

No. 14614

Supreme Court of Illinois

Bullerdeck

vs.

Gear ^D et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

Chas. W. H. H.
No. 138.

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

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State of Illinois---Supreme Court,

Third Grand Division,

APRIL TERM, A. D. 1864.

JOHN H. BULLERDICK,

vs

HEZEKIAH H GEAR,&
A. HAMILTON GEAR.

} Appeal from Jo Daviess
County.

ABSTRACT OF RECORD.

Record. This was an action of Replevin for a "Horse Ferry Boat,"
p 5 commenced on the 22nd of August, 1862.

9 The Declaration sets out the plaintiff, as entitled to the possession, and that the Boat belongs to Gordon & Willis and John A. Burrichter, and prays a return.

14 Defendants plead, 1st. Non detinet.

2nd. Non cepit.

3rd. Property in defendants.

4th. Property in defendants, and plaintiff not entitled to the possession.

20 5th. That they were the owners of a certain Ferry, known as Gear's Ferry, duly established by law, running over and across the Mississippi river, from a landing known as Gear's Ferry Landing, in Jo Daviess County, Illinois, and was engaged and kept up said ferry in pursuance to law, to convey persons and property over and across said river for tolls, under and by virtue of a charter, granted by the Legislature of the State of Illinois and in pursuance to the statute, and had the exclusive right to have and maintain a ferry, and land at the place aforesaid. And no other person was permitted to run any boat or water craft for the purpose of conveying persons or property across said river, at the point aforesaid, for toll, or within three miles of said ferry, on said river, and being so entitled, and the owner of said ferry, and having the exclusive right aforesaid, The plaintiff on the 10th day of August, 1862, and on divers other days before that date, without any legal authority, and not being within any of the exceptions of the statute, in this, That he did not cross said river in his own boat, on his own business, but run the same as a public ferry; nor did he cross his neighbors without fee, and not with the intention of injuring said ferry of said defendants, not having any right established or confirmed by said statute, or licensed by any County Commissioner's Court under the provisions of law, to keep, run, maintain, and use said Horse Ferry Boat aforesaid, in conveying persons and property over and across said river aforesaid, and landing the same at "Gear's Ferry Landing," being in violation of the statute and the privileges so

to the defendants—by means whereof, said boat became forfeited to these defendants, as the owners of said ferry, under the 11th Section of the Revised Statute, entitled "Ferries and Toll Bridges." And being so forfeited, these defendants entered upon and took possession of said Horse Ferry Boat, at the time when, &c., was the property of the defendants, and they were rightfully entitled to the possession thereof, and not the plaintiff, and pray Judgment and a return of the boat.

18 Issue was taken on 1st, 2nd, 3rd and 4th pleas.

Replications filed to 5th plea.

26 1st replication to 5th plea denies that defendants are owners of a ferry duly established by law, and running over and across said river, under a charter, &c., denies they had kept up said ferry in pursuance to law.

Concluded to the country, and issue joined.

28 2nd replication to 5th plea, denies that defendants had an exclusive right to have and maintain a ferry at the point, and for three miles up and down the river, including said ferry landing.

Concluded to the country, and issue joined.

3rd replication demurred to, and demurrer sustained.

4th replication to defendants' 5th plea demurred to and sustained—leave to amend.

32 The plaintiff files an amended replication to defendants' 5th plea, as follows: "Because he says it is not true, that plaintiff on the 10th day of August, 1862, and on divers other days before that time, run, maintained and used said boat in conveying persons and property over and across said river without any legal authority. But he was at the time the owner of a ferry franchise under the laws of Iowa, and was authorized by license, duly granted by the Board of Supervisors, of Jackson County, Iowa, to operate and run a ferry from Whiteside's landing, in Jackson County, Iowa, across the Mississippi river to the State of Illinois, and to carry freight and passengers, cattle and teams from Whitesides landing in Iowa to Jo Daviess Co., Ills., and was by law entitled to land said passengers, freight, cattle and teams, on the Illinois shore, upon the public road in said County, at or near Gear's Ferry landing, in such manner as to do no injury to said landing, and not to interfere with the use of said landing by said Gear's ferry. And plaintiff admits he did land at or near said Gear's ferry landing, for the purpose of landing passengers, freight, cattle and teams, brought over from Iowa by said boat. And admits, while prosecuting his business, in operating and running his said ferry across said river, he may, at different times, have crossed over his neighbors without fee or reward, without the intention to injure said Gear's ferry. But he denies that he conveyed passengers, cattle, teams, or freight, from Gear's ferry landing, or within the three miles claimed as his exclusive right to the Iowa shore, except as above admitted, denies that he interfered with or injured defendants' ferry franchise, and concludes with a verification and prays Judgment, &c."

to the defendants—by means whereof, said boat became forfeited to these defendants, as the owners of said ferry, under the 11th Section of the Revised Statute, entitled "Ferries and Toll Bridges." And being so forfeited, these defendants entered upon and took possession of said Horse Ferry Boat, at the time when, &c., was the property of the defendants, and they were rightfully entitled to the possession thereof, and not the plaintiff, and pray Judgment and a return of the boat.

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Concluded to the country, and issue joined.

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3rd replication demurred to, and demurrer sustained.

4th replication to defendants' 5th plea demurred to and sustained—leave to amend.

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The defendants by leave of Court file THREE rejoinders.

- 35 1st. Defendants rejoin That plaintiff, on the 10th day of August, 1862, and on divers days before that day, did run and maintain and use said Horse Ferry Boat in conveying persons and property over and across said river, within the distance in which defendants had the exclusive right, without any legal authority, as set out in said plea.

And concludes to the country.

- 36 2nd. Defendants rejoin That if said plaintiff was authorized, by authority from Jackson county, Iowa, to run a ferry over and across said Mississippi river, said plaintiff was not authorized to maintain and use said Horse Ferry Boat in conveying persons and property over and across said river for hire, and landing the same at Gear's ferry landing. And defendants AVER said plaintiff did run and maintain said boat, and convey persons and property over and across said river for hire, and landed the same at "Gear's ferry landing," within the distance in which these defendants had the exclusive right, as in said plea mentioned.

Concludes to the country and issue joined.

- 37 3rd. Rejoinder demurred to, and amended as, amended. Defendants rejoin, That it may be true Gordon, Willis and Burrichter became the owners of said boat, and leased the same as therein mentioned. But these defendants AVER, at the time when, &c., The said plaintiff used said boat in conveying persons and property over and across said river for hire, and landed the same at a point within which these defendants had the exclusive right. By means whereof said boat became and was forfeited, and was seized, and thereby became the property of these defendants, as in said plea mentioned.

Concludes to the country and issue joined.

Plaintiff demurs to 1st and 2nd rejoinder.

- 40 Court sustains demurrer to the 1st rejoinder, and defendant excepts to the ruling of the Court, and stands by the rejoinder. Issue on 3rd rejoinder.

Afterward a jury is empaneled, and the cause submitted. The defendants or their att'y not being in court, a verdict for plaintiff and one cent damages, which was set aside by the Court on the application of defendants.

- 41

PLAINTIFF'S EVIDENCE.

On the 19th day of August, 1863, said cause came on for hearing before a jury, when the following evidence was heard, and proceedings had:

- 51 The plaintiff examined HENRY YEAGER,

Who testified, I reside at Hamilton, on the opposite bank of the Mississippi river. I know the Horse Ferry Boat in dispute. It was built by Armbruster, for plaintiff, in the spring of 1862, at Galena, to run between my place and Gear's ferry landing, on this side of the river, as a ferry boat. Gordon & Willis furnished one hundred dollars, and Burrichter one hundred dollars to Bullerdick to build the boat. Bullerdick furnished the balance, two hundred dollars. The boat was completed and commenced running as a ferry, the last of

April, or the first of May, 1862, between my place and Gear's ferry landing on this side of the river. Bullerdick owned the boat and ran it by himself and hands, as a ferry between the points named, until the latter part of July, when in consequence of Perkins, who ran Gear's ferry, bringing suits against him before a Justice for the penalty under the statute, he laid up the boat for a few days. On the 28th of July, as agent for Gordon, Willis & Burrichter, I paid for them to Bullerdick, about two hundred dollars for the boat horses, &c., and took the Bill of Sale hereinafter set out. The consideration of the bill of sale was the amount they advanced in building the boat, and the money advanced by me.

The purchasers then made a lease to Bullerdick, who commenced running the boat on the 1st of August. In a few days after, the boat was seized by Gear, and Bullerdick got the boat back the same day, and continued to run the boat at the same place, until about the middle of August, when Gear again seized the boat, and took it to his landing in this city, (Galena.) When Bullerdick brought this suit, before he brought the suit, he demanded of Gear a return of the boat, which was refused. Gear had the boat in possession about a week. After the lease, Gordon, Willis & Burrichter gave instructions that the boat should not carry passengers and property from this side for hire. Have seen a fourth of the persons that crossed after the lease, did not see any one pay ferriage from Illinois to Iowa. Heard Bullerdick tell his hands not to charge ferriage from Illinois to Iowa.

ON CROSS EXAMINATION.

Bullerdick ran the boat as a ferry, and carried all that came both ways, when the other boat was not present, and charged the usual fare both ways, up to the time of the suits before the justice. The usual fare, in the first place, was seventy-five cents for a two horse team both ways; afterward, in June, or the early part of July, Bullerdick charged fifty cents from the Iowa side.

After the lease was made, he only charged from the Iowa shore to Illinois, but carried all that came both ways, when the other boat was not present. He carried from the Illinois shore, and did not charge for it, but charged fifty cents for bringing them back. Was not present on the boat, and do not know whether Bullerdick did in fact receive ferriage or not after the lease, from Illinois shore. Lives at the landing on the other side of the river, and knows the boat ran regularly when there was anything to do—crossed from one to six times a day.

55 Plaintiff then read to the jury as evidence, the lease from Gordon & Willis and Burrichter to Bullerdick, dated 28th of July, 1862.

In which they lease the Boat and Horses for ten dollars a month, payable monthly to Henry Yeager, the witness above, rent to be paid at the end of each month, Bullerdick to keep the horses in the winter, at his own expense, and to pay only when the boat runs. No time named when the lease is to terminate or expire.

58 Plaintiff proved the execution, and read to the jury as evidence, the bill of sale for the boat and horses from Bullerdick to Gordon & Willis and J. A. Burrichter, dated 28th July, 1862. Consideration named, four hundred dollars—one hundred advanced by Gordon & Willis, and one hundred advanced by Burrichter in building the boat, and two hundred cash.

58 The plaintiff then offered in evidence the proceedings and license from the Board of Supervisors of Jackson county, Iowa, granted to Bullerdick, to keep a ferry from Whitesides landing in said Jackson county, Iowa, across the Mississippi river to the State of Illinois. To the reading of which, as evidence, the defendants objected. The objection was overruled by the Court, and proceedings and license read, and defendants then and there excepted.

The proceedings before the Board of Supervisors are fully set forth in record offered.

62 The license granted to Bullerdick, is, to run a Two Horse Ferry Boat across the Mississippi river from Whitesides landing to the Illinois shore, for five years, with the exclusive privilege, for one mile above and below, and fixes the rates, OVER AND BACK to be charged as ferriage on all persons and property.

DEFENDANT'S EVIDENCE.

64 The defendants read to the jury, as evidence, from the Private Acts of the Legislature of the State of Illinois, entitled "An Act to authorize H. H. Gear to keep a Ferry across the Mississippi River. In force Jan. 18th, 1840."

Sec. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That Hezekiah H. Gear, of the county of Jo Daviess, is hereby authorized, and licensed to keep a ferry across the Mississippi river, at and from a point in said river, in the county of Jo Daviess, and opposite the mouth of "Tete de Mort," in the territory of Iowa; and the said Gear, his heirs and assigns, shall have the right of having, maintaining, and using a ferry across the said river, at the place before mentioned, and to have and receive all advantages and emoluments arising from the use of said ferry, for and during the term of ten years: Provided, however, That the county commissioner's court, of the county of Jo Daviess shall have the right to assess an annual tax upon the said ferry equal to that levied upon other ferries severally situated in said county.

APPROVED, January 18, 1840.

65 Also "An Act to amend an act," entitled "an act to authorize H. H. Gear to keep a ferry across the Mississippi river," approved January 18, 1840.

Sec. 1. Be it enacted by the people of the state of Illinois, represented in the General Assembly, That the term of the ferry franchise granted to the said H. H. Gear, under and by virtue of the above recited act, to which this is an amendment, be, and the same is hereby, extended to the said H. H. Gear, his heirs and assigns, for and during the term of thirty years, subject to the same restrictions contained in the act to which this is an amendment.

APPROVED, February 8, 1849.

66 The defendants then read as evidence to the Jury, a Deed from Hezekiah H. Gear to A. Hamilton Gear, dated 25th day of September, 1851, duly acknowledged and recorded in Jo Daviess County, by which H. H. Gear sells to A. Hamilton Gear, his son, for one hundred dollars, one undivided half part of all the right, title, interest and estate in the franchise, charter, rights, privileges and appurtenances in said ferry, with all the boats, horses, fixtures and appurtenances then in use at said ferry, with covenants of warrantee, to him and heirs, and an agreement to run the ferry as joint owners.

69 The defendants examined Esq. McKINSTER, Who testified he was well acquainted with Gear's ferry landing on this side, and Tete des Morte. That he had known it for the last fifteen years. He resided within two miles of it, on the other side of the river. When he first knew it, he was employed to build a horse boat, to run there, by Capt. Gear. Afterwards Gear run a steam ferry boat there for two or three years, when the steam boat was taken off and a horse boat put on again.

There has been a continuous ferry there, with slight interruption to repair, ever since I have known it, up to the bringing of this suit. Never heard any complaint that it did not accommodate the public.

70 The defendants examined GEO. FERGUSON, Who testified he had known the ferry since 1834. It was then known as Tabour & Shiptons. For the last twenty-five years it has been known as Gear's ferry; lived within two and a half miles of it all the time; knows it has been kept up as a ferry all the time. Knew it when they ran an old scow boat, then a horse boat, then a steam boat, and last a horse boat, up to the bringing of this suit.

The landing has always been the same.

71 Defendants then examined THOS S. PARKS, Who testified That he knew this ferry for a number of years. Owned the ferry at Sand Prairie when the steam boat was taken off. He made an arrangement with Capt. Gear to put his boat on. This was about the last of October, 1859 I first made an arrangement with Young, who owned the Whiteside's landing. I made the arrangement with Young to avoid dispute, and so I could land at his landing. My arrangement with Gear covered both his landings, on this side and in Iowa.

Ran the boat two seasons and sold out to Perkins, who has run it since. When I ran the boat, we were in the habit of landing at Gear's or Young's landing in Iowa, as persons wished.

Have crossed over from Illinois to Iowa in Bullerdick's boat, with stock, in June or July, 1862, and paid Bullerdick the usual ferriage. His boat ran at the time as a ferry from Gear's landing on this side, to Young's landing in Iowa.

72 Defendants examined A. PERKINS, Who testified That he knew the ferry since 1861, purchased the boat from Parks, and made an arrangement with Capt. Gear to run it under his charter, has run it regularly from that time to the bringing of this suit, from Gear's landing on this side, to his landing in Iowa at the mouth of the Tete des Morte.

Bullerdick came there the last of April, 1862, with his boat, and put it in as a ferry boat, between Gear's landing on this side, and Gordon or Young's landing on the other side. We both landed at the same place on this side, and tied to the same stakes, at the landing where Gear's boat always landed on this side since I have known it.

It was run by Bullerdick and his hands. In July he put down the ferriage to fifty cents for crossing both ways. I asked Bullerdick why he put it down. He said he understood I had put it down. I had to put down the ferriage to the same price, or get no business. We run at that price until Bullerdick's boat was seized by Capt. Gear the last time. Bullerdick ran his boat as a regular ferry from the time it came out, until it was seized, between the points named, with slight interruptions.

I attempted to stop his boat from running, by bringing divers suits against him, but did not succeed. He carried every thing that wanted to cross, both ways, as far as I know, and charged both ways. I have frequently made change for him, and he has for me, and seen persons pay him for crossing each way. Seen persons pay his hands when he was not on the boat, for crossing each way. It was not his neighbors and friends, but the traveling public generally.

This continued all the time, except a few days after the first seizure, when he would hang back, if I was there. In a few days he came in and ran as usual, up to the time Capt. Gear last seized the boat.

His running divided the business with Gear's ferry; the usual price was seventy-five cents for crossing a two horse team and back. Bullerdick put it down to fifty cents after June or July.

ON CROSS EXAMINATION.

Witness testified, His horses were put on the Bullerdick boat by Gear, and the boat was run up to Galena, after it was seized. Cannot name the person or time when paid, but it was a usual thing, and continued without any change, as far as I know, up to the last seizure. Witness was sued in Treaspass, and there was a Judgment against him with them for seizure.

RE-EXAMINED BY DEFENDANTS.

Gear's ferry was sufficient to accommodate the public, and ran regularly.

Defendants examined JOHN HORNING,

Who testified, He was engaged in delivering beer in Iowa, in the summer of 1862, and crossed the Mississippi river at these ferries, crossed on the Bullerdick boat five or six times with a beer team, paid Bullerdick the usual ferriage both ways.

Defendants examined RODOLPH SPIRE,

Who testified He crossed over the river and back two or three times in June and July, 1862, in Bullerdick's boat, and

paid the usual ferriage to Bullerdick both ways, with his team. Don't know but it was as late as August when he last crossed.

Defendants examined EDWARD TOMLIN,

Who testified He knows the ferries, has crossed on Bullerdick's ferry in June and July, 1862, from the Illinois shore to Iowa, and paid him the usual ferriage.

The plaintiff then recalled HENRY YEAGER,

Who testified He was the agent of Gordon & Willis and Burrichter to collect the rent. Was careful to see Bullerdick did not charge from Illinois to Iowa. I was not on the boat, except occasionally; might have charged and I not know it; have seen him refuse ferriage from Illinois.

This was all the evidence in the case, both on the part of the plaintiff and defendants.

The Court then instructed the jury, at the request of the plaintiff as follows:

3d. "The jury are instructed, that if they believe from the proof, that the boat in controversy was sold to Gordon & Willis and I. H. Burrichter on or about the 23th of July, 1862, and that Gordon & Willis and Burrichter leased said boat to the plaintiff about the 1st of August, 1862, Then, unless they further find from the proof, that plaintiff did after said sale and lease run said boat for the purpose of conveying passengers or their property across the Mississippi river from the Illinois shore to Iowa, within the distance covered by Gear's franchise, They should find for the plaintiff, on the issue claiming property in said defendant as a penalty under the law."

5th. "If the jury believe from the proof that the plaintiff was running the boat across the river under a franchise granted by the proper authorities in the State of Iowa, and bringing passengers and their property for reward from Iowa to Illinois, and not for the purpose of injuring defendants' franchise, and in the prosecution of such purpose, he carried without fee or reward, passengers, being his neighbors, or their property, from Illinois to Iowa, for their accommodation and not to injure the defendants' franchise, then the law is with the plaintiff in those issues setting up property in defendants, by virtue of a forfeiture under the law."

To the giving of which instructions by the Court, the defendants then excepted.

The defendants then asked the Court to give to the jury the following instructions, which the Court refused, and the defendants then and there excepted to the ruling of the Court in refusing the same.

"If the jury believe from the evidence that the defendants kept and maintained a regularly established ferry across the Mississippi river, from a point known as Gear's ferry landing, in Jo Daviess County, Illinois, under a Charter granted by the Legislature of the State of Illinois, and that Bullerdick ran the boat in controversy as an opposition ferry boat, and conveyed passengers or property across the Mississippi river from the Illinois shore to Iowa, taking said passengers or

property for hire from said Gear's ferry landing in Jo Daviess county, Illinois, without any legal authority or permit from the State of Illinois. And if the jury further believe from the evidence, that at or before the entering upon and taking possession of said boat by the defendants, the said boat was used for the purpose of conveying passengers or property across said river for hire, from said Gear's landing in Illinois to the Iowa shore, then said boat became forfeited to the owners or proprietors of the regularly established ferry. And if the jury further believe from the evidence, that the said boat was entered upon and taken possession of by said defendants, to their own use, by reason of said forfeiture, then the jury should find the issue of property in favor of the defendants."

80 "If the jury believe from the evidence, that the defendants kept and maintained a regularly established ferry across the Mississippi river, from a point known as Gear's ferry landing in Jo Daviess county, Illinois, under a charter granted by the Legislature of the State of Illinois, and that Bullerick ran the boat in controversy as an opposition ferry boat, and conveyed passengers or property across the Mississippi river, landing at Gear's ferry landing in said county, without any legal authority or permit from the State of Illinois, And if the jury further believe from the evidence, that at or before the entering upon and taking possession of said boat by defendants, the said boat was used for the purpose of conveying passengers or property across said river for hire, then said boat became forfeited to the owners or proprietors of the said regularly established ferry. And if the jury further believe from the evidence, that the said boat was entered upon, and taken possession of by said defendants to their own use by reason of such forfeiture, then the jury should find the issue of property in favor of the defendants."

Thereupon the jury returned a verdict, finding the issues for the plaintiff.

And defendants moved for a New Trial, and filed his reasons as follows:

- 40 1st. Because the verdict is contrary to the law and evidence in said cause.
- 2nd. Because the Court gave improper instructions to the jury, and refused proper instructions in said cause.
- 3rd. Because the Court admitted improper evidence in said cause, and refused proper evidence.
- 4th. Because the verdict should have been rendered for the defendants, under the law and evidence in said cause.

The Court overrules the motion for a New Trial, and renders Judgment that the plaintiff recover possession of the property, and Judgment for costs against the defendants.

To the overruling of the motion for a New Trial, and rendering the above Judgment, the defendants then and there excepted.

Defendants appeal the cause to this Court.

ERRORS ASSIGNED.

1st. The Court erred in sustaining the plaintiff's demurrer to the 1st rejoinder to 5th amended replication.

2nd. The Court erred in admitting as evidence to the jury, the record and proceedings of the Board of Supervisors of Jackson County, Iowa, and the License granted by said Board, and each of them.

3rd. The Court erred in giving to the jury the 3rd and 5th Instruction, and each of them asked by the plaintiff.

4th. The Court erred in refusing to give the Instructions asked by the defendants, and each of them.

5th. The Court erred in overruling the motion for New Trial.

6th. The Court erred in rendering the Judgment rendered in this case.

State of Illinois
In Daviess County
Fourth Judicial Circuit

as above
of Judicial Circuit & Pleas in the Circuit
Court of Jo Daviess County
begun and held at Galena in said
County on the third Monday in the
Month of August A.D. 1863 to-wit on the
Seventeenth day of August A.D. 1863.
before the Honorable Benjamin R. Sheldon
Sole Judge of the said Fourteenth Judicial
Circuit of the State of Illinois.

R. H. McEllan. Prosecuting Attorney for Tenn.
Wm R Cowley Clerk
J. C. Hawkins Sheriff.

John H. Ballerdiens 3
 as 3
 Hugeniah H Gear. and 3
 A. Hamilton Gear. 3
 that heretofore tried
 on the 22^d day of August A.D. 1862, the
 Plaintiff above named, by Weigley
 & Cummings, his attorneys, filed in the office
 of the Clerk of our said Circuit Court
 his affidavit, and process for a
 writ of Replevin, together with a
 bond for Costs, in this Cause -

The affidavit filed by
the Plaintiff is in the words and

figures following. To wit:

State of Illinois
of Daviess County
This day personally
appeared before me
William A Rowley Clerk of the Circuit
Court of said County. John. A. Barrietta
and made oath in due form of Law. and
deposed ~~and~~ as follows. That he is
lawfully entitled to the possession of a
certain horse ferry Boat of the value of
four hundred ^{dollars} now in the possession
of Hezekiah H. Gear. and A. Hamilton
Gear. That said boat was unlawfully
and forcibly taken from his possession
by the said A. H. Gear and H. H. Gear on
the morning of the 15th August. A.D. 1862, and
detained by them hitherto, and that the
same was not taken for any tax, ass-
essment, or fine, levied by virtue of any
law of this State; nor seized under any
execution or attachment against the goods
and chattels of said Plaintiff liable to
execution or attachment. That said boat
is the property of Gordon and Willis.
and John. A. Barrietta and by them let
to hire to this affiant, and used by him
in running and operating a ferry in Jackson
County Iowa. To the Illinois shore, under a
license from the board of supervisors of
Jackson County Iowa. That said Boat
when taken had been replevied in a
former suit in said Circuit Court of Jo

Davies County, which suit is yet unde-
termined, and in which suit this affiant
is under Bond in the sum of Eight Hundred
dollars, for the performance of the judgment
of the Court.

Sworn & Subscribed before me J. H. Bullerdict
this 22 day of August. 1862.

Wm R Rowley Clerk
by F. D. Newhall, deputy

Endorsed

Filed August 22 1862

Wm R Rowley Clerk

by F. D. Newhall, deputy

The Bond for costs, filed by the Plaintiff
is in the words and figures following
to wit:

State of Illinois } 2nd sec.

In Davies County } In the 1st Davies County
Circuit Court. To
October Term. A.D. 1862

John. A. Bullerdict. Plaintiff }

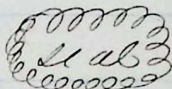
vs

John Beplewin.

Sezeniah. A. Gear et al. Defendants }

I do hereby enter myself
security for costs in this cause, and
acknowledge myself bound to pay or cause
to be paid, all costs which may accrue
in this action either to the opposite party
or to any of the officers of this Court, in

4
pursuance of the laws of this State
Dated at Galena this 22^d day of August.
AD 1862.

J. Gordon. 

Approved.

Wm Crowley, Clerk of Davis County Circuit Court
by J. D. Newhall, deputy.

Endorsed.

Filed August 22^d 1862.

Wm Crowley Clerk
by J. D. Newhall, deputy

The proceipe for writ & Summons
filed by the Plaintiff is in the words
and figures following. to wit:

State of Illinois of and for Davis County
Go Davis County Circuit Court to the
October Term AD 1862

John H. Bullardick 3
vs 3 Replevin

Hezekiah H. Gear and 3

A Hamilton Gear.

3 On filing affidavit
and bond for costs

the Clerk will issue a writ of Replevin
for the property named in said affidavit
and summons to said defendants return
able to the next October Term of said Court
AD 1862.

Highley Cummings
attys for Plaintiff

Endorsed

Filed August 22nd 1862.

Wm R Bowley clerk

By F R Bird deputy.

Upon the filing of which said affidavit,
Bonds and Proceipe, there issued out of
the clerk's office of our said Circuit Court
a writ of Replevin in words and figures
following to-wit:

State of Illinois }
of Davis County } For The People of the State
of Illinois to the Sheriff of
said County, Greeting:

Whereas John H. Bullard is
Plaintiff complains that Hezekiah
Hear and A. Hamilton Hear
defendants, unlawfully and wrongfully
does detain a certain horse ferry boat
of the value of Four Hundred Dollars.

Therefore We command you
that if the said Plaintiff shall give you
bond with goods and sufficient security
in double the value of 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 and Chattels if return thereof shall
be awarded, and to save and keep you
harmless in replevying said goods and
chattels, you cause the said goods and

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chattel to be uplevied and delivered to the
said Plaintiff without delay, and also
that you summon the said defendants
to be and appear before the Circuit Court
of Jo Daviess County on the first day of
the next term thereof, to be holden at the
Court House in Galena, in said County
on the third Monday of October 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 bonds which you shall take from
the said plaintiff as before commanded
before executing this writ.

Witness William B Rowley Clerk
of our said Court, and the seal
thereof at Galena, in said County
the 22nd day of August, A.D. 1862.

Seal

Wm B Rowley Clerk
by J. B. Newhall, deputy

Which said writ of replevin was duly
returned unto the Circuit Court by the
Sheriff, with the following return en-
dorsed thereon to wit:

Executed this writ by delivering the
within described boat to the within named
John A. Bullerdict, and reading the same
to Hegernah. & Hear this the defendant, this 22nd
day of August, A.D. 1862.

J. B. Meiner Sheriff

Endorsed

Filed August 22nd 1862

W^o R Cowley lts

By J R Bird deputy.

The Replevin Bond returned into Court by the Sheriff in the words and figures following to-wit:

Know all men by these presents that we John H. Bullerdicts and William B. Willis, are held and firmly bound unto Simon H. Whiner, Sheriff of Goddards County and State of Illinois and his successors in office, in the penal sum of Eight Hundred Dollars. for the payment of which well and truly to be made we bind ourselves our heirs, executors, administrators and assigns jointly, severally and firmly, Signed with our names and sealed with our seals this 22nd day of August. 1862.

The Condition of the above obligation is such, that whereas the above bound John H. Bullerdicts has commenced an action of Replevin against A. H. Gear and C. H. Gear in the Circuit Court of the said County, for the taking and unjustly detaining of the following goods and chattels, to-wit: One Horse ferry boat: the property of him the said Bullerdicts or to which he is entitled to the possession

as he saith. Now if the said John H Bullardicks shall personally be and appear before the said Circuit Court on the first day of the next term thereof to be holden at the Court House at Galena on the 3^d Monday in the month of October next, and shall then and there prosecute his said suit to effect and without delay and doth make a return of the said property to the said Simon H. Wimer if a return thereof shall be awarded by the said Circuit Court and shall save and keep harmless the said Sheriff in replevying the same. then this obligation to be null and void, otherwise to remain in full force and effect.

Taken & Entered into before me.

this 22^d day of August 1862.

S. H. Wimer Sheriff

Isaiah Co. cler.

Endorsed.

Filed August 22nd 1862.

Wm. K. Rowley cler.

By J. R. Bird, Deputy

And afterwards to wit on the 27th day of August A D 1862. the Plaintiff by his attorneys filed in the clerks office of our said Court his declaration in this cause, in the words and figures following to wit:

State of Illinois of and for Davis County
J. Davis County Circuit Court to the October
Term. A.D. 1862

9
Hegriah H. Gear. and A. Hamilton were
the defendants in this suit were duly summoned
to answer John H. Bullard the Plaintiff
in this suit of a Plea wherefore they took a certain
horse ferry boat of the said John H. Bullard
and unjustly detained the same against
sureties and pledges until &c. and thereupon
the said Plaintiff by Weigley & Cummings his
attorneys, complains.

For that the said
defendants on the 15th day of August in
the year of our Lord One thousand Eight
hundred and sixty two in the County
aforesaid took a certain Horse ferry boat
from the possession of said Plaintiff, belong-
ing to Gordon & Willis and John A. Burrichter
and let to him to said Plaintiff and in and
to which the said Plaintiff had a special
property by virtue of an unexpired term
for which the same was so let to him. to him
the said Plaintiff as aforesaid. of great
value to wit. of the value of Four Hundred
Dollars. and unjustly detained the same
against sureties and pledges until the
issuing of said writ; Wherefore the said
Plaintiff saith that he is injured and
has sustained damage to the amount
of Four Hundred Dollars and therefor
he brings his suit &c. Weigley & Cummings
attys. for said Plaintiff

Endorsed

Filed August 24th 1862.

Wm A Rowley clerk
by F. D. Newhall. deputy.

and afterwards to wit on the 24th day of October A.D. 1862. as yet of the October Term A.D. 1862. of said Circuit Court. in the Record of the proceedings thereof in the above entitled cause. appears the following entry to wit:

John A. Ballard vs

Hezekiah H. Gear.

A Hamilton Gear.

Replevin

On motion of the plaintiff by his attorneys it is ordered by the court. that this cause be continued, and that an alias summons issue to the defendant A. Hamilton Gear

And afterwards to wit on the 15th day of January A.D. 1863. in pursuance of the last above recited entry. there issued out of the clerk's office of our said Circuit Court an alias summons. in words and figures following to wit:

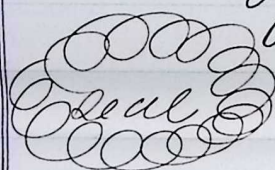
State of Illinois

Jo Daviess County The People of the State
of Illinois to the Sheriff
of said County: Greeting
We again command you

11.

To summon A. Hamilton Gear,
(impleaded with Hegiraiah H. Gear) to
appear before the Circuit Court of Jo Daviess
County, at the next Term, to be holden at
Galena on the second Monday of March
next to answer John H. Bullardick
in an action of Replevin, and to have
your then and there this writ.

Witness William Rowley, Clerk
of the Circuit Court of Jo Daviess
County, Illinois, and the seal
thereof at Galena, this 15th day
of January 1863.



Attest: W. Rowley Clerk
per C. F. Bird, deputy

Which said alias summons was
suly returned into Court with the follow-
ing return endorsed Thereon to wit:

The within named defendant
cannot be found in my County this
9th day of March AD 1863.

J. C. Hawkins
Sheriff Jo. D. Co. Ill

Endorsed.

Filed in Circuit Court.

This 9th day of March AD 1863

W. Rowley Clerk
per C. F. Bird deputy

and afterwards tried on the 9th day of
March AD 1863, as yet of the March Term

A d 1883 of said Circuit Court in the Record of the proceedings thereof in the above entitled cause, appears the following entry to wit:

John H. Bullardick *J*
vs *J* Replevin.

Hegemah H Gear *vs*

A Hamilton Gear *vs*

On motion of the Plaintiff it is ordered by the Court that this cause be continued and that a Pluris Summons issue to the defendant A Hamilton Gear.

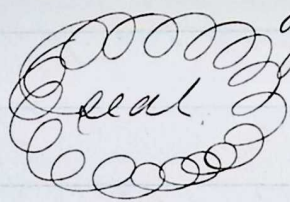
And afterwards to wit on the 9th day of March A d 1883 in pursuance of the last above recited entry there issued out of the clerk's office of our said Circuit Court a Pluris Summons in the words and figures following to wit:

State of Illinois *J*
 Jo Daviess County *J* The People of the State
 of Illinois to the Sheriff
 of said County, Greeting:

We command you again as often heretofore to summon A Hamilton Gear, impleaded with Hegemah H Gear to appear before the Circuit Court of Jo Daviess County, at the next term to be holden at Galena on the third Monday of May next to answer John H. Bullardick in an action of Replevin

and do have you there and do there this writ.

13
Hence William P Rowley, clerk
of the Circuit Court of Jackson
County Illinois, and do thereal
thereof at Galena, this 9th day
of March, 1863.



at Test: Wm P Rowley clerk
by J D Newhall, deputy

Which said writ of summons was
suly returned into court with the
following return endorsed thereon
to wit:

Executed the within summons
by reading the same to the within named
A Hamilton Esq. this 9th day of March
AD 1863.

J C Hawkins. Sheriff J. D. Co. Ill
by O P Hopkins. deputy.

And afterwards to wit on the 22nd day of April
AD 1863. the defendants herein by M J Johnson
Esq their attorney, filed in the clerk's office
of our said Circuit Court their pleas
herein, in the words and figures following
to wit:

Gear et al	3	2d to the Circuit Court
ads	3	of Jackson County
Bullerdict	3	3 May Term 1863

1. And the said defendants by M J.

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Johnson, their atty. comes and defends
oc. and says they did not wrongfully
detain the certain Horse ferry Boat in
the declaration mentioned, or any part
thereof in manner and form as therein
alleged oc. and of this they put them-
selves upon the Country,
And the said Plaintiff doth the like oc.

2. And the said defendants for a further
plea in this behalf, comes and defends
oc & says they did not wrongfully
take the certain Horse ferry Boat in
the declaration mentioned or any part
thereof from the possession of the said
plaintiff, in manner and form as
therein alleged oc

And of this they put themselves
upon the Country.

And the said plaintiff doth the like oc.

3. And the said defendants for a further
plea in this behalf, comes and defends
oc. and says that the said Plaintiff
ought not to have his aforesaid action
against them, Because they say that
the certain Horse ferry Boat in the
said declaration mentioned at the said
time, when oc was the property of the
said defendants and not of the said
plaintiff, and of this they are ready to
verify. Wherefore they pray judgment oc
and a return of the property oc.

15- 4. And for a further plea in this behalf the said defendants, comes and defends &c. and says the said plaintiff ought not to have his aforesaid action against them Because they say that the certain Horse ferry Boat, in the said declaration mentioned, at the said time when &c. was the property of the said defendants and the said plaintiff was not entitled to the possession thereof as in said declaration alleged, and this he is ready to verify. Wherefore he prays Judgment &c. and a return of the property.

5. And for a further plea in this behalf the said defendants come and defend &c. and say the Plaintiff ought not to have his action against them Because they say that they were long before and at the time when &c. the owners of a certain ferry known as "Gears ferry" duly established by law, and running over and upon the Mississippi River, from a landing known as "Gears Ferry landing" in Jo Daviess County Illinois, and was engaged and kept up said ferry in pursuance to law, for the purpose, conveying persons and property over and across said Mississippi River for toll, and under and by virtue of a Charter, granted by the legislature of the State of Illinois, and the Statute

in such cases made and provided; they had the exclusive right to have and maintain a Ferry, and Land at the place aforesaid and no other person was permitted to run any boat or water craft for the purpose of carrying persons or property across said river at the point aforesaid or within three miles of said ferry on said River, and being so entitled, and having the exclusive right as the owner of said Ferry aforesaid, the said Plaintiff on the tenth day of August A.D. 1862. and on divers other days before that date, without any legal authority, kept, run and maintained and used said Horse Ferry Boat mentioned in said plaintiffs declaration in conveying persons and property over and across said River aforesaid, and receiving and landing the same at "Sears Ferry Landing" aforesaid in violation of the Statute, and the privileges so secured to these defendants, by means whereof said Boat became and was forfeited to these defendants, as the owners of said ferry under the 15th Section of the Revised Statutes entitled, Ferries and Toll Bridges, and being so forfeited as aforesaid. These defendants entered upon and took possession of said Horse Ferry Boat as their own property, as they had a right to do, and these defendants say that the said Horse Ferry Boat in the said declaration mentioned at the time when &c. was the

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property of these defendants, and do they were
rightfully entitled to the possession thereof,
and not the said plaintiff, and do this
they are ready to verify. Wherefore they
pray judgment &c. and a return of the property
W. J. Johnson
Def'ts atty.

Endorsed

Filed April 22nd 1863.

W. R. Hawley clerk

By J. R. Bird deputy.

And afterwards took on the 19th day
of May A.D. 1863. as yet of the May Term
A.D. 1863 of said circuit court in the Records
of the proceedings thereof in the above
entitled cause, appears the following
entry To wit:

John H. Bullard vs. Hegeniah H. Gear
A. Huntington Gear
Now at this day
comes the Plaintiff
by his attorneys and files replications
and demurrer to the defendants pleas
herein, and the said demurrer having
this day been brought on to be heard.
after argument of Counsel the same
is overruled as to the defendants 4th Plea
and sustained as to the 5th plea. and
upon motion of the plaintiff. Cause is

granted him to withdraw his demurrer to the defendants fourth plea, and to file replication thereto, and upon motion of the defendants leave is granted them to amend their fifth plea, which is accordingly done, and filed as amended.

The Replication and demurrer, referred to in the last above recited entry is in the words and figures following to-wit:

State of Illinois In Circuit Court
In Duwisp County W May Term A.D. 1863.

John H Bullardick
vs
Hazeniah H Year et al

Plaintiff
vs
Defendants.

And the said Plaintiff by Keigley Cummings his attorney, for Replication to the third plea of said defendants, by them in their behalf pleaded, saith preclude now, because he saith, it is not true that said certain Horse ferry Boat in said declaration mentioned at the said time when it was the property of the said defendants as in said Plea, erroneously supposed and alleged, and of this he puts himself upon the country

19 And as to the fourth and fifth Pleas of said Defendants, by them in this behalf pleaded, said Plaintiff by his attorneys aforesaid demurs to the same, and saith that said pleas and each of them, in manner and form as the same are above pleaded and set forth are insufficient in law to bar the recovery of the Plaintiff in said action, wherefore by reason of the insufficiency of said pleas and each of them, said Plaintiff prays judgment, &c.

And for special cause of demurrer said Plaintiff shews as follows:

Said fourth plea is the same as the third plea, in so far as it pleads property in defendants. Said fourth plea is double in setting up property in Defendants and also denying the right of possession in Plaintiff.

Said fourth plea in so far as the same denies the right of possession in Plaintiff pleads matter already in the first plea.

Said fifth plea does not set up such a ferry right as entitles defendants to a forfeiture.

Said fifth plea sets up a Common Law franchise, and claims under a Statutory penalty.

Said fifth plea does not shew any adjudicated right to said property as

a forfeiture, or any legal steps to obtain
an adjudication therein, and it cannot
be inquired into collectively; and for
other good and sufficient reasons.

Heigley Cummings
attys for Deff

Endorsed

Filed May 19th 1863.

W. H. Rowley clerk

By O. A. Ford deputy.

The amended fifth plea filed by
Defendants, and referred to in the
last above recited entry is in the words
and figures following to-wit:

5th and for a further plea in this behalf
the said defendants come and defend
vc. and says the plaintiff ought not
to have his action against them. Because
they say that they were long before and
at the time when vc. the owners of a
certain ferry known as "Gears ferry"
duly established by law and running
over and upon the Mississippi River
from a landing known as "Gears Ferry
Landing" in Jo Daviess County Illinois
and was engaged and kept up said
ferry in pursuance to law for the
purpose conveying persons and property
over and across said Mississippi

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River for Toll, and under and by virtue
 of a Charter granted by the Legislature
 of the State of Illinois, and the Statute
 in such case made and provided.
 They had the exclusive right to have
 and maintain a Ferry, and land at
 the place aforesaid, and no other person
 was permitted to run any boat or water
 craft for the purpose of conveying persons
 or property across said River at the point
 aforesaid, or within three miles of said
 ferry on said river; and being exer-
 cised and having the exclusive right
 as the owner of said ferry aforesaid
 the said plaintiff on the tenth day of
 August A.D. 1862. and on divers other
 days before that date, without any legal
 authority, not being within any of the
 exceptions in said Statute, in this, that
 he did not cross said river in his own
 boat, on his own business, but run
 the same as a public ferry; nor did
 he cross his neighbors without fee
 and not with the intention of injuring
 said ferry of said defendants; or having
 any right established or confirmed by
 said Statute, or licensed by any
 County Commissioners Comng. under
 the provisions of said law. kept, and
 maintained and used said Horse Ferry Boat
 mentioned in said Plaintiffs declaration
 in conveying persons and property over
 and across said River aforesaid and

receiving and landing the same at "Gears
 Ferry Landing" aforesaid. in violation of
 the Statute, and the privileges ~~so~~ secured
 to these defendants, by means whereof
 said Boat became and was forfeited
 to these defendants as the owners of said
 ferry under the 11th Section of the Revised
 Statute entitled "Ferries and Toll Bridges"
 and being so forfeited as aforesaid.
 these defendants, entered upon and took
 possession of said Horse Ferry Boat
 as their own property as they had a right
 to do, and these defendants say that the
 said Horse Ferry Boat in the said
 declaration mentioned at the time when
 it was the property of these defendants
 and they were rightfully entitled to the
 possession thereof and not the said
 plaintiff. And this they are ready to
 verify. Wherefore they pray judgment
 &c. and a return of the property.
 W. J. Johnson
 Deft to Plt.

Endorsed

Filed as amended on margin
 May 19th 1863.

W. A. Rowley clerk
 By T. R. Bird, deputy

And afterwards to wit on the 25th day
 of May A D 1863 as yet of the May Term
 A D 1863 of said Circuit Court in the

Wherefore he prays judgment &c.

Lumings & Wigley
attorneys for Piffs.

Endorsed

Filed May 25th 1863

W. H. Rowley clerk

By O. A. Bird deputy

And afterwards comes on the 25th day of May A. D. 1863 as yet of the May Term A. D. 1863 of said Circuit Court in the Record of the proceedings thereof in the above entitled cause, appears the following entry to-wit:

John H. Bullardick	}	Replains
vs		
Hezekiah H. Gear & Co		
A. Hamilton Gear.	}	The Plaintiff

by his attorneys at this day comes and files replication to the defendants fourth plea, and the defendants by their attorney file their demurrer to the plaintiffs fourth and fifth replication to the defendants fifth plea herein.

The replications referred to in the last above recited entry are in the words

and figures following to-wit:

25- State of Illinois } In Circuit Court
of Daviess County } May Term 1863

John H. Bullerdiens }
vs } Replevin
Hezekiah H. Gear. }

And the said Plaintiff
by Origley and Cummings his attorneys
comes and replies to the fourth plea
of said Defendants and saith "preclude
now." because he says it is not true
as in said plea is erroneously supposed
and alleged that the certain Horse
Perry Pray in the said Plea and
Declaration mentioned at the time
when &c. was the property of the
said Defendants, and avers that
the said Plaintiff was entitled to the
possession thereof as in said Decla-
ration alleged. And of this he puts
himself upon the Country &c

And the said Defendants doth the like
On J. Johnson depts atty.

And the said Plaintiff by his Attorneys
aforesaid for Replication to the fifth
plea of said Defendants in this behalf
pleades saith "Preclude Now" because
he saith it is not true as in said Plea
erroneously supposed and alleged
that said Defendants were the owners of

a ferry duly established by law and running over and upon the Mississippi River from a landing known as Gauss Ferry Landing in Jo Daviess County Illinois by virtue of a Charter &c and had kept up said ferry in pursuance to law. And of this he puts himself upon the Country, &c.

And the said Defendants do the like &c.
(M. J. Johnson depts atty.)

2 And for further Replication to said fifth plea the said Plaintiff by his said Attorneys by special leave of the Court for that purpose first had and obtained said "Precludi Non" because he saith that it is not true as in said plea erroneously supposed and alleged, that by virtue of said Charter and the Statute in such case made and provided that the said Defendants had the exclusive right to have and maintain a ferry at the point called Gauss Ferry Landing and for three miles up and down the Mississippi River, including said Ferry landing, and of this he puts himself upon the Country, &c. And the said Defendants do the like &c.
(W. J. Johnson depts atty)

3 And for a further Replication to said fifth Plea, the said Plaintiff by his said Attorneys by special leave of the Court for that purpose first had and

sustained. saith "Precludi Non" because he
 saith It is not true that said Plaintiff
 on the tenth day of August 1862. and
 on divers other ~~ten~~ days before that time
 ran and maintained, used said Horse
 Ferry Boat in conveying persons and
 property over and across the Mississippi
 River without any legal authority there-
 for as is in said plea erroneously sup-
 posed and alleged and on the contrary
 said Plaintiff avers and maintains that on
 the tenth day of August A.D. 1862 and on
 divers other days before that time specified
 in said plea, said Plaintiff running a
 ferry from the landing known as Whitesides
 ferry Landing to where the Public road from
 Galena Illinois to the Mississippi River
 strikes the said river at what is called
 Harris' Slough, said Harris' Slough being
 a part of said Mississippi River, and by
 virtue of a License granted him by the Board
 of Supervisors of Jackson County Iowa
 on the 4th day of June A.D. 1862. and that
 by virtue of said license the said Plaintiff
 ran said Horse Ferry Boat from
 Whitesides Landing to Jo Davies County
 Illinois, sometimes landing in the
 public road, where Sears ferry boat
 usually lands, but usually landing at
 his own private landing further up the
 Slough, rented by him from Mrs Sophia
 Farrar, as he lawfully might do, and

Defendant Sustained

Defendant Sustained

said Plaintiff denies that he did any act to injure said Defendants in the use of their franchise, or did any act contrary to law in using his said franchise under the laws of the State of Iowa. ^{and this he is ready to prove.} Wherefore he prays judgment &c.

4. And for a further replication in this behalf to the said 5th amended plea of said Defendant, the said Plaintiff by his said attorneys by special leave of the court for that purpose first had and obtained saith "Preludi Pro" because he saith that long before the tenth day of August 1862. to wit on the 28th day of July A.D. 1862. said Horse ferry boat in said plea mentioned became and was the absolute property of Gordon & Willis & John A. Gurichter. And that the same was their property when the same was wrongfully seized by said defendants and leased by the said Gordon and Willis and John A. Gurichter to said Plaintiff and that said Plaintiff was entitled to the possession of said Horse Ferry Boat, as issue of the said Gordon & Willis and John A. Gurichter, as stated in said Plaintiffs Declaration. And said Plaintiff denies that at any time after said Horse Ferry Boat became the property of said Gordon & Willis and John A. Gurichter, there was any act

* or at any point within the three miles claimed by said Defendants as their exclusive right.

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of interference with the ferry franchise of said Defendants, and denies that said Ferry Boat was after it became the property of said Willis & Gordon & Burrichter engaged in receiving at Gears Ferry Landing* & conveying passengers and freight over and across the Mississippi River from said point or the three miles claimed by Defts on the Illinois shore to Iowa, as is in said Plea erroneously supposed, and this he is ready to verify. Wherefore he prays judgment &c.

Wiegley & Cummings
Attys for Plff.

Endorsed

Filed May 26th 1863.

W. A. Bowley Clerk
By T. R. Bird Deputy.

The demurres referred to in the last above recited entry is in the words and figures following to-wit:

State of Illinois vs In Circuit Court of
Jo Daviess County said Jo Daviess County
May Term 1863.

John A. Bullardick
vs

Hegewiah H. Gear. & and the said
defendant by W. A.

Johnson: Saith that the third replication

of the said Plaintiff to the said fifth plea of said defendant and the matter therein contained, in manner and form as the same are above pleaded and set forth are not sufficient in law for the said plaintiff to have or maintain his aforesaid action &c. and that he is not bound to answer the same and &c. and this he is ready to verify, wherefore he prays judgment &c.

And for special causes of demurrer to said 3^d replication to said 5th plea of said defendant. sets forth the following

- 1st Said replication presents an immaterial issue

- 2^d Said replication is not responsive to said 5th plea

- 3^d The license from Board Supervisors of Jackson County Iowa, is no defence

W. V. Johnson
depts atty.

And the said defendant saith that the said fourth replication of the said plaintiff to the said fifth plea of the said defendant and the matters therein contained, in manner and form as the same are above set forth are not sufficient in law. and the said defendant is not bound to answer the same &c. and this he is ready to verify, wherefore he prays judgment &c.

And for special causes of demurrer to said 4th replication of said plaintiff states the following.

1st The said replication is not responsive to said 5th plea.

2nd The said replication tenders an immaterial issue.

3^d When or at what time the said boat became the alleged property of Willis Gordon & Burrichter is immaterial.

W. J. Johnson
Depts atty

Endorsed

Filed May 26th 1863.

W. R. Bowley clk

By J. R. Bird deputy.

And afterwards tried on the 27th day of May A. D. 1863. as yet of the May Term 1863 of said Circuit Court. in the record of the proceedings thereof in the above entitled cause appears the following entry to wit:

John A. Bullerick 3
mes 3

Hezekiah H. Gear 3

Ed. A. Hamilton Gear 3

Replevin

From of this day

Came on to be heard

the demurrer heretofore filed by the defendants to the plaintiffs 4th & 5th

replication to the defendants fifth plea. which demurrer after argument by counsel is sustained by the Court, and upon motion of the plaintiff, leave is granted him to amend his said replication which is accordingly done.

The amended replication filed by the plaintiff & referred to in the last above recited entry is in words and figures following to-wit:

And for an amended replication to said defendants fifth plea. in place of the third replication to said plea, which ~~was~~ was held defective on demurrer. by leave of the Court. for that purpose first had and obtained, said Plaintiff by Wigley Cummings his attorney aforesaid. saith precludes now, because he saith It is not true that said Plaintiff on the tenth day of August 1862. and on divers other days before that time, run and maintained and used said Horse ferry Boat. in conveying persons and property over and across the Mississippi River without any legal authority therefor. as is in said plea erroneously supposed and alleged, but on the contrary said plaintiff avers and maintains that he was at the time when &c. to-wit the tenth day of August. and on divers other

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(3rd Replication as amended)

days before that time as specified in said plea. the owner of a Ferry franchise under the laws of the State of Iowa and was authorized by License issued by the proper authorities in the State of Iowa. to wit the Board of Supervisors of Jackson County, Iowa. to operate and run a ferry from Whitesides Landing in Jackson County Iowa. across the Mississippi River to the State of Illinois. and to carry passengers and freight and cattle and teams across from said Whitesides Ferry Landing in Jackson County Iowa to the Illinois shore in Jo Daviess County State of Illinois. and was by law entitled to land said passengers and freight, cattle and teams on the Illinois shore in Jo Daviess County Illinois, in and upon the public road in said County. leading from Galeus Illinois to the Mississippi River, at or near Geas Ferry Landing, in such manner as to do no injury to said landing and not to interfere with the use of said Landing by said Geas Ferry. And said Plaintiff admits that he did land as he lawfully might, at or near said Geas ferry landing, in the public road aforesaid for the purpose of landing passengers from Iowa. and also for the purpose of landing cattle, teams and freight

brought from Iowa, over and across the Mississippi River along said ferry but for no other purpose whatever, and said plaintiff further admits that while in the lawful prosecution of his business in running and operating said ferry, he may at different times have carried his neighbors across said Mississippi River without fee or reward but without intention to injure said Sears ferry, and said plaintiff utterly denies that he did receive and carry over passengers, cattle, teams or freight from Sears Ferry Landing or within the three miles claimed by him as his exclusive right to the Iowa shore, except as above admitted, or did any other act contrary to law or calculated to injure said defendant or interfere with his ferry franchise, claimed in said plea, and this he is ready to verify. Wherefore he prays judgment &c.

And afterwards testified on the 28th day of May A.D. 1863 as yet of the May term A.D. 1863 of said Circuit Court in the Record of the proceedings thereof in the above entitled cause appears the following entry testified:

John H Bullardick
vs
Hazeniah H Gear et al.

Replevin

35-

Now at this day comes
the defendants by their attorney and filed
rejoinders to the plaintiffs amended third
replication to the defendants fifth plea
herein.

The rejoinders referred to in the last
above recited entry are in words and
figures following to-wit:

Bullardick In the Circuit Court.
vs
Gear May Term 1862

1 And the said defendant for
rejoinder to plaintiffs third replication
to defendants fifth plea, says the said
plaintiff on the tenth day of August 1862
and on divers days before that time did
run and maintain and use said Horse
Perry Boat; in conveying persons and
property over and across said river
within the distance in which this def-
endant had the exclusive right, without
any legal authority as in said plea
mentioned, And of this he puts himself
upon the Country &c.

demurrer sustained, and
defts stand the rejoinders

2. And for a second rejoinder to said
third replication aforesaid by leave of the

Court, this defendant says. That if said Plaintiff was authorized by the Board of Supervisors of Jackson County Iowa to operate and run a ferry over and across the Mississippi River within the jurisdiction of the State of Iowa, said Plaintiff was not authorized to maintain and use said Horse Ferry Boat. in conveying persons and property over and across said river for hire and landing the same at Gears Ferry Landing aforesaid. And this defendant avels said Plaintiff did run and maintain said boat and convey persons and property over and across said river for hire, and landed the same at Gears Ferry Landing in Jo Davies County Illinois, within the distance in which this defendant had the exclusive right, as in said plea mentioned and of this he puts himself upon the Country &c.

And for rejoinder to plaintiff fourth replication to defendants fifth plea This defendant saith, that if said Boat was the property of said Gordon & Willis and Burrichter, as in said replication mentioned, at the time when &c. this defendant avels said ferry boat ^{was} at the time when ~~it~~ used and engaged in conveying persons & property

(verdict sustained, and)
(amended below)

over and across said river for hire
and landing at a point in Jo Davies
County within which this defendant
had the exclusive right, by means
whereof said Boat became forfeited
and was seized and thereby became
the property of the said deft, as in
said Plea mentioned, And of this
he puts himself upon the Country &c.
M. J. Johnson
deft atty

3rd

And for amended rejoinder to plain-
tiffs fourth replication to defendants
fifth plea. The defendant says it
may be true as stated in said repli-
cation that said Gordon Willis and
Burrichter became the owners of said
Boat and leased the same as therein
mentioned, but these defendants aver
at the time when &c. the said plaintiff
used said boat in conveying ~~persons~~
~~persons~~ persons and property over and
across the Mississippi River for hire
and landing the same at a point within
which the said defendants had the
exclusive right, by means whereof the
said boat became and was forfeited
and was seized, and thereby became
the property of these defendants as in
said plea mentioned And of this they put
themselves upon the Country
M. J. Johnson
deft atty.

Endorsed

Filed May 28th 1863.

W. A. Rowley clerk

By T. C. Bird deputy

And afterwards to wit on the 29th day of May A D 1863 as yet of the May term A D 1863 of said Circuit Court in the record of the proceedings thereof in the above entitled cause appears the following entry to wit:

John H. Bullardick }
vs } Replication
Hegemiah H. Gear And }
& Hamilton Gear. } Now at this day
comes the Plaintiff
by his attorneys and files demurrer to
the defendants rejoinder to the plaintiffs
3^d & 4th Replications to the defendants
fifth plea in this cause.

The demurrer referred to in the
last above recited entry is in the
words and figures following to wit:

Bullardick } In the Circuit Court
vs } Said County May Term
Gear et al } A D 1863

And the said Plaintiff

by Hugley & Cummings his attorneys, comes
 and demurs to the Rejoinder of said
 defendants to said Plaintiff's third &
 fourth Replications to said Defendants
 fifth plea. and to each of them
 separately and saith that the first
 and second rejoinders to said Plaintiff
 third Replication to fifth plea
 and the rejoinder to plaintiff's 4th
 replication to said fifth plea
 and the matters and things in
 said rejoinders and each of them
 contained, and each of them separ-
 ately, in manner and form as the
 same are therein alleged, and set
 forth are not sufficient in law
 to defeat said Plaintiff's recovery in
 said action, wherefore, by reason of
 the insufficiency of said rejoinders
 and of each of them separately, said
 Plaintiff prays judgment &c.

Hugley & Cummings
 Attys for the Plff.

Endorsed

Filed May 29th 1863.

W. R. Rowley clk

By O. R. Bird deputy.

And afterwards tried on the second
 day of June. AD 1863 as yet of the
 May Term AD 1863 of said Circuit.

Court. in the records of the proceedings thereof in the above entitled cause appears the following entry to-wit:

John H. Bullard vs Benjamin H. Garretts
3 Replevin
3

Now at this day, came on to be heard the demurrer heretofore filed to the defendants rejoinders to the plaintiffs 3^d & 4th Replications to the defendants fifth plea, which demurrer after argument by counsel is sustained as to said 1st and 3^d rejoinder and overruled as to 2^d rejoinder, to which sustaining of demurrer the defendants by their attorney, then and there except and upon motion, leave is granted the defendant to amend his said demurrer to said second rejoinder.

And afterwards to-wit on the 4th day of June A.D. 1863. as yet of the May Term A.D. 1863 of said Circuit Court in the records of the proceedings therein the above entitled cause, appears the following entry to-wit:

11

And afterwards to wit on the 5th day of June A.D. 1863 as yet of the May Term A.D. 1863 of said Circuit Court. in the record of the proceedings thereof in the above entitled cause appears the following entry to wit:

John H. Paulding

vs

Nehemiah H. Geary & al.

Replevin

Now at this day
 came the defendants by their attorney
 and move the court for a new trial
 in this cause and file their motions
 and reasons therefor, which motion
 after argument by counsel is
 sustained by the court, and a
 new trial granted conditioned
 that the defendants pay the costs
 of this term of court within forty days
 from this date. To which granting of new
 trial the plaintiff by his attorney then
 and there excepts.

The affidavit and motion referred to
 in the last above recited entry is in the
 words and figures following to-wit:

M^r J. Johnson, of lawful age, after
 being duly sworn made oath and states
 That some three weeks before the com-
 mencement of this court he made an
 arrangement to try an important suit
 at Darlington N.C. on the 3^d day of
 June 1863. That on the evening of the
 2^d June inst, on the court overruling
 the rejoinder of the defendants, to one
 of Plaintiff's replications, leave was
 granted to amend the rejoinder, at

which time this affiant stated to the court, he was compelled to be absent on the next day at Darlington, and desired said cause should be continued until his return, when he would make up the issues and try said cause; that the issues are not yet made up, and said cause was not ready for trial.

This affiant further states, to enable him to return and try this cause he agreed and continued his cause in Prisoner's one week, and would have returned in time to have been present at the time the cause was called up and disposed of by the court, but he was delayed by the Rail Road not making the connection, and being delayed, that he did not arrive until about four o'clock, about one hour as he is informed, after the court disposed of said cause. This affiant further states, this is one of a series of cases connected with the Gear ferry privilege and that two other of said cases in which A Perkins appears as plaintiff, have been as summarily disposed of as the present, and that another of said causes was tried on a default, the same being taken against said Gear while his attorney

was confined as a political prisoner
in Fort Delaware. That the rights
of the defendants have been disregarded.

This affiant prays said Sears
affidavit filed in this case may be
made a part of this application, to
vacate the finding and grant a
new trial in said cause.

W. J. Johnson

Sworn & Subscribed

before me this 5th June 1863.

W. A. Pawley Clerk

By T. C. Dind deputy

State of Illinois, In the Circuit Court
of Davis County, of said Davis
County at the May
Term, 1863.

John A. Bullardick

vs

Hezekiah H. Gear

& Hamilton Gear

Hezekiah H. Gear, one
of the defendants in the above entitled
suit being first duly sworn, deposes
and says, that they cannot safely pro-
ceed to the trial of said cause on account
of the absence of W. J. Johnson their attorney.
That said W. J. Johnson is the only
attorney employed by them in said
case, and the only attorney fully con-
versant with the matters of their

defence, and that said Johnson was
 compelled to leave this County on the
 evening of June 2^d 1863 to attend to
 necessary business requiring his pres-
 ence at Darlington in the State of
 Wisconsin. That this affiant and
 the said J. Hamilton Gear were
 notified for the first time on the
 evening of the 2^d day of June 1863. at
 about 5 o'clock P.M. of said day,
 that the said Johnson was compelled
 to go away and be absent during
 Wednesday June 3^d but would return
 on Thursday June 4th. This affiant fur-
 ther states that the defendants have
 been ready for trial and have had
 their witnesses in court from the
 first day of the present term of Court
 up to the evening of the 2^d day of June
 1863. That this affiant has been in
 attendance at Court each day and
 has heard his counsel repeatedly
 ask and insist that the pleadings in
 said case should be made up by the
 plaintiffs Counsel, but the same
 was delayed from day to day on
 various demurrers &c. until the evening
 of said 2^d day of June. That these
 defendants have shown diligence on
 their part to have said case for trial
 and if the said plaintiff had been
 as diligent, the said case might have
 been tried before the present term.

70
This affiant states, that it is his belief that, it is his belief that no injury would be suffered by said plaintiff if said cause was continued, as the property in dispute is now in the possession of said plaintiff.

Upon these facts this affiant asks that the case may be continued until tomorrow, or if necessary until the next term of this Court. That this prayer of Continuance is made in order that justice may be done in the premises.

H. H. Gear.

Subscribed & Sworn to
before me June 3rd 1863

W. A. Bowley Clerk
By J. R. Bird Deputy

Endorsed

Filed June 5th 1863.

W. A. Bowley Clerk
By J. R. Bird Deputy

And afterwards to-wit on the 19th day of August A.D. 1863. as yet of the August Term A.D. 1863 of said Circuit Court in the record of the proceedings thereof in the above entitled cause appears the following entry to-wit:

John H. Bullard

vs

Replevin

Hazeniah H. Gear

At this day
came the parties by

their attorneys and
upon issue joined thereupon came
a jury of good and lawful men to-wit
John Knahl, Perry A. Guild, Robert
McCabe, William Virtue, James Ransin
Rowell Hildreth, Thomas L. Galpin
Michael Clifford, John H. Dobler, John
E. Hail, Francis Ford and Charles
Schrader who were duly elected, tried
and sworn, and after hearing a part
of the evidence, the further hearing of this
cause is postponed until tomorrow
morning.

And afterwards to-wit on the 20th day of
August A D 1863 as yet of the August
Term A D 1863 of said Circuit Court in the
record of the proceedings thereof in the
above entitled cause appears the follow-
ing entry to-wit:

John H. Bullard

vs

Replevin.

Hazeniah H. Gear

At this
day came again
the jury heretofore impaneled in this
cause and after hearing the remainder
of the evidence and the arguments of

counsel they retire to consider of their verdict, and after due deliberation they return into Court with the following verdict to wit: That the jury find the issues for the plaintiff. And the defendants by their attorney move the Court for a new trial.

And afterwards to wit on the 21st day of August A D 1863. as yet of the August Term A D 1863 of said Circuit Court in the Record of the proceedings thereof in the above entitled cause, appears the following entry to wit:

John H Bullardick 2
vs 2 Replewin.
Nehemiah H Gearstab 3

Now at this day come the defendants by their attorney and file their motion and reasons for a new trial in this cause.

The motion for a new trial referred to in the last above recited entry is in the words and figures following to wit:

Bullardick 2
vs 2 Replewin
Gearstab 3 In the Cir Court of Judawick
County Augt Term. 1863

13
And now at this day comes the defendants, and moves the court for a new trial in this cause for the following reasons.

49 1st Because the verdict is contrary to the law and evidence in said cause

2^d Because the court gave improper instructions to the jury and refused proper instructions in said cause

3. Because the court admitted improper evidence in said cause and refused proper evidence.

4th Because the verdict should have been rendered for the defendants under the law and evidence in said cause.

W. J. Johnson
depts atty.

Endorsed

Filed August 21st 1863.

W. J. Johnson clerk

By J. A. Bird deputy.

And afterwards to wit on the third day of September A.D. 1863. as yet of the August Term A.D. 1863 of said Circuit Court in the records of the proceedings thereof in the above entitled cause appears the following entry to wit:

John H. Bullardico

vs

Hezekiah H. Gear

A. Hamilton Gear.

Replevin

Now at this day
 came on to be heard
 the motion heretofore filed by the def-
 endants for a new trial in this cause
 which motion after argument by counsel
 is overruled by the Court, to which over-
 ruling of motion the defendants by their
 attorney then and there except. And it
 is thereupon considered by the Court that
 the Plaintiff have and recover of the
 possession of the property in controversy
 in this suit, and that he also have
 and recover of the said defendants
 his costs by him in this behalf expended
 and that he have execution therefor
 and the defendants pray an appeal to the
 Supreme Court of this State, which is
 granted, conditioned that they enter
 into and file with the clerk of this
 Court, within twenty days from this
 date, a good and sufficient appeal
 Bond with Madison G. Johnson or
 Frederick Stahl as security, in the penal
 sum of Two Hundred Dollars. And
 the said defendants at this day come,
 and file their bill of exceptions herein
 which is certified by the Court.

The bill of exceptions referred to in the last above recited entry is in the words and figures following to-wit:

John H. Bullardick
vs
H. H. Yeager et al
Replevin
In the Cir Court of
Jackson County
Augt Term 1863

Be it remembered, that on this nineteenth day of Aug^r AD 1863 before the Honl. R.B. Sheldon and a jury, the above entitled cause came on to be heard in said Circuit Court. The plaintiff to maintain the issue on his part introduced H. Yeager, who was sworn and examined, and testified as follows.

I reside at Hamilton, on the opposite bank of the Mississippi river in Jackson County Corra. I know the Horse Ferry Boat in dispute. It was build by Mr Armbruster, in this City in the Spring of 1862. for Bullardick, to run between my place and Gears Ferry landing on this side of the River as a ferry boat. Gordon & Willis furnished One Hundred dollars and Burrichter One Hundred dollars to Bullardick to build the Boat. ~~The~~

Butlerdick furnished the balance (Two Hundred Dollars) of the money to build the boat. The Boat was completed and commenced running as a ferry the last of April. or about the first of May 1862. between my place and Gear ferry landing. on this side of the River Butlerdick owned the boat and run it by himself and hands, as a ferry between the points above named until the latter part of July. when in consequence of Perkins. (who run the Gear ferry) bringing a number of suits before justices against him for the penalty under the Statute he laid up the boat at my place a few days. On the 28th of July 1862 as the agent of Gordon & Willis and Burrichter, he paid Butlerdick about Two Hundred Dollars for them, for the boat and horses &c. and he executed to them the bill of sale. hereafter set out.

That the consideration of the Bill of sale, was the amount they had advanced in building the boat and the money paid by him.

The purchasers then made the lease hereafter set out. and that Butlerdick again commenced running the boat on the first of August. in a few days after the Boat was seized by Gear. and the same day

53.

Bullerdict got the boat back, and continued to run the boat at the same place until about the middle of Augt. when Gear again seized and took the boat, and brought it to his landing in this city, and afterwards Bullerdict brought this Replevin suit and got the Boat. Before the Replevin suit Bullerdict demanded of Gear a return of the Boat, which he refused to give up, when it was Replevied.

Gear had the Boat in possession about a week before it was replevied. After the lease was made, Gordon & Willis & Burrichter gave instructions that the boat should not carry passengers and property from this side for hire. - have seen probably one fourth of the persons that cross do, that landed at my place, and did not see any person pay ferriage from the Illinois shore to Iowa. after he leased the boat and up to the seizure by Gear, I heard Bullerdict give orders to his hands not to charge ferriage from Illinois to Iowa.

Our cross Examination witness states that Bullerdict run the boat as a ferry and carried all that came along from both sides of the river when the other boat was not present, and charged the usual fare both ways up to the time of the suits.

before Magistrates, 21st July, 1862. The usual fare charged for a two Horse Team in the first place, was seventy five cent. both way. afterward, in June, or the early part of July, Bullard charged for ferriage, fifty cents from the Iowa side, which he was allowed by his Charter.

After the lease was made he only charged one way, from the Iowa shore to Illinois. He carried all that came, both ways, when the other boat was not present.

He carried from the Ills. shore and did not charge for it, but charged fifty cents for bringing them back. It was not present on the boat and do not know whether Bullard did in fact receive ferriage or not from the Illinois shore. All I intend to be understood is, that I do not know of his receiving ferriage after the lease, from the Illinois shore to Iowa. It is true lives at the landing on the other side of the River, and knows the boat ran regularly when there was any thing to do. Some days the boat may not cross more than once, other days, would cross three, four and six times a day, dependant on the business.

Plaintiff then proved the execution of the lease and reads the same to the jury as evidence in the words and figures following to wit:

State of Iowa. If
Jackson County If This agreement
entered into between
Gordon Willis and John A. Purrichter
parties of the first part and John A.
Purrichter, party of the second part
witnesseth, that the said parties of the
first part for and in consideration
of the sum of ten dollars per month
to be paid on the last day of each and
every month, have this day let to him
to the said party of the second part
a certain boat and horses. This
day purchased of the said party of
the second part, and more fully
described in a bill of sale of this
date: and the said party of the second
part agrees to pay to the Henry Gager
the agent of the parties of the first part
said sum of ten dollars per month.
the first month to commence on
the first day of August, and the rent
to be paid on the last day of said
month, and the said party of the
second part agrees to take good care
of said boat and horses, and to

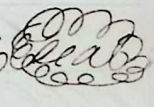
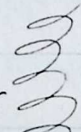
find and keep said horses at his own charges during the winter months. it being understood that said party of the second part is to pay him for said boat and horses only when the said boat can be run. Witness our hands this 28th day of July 1862.

Gordon & Willis
John H. Bullardick. J. A. Burrichter

The Plaintiff then proved the execution of the bill of sale. and reads the same to the jury as evidence. in the words and figures following to-wit:

I, John H. Bullardick of the County and State aforesaid for and in consideration of the sum of Four Hundred Dollars, to me in hand paid. the receipt whereof is hereby acknowledged, have this day sold and delivered to Gordon & Willis and John A. Burrichter, the following described personal property to-wit:
One Ferry boat. propelled by horse power. being the same boat built for me by Armbruster at Galena Illinois. and now lying at the

57
 landing on the Mississippi River in Iowa
 known as the Whitesides ferry landing.
 Also two horses. lately used by me
 in propelling said boat. The true
 consideration being One Hundred
 Dollars advanced me by Gordon
 & Willis and One Hundred Dollars
 advanced me by John A. Partridge in
 building said boat. And Two Hundred
 Dollars in cash paid. at the execution
 of these presents. To Have and To
 Hold the same to them, their assigns
 and personal representatives forever.
 Witness my hand and seal
 this 28th day of July A.D. 1862.

John H. Dullerdict 
 attest:
 Richard Evans. 
 Peter Wisgerber 

The Plaintiff then offered in evidence
 the Records and proceedings and license
 from the Board of Supervisors of
 Jackson County, Iowa. to the reading
 of which as evidence, the defendant
 objected. The Court overruled
 the objections and the Plaintiff read the
 same as evidence, and the defendant
 excepted to such ruling and ad-
 mission as evidence.

The records and license

referred to above are in words and figures following to wit:

John H Bullerdick ^{vs} In the matter of
 Jackson County ³ application for a
 ferry license To
 run a horse ~~Boat~~
 Boat across the Mississippi from a
 point in Tete des Morts Township
 Jackson County. known as Whitesides
 Landing.

Now at this June Term of
 the Board of Supervisors. John H.
 Bullerdick. files his petition, praying
 the board to grant him a ferry
 license, to run a ferry boat from said
 point across said river. And it
 appearing to the Board. that the
 notices of said application had
 been given according to law. and
 that the remonstrance of W. H. Simpson
 et al had been filed against said
 grant. and it appearing to the Board
 that A Perkins. had also at this term
 filed a petition for a grant of ferry license
 across the said Mississippi River
 from a point known as Gas Landing
 across said River. and it appearing
 that the said Perkins had also given
 notice of his intended application, and
 that a remonstrance of Richard Evans
 et al had been filed against said

grant. And by the consent of the said Bullardick and Perkins, the two applications were heard together, of Keles appearing for said Bullardick and P. Dangs for said Perkins, and the said cause having been submitted to the Board upon evidence papers, remonstrance and Exhibits and after argument of counsel It is ordered and adjudged, that the said application of the said Perkins be refused, and that the application of the said Bullardick is hereby granted: ^{and license is granted} to the said Bullardicks to run a ferry Boat across said river from the said point at said Whitesides Landing, under the limitations and restrictions herein specified for the term of five years from the 4th day of June A.D. 1862.

It is further ordered that the said Bullardicks shall have and enjoy the exclusive privilege for a distance not exceeding one mile either direction from said Whitesides Ferry Landing that is to say, one mile up said river and one mile down the same.

It is further ordered that the rates of ferriage the said Bullardicks may charge for crossing persons and property, shall be no larger than as herein specified, that is to

60
say, he may charge for crossing. towing:

Two Horses & One Wagon. Over & back	0.75-
For single crossing one team, one way	.50
Single passage Over and back	.20
Single passenger One way	.15-
4 Horses & Wagons, over & back	1.00
4 " " " single crossing	.75-
1 Horse & Buggy. Over & back	.50
Horse & Buggy. One Way.	.30
Hogs & Sheep, for twenty or under	5-
for all over twenty	2 1/2

It is further ordered that said Bullardicks shall attend and run said ferry boat between sunrise and sun down each day in crossing & recrossing the Travelling public.

State of Iowa
Jackson County S. D. F. Scarborough
Clerk of the Board of Supervisors, do hereby certify that the foregoing is a true copy of the Record and license granted to the said Bullardicks as the same is of Record in my office.

91
In Testimony whereof I have hereunto and affixed the seal of the Supervisors Court. at Audrew this 20th day of June
A.D. 1862.

Seal

F Scarborough
Clerk

61. State of Iowa
Jackson County P.D. P.D. Bradley Judge
in and for said County and Ex
Officio, the Presiding Magistrate of
the Supervisors Court. in and for
said County, do hereby certify that,
F. Scarborough, whose name is
signed to the foregoing certificate,
attesting the same as a true copy
of the records of said Court, the same
being a Court of Record was at the
time of said attestation, and is now
the Clerk of said Supervisors Court,
having custody of the seal thereof, that
said attestation is in due form of law,
that the same is genuine, and that
full faith and credit should be
given thereto.

Witness my hand with the
seal of said Court, hereunto
affixed at Andrew in said
County this 24th day of June
A.D. 1862

Seal

P.D. Bradley
County Judge.

The license granted Bullerick and
referred to as having been seen in
evidence is in the words and
figures following to-wit:

State of Iowa
Jackson County.
Board of Supervisors Office of said
County.

To all whom it may concern - *Meeting.*
Whereas, John H. Bullerdiex of
said County and State, having filed his
application for a Ferry License to run a two
horse Ferry Boat, from a point in said
Jackson County in Pe-to-des-Morts Township
known as Whitesides landing across the
Mississippi River to the Illinois shore
and having given the notices and filed
the bonds, prescribed by the Statute
and in all respects complied with the
law for granting Ferry Licenses: License
is hereby granted to you the said John
H. Bullerdiex to run said Ferry Boat,
to wit: a two horse ferry boat across the
Mississippi river from said Whitesides
Landing to the Illinois shore, and with
the exclusive privilege of landing at said
point, and a distance from said land-
ing, not exceeding one mile in either di-
rection, that is, one mile up and one
mile down said river from Whitesides
Landing. And this license is to continue
and be in force for the term of five years
from the fourth day of June, A.D. 1862.

The following are the rates of ferriage
and toll, which you are allowed to
charge viz:

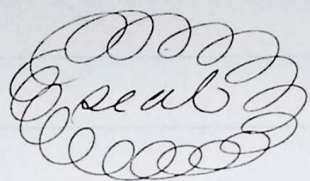
For 2 Horses and one Wagon over & back	75 cts
" 1 Team one way	50 "
" Single passenger over and back	20 "
" do one way	15 "
" 1 Team & 4 Horses & Wagon over & back	1.00 "
" 1 " do one way	75 "
" 1 Horse & Puggy over & back	50 "
" 1 do one way	30 "
" Hogs & Sheep 25 & under	5 "
" do all over	2 1/2 "

It shall be your duty to run said Ferry boat from Sunrise to Sunset of each day in crossing and recrossing for the convenience of the travelling, and to transport the Public Expresses of the United States and of this State, and also the United States Mail, at any time during the day or night, except when you are exempted by the laws of the United States.

You will keep a list of the rates of Toll, as herein before specified, posted up in your boat, or on the door of your ferry house, or in some other conspicuous place near the ferry. And if you should after ten days notice fail substantially to perform your duties according to law, and the terms hereof, then this License is subject to be revoked by the said Board of Supervisors of said County.

In Testimony whereof J. J. F.
Scarborough, Clerk of said

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Jackson County. and of the Board
of Supervisors of said County have
hereunto set my hand at Andrew
in said County. this 4th day of June
A.D. 1862. and have affixed the
seal of said Court.



F. Scarborough.
Clerk
of Board of Supervisors

The defendants to sustain the
issues on their part, introduced and
reads to the jury, under a general objection
by Plff. (being the same objections hereto-
fore presented in another case.)

The act of Incorporation.

In words and figures following to wit.

An Act to authorize H. H. Gear to keep
a ferry across the Mississippi river.
In force Jan. 18. 1845.

Sec 1. Be it enacted by the people of
the State of Illinois represented in
general Assembly. That Hesperiah H.
Gear, of the County of St. Davie, is here-
by authorized, and licensed to keep
a ferry across the Mississippi river
at and from a point in said river
in the County of St. Davie, and oppo-
site the mouth of "Tete de Mort," in
the territory of Iowa; And the said

65-
 Gear, his heirs and assigns, shall have the right of having, maintaining, and using, a ferry across the said river, at the place before mentioned, and to have and receive all advantages and emoluments arising from the use of said ferry, for and during the term of ten years: Provided, however, That the County Commissioners Court, of the County of St Davids shall have the right to assess an annual tax upon the said ferry equal to that levied upon other ferries severally situated in said County. Approved. January 18. 1840.

Our Act to amend an act entitled "an act to authorize H. H. Gear to keep a ferry across the Mississippi river." approved January 18. 1840. In force April 13. 1849.

Section 1. Be it enacted by the people of the State of Illinois, represented in general assembly, That the term of the ferry franchise granted to the said H. H. Gear, under and by virtue of the above recited act, to which this is an amendment, be, and the same is hereby, extended to the said H. H. Gear, his heirs and assigns for and during the term of thirty years subject to the same restrictions contained in the act to which this is an amendment.

66
Approved February 8. 1849.

The Defendants then read as evidence to the Jury a Deed from H H Gear to A H Gear. as follows. to-wit:

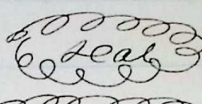
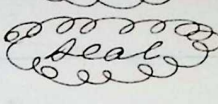
This Indenture. made and entered into. between Hezekiah H Gear of Adams County, State of Illinois of the first part. And Alexander H Gear of same County. and State of the second part: Whereas. the said party of the first. holds by grant from the State of Illinois and Iowa. a certain franchise. or charter for a ferry across the Mississippi River. as by reference to said charters. will more fully appear: And whereas under and in pursuance of said charter the said party of the first part. has established a ferry. and provided the means for crossing and ferrying persons and property over said River. which are now in use and operation. for said purpose.

Now therefore this indenture witnesseth that the party of the first part. for and in consideration of the sum of one hundred dollars to him in hand paid. by the party of the second part. at and before executing and delivery hereof. the receipt

67 whereof he does hereby acknow-
ledge has granted, bargained, sold,
released, and confirmed. And by these
presents doth grant bargain, sell,
release, and confirm unto the said
party of the second part, his heirs
and assigns, and undivided half
part of the right title, interest
and estate of the said party of the
first part, in and to said fran-
chise or charter, and the rights,
privileges and appurtenances to
the same belonging and appertain-
ing, including the ferry boat now
running on said ferry, and three
horses now in use there, and harness,
setting poles, and all the appur-
tenances, and means now in use
at said ferry, and appertaining
to the same. And it is understood
covenanted and agreed, that the
expenses of running, or keeping said
ferry in operation shall be borne
and the profit and loss shared,
and borne equally by said parties
their heirs or assigns.

In Witnes whereof the said Hez-
ekiah Ho Gear, us to the grant bar-
gain and sale, and both parties

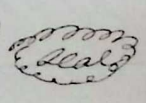
as to the terms upon which said
ferry shall be kept in operation.
have herunto set their hands and
seals, this 25th day of September A.D.
1851.

H H Gear 
A H Gear 

Sealed & signed in
presence of
J^{es} C Postuick

State of Illinois
In Davis County Before me the un-
derigned Justice of the Peace in and
for said County personally appeared
this day Hezekiah H Gear and
Alexander H Gear both personally
known to me to be the identical persons
described in and who executed the
annexed and foregoing instrument
of writing and severally acknowledged
to me that they had executed the same
freely and voluntarily for the uses and
purposes therein mentioned.

Witness my hand and seal this 25th day
of September A.D. 1851.

J^{es} C Postuick J.P. 

Endorsed

Filed for record
July 23rd 1862
at 6 o'clock P.M.

J^{es} R Rowley Clerk
by F B Newhall depy

Endorsed

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State of Illinois J. J. Wm R Rouley Clerk
 of Davis County, J. J. of the Circuit Court
 & ex officio Recorder in
 and for said County do hereby
 certify that this deed was filed for
 record July 2nd 1862 at 6 o'clock
 P.M. and duly recorded in Book
 No 13 of Deeds on pages 162 & 163.

Wm R Rouley Clerk
 By J. B. Newhall Deputy

The Defendant then introduced and
 examined Esg. Krister who testified
 that he was well acquainted with Gears
 ferry between Gears landing in this
 County and Tate des Morte. That
 he had known it for the last fifteen
 years. for the last twelve years he had
 resided within two miles of it on the
 other side of the River. When he first
 knew it he was employed to build
 a Horse boat to run there by Capt
 Gear. afterwards Gear run a Steam
 Boat as a ferry for two or three years.
 when the Steam Boat was taken
 off and a Horse Boat put on again.
 There has been a continuous ferry
 there with slight interruptions for
 repairs or something of the kind
 ever since I have known it up to

the bringing of this suit. never he and any complaint that it did not accommodate the Public fully,

The Defendants then introduced & examined Geo Ferguson who testified he had known the ferry since 1834 it was then known as Faber & Shipton, for the last Twenty five years it has been known as Gear Ferry. That he has resided all the time in Galena some two and a half or three miles from the ferry, and has crossed more or less every year. Knows it has been kept up as a Ferry all the time, knows it when they run an old row boat then a Horse boat, then a Steam Boat and then a Horse boat up to the time of bringing this suit. The ferry has always kept the same landing since I have known it. The Steam Boat was too expensive for Gear to keep up and Citizens raised money one or two seasons to induce him to run it. was a contributor.

The Defendants then called and examined Thos S Parks who testified he has known the Gear Ferry for a number of years. That he owned the Ferry at Sand Prairie and about the time the Steam Boat was taken off

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he made an arrangement with
Gear to put his Boat in place of
The Steam Boat. put it on about the
last of October 1858 or 1859 dont remember
which year positively. The arrangement
was made first with Young who owned
the Whiteside landing in Iowa at
that time. And then with Gear that
I could land at any place on the Iowa
shore where business might require.
my arrangement with Gear covered
both ~~his~~ his landings on this side
of the River and in Iowa. To avoid
dispute he made an arrangement
with young to land at his landing
in Iowa. so he could land anywhere
on the other shore. run the boat ^{for} two
seasons by himself and hands. when
he sold out to Perrins. who has run
it since. When he had the Ferry. was
in the habit of landing at both Young
and Gears landing in Iowa. as persons
wished. Now the ferry called Buller-
dicks. it runs between Youngs land-
ing in Iowa and Gears landing on
this side. have crossed on it last sum-
mer 1862 and took stock over. was
in June or July. from Illinois to Iowa.
Bullerdick run the Boat paid him the
usual ferrage. Boat run as a ferry
at the time. from Gears landing on
this side. to Youngs landing on the other

Side.

The Defendant then called and examined A Perkins who testified that he knew the Ferry in controversy, in 1861 he purchased the Boat from Parks and made an arrangement with Capt Gear to run, ^{it} under his charter, has since that time, up to the bringing of this suit run it regularly as a ferry from Gears landing on this side to his landing in Iowa, at the mouth of the "Tale des Morte". Bullerdick came there the last of April 1862 with his Boat, and put it in as a ferry boat between Gears landing on this side and Gorden or Gung landing on the other side. we both landed at the same place on this side and tied to the same stakes. it is the landing where Gears ferry always lands since I have known it on this side of the river. It was run by Bullerdick and his hands, In July he put down the ferriage to fifty cents for crossing both ways - I asked him Bullerdick, why he had done so. He said he understood I had put it down. I had to put down the ferriage to the same price or get no business. we ran at that price

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 until Bullerdicts boat was seized
 by Capt Gear the last time in which
 this suit grew out of it, Bullerdict
 run his boat as a regular ferry be-
 tween the points indicated from the
 time it come out in the Spring until
 it was seized the last time by Gear
 with slight interruptions. I attempted
 to stop his running by bringing divers
 suits against him for the penalty, un-
 der the Statute, but did not succeed,
 during all the time he run the boat
 up to the last seizure, he carried
 every thing that wanted to cross with
 him both ways, as far as I knew.
 and charged both ways. I have
 frequently made charge for him, and
 he has for me, and seen persons pay
 him for crossing each way, and pay
 his hands when he was not on the
 boat, for crossing each way. It was
 not his his neighbors and friends,
 but the Travelling public generally
 This continued all the time except
 for a few days, say two or three, after
 the first seizure, he would hang back
 and not come to the landing where
 I was there, after that he came in
 and ran as usual up to the last
 seizure by Gear. He is running his
 boat divided the business with me,
 and injured the Gear ferry. The usual
 price was seventy five cents for crossing

a two horse team and back. Bullardick put it down to fifty cents after June or July.

On Cross Examination Witney stated, his horses was put on the Bullardick boat by Gear. and the boat run up to Galena after it was seized. Cannot name the persons that paid. or the times when paid. but it was a usual thing, and continued without any change. as far as he knows. up to the seizure. The last time, Witney was sued in Trespas with defendants for seizing the boat. and there is a judgment against him with them for this seizure.

Examined by Defts.

Gears ferry was sufficient to accommodate the travelling public, and do all the business over said ferry, and run regularly all the time Bullardick boat run. up to the seizure. Witney did not recollect. If he took any pay for Ferriage from the Illinois side after the 2^d or 3^d suit he commenced before the magistrate, could not say he received any after the suits were commenced.

The defts then called and examined John Horing, who states, he was engaged last summer (1862) in delivering beer in Iowa, and crossing the

Mississippi River at these ferries.
That he crossed Bullerick ferry
five or six times with a beer team
during that summer. cannot fix the
time more particularly, paid Bullerick
the usual ferriage both ways.

The depts then examined Rodolph Spire
who states he crossed over the river and
back two or three times in June and July
1862. on Bullericks boat and paid the
usual ferriage to Bullerick both ways
with his team, dont know but it was
as late as Augth, when he last crossed,
cant fix the time with particularity

The depts then examined David Comins
who testified that he knew the ferries,
crossed on Bullericks ferry in June
and July 1862. from the Illinois shore
to Iowa. and paid him the usual
ferriage.

The plaintiff then recalled
Henry Yeager, who stated

I was the agent
of Gordon, Willis & Durrichter after
the lease was made. to collect the rent
and was careful to see Bullerick did
not charge ferriage from Illinois to Iowa.
my place of business is on the opposite
bank of the River at the ferry landing

but I was not on the boat except occasionally. Bullardiers might have charged ferriage and I not know any thing about it. have seen him refuse ferriage from the Illinois shore when persons offered to pay

This was all the evidence given said came both on the part of Plaintiffs and defendants.

The plaintiff then asked the Court to instruct the jury as follows.

Given
 2nd The boat in controversy is claimed by the defendants as a penalty, and the jury should find for the Plaintiffs unless the defendant by his proof has brought himself within the strict letter of the Law. authorizing such a penalty

3rd The jury are instructed that if they believe from the proof that the boat in controversy was sold to Gordon & Willis & John A. Burrichter on or about the 28th day of July 1842. and that Gordon & Willis & Burrichter leased said Boat to the plaintiff about the first of August 1842. then unless they further find from the proof that plaintiff did after said sale and lease run said boat for the purpose of conveying passengers or their property across the Mississippi River

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Given from the Illinois shore to the Iowa shore within the distance covered by Years franchise, they should find for the Plaintiff on the issues claiming property in said defendant as a penalty under the law.

5th If the jury believe from the Proof that the plaintiff was running the boat in controversy across the River under a franchise granted by the proper authorities in the State of Iowa, and bringing passengers and their property for reward from Iowa to Illinois and not for the purpose of injuring defendants franchise and that in the prosecution of such purpose he carried without fee or reward passengers, being his own neighbors or their property from Illinois to Iowa for their accommodation, and not to injure the defendants franchise, then the law is with the plaintiff on those issues setting up property in Defendant by virtue of a forfeiture under the Law.

Which were given by the Court. To the giving which Instructions, the defendants then and there excepted. The left then asked the Court to instruct the jury as follows.

Defts Instructions.
That if Quellerick had authority from

Given

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the State of Iowa to run a ferry boat from Jackson County Iowa, across the Mississippi River, yet this License as granted would not authorize him to use Geare's ferry landing in receiving and taking passengers or property from it on this side across said river for hire. And if the jury believe from the evidence that said Bullardicks (after the sale to Gordon, Willis & Burrichter and before the seizure by the defendants) did receive and take passengers and their property from Geare's ferry landing in this County across said river for hire on said Boat in dispute, then said Boat became forfeited to the owners or proprietors of the regularly established ferry. And if in consequence of said forfeiture, the depts entered upon and took possession of said Boat to their own use. Then the jury should find the issue of property for the defendants.

The defendants ask this Instruction

If the jury believe from the evidence that the defendants kept and maintained a regularly established ferry across the Mississippi River from a point known as Geare's ferry landing in Jo Daviess County Illinois under a Charter granted by the legislature of the State of Illinois and that Bullardicks ran the boat in

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controversy as an opposition ferry boat
and conveyed passengers or property
across the Mississippi River from the
Illinois shore to Iowa. taking said
passengers or property for hire, from
the said Gearys ferry landing in said
Jo Daviess County Illinois, without
any legal authority or permit from the
State of Illinois. And if the jury further
believe from the evidence, that at or
before the entering upon or taking poss-
ession of said boat by the defendants
the said boat was used for the purpose
of conveying passengers or property across
said river for hire, from the said Gearys
landing in Illinois to the Iowa shore,
then said boat became forfeited to the
owners or proprietors of the said regu-
larly established ferry, and if the jury
further believe from the evidence that
the said boat was entered upon and
taken possession of by said defendants
to their own use by reason of such
forfeiture, then the jury should find
the issues of property in favor of the said
defendants.

The defendants ask this Instruction
If the jury believe from the evidence
that the defendants kept and maintained
a regularly established ferry across the

Mississippi river from a point known as Hears ferry landing in Jo Daviess County Illinois, under a Charter granted by the Legislature of the State of Illinois and that Quillard ran the boat in controversy as an opposition ferry boat and conveyed passengers or property across the Mississippi River, ^{at Hears ferry Landing} landing in said County without any legal authority or permit from the State of Illinois and if the jury further believe from the evidence that at or before the entering upon and taking possession of said boat by the defendants the said boat was used for the purpose of conveying passengers or property across said river for hire, then said boat became forfeited to the owners or proprietors of the said regularly established ferry, and if the jury further believe from the evidence that the said boat was entered upon and taken possession of by said defendants to their own use by reason of such forfeiture, then the jury ^{should} find the issues of property in favor of the said defendants.

Which were all given except two which are marked on the margin, the words "Refused," Two which instructions so asked and marked on the margin

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"Refused," the Court refused to give, and the depts then and there excepted.

81 When the jury returned into Court the following verdict: (Heretofore Copied)

and thereupon the depts moved the Court for a new trial and filed the following reasons: (Motion and reasons for new trial heretofore copied)

This being all the proceedings to this day in said cause the defendants comes and prays this Honl Court to certify this their bill of Exceptions in said cause ~~which~~ in pursuance to Law. which is accordingly done.

Benj A Sheldon *Att'y*

Endorsed

Filed September 3rd 1863.

W. A. Howley Clerk
By E. R. Bird deputy.

And afterwards to-wit on the 11th day of September A D 1863. the defendants filed in the clerks office of our said Circuit Court. their appeal bonds in the words and figures following to-wit:

Know all men by these presents. That we Hegeniah H Gear, of Jo Daviess County Illinois, A. Hamilton Gear of Dubuque County, Iowa, and Madison of Johnson of Jo Daviess County Illinois, are held and firmly bound unto John H. Bullerdick of the County of Jackson and State of Iowa, in the penal sum of Two Hundred Dollars, Current 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 and severally by these presents. Witness our hands and seals this 8th day of September A.D. 1863.

The condition of the above obligation is such, that whereas the above named John H Bullerdick, did on the third day of September A.D. 1863, recover a judgment against the above bounden Hegeniah H Gear and A. Hamilton Gear, in the Jo Daviess County Circuit Court, in the State of Illinois, from which said judgment of the said Circuit Court the said Hegeniah H. Gear and A. Hamilton Gear have prayed an appeal and obtained the same to the Supreme Court of said State

Now if the said Hegeniah H. Gear and A. Hamilton Gear, shall

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

Taken and entered into before 3 H. H. Gear. *Just*
me at my office in Galena, this 3 A. H. Gear. *Just*
11th day of September A.D. 1863. 3 W. Y. Johnson. *Just*
Wm A Rowley Clerk 3
By T. A. Bird. deputy 3

Endorse to.

Filed September 11th 1863.

Wm A Rowley Clerk
By T. A. Bird deputy.

State of Illinois
of Daviess County
I William A Rowley
Clerk of the Circuit Court in and
for said County in the State aforesaid
do hereby certify the foregoing to be a full
true and correct transcript of the
Records and proceedings in the above

entitled cause of John H Bullard vs
Hegesiah. H. Gear et al. as the
same appears of Records in my
office.



In Testimony whereof I have
herewith set my name and
affixed the seal of said Cir-
cuit Court of my Office
in Galena on this the fourth
day of January A.D. 1864.

Attest: Jm A Cowley Clerk
By T. R. Bird deputy



Warrant Transcript	\$ 18.25	
Cert. Seal & Stamp	with	\$ 18.15
Costs in Circuit Court		

And now at this day comes the said
appellants, and says there is manifest
error in the Record and proceeding in the
above and foregoing cause and shows to the
Court the following

1st The Court erred in sustaining the Peffs
demurer to 1st rejoinder to 5th amended plea

2nd The Court erred in admitting as evidence
to the Jury the Record & proceedings of the Board
of Supervisors of Jackson Co Iowa, and the
license granted by said Board, and each of
them

3rd The Court erred in giving to the Jury the 3rd
& 5th Instructions of Peff, and each of them,

4th The Court erred in refusing the Defts
Instructions, and each of them,

5th The Court erred in overruling the motion
for a New Trial

6th The Court erred in rendering the
Judgment rendered in this case

Wherefore they pray said errors may be
corrected, the Judgment reversed and said
cause remanded in permannce to Law

M G Johnson

Atty of App^{ts}

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Years

as

Butterick

Rec'd & Envs

Filed Apl. 9. 1864
L. Seland
Clerk.