Res. I resided at Kenosha when Mr. Wicker came up last Spring and wanted me for a witness. Wicker asked me some questions about this suit, he handed me ten dollars & wanted me to come, I said Mr. Stow had applied to me to come but I concluded not to come short of 20 dollars. Mr. Wicker said if I would come down again, he thought he would not trouble me again, and he give me 20 dollars, I am engaged in a flowering mill at Kenosha, I know of the work being done recollect - telling Mr. Wicker how it progressed after that the engine was gone, I saw the Engine after it was brought back, I think

one segment of the fly wheel, the eccentric
 and force pump were taken away by Mr.
 Davis when there with Mr. Corliss. They would
 not be of much value unless you had another
 engine to put them into. The pump would
 be worth about 40 dollars perhaps and
 the segment of fly wheel would not be worth
 its weight for old iron, and that was at that
 time $1\frac{1}{2}$ cents per pound, don't know what it
 weighed, I don't remember whether the
 heads of the boilers were cast iron, my recollection
 of the shell of the boiler was, that it was
 taken and a new flue put in and heads
 and used at Stow's foundry for about
 three years. The shell comprehended the
 brittle portion that I mentioned, it had
 no flues when it came there, Mr. Stow's
 brother in law Robinson came to the foundry
 to keep the books about the time the repairs
 were made, I think the segments of the
 water wheel were made by Stow and taken
 away by ^{about their going} ~~Yanwood & Co.~~ ^{brought back} ~~I don't~~ ^{recollect} I don't recollect the
 sleigh shoes they had no reference to the
 steam engine (testimony about the
 sleigh shoes struck out) can't say positively
 that the shaft and pump was made
 by W. & S. Stow my impression is that he
 did, they did not form any part of the
 steam engine, I think these articles that

were furnished were taken away, I don't remember that the bolts were made, the same in regard to the bands, the others we made all, I judged the Engine & Boilers after they were repaired to be worth in the neighbourhood of \$1800 or \$2000 dollars as repaired, new riveted, all complete, all I know of the Sale by W^m Stow to his Brother was common report, and sometime in the year 1841 Henry M. Stow came around he did not direct about work, I don't recollect of any particular circumstances, don't recollect of his giving any directions to the hands, he came up once in two or three days — there was no change in the business by William M. Stow he continued there as long as I staid until 1844. when this Boiler was cut up he was about the same as usual never heard W. M. Stow give any direction about things in the Shop. There was no sign up, don't remember that there was any change in the books. The Cylinder is the principal part of an Engine, I suppose that the Cylinder was broken up, taking the Cylinder by itself it would be worth nothing only for old iron.

Crop & Res. The value of the Engine as I gave it was according to my best judgement I can tell to some extent the amount of repairs

32, put upon the engine. If the rest of the engine was broken up, these parts were worthless except for old iron. It would cost considerable to produce them. I left the Shop in 1844 and it continued until 1848. I worked for Gates across the street, in 1843. The engine was removed to the corner of Canal and Randolph Streets. William H. How was the acting steam, I mean that William H. How directed things just the same as he always did, I don't know about the books of the concern, I had a pass book & that went on just as usual until I had Henry M. How alter it, and give me a Note for the amount due me. I should call it in the neighborhood of a 20 horse power engine I judge from size and appearance of it altogether. I never pay any attention to horse power, I determine this engine by the ordinary way of speaking of horse power, the Cylinder was about twelve inches and three feet stroke on the trial before we guessed at the size of the boiler and rated the engine at fourteen horse power. We repaired the boilers at 20 ft. long at that time. I stated last spring that the boiler might have been 30 feet long. If the Boilers are 20 feet long then 14 Horse power would be about right I think the Boilers are over 20 feet long.

Direct Co. Res. East May something was said
35 about the estimate of the power of the engine
I think I said that the boiler was as much
as 20 and might have been 30 feet long. If
the boiler was 30 feet long the power of the engine
would be nearly 1/3 more.

Thomas R. Armstrong being sworn I said I
reside about 18 miles from here and five miles
from the Sag. New Yarwood & Co. at that
time. They had a store down there about
two miles from me. The engine or a part
of it was there in 1840. I bought an engine
about the same time myself. Part of Yarwood's
engine was in a log house, I think it was
there in the latter part of the fall of 1840
and was there until the winter of 1841 or
Spring of 1842. it was there perhaps over a
year. I recollect of bringing a portion of
that engine to town. I brought six segments
of the fly wheel to town. I brought it where
New Yarwood & Co. shanty on the Canal to
town. The boilers were in the Shanty near
the Canal the segments were in another
Shanty. I brought them in the Spring of
1842. I believe it might have been in 1842
or 1843. I brought them by Mr. Stow's direc-
tions, he told me to bring them in, and I
brought them in, sometime previous to that

I was coming into town and I met Mr. How going out with two teams, I think Mr. Dean had a pair of horses and a sleigh with him and a Mr. Davis, I met them about a mile this side the Summit. How asked me if I had any crow bars that I could lend him and I told him I had & where to find them and he told me he was going after that Engine that was in Yarwood's place. I noticed afterwards that the Engine had been removed. I met him when I was returning home with two loads of boilers, the boilers I had seen placed had been taken it was the same winter that I brought the Regiments in some time after the Engine was gone. Mr. Yarwood spoke to me about it this was a week after, I considered Yarwood & Co. good to pay their debts their representatives for solvency was good.

Crop &c. Sometimes I have a pretty good memory my recollection has been about the same through the whole trial. I bought an Engine about 1840 I recollect it because they were bargaining for the Engine that I afterwards bought. I never knew the Engine, I have seen, I saw one boiler in particular, the boiler I saw was 20 feet long, am sure of it. I think they had two on the sleigh when they returned, I saw one boiler in the engine house. I gave the Regiments I bot. in to Mr. Mottier. It was worth

about \$1800, All I remember seeing one boiler. I did not find Mr. Yarwood there when I went for these things for Mr. Stow. The Canal stopped in March 1841. The Legislature did not make an appropriation we had to stop. Mr. Th. asked what I was going to swear to, He asked me if I considered him good for 6 or \$700, I told him I would, I considered them good for that amount. I believe they sold some machinery to the Canal Commissioners, we bot. engines about the same time, I don't know that they sold an engine to the Canal Trustees, They had more Machinery on the Canal than one engine I understood that the State took all the machinery of the Contractors, they sold all wheel barrows and all, It was understood that Yarwood & Co. sold out.

Dir. re. I do not recollect what Mr. Yarwood told me I think it was in '43 or '44 that the settlement was made, don't recollect where Yarwood was when he told me

Bro. re. Whatever Machinery they had I understood from Mr. Yarwood they sold to the Canal Trustees.
 To the Court. I think Mr. Yarwood never gave up a Steam Engine to the State, this was after I saw the Steam Engine bot up by Stow.

P. M. Gates known for plotts, called
 My business is the manufacture of Steam

Engines &c. In 1840 knew Mr. & Capt. Snow when Mr. Snow had their work done at the "Vag" In Winter of 40 or 41 met Mr. Snow Mr. Dean & Mr. Davis beyond the Summit they had two teams I asked them where they were going and Snow said they were going down to the Vag to get saw logs, they had sleighs -

Capt &c I am pretty extensively engaged in making Steam Engines, my impression that this was in 1840 or 41. I am not very sure about the time, I know there was a great deal of snow.

Phillips Dean, called by Mr. & Snow

I was acquainted with William M. Snow in 1840 or 41. I have been acquainted with him for 20 years, the first I knew him he was carrying on a foundry on the South Branch In 1840 or 41. Yarwood &c were carrying on business at the "Vag" I was employed by William M. Snow in the winter of 41 to remove a Steam Engine, I should be apt to think it was in 1841. Employed me first to bring a load when we got there we found what we had to get. The first time I went down there was nobody with me but Mr. W. Snow & his men after we got there we took hold & loaded the best way we could. The Boilers were in the Building, we tore away the side of the building until we could get the Boilers out.

Mr. Stow found his steam got there before I did, the building was a log building, we took the sides of the building away and brought away a large boiler. This was Saturday, on Monday went to the same place, Harris went with us. We made part of both loads from the other building, brought a boiler each time, flung the things into the boiler. That building was a sort of storehouse, had a door & Clark on. It was open when I got there. This was a 100 rods from where the boilers were. We brought these things to Mr. Stow's foundry - We took every thing we could see -

Crop. Co. This occurred about 1845 I should think. It was in December, I know that Sunday was Christmas. We went down the 24 & 26, could tell by my book what year it was. Saturday was taken by Mr. Stow. I should think there was other things in the Shanty besides the Boilers. Have not talked with Mr. Wicker about the matter lately. Don't know where Clark is. Saw him 5 or 6 years ago he was living in Rock Island. Brought these things back to his yard Mr. Stow. I recollect seeing Armstrong on my way down. Have a Certified Copy of Stow's bankruptcy proceedings was put into the case by the plaintiffs for the purpose of showing that Stow was not entitled to recover the amount

40. of his claim on the plaintiffs for repairing
done to the engine by Stow against such
damages as the jury might find, plaintiffs
entitled to for the conversion of the engine
and Machinery the subjects of this action
by Stow—

Decree of Bankruptcy in
the District Court of the
United States of America
within and for the District
of Illinois before the Hon.
Nathaniel Pope District Judge
of the United States for the
District aforesaid on the 29th
day of September in the year
of our Lord One thousand
eight hundred and forty three
and of our Independence the 66th
year

District of Illinois ss.

This day to wit, the
fourteenth day of January A.D. 1843
I am William H. Stone, a petitioner
for the benefit of the bankrupt act
by his Solicitors Spring & Goodrich
into the Clerk's Office of the District
Court of the United States for the District
of Illinois and filed his petition to be
declared a bankrupt under the provisions
of the Act of Congress in such case
made and provided, which petition
is in the words and figures following
to wit:

To the Honorable Nathaniel Pope
Judge of the District Court of the

United States in and for the District of Illinois;

The petition of William H Stow respectfully sheweth that your petitioner is a resident of the County of Cook in the State of Illinois and that your petitioner has become unable to meet his debts & engagements, and your petitioner further sheweth he is indebted to the persons and in the respective sums mentioned & set forth in the Schedule of debts hereto annexed and marked Schedule setting forth a list of petitioner's Creditors, their residence and the amount due to each under signed by your petitioner which Schedule according to the best of your petitioner's knowledge and belief contains a true & correct list of all your petitioner's creditors, their residence, and the amount due to each of them; which Schedule signed as aforesaid your petitioner prays may be taken as part of this his petition which debts your petitioner sheweth, have ^{with} in whole or in part been created in consequence of any defalcation by your petitioner as a public Officer or as executor administrator guardian or trustee

or while acting in any other fiduciary Capacity and your petitioner further shows that the Schedule hereto annexed and marked "Inventory of property" and signed by your petitioner, contains a correct Inventory of your petitioner's property rights and credits of every name kind and description and the location and situation of each and every parcel and portion thereof to the best of your petitioner's knowledge and belief, which your petitioner prays may be taken as part of this petition. Your petitioner therefore respectfully prays that he may be by decree of this Honorable Court be declared a Bankrupt according to the provision of the Act of Congress in such Case made and provided; and that such further order and proceedings may be taken as are provided for directed or required in and by the said Act of Congress.

Dated at Chicago, this
day of January A.D. 1843

William H. Story

or while acting in any other fiduciary Capacity and your petitioner further shows that the Schedule hereto annexed and marked "Inventory of property" and signed by your petitioner, contains a correct Inventory of your petitioner's property rights and credits of every name kind and description and the location and situation of each and every parcel and portion thereof to the best of your petitioner's knowledge and belief, which your petitioner prays may be taken as part of this petition. Your petitioner therefore respectfully prays that he may be by decree of this Honorable Court be declared a Bankrupt according to the provision of the Act of Congress in such Case made and provided; and that such further order and proceedings may be taken as are provided for directed or required in and by the said Act of Congress.

Dated at Chicago, this
day of January A.D. 1843

William H. Story

United States of America
District of Illinois

William H

Storv being duly sworn doth depose
and say that the foregoing petition
by him subscribed is true according
to the best of his knowledge and belief.
Sworn and subscribed }
before me this 11th day of }
January A.D. 1843 } William H Storv
Geo A O Beaumont

Corn, Cook Cy

Schedule setting forth a list of petitioners,
creditors, their residences and the amount
due each debt due by the firm of
William H Storv, Pyramus King deceased
Jed H Walker, Ebenezer Peck, William
James his administrator of Pyramus
King deceased.

Henry King, Brooklyn, Long Island	%	\$14.04
A S Sherman Chicago Ill	%	9.90
King Walker & Co residence of Jed Walker, Boston Mass, Ebenezer Peck, Springfield Ill, composing said firm with Pyramus King deceased		510.18
Ebenezer Peck Springfield Ill	%	12.00

Francis Walker Belvidere Ills note
dated January 4th 1839 due any day from
date 412, 00

James Clark & Co Chicago, Ills $\frac{1}{2}$ about 50, 00

Scott & Witham Chicago, Ills $\frac{1}{2}$ 9, 25

Eliza Poolittle, Joliet, Ills. $\frac{1}{2}$ about 25, 00

the above I believe has been paid

Oroville Hungerford, Watertown

Jefferson County N. York, Judgment

obtained in the U.S. Cir. Court for
the District of Illinois at Springfield 4523, 11

for the payment of which he holds

as collateral security a Judgment

against the Steam Boat James Allen,

obtained in the Cook County

Circuit Court in the State of

Illinois for the sum of \$4474, 00

William H Story, Surviving partner

of King & Story, William James

Administrator of Pyram King

deceased of said firm residing

in Chicago, Ills.

Debts due by William H Story and

Company, composed of William

James, Pyram King deceased Henry

Blacket William H Story

Butterfield & Collins Chicago, Ills $\frac{1}{2}$ 115, 00

47 Debts due by the firm of Knight & Stone,
deceased Pyram Knight deceased
and William H Stone,

Cash

Abraham, Residence unknown &c	1, 75
Henry M Hark, McHenry, Ill, Hwy Co Ills, &c	13, 04
J St Jeffries residence unknown Note part paid, about	300, 00
L M Laflin Chicago Ills &c	200, 00
Graham Barker Rochester Wisconsin Territory, Note supposed to be in the hands of Gardner Hutton on which is due about	115, 00
Kalher & Co Chicago Ills &c about	7, 24
Avory & Barrabee Chicago, Ills unsettled	3, 07
David Byard residence unknown &c	2, 82
Saint Joseph Iron Company Milwaukee, Indiana balance due on Note about	85, 00
Spring Goodrich Chicago, Ills, &c about	28, 87 1/2
Quart Rich Chicago, Ills, unsettled &c about	5, 00
Alexander Robinson, Cook County, Ills, &c about	30, 00
Philip Dean Chicago, Ills, &c about	5, 00
I claim the above paid	
John M Intyre Chicago, Ills, &c	3, 00
Samuel Davis Chicago, Ills &c	3, 00

Church & Sattler Chicago Ill	a/c	\$ 5,00
A Gilbert & Co Chicago Ill,	a/c	5,00
Lewis Lafrombois Council Bluffs	a/c	30,00
William Rankin Chicago Ill,	unsettled a/c	3,00

Debts due by the firm of William
 & Storey composed of Giles Williams
 and William H Storey

Churchill Barker & Co. Batavia		
Kane County Ills,	a/c	3,32
Willis King Chicago Ill	a/c	2,88
Joseph Williman Chicago Ill	a/c	0,50
Moses S. Trader, Chicago Ill	a/c	3,32
E. B. Cherway, Buffalo N York	a/c	1,37

All the above accounts it is found
 have been paid, but the above balance
 appear on the books of said firm
 Spring Goodrich Chicago Ill a/c

20,50

Individual Debts.

Samuel Smale Chicago Ill,	a/c	147,30
John Gage Chicago Ill	}	
Judgments in Cook County		
Circuit Court Ills,		
E Gilbert, Residence unknown		27,00
Judgments in Cook County Circuit		
Court Ills about		14,75

David Byard residence unknown

Judgment before H. B. Rucker a Justice
of the Peace for the County of Cook

State of Illinois balance of about \$ 15,00

John Rogers Chicago Ill note 50,00

J. H. Leavenworth Chicago Ill note ^{for} about 94,44

J. P. Allen & Co Chicago Ill ^{for} 108,58

Gurnee & Mattison Chicago Ill ^{about} ~~settled~~ 230,00

A. L. Sherman Chicago Ill do do 200,00

Richard Ringland New York City

One note dated May 31st 1839 secured

by Mortgage payable One year from
date for 1000,00 &

On which has been paid 300,00

Also One note same date secured
by Mortgage payable 2 years } 1000,00
from date

Also One Note same date secured
by Mortgage payable 3 years from } 1000,00
date

3000,00

Drawing interest at 7% per cent there
has been paid on the above two
last notes \$721,00

Loomis & King Chicago Ill ~~settled~~ ^{for} about 75,00

P. B. Opdike Chicago Ill do do do 5,00

S. J. Henry Chicago Ill do ^{for} do 20,00

Crawford & Horne Chicago Ill do do 7,00

Branch State Bank of Illinois

Chicago Judgment in Cook County 512,20

Circuit Court Ill

Abraham Bigelow, residence unknown of about
\$125,00

School Commissioners of Cook Co Ill
2 notes which are secured by mortgage
both amounting to 473, 25

Clark & Co Chicago, Ill of about 48, 15

William H Stow, No Chicago, Ill of amount 719, 19

Alexander White Chicago, Ill of do about 15, 00

George Mitchell Chicago, Ill of do about 40, 00

S B Collins Chicago Ill of do about 4, 00

A Sherman Chicago, Ill of, about 1, 00

Wm Stewart Chicago Ill of do about 5, 00

which I claim to have unpaid

William H Stow

Inventory of Property

Debts due the firm of William H
Stow, No Corespondent of Pyramus Knig
deceased Joel H Walker, Ebenezer
Reck and William H Stow,

John R Beyer & Co Judgment in Cook
Co Circuit Court Ills

William Ford deceased of about 3, 00

Blodget & Goodhue of do 23, 00

Charles Taylor amount of do 26, 38

Robert James do of do 9, 40

A & F Bovey do of may be paid 1, 12

H Davidson	unsettled	af	about \$ 1,50
H Remick	do	af	" 1,90
Henry Moore	do	af	" 125,10
Vanderant & Schiltre	do	af	" 21,10
John Follanshee	do	af	" 41,95
James Hill	unsettled	af	about 79,53
Coburn & Seville	do	af	" 255,11
J Russell	do	af	" 3,50
James G. Walker	do	af	" 16,40
J Ayers	do	af	" 69,00
as appears by the book but may have been settled			
W C Snell	unsettled	af	about 61,50
as appears by the books but may have been settled			
John Taylor		af	about 4,00
Morgan J Mackie	^{unsettled}	af	" 10,00
Wedge & M. Elwood	do	af	" 4,00
W F Rice	do	af	" 14,00
Archibald Clybourne	do	af	" 9,00
Jones King & Co	do	af	" 2,00
Nathaniel Snell	do	af	" 30,00
Byronus King deceased	do	af	" 30,99
W H Higgins	do	af	" 50,00
Louis Dubois	do	af	" 80,57
John V Linger	unsettled	af	about 22,38
Peter Jordan	do	af	" 2,00
Rud Lewis	do	af	" 27,16
Haib & Winslow	do	af	" 59,06

Taylor Bruce & Co Unsettled	apc	48,77
J P Rogers do	apc	4,10
James F. Saunders "	apc	117,75
A A Bird "	apc	67,20
Joseph Lafontaine "	apc	21,25
Steam Boat, James Allen		4474,00
Judgments in Cook's Circuit Court Ill, Assigned as herein before stated		1,00
John C Brien Unsettled	apc	1,00
Jesse Tappan do	apc	93,75
Walt Surviving Partner of Pyramus King deceased Unsettled	apc	188,40
John P. Chapin Unsettled	apc	4,30
Charles Taylor & Co do	apc	3,41
Arman G Wright note dated 1838 with interest, lost by Francis Walker		100,00
John Baird Senior note dated August 30 th 1837, lost by Francis Walker for		112,00
John J Taper Unsettled	apc	17,45
W S Blake do	apc	0,98
James A Smith do	apc	4,75
Gosham Brinker do	apc	19,90
J J Kimball note dated August 9 th 1838, lost by Francis Walker for		97,90
King & Store, Unsettled	apc	282,80
William Jones is Administrator of Pyramus King deceased		

Debts due the firm of W H Stow & Co
 composed of William Jones
 Pyram King deceased and Henry
 B Clark, William Ford deceased
 Judgments in the Municipal Court
 of the City of Chicago for \$150,00

Johnston Gavin unsettled &c about 120,00

Debts due the firm of King Stow
 composed of Pyram King deceased
 and William H Stow

Perley & Ashill note dated June
 10th 1837 payable one year from
 date for 350,18

Joseph Backus judgments before
 William Jones a Justice of the Peace
 for the County of Cook & the
 State of Illinois 4,00

J M Dubois unsettled &c 9,33

Brown & Co St Joseph Mich " 13,79

Cankite Doolittle & Co &c balance due 206,10

Harman Snow & Co &c " " 0,72

Pyram King deceased, Joel Mulher

Chaucer Rich Comprising part of

the firm of W H Stow & Co &c 46,55

Clayton Store &c balance due 0,08

Lockport Mill Company &c " " 8,00

Scoville & Avery unsettled &c 0,86

Archibald Clyburne unsettled &c 4,13

Nier & Brown do &c 0,17

132

Francis Walker admitted	apc	230, 94
James Saint Clair do	apc	4, 00
Elihu Peck do	apc	140, 11
Stuart Sangar & Wallace do	apc	91, 26
D D Dewey "	apc	65, 94
King Walker & Co "	apc	999, 92
O Road & Co note dated March 30 th 1839		194, 02
Henry Bell Rev note dated August 14 th 1839, lost by Francis Walker,		74, 00
Johns Ruddiman admitted	apc	100, 00
Samuel Ward "	apc	71, 00
P S Chapin "	apc	1, 25
James Curtis "	apc	5, 13
D B Webster "	apc	34, 53
A L Sherman "	apc	10, 53
Col. J B Beaubien "	apc	24, 57
J St J "	apc	27, 00
M B Beaubien "	apc	0, 50
James Williamson "	apc	6, 08
Alonso Leach "	apc	71, 25
H H Yates "	apc	3, 58
James A Marshall "	apc	12, 00
Steam Boat C C Trowbridge Judgment on Cook C C Circuit Court L C		199, 00
Steam Boat George W Dale admitted	apc	0, 90
Marshall Wheeler "	apc	24, 10

53-	W Bell	Unsettled	apc	\$ 10,72
	J McConno	do	apc	9,00
	James Brooks	do	apc	4,54
	H S Putnam & Co		apc	20,00
	Chester Ingefer	do	apc	31,25
	Arhelle Steele	do	apc	2,00
	John D Singer	do	apc	331,49
	Michael Sullivan	do	apc	1,82
	Williams & Stewart	do	apc	369,90
	Willis King	do	apc	27,33
	Coburn & Seaville	do	apc	10,71
	John Mitchell	do	apc	2,30
	S B Craff	do	apc	3,25
	Pyram King deceased	do	apc	3426,78
	David Miller	do	apc	64,40
	Williams & Stow	,	apc	0,00
	Stephens Douglass & Co	"	apc	94,30
	Frank & Snowbridge	do	apc	14,15
	W H Stow & Co	"	apc	282,86
	Giles Williams	"	apc	1500,00
Debts due the firm of				
Williams & Stow Composed				
of Giles William & William				
H Stow				
	John Farnsworth	Unsettled	apc	\$ 1 82
	William Mitchell	"	"	2,30
	Isaac Holmes	"	"	0,37
Ina Wittmore Judgment before				
J A Hume a justice of the peace				
for Cook Co & State of Illinois				
				22,67

54	J Benham	Inspected	apc	\$ 9,50
	John Goun	"	"	19,75
	John Peat	"	"	4,94
	H Miller & Son	"	"	1,31
	A Scrantom	"	"	31,00
	Charles Chase	"	"	15,19
	John Wade	"	"	25,45
	Leas & Blant	"	"	25,00
	Cyrus Aldrich	"	"	37,36
	James H Scott	"	"	1,50
	J Puller	"	"	8,69
	Obad Smith	"	"	11,29
	Edmund Cady deceased	apc	in	
	Judge of Probate Office of			
	Cook Co Ill			272,62
	Walter Kuter	Inspected	apc	4,70
	David Byard	"	apc	33,92
	Joseph Blake	"	apc	3,00
	Capt Stockton for the United			
	States Harbor at Michigan City			
	Michigan		apc	14,91
	Giles Williams & Co	Inspected	apc	22,34
	Thos & Sanger & Wallace	"	"	14,55
	King & Storer	"	"	1,13
	Eady & Co	"	"	00,10
	B W Raymond	"	"	66,00
	E P Rogers	"	"	3,44
	Robert & Co	"	"	27,10
	David Butterfield	"	"	2,92

John M Van Osdel Amittul of \$33,00
 Osburn & Stewart " " 2,12
 R & J Woodworth note dated
 September 25th 1840 75,81
 J J Temple & Co note dated July
 8th 1840 26,48
 Abel Smith note dated October 30 1840 38,58
 James Carman note dated January 1st 1840 25,00
 William Bentley note dated June 19th 1840 3,00
 Prouson & Horton note " December 28th 1839, 24,23
 Alexander Kouse note " October 10th 1840, 5,00
 Capron & Wheeler note " October 12th 1840, bal 65,26
 Capron & Wheeler note " October 13th 1840^{me} 216,53
 James Carman note " July 15th 1840 19,21
 All of the notes and accounts of the
 firm of Williams & Stow are in the
 hands Ashley & Gilbert for collection
 & settlement

Oaths due William H Stow individually
 J D Gafford & J M Rice note
 dated August 12th 1841 \$ 9,90
 R Poole note dated April 12th 1841 7,00
 J D Brardman note dated May
 14th 1841 62,00
 J D Brardman note dated May
 14th 1841 62,87
 Theodore Tillotson " " September
 15th 1839 2,21

58 William Cornhill note dated \$
 April 24th 1841 10,00
 Milo J Meacham note dated
 February 10th 1841 5,50
 J Canblin a/c 11,13
 Henry Brown unsettled " 2,00
 J J Temple " " 6,00
 Truman Barnum " " 7,55
 Hunt Winard & Co " 45,15
 Obed Smith " " 34,37
 Thomas Brock " " 7,49
 M Leod & Co " " 2,31
 Giles Williams unsettled a/c both
 Claiming a balance 200,00
 I claim a balance of
 William Jones " " 6,00
 Phillis Pindle " " 21,24
 James Brooks " " 31,80
 S H Peck " " 30,00
 Ashley Gilbert in State indebtedness
 and Scrip, Illinois State Bank
 Papers & Cash 421,19
 John Wood & Co. unsettled a/c 700,00
 from the above I claim the right
 to deduct certain portions of an
 Engine now in my possession
 Wade & Woodruff a/c 3,51
 James Penn " 1,29
 Williams & Stow " val 57,00

May Walker & Co unsettled A/c about \$100,00
 D D Stanton " " " 0,50
 Henry M Stow & Co " " " 50,00
 H M Stow Note dated December
 11th 1841 balance due 277,29

Personal Property

3 Beds & bedding 3 Bedsteads 2 cherry
 Tables, 1 stand 1, Washstand 12 chairs
 1 pr Shovel & Tongs, 1 Cradle 2 Rocking
 Chairs, 1 pr Spring balances & Milk
 Pans 2 Wash tubs 2 pr Smoothing Irons
 1 Tea Pot 1 Coffee Pot 1 doz Cups & Saucers
 2 doz Plates 4 Deep dishes, 4 Candles
 Stands 2 Lamps 2 Pitchers 3 Gallon
 Jugs 1 Stone Churn 2 doz Glass Tumblers
 1 Doz Zinc Tumblers, 1 doz Wine
 Glasses 1 doz Glass Preserver Dishes 2
 Deep Glass Dishes 12 doz Bowls 1
 Caster 2 large Platters 1 Britannia Ware
 Tea Pot, Cream & Sugar Bowls 1 Bread
 Pan 1 Coffee Mill Ice Cream Cooler
 2 Servers 1 Basket 2 small Looking
 Glasses 1 Globe Lamp & a lot of Perrells
 2 Cannon Drunks 1 Carpet Bag 3
 Rails, Also 1 Boiler 1 Cylinder &
 Side pipes 1 Connecting Rod 1 Shaft & crank
 1 Force Pump 1 Heater & Chimney

John Garwood Company, Also all my right title & interest in Lot 7 in Block 54 in the School Section Addition to the Town of Chicago together with the appurtenances belonging & building thereon which was sold by Messrs. Storey & Company & bought by me Also all my interest in a Patent for a Cast Iron Rice for the County of Cook & Also all my interest in a Patent (invented by Avery) Rotary Engine for the State of Illinois, the transfers and papers of the last two mentioned patent rights supposed to be in the hands of one of one of the last firm of King Walker & Company,

William H. Storey

Upon the reading & filing of the aforesaid petition the following order was entered of record viz: On reading & filing the petition of William H. Storey in the above entitled matter - it is ordered on Motion of Spring Goodrich the Solicitor of the petitioner, that the 10th day of February next at 9 o'clock in the forenoon of that day at the District Court Room in the Town of Kaskaskia within the District of Illinois be

and the same hourly is appointed the time & place for the hearing of said petition, and for showing cause against granting the prayer thereof, if any there be; And it is ordered that notice hereof & that all persons interested (may appear & show) cause if any they have at the time & place above mentioned why the prayer of said petition should not be granted be published in the Sangamon Journal one of the Newspapers printed and published at the City of Springfield in the District aforesaid & in the Chicago Express a Newspaper printed & published in the County of Cook for two weeks successively, the first of which notices shall be at least twenty days before the day of hearing above mentioned.

This day to wit the nineteenth day of June A.D. 1843 came the said petitioner by his said Solicitors and filed notice of publication in the words & figures following to wit;

District Court of the United States
within and for the District of Illinois)

In the matter of the
petition of William H. Starn of Cook

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County Illinois to be declared a Bankrupt and to be discharged from his debts. Notice is hereby given that William H. Story of Cook County has filed his petition in this Court to be declared a Bankrupt and to be discharged from his debts under the Act of Congress in such case made provided & that an order has been duly entered in this Court appointing the 10th of February next at the District Court Room in the Town of Kaskaskia in this District as the time & place for the hearing of said petition all persons interested may then & there appear & show cause if any they have, why the prayer of said petition should not be granted.

Dated this 17th day of January
A.D. 1843

Springfield District Solicitor
for Petitioner
Attest James P. Canning Clerk

We Certify that the attached Notice was published in the Sangamon Journal a weekly Newspaper printed in Springfield Illinois, two weeks successively, the first publication being made

62 on the 19th day of January 1843 and
the last on the 26th day of same
month of the same year

S Francisco Co

Publishers

This day to wit the Nineteenth day of
June A D 1843 the said Petitioner
by his Solicitors filed an Affidavit as
follows to wit.

United States of America
District of Illinois

In Bankruptcy

I In the matter of William H Stow
Chungon Peck being duly sworn deponent
and saith that a notice for a primary
decreed in Bankruptcy in the case
of William H Stow and published
in the Chicago Express a papers
published at the residence of the said
William H Stow a copy of which
notice was as this deponent believes
forwarded to him to be filed in this
Court but the same is now lost or
mislaid

Sworn to before me this } E Peck
19th day of June A D 1843 }
B B Edwards }

Comm^r of Bkpts for S. C. D. I.

Upon reading & filing the aforesaid notice of publication & affidavit the following decree was made viz:

William H. Stow, having proceeded in his application for Bankruptcy according to law, and the rules & orders of this Court was this day duly declared a Bankrupt. William H. Battenthall appointed his Assignee and the nineteenth day of September A.D. 1843, fixed for the final hearing which decree, and of the appointments of Assignee and day of final hearing as in form and correctly entered in the Decretal Book of this Court;

This day to-wit the 29th day of September A.D. 1843 came the said petitioner by his said Solicitors and filed the Certificate of the Assignee & also the proof of the service of notice upon Creditors which are as follows to-wit:

District Court of the United States
for the District of Illinois

In the matter of William H. Stow,
to be declared a Bankrupt

Is the Hon. Nathl. Pope Judge of
the District Court of the United States
for the District of Illinois.

The undersigned general assignee for

The County of Cook respectfully reports
 that the above named William H. Stone,
 a Bankrupt has paid to him a preliminary
 fee of Ten Dollars for undertaking the
 management of his affairs under the
 assignment that so far as he knows, the
 said Bankrupt has given up to him (so
 far as in his power) all his property
 and has afforded him every reasonable
 aid to enable him to perform his
 agency as such assignee.

Witness my hand
 this Tenth day of September A.D. 1843

Wm H. Saltor Tall
 General Assignee for Cook Co

United States of America ^{U.S.} Dist Court in
 District of Illinois ⁱⁿ for the District falling

Copy of Notice

Chicago, July 1st A.D. 1843
 Sir - You will please take notice
 that on the Tenth day of September
 A.D. 1843, I shall apply to the District
 Court of the United States within and
 for the District of Illinois to be holden
 in New Kas Kie in said State for a final
 discharge from all my debts under the

General Bankrupt Law, of the United States, when and where you may appear and show cause if any you have why such discharge should not be granted to me."

Yours &c

William H Stow

per Spring Goodrich

his Solr

Henry A Griswold being duly sworn deposes and says, that on the fifth day of July A.D. 1843, he deposited in the Post Office at Chicago in the State of Illinois, a notice of which the foregoing marked 'Copy' notice is a true copy except the direction directed on the back to the following persons as hereinafter set forth to-wit: Richard Kingdand, New York City, E. B. Chumway, Buffalo N York, Marshall Barker & Co Batavia, Penn A. D. Ds, Louis Desfrancois, Council Bluffs, Saint Joseph Iron Company, Wisconsin Indiana, Gardner ¹⁸⁰⁰⁻¹⁸¹⁰ Walter D. J. Yorkham Banker New York, W. P. Hany, Mr. Nash, W. Hany W. Hany Co, Ills, Council Kingsford Chataleau, Jefferson County N Y Joel Walter Boston Mass, Eliza

Peckville, J. M. S. S., Francis
 Walter Belvidere Ill; Henry King
 Brooklyn Long Island, and E. H. H. H.
 Peck Springfield Ills,

And this affiant further says that
 all of the notices mailed as aforesaid
 were endorsed on the back "Notice to
 Creditors of J. M. S. S. a Bankrupt"
 And this affiant further says that he
 deposited a notice a true copy as
 aforesaid in the said Post Office at
 Chicago directed to the following
 persons on the following days as
 hereinafter set forth to-wit:

On the 12 day of July aforesaid to
 J. M. S. S. Chicago Ills. And on the
 28th of August A. D. 1843 to William
 Rankin Chicago Ills. the two last
 named persons (as this affiant is in-
 formed and believes were in the County
 of Cook at the time the said J. M. S. S.
 applied for the benefit of the
 Bankrupt Law, but were at the
 time said notices were deposited in
 the Post Office as aforesaid; and of
 the County of Cook, as this affiant
 was informed and believed
 And this affiant further says that he
 deposited a notice a copy as aforesaid

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in the Post Office at Bushill in the
County of Cook and State of Illinois
aforesaid directed to Gardner Waters
some day between the 20th & 30th of
August last past, this affiant was
informed that he said Waters was
away from home & that said Bushill
was the usual Post Office where he
received his letters, and this affiant
in compliance with the rules of this
Honorable Court, deposited the notice
in the said Post Office directed as
aforesaid, and this affiant further
says that he personally delivered a
notice a true copy as aforesaid to the
following persons on the following
days as hereinafter set forth, to-wit:
On the 10th day of July last past to
John Gage Matteson of the firm
of Gurnee & Matteson, A Walker of the
firm of A Walker & Co, Goodrich of
the firm of Spring & Goodrich
Church of the firm of Church & Satterlee
A Gilbert of the firm of A Gilbert & Co
William L Church School Commissioner
of Cook County, A S Sherman, Henry
of the firm of Crawford & Hersey
Samuel Clark of the firm of Clark & Co
S B Collins & L Rucker, J P Allen

of the firm of J. P. Allen & Co. Sonnis
 of the firm of Sonnis & King. And on
 the 25th of July last past to Willis
 King and between the 12th and 18th
 of July aforesaid to George Mitchell
 On the 28th of August last past to
 William Street; Also on the 31st
 day of August aforesaid to

J. L. Updike & between the 1st and
 the 6th of September 1843, to William
 Jones as Administrator of the Estate
 of Pyronne King deceased - and as
 one of the firm of Jones, Clark & Co.
 And on the 9th of said September to
 William H. Brown the Cashier of the
 State Bank of Illinois, John McIntyre
 Alexander White, Larrabee of the firm
 of Avery & Larrabee

And this Affiant further says that he
 deposited in the said Post Office at
 Chicago on the said 9th day of Sep-
 tember a notice which the foregoing
 is a true copy as aforesaid directed
 to the following persons as hereinafter
 at faith to wit: Joseph Williams Chi-
 cago Ills. and John Rogers Chicago
 Ills. this affiant being informed that
 the said Williams & Rogers are out
 of the County of Cook and away from
 home

And this affiant further says that he deposited a notice a true copy as aforesaid in the said Post Office at Chicago directed to the following persons at Chicago all to wit;

Philip Deane, Scott & Wittmone,
 Samuel Small, Samuel Davis, Moses
 S Prader & S M Laflin

Henry A. Griswold,
 Sworn to and Subscribed }
 before me this 20th day }
 of September A.D. 1843 }
 Geo A C Beaumont
 Counsel for Cook Co Ill

This day to wit the 29th day of September A.D. 1843 the said petitioner by his Solicitors filed the report of the Commr which is as follows to wit;

In the Matter of Wm H Stow a
 Bankrupt
 Vs the Hon Nathaniel Pope,
 Judge of the District Court for the
 District of Ill.

The under signed reports that he has examined the papers in case of the above named Bankrupt and finds by affidavit on file that

Notice has been given to all his
creditors, also the report of the
assignee showing that the Bankrupt
has given up all the property con-
tained in his Schedule has been
paid his fee, and has been paid
all the aid he required.

Wm. J. J. J.

Comptroller of the Court

Sept 29th 1843

Thereupon on the 29th of September
A.D. 1843 a decree of final discharge
was entered of record in the words
figures following to wit:

In the Matter of William H. Starr
a declared Bankrupt

It appearing to the Court from the
petition of William H. Starr who
was declared a Bankrupt on the
19th of June A.D. 1843 and the reports
accompanying the same, that the said
Bankrupt has bona fide surrendered
all his property & rights of property
for the benefit of his creditors and
that he has fully complied with &
obeyed all the orders and directions
which have from time to time
passed by this Court and have otherwise

Conformed to all the requisites of the act entitled "An Act to establish a uniform System of Bankruptcy throughout the United States" approved August 19th 1841, and no written dissent to his discharge having been filed by a majority in number and value of his creditors who have proved their debts and no cause being shown to the Court why the prayer of the Petition should not be granted,

It is therefore by virtue of the Act aforesaid Ordered & decreed by the Court that the said William H. Stony be and he accordingly hereby is forever discharged of and from all his debts owing by him at the time of the presentation of his Petition on the 17th day of January A.D. 1843 to be declared a Bankrupt, and it is further ordered that the Clerk duly certify this decree for the use of said Bankrupt.

William Pope Clerk of the District Court of the United States for the District of Illinois do hereby certify that the foregoing transcript is a full and correct copy of the proceedings in Bankruptcy of

William H. Stow, as the same ap-
 pears from the files of my said
 Office and of record.

(L)

In Testimony Whereof I
 have hereunto affixed the seal
 of said Court and sub-
 scribed my name this Eighth
 day of May. A.D. 1854 and of
 our Independence the 78th year

Wm. Pope Clerk.

V

The Defendant by his Counsel here objected to the introduction of the Record Copy of proceedings above mentioned on the ground that Elow was not barred thereby or by anything therein contained from the right to recover the amount of his claim for such repairs or so much thereof as he might prove to the satisfaction of the Jury against the plaintiffs claim for damages in this action. The Court allowed the evidence to be offered & overruled the objection of Elst. To which opinion and ruling of the Court the Defendant then and there excepted.

Direct. 20 I recollect seeing Mr Armstrong on my way down

Thomas Hogue being duly sworn said I tried this case in 1857. Mr J. M. Burk was sworn as a witness on behalf of the plffs Garwood & Co. I can only state the substance of his testimony, it is here in my handwriting, I took down at the trial the substance of all the material statements that the witness made, as well on the cross as on the direct examination. He stated that he was one of Elows Workmen in 1841, said he saw the boiler delivered to one of Garwood & Co's men, said that Elow was there when one of the boilers went away, and was satisfied

74 That Snow knew when it went away, said he did know when the other Boiler went away. Could not state certainly when some of the Engine was cut up, but stated that some of it was cut up when he was there, Was there when some of it was melted, said the boiler was worked over for another machine & not the same machine that had been furnished the puffs - After it came back from where it went to it was cut up, don't know what became of it, but thinks it was put into another for Snow or his Mother -

Crop &c. This trial took place in May 1881, I took as full minutes of evidence as I deemed was material, I intended to take down all that was material both for and against & generally in the words of witnesses so that I might know how to deal with them, I have a recollection that witnesses stated that Snow was present when one of the Boilers was taken away and the further fact, that it was cut up & made into another machine for either Mr Snow or his Mother - I recollect these independent of the memorandum - I have a recollection of every fact stated in the paper - I would not have remembered the facts perhaps without the paper before me - I could not repeat from memory all the facts contained in the paper without the memorandum I would not

have remembered the facts - I generally do feel a great interest in my cases, I am not disinterested so far as my feelings and wishes are concerned. ~

Counsel for the defendant here moved to strike out the evidence of the last witness Thomas Hoyle because he did not profess to be able to give the testimony of the witness in the words of the witness as it was given by him, but only parts of it, and such as he deemed material, and then not from his own distinct recollection of it, but from partial notes taken at the time, and only containing the substance of what Mr Hoyle deemed to be material facts. The Court overruled the motion and the defendant's Counsel then and there excepted. ~

Thomas C. Ames sworn & called by self.
I knew Frank Lawless, I don't remember that in 1887 I was present at the trial, I could not say positively that he was in attendance - Lawless was to work for me & I felt a little anxiety about him, He & the woman went to Michigan & I heard that they were both dead - I went to see this woman & she told me that Frank Lawless was dead, but her husband was not, I think he worked for me last in the Spring of 1888.

here in Chicago - I don't know where he
went to - He left me in the Spring and
I heard three reports in the fall - I saw
him afterwards, the last report of his death
was that he died in the poor house of Cook
County - Mr. John Burk is dead, there is
no doubt about him - I attended his funeral
& saw him put into the vault.

Defence Opens -

State of Illinois
County of Cook

} The people of the State of
Illinois, to the Sheriff of
said County, greeting -

Whereas John Garwood, Gardner &
Carlip & Joel B. McKim Plaintiffs, complain
that William B. Stow defendant unlaw-
fully and wrongfully does detain, the following
property to wit, two Iron Steam Boilers
and one set of Steam Machinery called
a Steam Engine of the value of twelve hundred
dollars - Therefore we Command you
that if the said plaintiffs shall give you bond
with good and sufficient security in double the
value of the said goods and chattels as required
by law, to prosecute his suit in this behalf
to effect and without delay, and to make
return of the said goods & chattels if return
thereof shall be awarded, and to save & keep

you hereby in replenishing said goods and Chattels, you cause the said goods and Chattels to be replenished and delivered to the said plaintiffs without delay, And also that you summon the said Defendant to be and appear before the Circuit Court for said County on the first day of the next term thereof to be holden at the City of Chicago in said County on the third Monday of August next to answer unto the said Plaintiff in the premises. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same together with the Bond which you shall take from the plaintiff as before recommended before executing this writ. Witness Henry G. Hubbard Clerk of our said Court and the Seal thereof at Chicago in said County the fifteenth day of April A.D. 1843.

C. G.
H.

H. G. Hubbard, Clerk
executed by replenishing the following described property to wit, 1 Steam Cylinder, 1 Crank Shaft, 1 Steam boiler, 4 pieces fly wheel Lag screws, 1 Pittman 1 connecting Rod 1 Piston Rod, 1 Throttle valve, 1 Force pump 1 slide Valve & 1 Condenser, being the only parts of the within described property that could be found, I therefore return the balance of said property whatever they may be not found.

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I said property so replevied given by me into the possession of the within named party, as per receipt on the within, & further executed by reading the within in the presence of the within Mr. H. H. on April 15th 1843.

paid by W. H. H.	2 Services	1.00
	Taking Bonds	.50
	2 Mules	12 1/2
	return	12 1/2
paid H. H. H. on		\$1.75

J. F. Lowe Sheriff to C.

W. H. H. Deputy

Received Chicago Cook County April 15th 1843 of J. F. Lowe Sheriff in and for Cook County by W. H. H. Deputy Sheriff the following described property to wit, 1 Steam Cylinder 1 crank shaft, 1 Steam Boiler 4 pieces Fly wheel segments, 1 Piston and Connecting Rod, 1 Piston Rod, 1 Throttle Valve 1 force pump 1 slide valve & 1 Condenser being part of the within named Steam Engine.

John Yarwood
G. L. Corliss
J. M. Victor.

Thomas C. James recalled by deponent.

I have known Mr. H. H. since 1836 and worked for him most of the time until 1841.

I made the patterns & most of the draftings
 at the time the engine was repaired I
 remember Mr. Garwood & Mr. Balch. It was
 the engine that belonged to the firm of
 Garwood & Co. - I cannot not say positively,
 but think that it came in 1840. - I think
 it was there as much as a year before Garwood
 became possessed of it. - Mr. Mitchell was
 an old friend of mine - I recollect a man
 coming there that I was told owned the
 engine - My attention was not particularly
 drawn to the engine until it was sold &
 Mr. How came to me to examine it & find
 out the deficient parts if there were any.
 I made the examination & to find out the
 pieces - I found the incomplete engine -
 Can't recollect particularly - The engine had the
 appearance of having somewhere where sand
 was abundant - I don't know how the sand
 got into it - It had all the appearance of an
 engine that had suffered from exposure more
 than from work - I think it was no more
 eaten by rust than they could be polished
 out with lead and emery & the valves could
 have been ground out - It had the appearance
 of the engine that had been exposed a
 great deal it had been rusted where there
 was no oil - There were two Boilers - I
 think the Boilers were examined, I don't

I don't think the boilers were in a very bad condition - The boilers were cold riveted & it was a new thing in this part of the country - There was a prejudice existing against such riveting - There is now made that way now here - Cold riveting is common now on the Mississippi - The Boilers were thirty inches in diameter and thirty feet long - The Boilers were worth, at that time I cannot say exactly - They require to be examined before you can judge - They might have been worth \$600, may be more or less - I should say that the Engine & Boilers were worth \$1200 or \$1400. I have always given my opinion upon my recollection - I can't say what I did say on the trial of 1851.

The iron used in the Boilers was ordinary iron - The Boiler sheets after they were cut up had to be rolled straight, then after they were laid out it was necessary to bend them again, I never saw any boiler here that would bear to bend three times -

I think it was ordinary boiler iron, it might have been the best. The rivets had to be cut out, in some cases they cut out corners - The repairs were well done -

Henry M. Stow came into the possession of the premises in 1841. after these repairs were made - I think Mr. Stow showed me

the Contract at the last Fair, Don't remember
 of the repairs that was called for by the con-
 tract were made - I was there when this
 Engine & Boiler were cut up, I think it was
 in 1847, that Henry M. Stow commenced
 the business - William B. Stow appeared
 to act the same as he always did, towards
 the last Henry M. Stow paid the workmen,
 I think I was there when the Engine went
 away - Have no recollection in seeing it leave
 the shop, neither have I any recollection
 when it came back - Wm B Stow conducted
 the business - There were several that I
 understood were partners - I recollect Felix
 Williams he was the last partner - I knew
 when Williams came in, that he was a
 partner - W. Stow was the principal acting
 man in all these changes, Don't think
 that in 1858-9 that I knew as much
 about it as I do now - In defining a
 Steam Engine I should call a Cylinder
 Pump, Main shaft, fly wheel, eccentric
 & eccentric rod, Piston & Piston rod & 2
 Slides, crosshead, Check valve necessary
 pipes, I think that is all necessary to form
 an engine, except the Boiler, I think that
 an engine should have connecting pipes
 and a Boiler - About what I have told you
 constitutes an Engine - I think an Engine

83.

The Replivine first given in evidence was here handed to the witness and he was asked to name as well as he could recollect other parts of this engine which were not named in the return endorsed on the replivine with and on this subject he said

There were 2 plunger blocks—here there is but one— I think there were six segments— strikes me there was nine— This speaks in general terms— Can't tell about the Steam Cylinder if it was all fixed up as it left the shop it would include such pipes as are usual— Steam chest and slide valves— I should guess there was nine pieces or segments here are only 4— Check valve there should be— There is no crosshead mentioned— The bed plates are deficient there— The shaft pendulum & plunger blocks of that pump are deficient— These pieces mentioned in the return would scarcely be worth repairing in Chicago at that time— I should think that these pieces would not be worth a great deal more than the ordinary pieces of pig iron at that time.

Since Mr. Haw, I think commenced keeping
public house in 1843, I think that Henry
Stow had a store in the same building.
A force pump is to supply the boiler with
water - It is a Cylinder with two valves, pistons

I stuffing box - I do not think that the pieces mentioned in the Replevin writ do constitute the bulk of a Steam Engine - To make that engine complete there would be necessary to have a Gallows frame pendulum plunger or block - The main part of a Steam Engine was here - Steam chest is not included in the term Cylinder -

Waldo W. Smith called and swore for the defendant - I have known Mr. Stow some twenty years or more, signatures to contract were those of Wm. B. Stow & Henry M. Stow was called to witness the contract I witnessed it sometime in 1841, in December aside from contract I could not state the time - I was then employed by B. M. Stow in Clark Street in this City - I never knew of any inventory or change - The Books of the Store were always kept in the name of B. M. Stow - In the earlier part of this time in 1841 came into the store of B. M. Stow and credited to Wm. B. Stow, orders accepted for them at a later time during the winter of '41 & '2 in the winter everything was sold at the foundry and at the Store in the name of B. M. Stow - I am quite positive of that after that I think the pass books were in the name of B. M. Stow - This continued always

Gilbert, called and sworn for depts.

About 1840 I kept the books of William Stow they were brought to the place where he was clerk I know that Mr. Jones came here and said that he had an engine between here and Michigam City - He wanted Stow to send for it - I think they sent for it - It came afterwards - It went to the foundry on the west side - It was there some time - I recollect about a charge for advertisement of sale - I went up there with the Marshall - It was sent for the purpose of sale - There was a charge for keeping it - It was worth \$400 for storing it - Can't say that there was anything said to Jones about it - I think there was a correspondence with Jones about it -

I kept their books (the depts. Stow's)

Crop. &c.

I kept the books of William Stow these charges were made by William Stow for the storage that I have spoken of - I occasionally went to the foundry - I never was in the employ of W. Stow -

J. W. Cobb, called and sworn for depts.

I have been in the foundry business for the past 8 or 10 years - have been engaged in building Steam Engines - Steam Boilers - I would define an engine & boiler, frame

Cast iron Cylinder, Piston & piston rod
cross head, slides, pump, pump rod, governor
fly wheel, shaft and boxes, check valves,
bolts, rock shaft, steam chest goes with
the cylinder & valve rod, constitute an engine.

The boiler is necessary to constitute a
steam engine - I have worked at the
business 20 years in Chicago -

(Following property replevied
1 Steam Cylinder, 1 Crank, Shaft, 1 Steam
Boiler, 4 pieces Fly wheel segments,
1 Piston rod, 1 Connecting rod, 1 Piston rod,
1 Throttle valve, 1 force pump, 1 Slide valve
& 1 Condenser) -

2 Do they constitute the main parts of a
steam engine

A. They constitute the main parts of an
engine -

Q. Rep. &c. There are many other things than those
enumerated in that list (Replevied list)
There are many different styles of making
an engine - Could not tell without seeing
the engine whether this would form an
engine - There are different ways of
making the working parts of an engine

Direct Re. The finish depends upon a man's taste
the essential parts of an engine are the
same -

87. to the case as far as I know, I remember
the time that Wm B. Stow kept the Western
Hotel - don't know any thing about that
(the change) but what the contract shows -
Henry M. Stow continued his stay on Clark
Street for a year or so - I left W. Stow
in the Spring of '42 - left the City a year
returned and have been here ever since.
Geo. E. previous to the making of their agreement
castings & iron were credited to Wm B. Stow -
don't know of any money or consideration
being paid, know only that the change was
made, goods were sent over to the store & W.
M. Stow paid -

Memorandum of an agreement entered
into this Twenty fifth day of December
One thousand eight hundred & forty between
W H Stow & John Yarwood & Co. Patricofth
J W H Stow, agree to clean, put up, and
put in repair a certain Engine (now at my
premises) in first rate condition for running
and furnish and to make also the following
items to wit: Plummer Blocks \$50.00
Plunge to Force Pump 6.00, One slide 6.00
Grate 6.15 Connecting Pipe 30.00 Sagement
to Fly Wheel 27.00 Rock Shaft & arm to
Pump 12.00, Stand Shaft to Shaft Steam
30.00, Five Irons Doors & Jamming 53.00
Connecting Rods & Jamming 55.00

Bolts that may be wanting 2000 Strap Bolts
 that may be wanting 6000 Iron Dry Cores to
 Boilers 1000 — Is now much the Boilers
 Corks put them in good order for use.
 For which said Yarwood & Co agree to pay to
 said Store the sum of five hundred dollars
 in manner following to-wit: Two hundred
 and fifty dollars when said work is
 completed & two hundred & fifty dollars
 at our next Estimate after our next
 January Estimate, for which said Store is
 to draw an order of cash acceptance on the
 Canal Commissioners for the same. And it is further
 understood that if the said Yarwood & Co shall
 furnish any of the items named above, the sum is to be
 deducted from the above said sum of five hundred
 dollars, and it is further understood that the said Store is
 to furnish what Castings said Yarwood & Co may want
 for Meters Wheel &c at the rate of six and one fourth
 cents per pound, and to receive pay in the same proportion and manner
 as above stated, for the payment of the said sum of Five Hundred & said I W M Store
 agree that the said engine and boiler together with all its fittings shall be completed and
 finished in a good workman like manner all in good order for running on or by the
 fifteenth of January next. In Witness Whereof we have hereunto set our names
 on this day and date above written.

W H Store, J Yarwood & Co

A B, It is understood that the boiler and cylinder to the engine is to be complete
 at the time above specified, and the remainder to be finished as soon as they
 will be needed in putting up the engine, so as the progress will not be
 delayed in setting up said engine, to delay the same against the interest of said
 Yarwood & Co

W H Store,

J Yarwood & Co

89 Nathaniel Boulton called & saw me
for left. I have had something to do
with Steam engines - I have purchased
and worked three engines - a Steam engine
is a piece of Machinery which being set
up - provided you have the steam - would be
able to run - When I have bought them
the Boiler was always extra - There is a
little small engine built in which the
Boiler & Machinery are all attached.

I think Boilers are not considered as
part of an engine in a trade for a Steam
engine - My acquaintance has been
confined to the purchase of these engines
& working them -

John C. Haines called & sworn by left.

Have been eleven years in a Steam Mill
am pretty well acquainted with it - The
understanding of an engine is, the
Piston, Piston Rod, Slide Cylinder, Con-
necting rod, - An upright engine has a
working beam - I think that the term
Steam engine does not include a boiler
when we make a contract, unless boilers
are expressly stipulated to be included
they are extra - The price of a Steam engine
does not include the boiler - And this
was all the evidence that was given in this

90 Case, as well on the part of the plaintiffs
as of the defendants —

The Court gave the following
instructions to the Jury for the plaintiffs

1. If the Jury shall believe from the evidence
that the Defendant before the commencement
of this suit did take and convert the property
mentioned in the plaintiffs declaration
or any part of it, and that the same was
the property of the plaintiffs, then he is liable
to the plaintiffs for the value of the property
so converted at the time of the conversion.
2. And if the Jury shall find from the evidence
that any portions of such property came
to the plaintiffs or was received by them
subsequent to the conversion, then the value
of the property so received by the plaintiffs
should be allowed to the Defendant in
mitigation of Damages —
3. If the Jury shall find from the evidence
that the property in question was taken by
by the Defendant from the possession of the
plaintiffs without their consent and
against their will and converted by him
then the plaintiffs are entitled to recover
the value thereof or so much as has not
been returned to them although the same
may have been used in the business of
D. M. Stow and for his advantage —

If the Jury shall find that the whole or any part thereof was so used -

Is the giving of each and all of the above instructions the Defendant by his Counsel then and there excepted.

And the said Defendant by his Counsel then and there asked the Court to give the following instructions to the Jury, viz.

If the Jury believe from the evidence that the plaintiffs were indebted to the defendant for the repairs made to the Steam engine property the subject of this action, And if the evidence upon this trial, at the time this action was brought, they must allow the claims for the repairs to be recompensed against the plaintiffs claim for damages - If they shall believe that the plaintiffs sustained any damages for which the Defendant is in any way liable - which instructions the Judge declined to give as asked, but qualified it by adding to it the following: But if the Jury shall find that subsequent to the accruing of such account for repairs the said defendant took the benefit of the Bankrupt Law of the United States and was decreed a Bankrupt, then such claims was by that act transferred to the Assignee in Bankruptcy and the Defendant cannot interfere such claims

93.

the said Defendant. And the Defendant
by his said Counsel there and there excepted
to the ruling of the Court in overruling his
Motion for a new trial and in rendering
judgment as aforesaid, and prayed an
Appeal, and that the Court allow, sign and
seal this his Bill of exceptions which is
accordingly done. Given under my
hand and seal as of the November term
A.D. 1857.

George Manierre (L.P.)
Judge of the Judicial Circuit
Illinois

In the Supreme Court of the State
of Illinois.

Third Division, held at Ottawa
of the April Term A.D., 1838.

William H. How

Appellant.

"
John Hammond
Gardiner J. Gilip
Jed H. Wicker

Appene from the
Cerk Co. Cir. Court.

Appelles.

And now comes the said Appellant William H.
How, by Arthur W. Windet his Attorney, and
says, that in ^{the} Record of the Judgment and rulings
granted there is great and manifest error
apparent: and that by reason of the same,
and because said judgment wholly against law,
erroneous and unjust, the said Appellant
further with, the said Judgment should be re-
versed and set aside.

And the said Appellant doth further show,
that the said Circuit Court erred

First. In refusing to exclude from the jury on the
trial, the testimony of Thos. Hazen Esq. a witness for the
Plffs. below.

Second. In giving the second Instruction asked
for by Plffs. below.

96.
Third. In refusing to give as asked the first
Instruction of depts. below. and in
annexing thereto the qualification
attached.

Fourth. In refusing to give the second
Instruction asked for by depts. below.

Fifth. In refusing to give the depts. below
a new trial as asked - and in
rendering judgment for the Plaintiff
below.

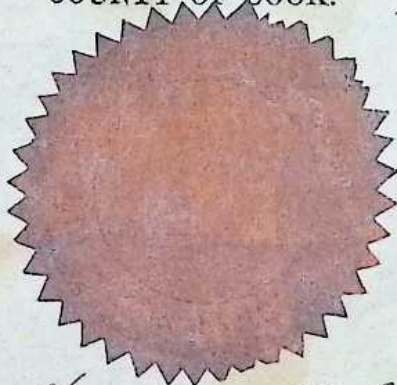
Arthur W. Windett.
Atty for Appellant.

April 20. 1888.

And now come the defendants in
error and say that there is no error
in the Record foregoing below as
alleged by the said Plaintiff
& of the true judgment.

Hogues & Miller
for said
Error.

State of Illinois, }
COUNTY OF COOK. } S. S.



J. WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of the declaration & plea filed & proceedings had & return of record on the trial of the
cause & also on the motion for a new trial, together with the appeal & bill of exceptions filed
in a certain cause lately pending in said Court on the
Common Law side thereof, wherein John Gaswood
Etal were plaintiffs — and
William H. Foster was defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this twentieth day of April A D. 1858

J. W. L. Church
Clerk.

244 207

Wm. H. Stow
applicant
vs.

John Greenwood
Gardner J. Corley &
Jesse H. Wickes
opponents

Filed April 21, 1858
J. Leland
Clerk

4 Apr 1858

H. W. Windell
Recorder

SUPREME COURT OF ILLINOIS.

THIRD DIVISION.

APRIL TERM, A. D. 1858.

WILLIAM H. STOW	}	<i>Appeal from Cook County Circuit Court.</i>
vs.		
JOHN YARWOOD ET AL.		

/ ABSTRACT OF RECORD.

The declaration states, that on the 15th day of April, 1843, Yarwood & Co. were "possessed of certain goods, chattels and effects, to wit, *one steam engine, consisting of two iron* 2 *boilers and steam machinery of great value,*" etc.; and conversion of the same by Stow. It contains only one count, and is in trover. Damages, \$3,000.

Plea, general issue.

3 Trial by jury. Verdict for plaintiffs, \$800. Motion for new trial, overruled. Exception, and appeal prayed. Bill of exceptions.

Testimony of George Mitchell,

- 10 Who knew parties in 1840. Yarwood & Co. had a job on the Illinois and Michigan Canal, at the Sag, about twenty miles from Chicago. In 1839, plaintiffs bought an engine, of one Allen, then lying in Stow's foundry yard, at Chicago, called then a twenty-horse power engine. It was an engine and two boilers, cylinder, crank-shaft, one slide, cross-head,
- 11 and five segments of a fly-wheel. Part of the pump was there. Other parts, viz., one segment, rack-shaft, connecting rod and cram rod, were afterwards found and brought to the engine. The engine, with these things, were left with Stow, to be repaired, as by contract, between Stow and Yarwood & Co., then made and put in writing. Contract dated 1840, January. Witness was in the employ of Yarwood & Co., to do mill-work, and to put up this engine. I was acquainted with engines and their value at that time. This had been used about a year. It was then worth \$1,400. When thoroughly repaired, \$2,000. The engine was repaired by Stow, and main parts of it brought to the Sag. What was brought to the Sag was worth \$1,000, put in the boiler house.
- 12 The boilers were brought down. The contract was dated December 6, 1840, and was to repair and put in first-rate condition for running, a certain engine, and to furnish and make new the following articles, viz.:

Plummer blocks,	-	-	-	-	-	-	-	\$50 00
Plunge to force-pump,	-	-	-	-	-	-	-	6 00
One slide, -	-	-	-	-	-	-	-	6 00
Grate, -	-	-	-	-	-	-	-	61 15
Connecting pipe,	-	-	-	-	-	-	-	30 00
Segment to fly-wheel,	-	-	-	-	-	-	-	27 00
Rack shaft and arm to pump,	-	-	-	-	-	-	-	12 00
Stands and shaft to shift steam,	-	-	-	-	-	-	-	30 00
13 Fire front, etc.,	-	-	-	-	-	-	-	55 00
Connecting rods, etc.,	-	-	-	-	-	-	-	50 00
Bolts, etc.,	-	-	-	-	-	-	-	20 00
Straps and boxes, -	-	-	-	-	-	-	-	60 00
4 cocks to boilers,	-	-	-	-	-	-	-	10 00

To new rivet boilers and make fit for use, for \$500. Any of said articles furnished by Yarwood & Co. to be deducted. Stow to make castings for water wheel at 6½ cents a pound. The parts mentioned in contract were made by Stow's foreman, to make the engine complete.

- 20 *James Hannahs* stated, that he was in Stow's employ, as workman and foreman, for several years preceding and subsequent to the repair of the engine in question. Witness
 21 knew the engine. It was repaired by Stow, for Yarwood & Co. It was taken away by them in 1842. The boilers were brought back on sleighs, in cold weather. The bulk of the engine was brought back. It was broken up and melted,
 22 soon afterwards, by Stow's order. Engines at that time were worth about \$100 per horse power. Parts were replevied. Most parts of the engine would be only valuable for old iron, separately.
- 23 Witness kept Stow's books of account. The repairs were made in winter of 1840-41. This was a high pressure engine. Such an engine *consists* of a cylinder, crank, ways, cross-heads, piston, piston-rod and frame. A low pressure engine consists of these articles and of a condenser. *Boilers*
 24 *are separate things from an engine.* An order for an engine *does not include the boilers.*
- 33 I judged the engine and boilers, when repaired, to be worth about \$1,800 or \$2,000. It was of about twenty
 34 horse power.
- 38 *Philip Dean* stated, that he was employed by William H. Stow, in the winter of 1841, to remove a steam engine from the Sag to his foundry in Chicago.

Copy of Record of Proceedings in Stow's Bankruptcy.

- 42 Petition filed, January 17, 1843, in the District Court of Illinois.
- 58 In the schedule of effects of said W. H. Stow is the following item:

*"John Yarwood & Co. Unsettled account, - - - \$700 00
From the above I claim the right to deduct certain portions
of an engine now in my possession."*

62 Decree of Bankruptcy made June 17, 1843. W. W. Saltonstall appointed assignee.

63 Final decree and order of discharge made September 29, 1843.

73 Introduction of copy of record, etc., objected to, on ground that same did not bar the right of recoupment. Objection overruled. Exception.

73 THOS. HOYNE was one of counsel for Yarwood, on trial of case in 1851. Burke was a witness, since deceased. Took notes of substance of his testimony. They are here. Took substance of all his material statements as well on cross as
73 on direct examination. He, said Stow, knew when the boilers went away, in 1841. One boiler was afterwards cut and melted up for another engine, for Stow or his brother.

Cross-examined. Mr. Hoyne said, he took as full minutes of the evidence as he deemed material. Intended to take down all that was material for and against, and generally in the words of the witness. Recollected witness' statement, that he was present when the boilers were taken away, and
74 that it was afterwards cut up, independently of the memoranda. Recollects every fact stated in the paper. Perhaps should not have remembered them without the paper. Without it, should not have remembered them. Could not repeat, from memory, all the facts stated in the paper.

Motion to strike out witness' evidence, because not in the language of deceased witness, and only parts of it, and such as H. deemed material; and not from witness' recollection,
75 but from partial minutes.

Motion denied. Exception.

Defence opened. Offered writ of replevin between same parties, dated 15 April, 1843, from Circuit Court, and sher-

77 iff's return on the writ, and plaintiff's receipt of articles embraced in the return, viz.: steam cylinder, one crank-shaft, one steam boiler, four pieces of fly-wheel, one pitman, one connecting-rod, one piston-rod, one slide-valve and governor.

81 *Thomas C. James* testified, in substance, very much as Hannahs, as above. Was a maker of engines. An engine consists of a cylinder, pump, main-shaft, fly-wheel, eccentric-rod, piston and rod, slides, cross-head, check-valve, pipes. Engine should have a boiler; incomplete without one; but may
89 be an engine without one. N. S. Bouton had bought and worked three engines. Boiler extra in buying an engine. Boilers are not considered parts of an engine.

89 *John C. Haines* was a steam-mill owner. The understanding of an engine, is, piston and rod, slide, cylinder, connecting-rod. Term steam engine does not include boilers. In buying engines, unless boilers are expressly stipulated for, they are extra. Price of steam engine does not include boiler.

Plaintiffs' Instructions,

90 1st. That if the jury shall believe from the evidence that the defendant, before the commencement of this suit, took and converted any part of plaintiffs' property, described in warrant, he is liable for its value at that time.

90 2nd. That defendant should be allowed, in mitigation of damages, the value of any such portion of such property, as after the conversion came to plaintiffs' hands, or was received by them.

No error assigned on plaintiffs' 3d instruction.

Exception to plaintiffs' instructions.

Defendant's Instructions.

Defendant excepted to judge's refusal to give instruction as asked, and to the qualification.

Second instruction asked for by defendant and refused :—

92 “ If the jury shall find from the evidence, that a steam engine does not include, or does not consist of, boilers, they must find a verdict for the defendant.”

93 Exception to the refusal to give it. Verdict for plaintiffs, \$800. Motion by defendant for new trial overruled. Exception, and prayer of appeal. Appeal allowed. Bill of exceptions signed. Clerk's certificate and seal.

95 Plaintiff in error assigns, as errors :

First. That the court below did not exclude testimony of Thomas Hoyne, Esq., on motion.

Second. The giving of the second instruction asked for by plaintiffs below.

96 *Third.* In refusing to give first instruction asked by defendant below, and qualifying it as shown by bill of exceptions.

Fourth. In refusing to give the second instruction asked for by defendant below.

Fifth. In overruling motion for new trial ; and rendering judgment for plaintiffs below.

POINTS AND AUTHORITIES OF PLAINTIFF IN ERROR.

FIRST POINT. The testimony of Thos. Hoyne, Esq., was not competent evidence. Mr. Hoyne spoke from his notes, except as to two facts. His notes were partial. They contained only so much of the statements of deceased witness, as Mr. Hoyne deemed *material*. His testimony was based on matter of opinion.

2 Johnson Rep. 24, per Spencer.

Wilbur vs. Selden, 6 Cowen 162; 12 Wend. 45.

U. States vs. Wood, 3 Wash. Cir. Ct. 440.

11 Serg. & Rawle, 149, 150, 151; 337-8, 342.

11 Illinois Rep. 531.

SECOND POINT. The second instruction for plaintiffs below assumed the main issue in the case. It assumed the conversion. It proposed as an issue to the jury, the TIME when certain circumstances of mitigation occurred.

Vide *Sherman vs. Dutch*, 16 Ills. 286.

Eams vs. Blackhart, 12 Ills. 195.

THIRD POINT. The refusal to give the first instruction asked for by defendant below, and the qualification which was attached to it by the Court, were wholly erroneous.

1. The defendant had a right to *recoup* his claim for repairs against plaintiff's claim for damages, growing out of an alleged conversion of the property repaired, the subject matters of the two claims being the same.

Former judgment of this Court in this cause, 14 Ills. 424, 428. *Brigham vs. Hawley*, 17 Ills. 38—40.

2. This right was not taken away by the Proceedings in Bankruptcy.

a. When the tort was committed, a right accrued to Stow to *recoup* his claim for the amount of the repairs

against Yarwood and Co.'s claim for the damages arising from the conversion. This is incontestible.

b. The assignee in Bankruptcy took all Stow's property, and rights of property, choses in action, &c., subject to all equities and liens, equitable as well as legal, which attached to them while in Stow's hands.

Talcott vs. Dudley, 4 Scam. 429.

Strong vs. Clason, 5 Gilman 344.

Mitford vs. Mitford, 9 Vesey 87—100.

Ex parte Hanson, 12 Vesey 345—248.

Ex parte Herbert, 13 Vesey 183—189.

Ex parte Stephens, 11 Vesey 24—29.

Parker vs. Moggridge, 2 Story Rep. 334.

Ex parte Marshall, 2 Story Rep. 360, 555.

3 Story Rep. 507. 1 Yeates, 399.

1 Atkins 160, 162.

c. At that time their rights were mutual, ascertained, and fixed. The right of Stow to recoupe the amount due to him for the repairs, against the claim for damages by Yarwood & Co., and the right of Yarwood & Co. to recoupe the damages for the conversion against the amount due to Stow for the repairs—this right existed in favor of each party sued by the other. This was a common law right, or equity worked out through the medium of an action at law.

d. The assignee in Bankruptcy was a volunteer, taking without valuable consideration, and with notice.

2 Story Rep. 555.

e. Stow's claim for the repairs, and Yarwood & Co.'s claim on him for damages, were choses in action, rights to be enforced by suit, or through the medium of suits at law. Stow, by assignment, could not deprive Yarwood & Co. of their right of recoupement, nor could Yarwood & Co. deprive Stow of his right of recoupement.

f. This right of recoupement, when once it existed,

works a liquidation or payment *pro tanto*. There is no subsisting cause of action unless there is a surplus, and the surplus where it exists constitutes the sole cause of action, and is so regarded in law. TREAT, Ch. J., 14 Ill., 426. When once the right of recoupement existed in these parties, Yarwood & Co. had no cause of action against Stow, except for the surplus damages. Stow had no claim on Yarwood & Co., unless the repairs exceeded the damages from the tort.

g. These equities, liens, &c., are administered in bankruptcy, as well as at law and in chancery.

11 Vesey, 24, 29.

12 " 345—348.

13 " 183—189.

2 Story Rep. 555.

h. The assignee in bankruptcy took the claim from Stow subject to Yarwood & Co.'s right to have the whole amount of their damages deducted from it, and could only claim from them the surplus after such deduction, if there was any surplus.

j. And after the bankruptcy, and notwithstanding the transfer of Stow's property and effects by the operation of the bankruptcy to the assignee, Stow was still entitled to the benefit of this liquidation or constructive payment, as before the bankruptcy, or as if it had not taken place, even against a purchaser from the assignee.

Strong vs. Clason, 5 Gilm., 344.

FOURTH POINT. The description of the property in the warrant was an averment requiring to be proved. A variance from it would be fatal. The proof showed a clear variance.

FIFTH POINT. Evidence was allowed to be given on the trial, of the conversion of boilers. The defendant was not charged by the warrant with the conversion of boilers, but of a steam engine consisting, &c. The evidence showed that the steam engine in question did not consist of boilers, &c., as alleged, and established a material variance between the property, the subject of proof, and that described, the subject of the action. A new trial should have been granted by the Court.

ARTHUR W. WINDETT,
Of Counsel for Plaintiff in Error.

Wm. H. Loomis

1838

Yarrowood Hall

Appical from Cook

Abstract.

Filed April 30, 1838

L. Loomis

Clerk