

No. 12467

Supreme Court of Illinois

Frink, et al

vs.

Schroyer

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John Frink et al
vs
Joseph Schroyer

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Ames
grove's

12467

1857



Supreme Court - of Illinois -
3rd Grand Division -

John Frink et al

vs
Joseph J. Schoyer } Error to Cook

And now come plaintiffs in error
and say that in the following proceedings
and judgment - there is manifest
Error - and by reason thereof said
judgment should be wholly reversed
and for naught held - and
as a special assignment of Errors

1st presents the following - viz -

The Court erred in admitting in
competent evidence for plaintiff

2nd - The Court Erred in giving each
of the instructions given for the
plaintiff below -

3rd - The Court Erred in refusing
the instructions asked by defendants

4th - The Court Erred in qualifying
the instructions given for defend-
ant - in the manner ~~of~~ shown in
the record -

5th - The Court erred in making a con-
ditional order allowing a new trial
and then overruling the motion
for a new trial - (over)

6th The Court erred in refusing a motion
for a new trial -

7th The Court erred in rendering
judgment for plaintiff~~s~~ on the verdict

Wherefore the plaintiffs in error
pray judgment of said record
& proceedings and that said
judgment may be reversed
and for naught held - and
that plaintiffs in error may
recover their costs &c

J. L. Dickey

p. 9-

Let a supersedeas issue in this
cause on filing a bond with D. M.

Park Davis surety in the penal sum
six thousand dollars

J. L. Dickey

State of Illinois }
Cook County } ss.

Pleas before the Honorable
Hugh Dickey Judge of the seventh Judicial
Circuit Court of the State of Illinois and presi-
ding Judge of the Circuit Court of the County
of Cook in the State of Illinois at a term thereof
begun and held at Chicago in said County of
Cook on the first Monday being the sixth day
of December in the year of our Lord one thousand
eight hundred and fifty two and of the Inde-
pendence of the United States the Seventy sixth

Present The Honorable Hugh J. Dickey
Judge of said Court

Daniel Mc. Harg State Attorney Pro tem
Cyrus P. Bradley Sheriff

Wheat

Louis D. Hoara Clerk of the Circuit Court
of Cook County

Be it remembered that heretofore to wit,
on the fourth day of September in the year
of our Lord one thousand eight hundred
and fifty two there was filed in the office of
the Clerk of
Cook County Circuit Court in and for the Coun-
ty of Cook in the State of Illinois a certain
Bond (security for costs) which is in the

words and figures following to wit,

Cook Circuit Court
Joseph J. Schroyer

vs.

John Frink, Martin O.
Walker, Granville Kimball,
Cyrus D. Davis, David S. Moore,
Lorenzo P. Sanger, Aaron R. Burnell,
Robert Stewart, Orson P. Barnely,
Edward H. Damon, Bissell
Humphrey & Danl. B. Hilbard

Trespass
on the Case

I do hereby enter myself security
for costs in this Cause & 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 the
Court in pursuance of the laws of this State.

Dated this 3rd day of September A.D. 1852

W. H. Stickney

Afterwards and on the day and year last
aforesaid (to wit, Sept. 4th A.D. 1852) there
issue out of the office of the Clerk aforesaid
and under the seal of said Court the Peoples
Writ of summons directed to the Sheriff of said
County and clothed in the words & figures
following to wit,

State of Illinois }
Cook County } ss.

The People of the State of Illinois
to the Sheriff of said county, Greeting:

We Command you, that you summon
John Frink, Martin C. Walker, Granville Kimball,
Cyrus D. Davis, David P. Moore, Lorenzo
P. Sanger, Aaron R. Burnell, Robert Stewart
Orson C. Parmely, Edward A. Daman, Bissell
Humphrey & Daniel B. Hubbard if they shall
be found in your county, personally to be and
appear before the Circuit Court of said County,
on the first day of the next term thereof to be
holden at the Court House in Chicago, in said
County, on the first Monday of December next
to answer unto Joseph J. Schroyer in a plea
of trespass on the case to the damage of said
plaintiff as he says, in the sum of ten thousand
and no dollars.

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



Witness, Louis D. Hoard, Clerk
of our said Court, and the seal
thereof at Chicago this 2th day
of September Anno Domini 1852
L. D. Hoard
Clerk

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Said Summons was afterwards returned
from whence it issued with an endorse-
ment by said Sheriff thereon which is in the
words & figures following viz,

Executed by Reading to John
Frisk, M. O. Walker & Granville Kimball
Oct. 14-1852 The other Defendants not found
in my County.

3 services	—	150
4 miles		20
1 Return		10
		8780

W^m L. Church Sheriff
By D. J. Wood Depty.

And afterwards to wit, on the Seventh day
of April in the year of our Lord one thousand
Eight hundred and a fifty three there was filed
in the office of the Clerk aforesaid in this cause
a certain written declaration, which is in the
words and figures following, that is to say—

State of Illinois Cook County ss.

Of the May Term of the Circuit
Court of Cook County

Joseph J. Schroyer the Plaintiff in
this cause Complains of John Frisk, Martin

O. Walker, Granville Kimball, Cyrus D. Davis,
David S. Moore, Lorenzo P. Sanger, Aaron B.
Burnett, Robert Stewart, Erson P. Parmely,
Edward A. Daman, Bissell Humphrey &
Daniel B. Hubbard defendants summoned
etc. in a plea of trespass on the case. And there-
upon the said Joseph I. Schroyer by Stickney
& Barker his attorneys complains for that whereas
before and at the time of committing the griev-
ances by the said Defendants as herein after men-
tioned the said Defendants were owners of
a certain Stage coach by them used & employed
in carrying passengers from Springfield in the
County of Sangamon to La Salle in the County of La
Salle all in the State of Illinois and divers
other places to wit, at the County of Cook & State
of Illinois aforesaid and being such owners of
the said Stage Coach the said defendants on
the 16th day of August A.D. 1852 at Springfield
aforesaid to wit at the County of Cook aforesaid
received into their said Coach the said plain-
tiff as a passenger therein to be carried & convey-
ed thereby on a journey to wit from Springfield
aforesaid to La Salle aforesaid for certain fare
and reward to the said defendants in that
behalf, and by reason thereof the said defend-
ants ought carefully to have conveyed or caused
to be conveyed the said plaintiff by the said

Coach on the said journey from Springfield aforesaid to La Salle aforesaid, yet the said defendants not regarding their duty in this behalf conducted themselves so carelessly, negligently and unskillfully in this behalf that by and through the carelessness, negligence & unskillfulness and default of themselves and their servants and for want of due care and attention to their duty in that behalf the said coach afterwards and while the same was carrying & conveying the said plaintiff on the said journey as aforesaid and before the arrival thereof at La Salle aforesaid to wit, on the day & year aforesaid at Cook County aforesaid was upset and thrown down by means whereof the said plaintiff then being therein was greatly bruised, wounded and injured and one of the arms of the said plaintiff became & was fractured, injured, strained, bruised and the use thereof destroyed, so that the said plaintiff lost the use of the same for a long period of time to wit, from thence hitherto, and the said plaintiff was then & there otherwise greatly injured, wounded & bruised in so much that the said plaintiff then & there became and was sick, sore and disordered for a long span of time to wit, from thence hitherto during all of which time the said plaintiff suffered & underwent great pain and was hindered

and prevented from carrying on, transacting
and proceeding in his lawful business and ne-
cessary affairs by him during that time to be
performed and transacted and thereby lost
and was deprived of divers great gains and profits
which had been accustomed to arise and accrue
and which otherwise would have continued
to arise & accrue to the said plaintiff from the
transacting and carrying on of the same, and
also by means of the premises last aforesaid
the said plaintiff was compelled to abandon
his intended visit to the North of this State
and was compelled to return a great distance
to his home at great expense without accom-
plishing the object of his journey and also by
means of the premises aforesaid the said
plaintiff was ~~was~~ forced & obliged to and did
then & there pay out and expend divers large
sums of money amounting in the whole to
the sum of one thousand dollars in & about
the curing & endeavoring to cure, the said
last mentioned fractures, strains, bruises,
wounds & injuries, and in and about the
said travel in returning to his home to wit,
at the County of Cook aforesaid. Whereupon
the said plaintiff saith that he is injured &
hath sustained damage to the amount of
\$10,000⁰⁰ & thereupon he brings his suit.

Stickney & Barker for Plff.

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And afterwards to wit, on the nineteenth day of April in the year last aforesaid there was filed in the office of the Clerk of said Circuit Court a certain amended declaration in this cause which is in the words & figures following viz.

State of Illinois Cook County ss.

Of the May Term of the Circuit Court of Cook County Illinois

Amended Declaration of Joseph J. Schroyer vs. Jno. Frink, Martin O. Walker & others —

And also for that whereas at &c. when &c. the said Defendants John Frink, Martin O. Walker, Granville Kimball, Cyrus D. Davis, David S. Moore, Lorenzo P. Sanger, Aaron R. Bursell, Robert Stewart, Erson C. Parmely, Edward A. Damon, Bissell Humphrey & Daniel B. Hibbard were owners of a certain other Stage Coach by them used and employed in carrying passengers from Springfield in the County of Sangamon Illinois to La Salle in the County of La Salle, to wit, to Chicago in the County of Cook & State of Illinois & divers other places and then & there were the owners of a certain other Stage Coach by them used and employed in

carrying passengers from Peoria in Peoria
County Illinois to La Salle in the County of
La Salle, Illinois to wit, in the County of Cook
aforesaid, & then & there were the owners of a certain
other Stage Coach by them used & employed
in carrying passengers from Peoria in the
County of Peoria Illinois to Hennepin in the
County of Putnam Illinois & La Salle in
the County of La Salle Illinois, to wit, to the
County of Cook aforesaid and being such
owners of the said Stage Coach the said Defend-
ants on the 10th. day of August aforesaid at
Peoria aforesaid received into the said Coach
the said Plaintiff as a passenger therein to
be carried & conveyed thereby on a journey
to wit, from Peoria aforesaid to Hennepin
& La Salle in the County & State aforesaid
to wit, at the County of Cook aforesaid. Yet
the said Defendants through the carelessness
negligence & unskillfulness of themselves & their
servants the said coach afterwards & while
the same was conveying the said Plaintiff
on the journey from Peoria aforesaid to Hennepin
& La Salle aforesaid, to wit, the County of
Cook aforesaid, to wit, on the day & year aforesaid
at Hennepin aforesaid, to wit, at the County
of Cook aforesaid, was upset & thrown
down by means whereof the said plaintiff

Remittances

then being therein was greatly bruised & injured
 & one of his arms bruised, strained and the
use thereof destroyed & was then & there greatly
 injured in so much that said Plaintiff was
 compelled to abandon his business & was sick
 & disordered from thence hitherto & under-
 went great pain & lost great profits which had
 been accustomed to arise & would otherwise
 have continued to arise & accrue to said Plain-
 tiff from carrying on of the same and also by
 means of the premises aforesaid said Plaintiff
 was forced to & did then & there pay out & ex-
 pend divers large sums of money in the whole
 about \$100000 in the endeavor and about
 the curing of his said wounds and bruises
 Wherefore the said Plaintiff saith that he
 hath sustained damage to the amt. of \$10,000
 and therefore &c.

W. H. Hickney
 J. R. Barker (for Plff.)

And afterwards to wit, on the 27th. day
 of October in the year last aforesaid (to wit,
 1853) there was filed in the office of the
 Clerk aforesaid, in this cause a certain
 Plea & replication, which are in the words
 & figures following, to wit,

State of Illinois }
Cook County ss. }

In the Circuit Court of
said County

John Frink
Martin C. Walker
Granville Kimball
Cyrus D. Davis
David S. Moore
Lorenzo P. Sanger
Aaron R. Burnell
Robert Stewart
Erson C. Parmely
Edward A. Damon
Bissell Humphrey
Daniel B. Hibbard

ads.

Joseph I. Schroyer

And the said Defendants by
H. Frink their Attorney come and defend
the wrong & injury when &c. and say they
are not nor is either of them guilty of the
said supposed grievances above laid to their
charge or any or either or any part thereof
in manner and form as the said Plaintiff
hath above thereof complained against them
And of this they put themselves on the

Country &c.

H. Frink

Atty. for Defts.

And said plaintiff doth the like

Sticksney for Plff.

And afterwards to wit, on the 5th day of December in the year of our Lord one thousand eight hundred and fifty four it being one of the days of the regular November Term of said Circuit Court an order was made and entered of record therein in this cause which is in the words & figures following to wit,

Joseph J. Throyer

vs.

John Frink Etal

This day come the said parties by their attorneys and the Court being more fully advised on the said defendant's motion heretofore filed in this cause to suppress said plaintiff's deposition taken and filed herein it is ordered that said motion be and the same is sustained as to the depositions Dr. Morris, Isaac Newman, P. B. Springhead, Van Buren Newman, Franklin Mitchell & William J. Throyer, and it is further ordered that the said motion be and the same is overruled as to the depositions Samuel Waugh, John Fagan

John Waugh, Charles R. Duncan and Samuel
Waugh —

And afterwards to wit on the 19th. day of Novem-
ber A. D. 1855 the same being one of the days of the
regular November Term of said Court for the year
last aforesaid the following among other proceedings
were had and entered of record in said Court
in this cause to wit —

Joseph J. Shroyer

vs.

John Frink, Martin C. Walker.

J. Kimball, C. D. Davis, D. S. Morris,
L. P. Sanger, A. R. Burnell, R. Stuart,
C. C. Parmely, Edward A. Dawson
Bissell Humphreys & D. B. Hibbard

This come the said
parties by their attorneys and issue being joined it
is ordered that a Jury come and thereupon come the
Jurors of a Jury of good and lawful men to wit,
James Turner George W. Irwin J. J. Chilcote
S. W. Grassie C. C. Newton T. O. Wilson
Thomas Hill Charles Church John Sweeney
Edward Williston Nathaniel Norton & Edward Brown
Who being duly elected, tried and sworn well and
truly to try the issue joined between the parties ac-
cording to law and the evidence and they having

heard the testimony adduced as well on the part of the plaintiff as on that of the Defendants and the arguments of Counsel thereon retire under charge of an officer of the Court to consider of their verdict Whereupon by agreement of parties it is ordered that when the jury have agreed upon their verdict they may reduce the same to writing and meet the Court at the opening thereof on to-morrow morning —

And afterwards to wit, on the 20th. day of the month and year last aforesaid it being as yet of the said November Term of said Court, the following further proceedings were had and entered of record in said Court in this cause to wit,

Joseph J. Shroyer

vs

John Frink, M. C. Walker, J. Kimball,
C. D. Davis, D. S. Morris, S. P. Sanger, A. R.
Burrell, R. Smart, C. C. Barnely, C. A. Dawson
Bissell Humphreys & D. B. Hubbard

This day again come the said parties by their Attorneys and the jurors aforesaid also come and render their verdict and say we of the jury find the issue for the plaintiff and assess his damages at the sum of five thousand dollars and thereupon the said defendants by their Attorneys move the Court for a new trial of this cause and in arrest of Judgment —

And afterwards, to wit on 4th day of ^{April} ~~March~~ A. D. 1856
the same being one of the days of the March vacation Term
of said Court the following among other proceedings were
had & entered of record in said Court in this cause to wit,

Joseph J. Schroyer

vs.

John Frink, M. C. Walker, G. Kimball
C. D. Davis, D. S. Morris, S. P. Sanger, A. R.
Burnell, R. Stewart, C. C. Barnaby, E. A. Dawson
Bissell Humphreys & D. B. Hibbard

And now at this day
come the said parties, by their Attorneys, and the Court
having heard the arguments of Counsel on said defend-
ants motion made herein at the last November term of
this Court for a new trial of this cause, and in arrest
of judgment, and being more fully advised in the
premises, Orders that said Motion for a new trial
be sustained unless the said plaintiff remit twenty
two hundred dollars of the verdict of the Jury rendered
in this cause. Whereupon comes William H.
Shikney Esq. attorney for said plaintiff and enters
his remitter for twenty two hundred dollars and agrees
to take judgment for twenty eight hundred dollars
under the suggestion of the Court that a new trial
will not be granted, which is ordered to be entered
of record, And thereupon it is ~~ordered~~ ^{Ordered} and con-
sidered by the Court that said Motion be overruled.

and that said plaintiff do have and recover of said ~~of~~
 defendant his damages of twenty eight hundred dollars
 together with his proper costs by him about his suit herein
 expended and have execution therefor.

And the ^{suit} plaintiff further agrees that he will remit a
 further sum of five hundred dollars at any time within
 three months from the date hereof when the defendants
 shall settle the balance being two thousand three hun-
 dred dollars and waive all right to a writ of Error
 and further agrees that he will not order on execution
 until the end of ~~three~~ ^{two} months from this date, and it
 is further ordered that said defendants have ten days
 to file Bill of Exceptions —

That Plaintiff was a heavy man, over the ordinary size and about 45 years of age, there was no dislocation nor fracture of the bone; Witness could advise nothing at that time, better than the embrocation which the Plaintiff was using. The injury to the arm did not prevent him from walking; (with his arm carried in a sling). Witness has seen the Plaintiff, and examined his arm twice since the last time a short period before his trial. The ligament over the shoulder was injured, it had grown stiff, and formed a different matter, and adhered to the bone - he could not raise his arm, an injury of that kind was worse than the fracture of a bone, and in all probability must be a permanent injury - Witness stated he was a regular practicing Physician, and had been such for many years, considered himself skilful in the profession, and well acquainted with the anatomy of the human frame.

The next witness introduced and examined by the Plaintiff, was Mr. Francis Rattle, who testified that he was a passenger in a stage coach belonging to the Defendants at the time of the injury complained of about August 1832. That witness then resided in

Peoria, Illinois, and the Stage route was from Springfield, Illinois, through Peoria, to La Salle, Illinois. The connection between Peoria and Henry was by a boat, ran by Defendants as part of the line. From Henry, Illinois, three Stage Coaches started in company. The Plaintiff was in the coach that led off, and witness in the second one, or next after. All three coaches belonged to the said line of the said Defendants, that the Drivers of said Coaches commenced drinking at every watering place, from a bottle, witness judged from their actions, it was something stronger than water. They arrived within a mile of Hennepin when it was about an hour before sun-set, the Drivers had been racing before, but at that time, the third, or last coach attempted to pass ahead, the Driver of the coach in which the Plaintiff was, put the lash on to his horses, and they raced all the way into Hennepin, one of the coaches upset in Hennepin by the horses turning suddenly around the Court House. Another coach, being the one in which the Plaintiff was, ran off on the Prairie, the horses turned suddenly around a fence, and upset it, on level ground. The Driver of the last mentioned coach, had

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premiously let fall one of the reins, by which he guided the front horses - Considered the Drivers drunk, saw the Plaintiff picked up and taken into the house, a Physician was called, who made some applications, and Witness and Plaintiff then proceeded to La Salle, and there took a Packet Boat, and came on to Chicago - Witness did not examine the Plaintiff's arm, to see how much it was injured - Witness is about 30 years of age, and now resides in Chicago, was not acquainted with Plaintiff before the injury.

Another witness, Mr. Vernon, was here called by the Plaintiff to prove that all the Defendants named in the Declaration were owners and proprietors of said line of stage coaches, this evidence, the Defendants attorney waived and admitted that all the Defendants named in the Declaration were such owners and proprietors of said line of coaches - carrying passengers on said route -

The Plaintiff then read to the jury the following depositions -

(Here insert such of Plaintiff's Depositions as had not previously been received by the Court and which were read on the trial)

The Depositions of Rowley Morris, Franklin Mitchell, Abner Mitchell, Van Buren S. Newman of the County of Green State of Wisconsin, Witnesses of lawful age, ^{produced,} sworn and produced, examined on their respective corporate oaths, on the seventeenth day of April, in the year of our Lord, one thousand, eight hundred and fifty five at my office in the Town of Spring Grove and County of Green, and State of Wisconsin aforesaid by me, R. D. Derrick, a justice of the peace in and for said County, a Commissioner duly appointed by a Diddimus Potestatum or Commission issued out of the Clerk's office of the Circuit Court of Cook County in the State of Illinois bearing teste in the name of Lewis D. Board Esq. Clerk of said Circuit Court with the seal of said Court affixed thereto, and to me directed as such Commissioner for the examination of the said Rowley Morris, Franklin Mitchell, Abner Mitchell, Van Buren S. Newman, witnesses in a certain suit, and matter, in controversy now pending and undetermined in the said Circuit Court, wherein Joseph J. Schryver is Plaintiff and John Plink, Martin C. Walker, Granville Kimball, Cyrus D. Davis, David S. Mone, Lorenzo P. Sawyer, Aaron B. Burnell, Robert Stewart, Orson C. Parnell, Edward A. Dawson, Bissell

Humphrey, and Daniel B. Hubbard, Defendants in behalf of said Plaintiff as well upon the cross interrogatories of the Defendant as on the interrogatories of the Plaintiff, which were inclosed with the said Commission, and upon none others. The said witnesses being first duly sworn by me R. D. Derrick the said Commissioner as witnesses in the said cause previous to the commencement of their examination to testify the truth as well on the part of the Plaintiff as the Defendant in relation to the matters in controversy between the said Plaintiff and Defendants so far as they should be interrogated, testified and deposed as follows—

Bowley Morris sworn, deposes as follows—
 1st Interrogatory—What is your name, age, occupation, or profession—

Ans—My name is Bowley Morris, am a regular Physician and Surgeon, reside in Town of Decatur, Green Co. And State of Wisconsin. Am forty-four years of age—

2nd Interrogatory—Are you acquainted with the parties to this cause, or either of them, if so, how long have you been acquainted—

Ans—I have been acquainted with the Plaintiff over two years—Am not acquainted

with either of the defendants—

3rd Interrogatory — Have you a knowledge of Anatomy and Surgery, and skill in the treatment of injuries to the human frame?

Ans — I have a knowledge of anatomy and surgery, and consider myself skilful in the treatment of injuries to the human frame—

4th Interrogatory — Have you been employed professionally by the Plaintiff Joseph J. Schroyer, if so, for how long? at what time? and what were your services needed for?

Ans — I was called once to see his arm, was of opinion that his arm had received a severe injury, that from the injury there remained a weakness, probably permanent. My impression is that there were extensive adhesions in the cellular membranes and muscles crippling the freedom of the arm, movement, also implicating the circulation, so much so that his arm was permanently injured. That he was deprived to a great extent of the use of it— If my memory is correct, there were irregularities in the appearance of the arm, some parts being unnaturally swollen, while others were unnaturally depressed—

5th Interrogatory — Did you examine the Plaintiff Joseph J. Schroyer particularly with reference to any injury of body or limb? if so,

at what time? And state whether you found any injury or not - if any, state your professional opinion of the cause and the extent of the injuries -

Ans - I examined Joseph J. Schroyer I think in the month of February 1834. I found him suffering from a severe injury in one of his arms - and my opinion is that the injury must have been caused by some violence such as would produce severe pressure or bruises -

6th Interrogatory - If you found any injury the Plaintiff, Joseph J. Schroyer had received, state your professional opinion whether said injury would prove a permanent or temporary one - also as to the pain and suffering such injury had caused and would in all probability cause hereafter to the Plaintiff -

Ans - I consider the injury to be a permanent one. - The pain and suffering which Mr. Schroyer endured from the injury must have been severe. The lameness must be permanent, and perhaps continue to be painful, especially at times -

7th Interrogatory - Do you know of any other facts, or professional opinion that would be of service to the Plaintiff in this cause - if so state them as fully as if particularly

Interrogated. There to —

Ans — I do not —

I do solemnly swear that the answers
I have given to the above interrogatories are
just and true according to the best of my
knowledge, and belief,

Rowley Morris.

Subscribed and sworn to before
me, this seventeenth day of April A.D. 1853

R. D. Derrick

Justice of the Peace —

Franklin Mitchell being duly sworn,
deposeth as follows —

1st Interrogatory — What is your name,
age, residence and occupation?

Ans — My name is Franklin Mitchell. I
am twenty seven years of age, am a Farmer
by occupation, and reside in town of Spring
Grove, Green Co. and State of Wisconsin.

2nd Interrogatory — Are you acquainted with
the parties Plaintiff or Defendants in this
suit, or either of them, if so, how long have
you known them?

Ans — I am acquainted with the Plaintiff

in this suit, and have been for nearly three years - I am not acquainted with either of the Defendants -

3rd Interrogatory - Did you know the Plaintiff Joseph J. Schoyer previous to August 1832. if so what was his condition as to soundness of body and limb previous to that date?

Ans - I did know the Plaintiff previous to August 1832 - He was sound in body and limb apparently, at that time -

4th Interrogatory - Has the Plaintiff any injury or affection in body or limb at the present time, or when you last saw him? if so, state the time and the defect or injury, manner and part affected -

Ans - He had - I saw him ⁱⁿ the ~~the~~ month of September 1832. and saw that he had received a severe injury in his right arm - the arm was badly swollen at the time, and appeared to be very painful -

5th Interrogatory - if the Plaintiff has any injury in body or limb, when did you first notice it, and how does it affect his health and ability to labor?

Ans - I first noticed the injury sometime in the month of September 1832. It appeared to affect his general health very much, and to entirely disqualify him from labor -

6th Interrogatory — Do you know of any suffering or pain suffered or endured by the Plaintiff if so, state the cause thereof — the time when, extent of the pain and suffering and your means of knowing the same —

Ans — I do — The pain and suffering seemed to be caused by a severe bruise or contusion in his right arm, extending from the wrist to the shoulder of the arm affected — I saw him frequently, as often as every three or four days, and knew him to be in pain and suffering from his arm more or less, from September 1832. to April 1834. and during that time I resided within eighty rods of the Plaintiff.

7th Interrogatory — State the occupation of the Plaintiff since August 1832. and before that date —

Ans — The Plaintiff was a farmer by occupation from August 1832. until April 1834. I do not know what his occupation was previous to that date —

8th Interrogatory — Has the Plaintiff been obliged to stop labor at any time, altogether, since August 1832. if so, state the reason thereof —

Ans — He has been obliged to stop labor at different times since August 1832. on account of injuries received in his arm, and finally quit farming altogether on account of the

lameness in his right arm which disabled him entirely from labor—

9th Interrogatory— Did the Plaintiff ever reside in Green Co. Wisconsin? if so, at what time, and where does he now reside?

Ans— He did for some time in the summer of 1832. until April 1834. I believe he now resides in the State of Ohio.

10th Interrogatory— Do you know of the Plaintiff's employing any medical or surgical aid at any time? if so, state when, and for what purpose, and the name of the persons employed—

Ans— I know of Physicians being called to the Plaintiff's house, but do not know whether they were called to see him— Dr. P. B. Springstead and Dr. Rowley Morris were the Physicians employed—

11th Interrogatory— Do you know of anything further that would advantage the Plaintiff in the trial of this cause? If so, state what it is fully, as if particularly interrogated thereto—

Ans— I do not—

I do solemnly swear that the answers I have given to the above interrogatories are just and true according to the best of my knowledge and belief—

Subscribed and sworn to { Franklin Mitchell
before me this seventeenth day
of April 1835.

R. D. Derrick

Justice of the Peace

Abner Mitchell Esq being duly sworn de-
posed as follows—

1st Interrogatory—What is your name, age, residence and
occupation?

Ans—My name is Abner Mitchell, I am
sixty-four years of age, and reside in Town of
Spring Grove, Green County, Wisconsin. My
occupation is farming—

2nd Interrogatory—Are you acquainted with
the parties in this suit, or either of them? if so,
how long have you known them?

Ans—I am acquainted with the Plaintiff
in this suit, but am not acquainted with
either of the Defendants. I have known the
Plaintiff for over thirty years.

3rd Interrogatory—Did you know the Plaintiff
Joseph J. Schryer, previous to August 1852? if
so, what was his condition as to soundness of
body and limb previous to that date?

Ans—I did. He was apparently sound in
body and limb previous to August 1852—

4th Interrogatory—Has the Plaintiff any
injury or affection in body or limb at the
present time, or when you last saw him? if
so, state the time, and the defect or injury, man-
ner and part affected—

Ans—He had a severe injury in the
right arm when I last saw him— I first

saw it in September 1852. His arm was badly swollen at that time, and was apparently very painful.

5th Interrogatory—If the Plaintiff has any injury in body or limb, when did you first notice it? And how does it affect his health, and ability to labor?

Ans— I first noticed it in September 1852. it seemed to affect his general health severely, and in a great measure disqualified him from manual labor—Whenever he attempted to labor, his arm swelled and pained him more than usual—

6th Interrogatory—Do you know of any suffering or pain suffered or endured by the Plaintiff? if any, state the cause thereof, the time when, and the extent of the pain and suffering, and your means of knowing the same—

Ans— I do, from the fact that his right arm was badly bruised and swollen from the wrist to the collar bone— This was in September 1852. it continued badly swollen for about three months, when the swelling gradually subsided, and irregularities in the size of the arm appeared, some parts still continuing swollen, while other parts of the arm were unnaturally depressed, and

still painful to a greater or less degree - I resided within eighty rods of Mr. Schoyer, and saw him frequently from September 1832. to untill April 1834.

7th Interrogatory - State the occupation of the Plaintiff since August 1832. and before that date -

Ans - His occupation was farming from August 1832 till April 1834. He was engaged in the Mercantile business previous to that date -

8th Interrogatory - Has the Plaintiff been obliged to stop labor at any time, or altogether, since August 1832? if so, state the reason thereof -

Ans - He has been obliged to stop labor at different times since that date - I believe he finally quit farming on account of the enfeebled condition of his arm.

9th Interrogatory - Did the Plaintiff ever reside in Greene County, Wisconsin? if so, at what time, and where does he now reside?

Ans - He did from the summer of 1832. untill April 1834. I believe he now resides in Ohio.

10th Interrogatory - Do you know of the Plaintiff's employing any medical or surgical aid at any time? if so, state when and at what time, and for what purpose, and

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the name of the person employed—
 Ans— I do not know of their being special-
 ly employed for him, but know of Dr. P. B.
 Springstead, and Doctor Rowley Morris being
 employed in his family—

11th Interrogatory— Do you know of anything
 further that would advantage the Plain-
 tiff in the trial of this cause, if so, state it
 as fully as if particularly interrogated thereto.
 Ans— I do not—

I do solemnly swear that the answers
 I have given to the above interrogatories, are
 just and true according to the best of my
 knowledge and belief

Abner Mitchell

Subscribed and sworn to before me this
 seventeenth day of April 1833.

R. D. Derrick.

Justice of the Peace.

Van Buren S. Newman being duly sworn,
deposeth as follows—

1st Interrogatory—What is your name, age,
residence and occupation?

Ans—My name is Van Buren S. Newman.
I am twenty-two years of age, and reside in
the town of Decatur, County of Green, State
of Wisconsin, my occupation is farming.

2nd Interrogatory—Are you acquainted with
the parties, Plaintiff and Defendant in this
suit, or either of them? if so, how long have
you known them?

Ans—I am acquainted with the Plaintiff,
Joseph J. Schryer, have known him ever since
I can remember, I am not acquainted
with either of the Defendants.

3rd Interrogatory—Did you know the
Plaintiff Joseph J. Schryer previous to August 18
82. if so, what was his condition as to soundness
of body and limb previous to that date?

Ans—I did—he was sound in body and
limb to all appearance.

4th Interrogatory—Has the Plaintiff any
injury or affection in body or limb at the pres-
ent time, or when you last saw him? if so,
state the time, and the defect or injury,
manner and part affected—

Ans—He had. I first noticed it in

The latter part of August 1832. He was very badly off then, his right arm was very badly swollen from the wrist to the shoulder, and appeared to be very painful—

3rd Interrogatory—If the Plaintiff has any injury of body or limb, when did you first notice it, and how does it affect his health and ability to labor?

Ans— I first noticed it in the latter part of August 1832. It injured his health materially, and rendered him entirely unfit for manual labor.

6th Interrogatory—Do you know of any suffering or pain suffered or endured by the Plaintiff? if any, state the cause thereof, time when, extent of the pain and suffering, and your means of knowing the same—

Ans— I know of his complaining of being in a great deal of pain caused by the injury of his arm, from the latter part of August 1832 until April 1834. He was at my Father's house several weeks shortly after he was hurt, and I afterwards worked for him, and lived in the neighborhood of the Plaintiff till April 1834.

7th Interrogatory—State the occupation of the Plaintiff since August 1832. and before that date—

Ans— He was engaged in Farming from 1832 till April 1834. He had previously been engaged in the Mercantile business—

8th Interrogatory— Has the Plaintiff been obliged to stop labor at any time or altogether since August 1832. if so, state the reason thereof—

Ans— He has at different times and altogether for the reason that his arm troubled him so severely that he was unable to labor—

9th Interrogatory— Did the Plaintiff ever reside in Green Co. Wisconsin? if so, at what time, and where does he now reside?

Ans— He did from the summer of 1832 until the spring of 1834. I believe he now resides in the town of Harrison, Ohio—

10th Interrogatory— Do you know of the Plaintiff's employing medical or surgical aid at any time? if so, state when, and for what purpose and the name of the person employed—

Ans— I do not— I know of his employing Physicians, but do not know for what purpose— I know of his using a great deal of medicine about his arm—

11th Interrogatory— Do you know of anything further that would advantage the Plaintiff, in the trial of this cause? if so, state it as fully as if particularly interrogated thereto—

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Ans— He was unable to drive his team
back to Ohio— He started to go back to Ohio,
but was unable to drive his team in con-
sequence of the infirmed condition of his
arm, and was obliged to go to Ohio by public
conveyance—

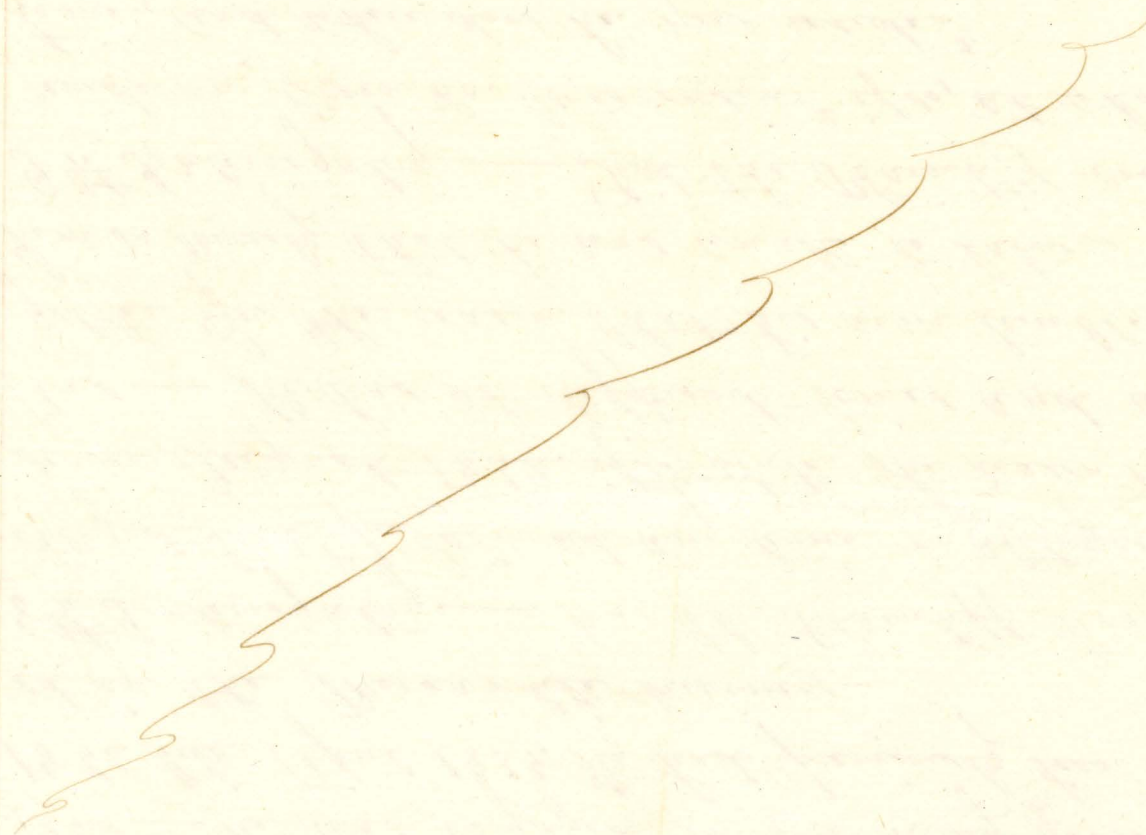
I do solemnly swear that the answers
I have given to the above interrogatories, are
just and true according to the best of my
knowledge and belief—

Van Buren S. Newman

Subscribed and sworn to before me this
seventeenth day of April 1853.

W. D. Derrick

Justice of the Peace



I Rodolphus D. Durick, of the county of Green,
and State of Wisconsin, a Commissioner duly
appointed to take the Depositions of the said
Rowley Morris, Franklin Mitchell, Abner Mitch-
ell, and Van Buren S. Newman, witnesses,
whose names are subscribed to the foregoing
Depositions, do hereby certify that previous to
the commencement of the examination of
the said witnesses in the said suit between
the said Joseph J. Schroyer Plaintiff, and the
said John Frink, Martin C. Walker, Granville
Kimball, Cyrus D. Davis, David S. Moore, Loren-
zo Sawyer Aaron R. Barnell, Robert Stewart,
Orson C. Parmely, Edward C. Dawson, Bessel
Humphrey and Daniel B. Willard, Defendants,
they were duly sworn by me as such commis-
sioner to testify the truth in relation to the
matter in controversy between the said Joseph
J. Schroyer Plaintiff, and the said Frink,
Walker &c. Defendants, so far as they should
be interrogated concerning the same, and
the said Depositions were taken at my of-
fice in the town of Spring Grove, County of
Green, and State of Wisconsin, on the seven-
teenth day of April A.D. 1855 and that after
said Depositions were taken by me as afore-
said, the interrogatories and answers thereto,
as written down, were read over to the witnesses

And that thereupon the same was signed and sworn to by the said Deponents before me, the oath being administered by me, the said Commissioner, as such Commissioner at the place, and on the day and on year last aforesaid.

R. D. Derrick

Justice of the Peace

State of Wisconsin, I J. V. Richardson, Clerk of the Circuit Court in and for said County do hereby certify that R. D. Derrick Esq., whose signature appears to the foregoing deposition and certificate was at that time and now is an acting Justice of the Peace in and for said County, duly commissioned and qualified, and as such, full faith and credit are due to all his official acts, and I further certify that I know the signature purporting to his is genuine.



Given under my hand and the seal of said Court at Monroe, the 27th day of April A.D. 1833
J. V. Richardson Clerk

The deposition of William J. Schroyer & Dr. J. S. Goodhart of the County of Hamilton and State of Ohio witnesses of lawful age produced, sworn and examined on their respective corporal oaths on the 25th. day of April A. D. 1855 at the office of John Pursel in the Township of Harrison in the County of Hamilton and State of Ohio by me John Pursel a Justice of the Peace in and for said Township, County and State and a Commissioner duly appointed by a *Decimus Potestatem* or Commission issued out of the clerk's office of the Circuit Court of Cook County in the State of Illinois bearing Teste in the name of L. D. Hoard Esq, clerk of the said Circuit Court with the seal of said Court affixed thereto and to me directed as such Commissioner for the examination of the said William J. Schroyer & J. S. Goodhart witnesses in a certain suit and matter in controversy now pending and undetermined in the said Circuit Court wherein Joseph J. Schroyer is plaintiff and John Frink, Martin C. Walker and others are defendants in behalf of the said Joseph J. Schroyer Plaintiff as aforesaid as well upon the cross interrogatories of the said John Frink, Martin C. Walker and others as on the interrogatories of the said Joseph J. Schroyer which were attached to or enclosed with the said commission and upon none others. The said William J. Schroyer & J. S. Goodhart being first duly sworn by me as witnesses in the said cause

previous to the commencement of their examination
to testify the truth as well on the part of the Plaintiff as
the Defendants in relation to the matters in contro-
very between the said Plaintiff and Defendants so
far as they should be interrogated testified and
deposed as follows

County Court of Cook County Ills.
Joseph J. Schroyer

vs.

John Frink, Martin C. Walker,
Granville Kimball, Cyrus D. Davis,
David S. Moore, Lorenzo P. Sanger,
Baron R. Burrill, Robert Stewart,
Erson C. Parsnely, Edward H. Damon,
Bissell Humphrey & Daniel B. Hibbard

Trespass on
the Case

The Deposition of William J. Schroyer
Interrogatories propounded to the said William J.
Schroyer a witness produced and sworn as afore-
said on the part of the said Joseph J. Schroyer and his
answers thereto as follows —

Interrogatory 1st — What is your name, age, residence
and occupation?

Answer to 1st Interrogatory — William J. Schroyer,
Nineteen years old last January, Residence, Harrison
Hamilton County, State of Ohio — Occupation. Da-
guerrian artist.

2^a Interrogatory — Are you acquainted with the plaintiff in this suit & how long have you known him
Answer to 2nd interrogatory — I am acquainted with him, I have been acquainted with him some fifteen years or ever since I can remember any thing.

3^a Interrogatory — Do you know the defendants in this suit, and how long have you known them? or either of them?

Answer to 3^a Interrogatory — I am not acquainted with either of them.

4th Interrogatory — If you know the Plaintiff Joseph J. Schroyer previous to the month of August A. D. 1852, state your knowledge of his health and respecting the condition of his body and limbs as to soundness up to that time?

Answer to 4th Interrogatory — I knew him previous to that time and his health previous to that time was good and his body and limbs were in a sound and healthy condition —

5th Interrogatory — State whether the plaintiff was at home or absent from home about the month of August A. D. 1852 — If absent, where was he?

Answer to 5th Interrogatory — He was absent from home from the 3rd of July of that year until some time in September of the same year and left home with the view of traveling through Illinois, Iowa & Wisconsin —

6th Interrogatory — Have you noticed any

injury that the plaintiff has received? If you answer in the affirmative, state when you first noticed it - Describe the injury, its appearance at the time and since - How it affects the plaintiff's limbs, health or ability to labor, the pain & suffering (if any) it has caused the plaintiff and also your opportunities of knowing -

Answer to 6th Interrogatory - I have noticed injuries that he received while absent at the time referred to in the 5th Interrogatory and the answer thereto. I first noticed the injuries when he came home as above stated, some time in September A. D. 1852 - His left shoulder and left arm were badly bruised and were black and blue from the shoulder to his hand and was so lame or sore that he was wholly unable to use it, to put on or take off his coat or for any other purpose in fact he had no use at all of his arm and was under the necessity of carrying it in a sling and it is at this time still lame and painful and has not much use of it. Whenever he takes any cold his neck on the left side thereof and his left shoulder become quite stiff and lame and his general health is such that he is much less able to perform any labor than he was before said injury and whenever he attempts to use his arm it readily gives out so that he cannot use it ^{at} all and he has continual pain and suffering so much

so that he is unable to sleep or rest at night as usual. I have lived and been with him ever since his return home in September A. D. 1852.

7th. Interrogatory — What was the plaintiff's occupation previous to August A. D. 1852? Has the Plaintiff been able to labor since? If compelled to abandon any location, labor or business by reason of any injuries state the facts as fully as if especially interrogated thereto.

Answer to 7th. Interrogatory — He was a Dry goods Merchant previous to that time. He has not been able to do the same amount of labor as before even in the Merchantile business. He gave up the Merchantile business in the Spring of A. D. 1852 and went West with the view of purchasing a farm and going into the agricultural business. He went to Wisconsin and there purchased a farm while absent as stated in my 5th. interrogatory. He went on to said farm some time in the Autumn of A. D. 1852 and after farming one season he found that he was unable to perform the labor of the farm in consequence of the injuries received as heretofore stated to his arm, shoulder &c. as he otherwise could have done and was therefore compelled to abandon the farming business in consequence of said injuries.

8th. Interrogatory — Where has plaintiff resided since August A. D. 1852? What is his occupation,

and when does he now reside?

Answer to 8th. Interrogatory — He resided in Cincinnati, Hamilton County, State of Ohio until some time the first of October A. D. 1852. He then went on his farm in Wisconsin where he resided until the Spring of A. D. 1854. Since which time he has been residing in Harrison, Hamilton County and State of Ohio and has been engaged in the mercantile business.

9th. Interrogatory — If you have spoken of any injury above has the Plaintiff been obliged to employ medical aid for said injuries? If so, give the names of the persons employed and what trouble and expense the Plaintiff has incurred in and about attempting to cure said injuries?

Answer to 9th. Interrogatory — I know he employed Dr. Morris of Wisconsin to examine and try to cure said injuries and have frequently seen said Plaintiff applying medicine to said injuries and that he is still applying medicines to said injuries for the purpose of trying to cure them or at least to alleviate the pain thereof. He has been to a considerable expense but the amount of which I cannot state.

10th. Interrogatory — If you have any further knowledge that will benefit the Plaintiff in this cause state it as fully as if directly interrogated thereto.

Answer to 10th. Interrogatory — He was at the expense of moving from here to Wisconsin and from thence back to this place in consequence of said injuries and was compelled to make considerable sacrifice in the sale of his horses, stock, farming utensils, grain and household furniture. Had it not been for the injuries aforesaid he would have been able to continue farming and would now have been on said farm in Wisconsin. And would probably have been at least, worth from one to two thousand dollars more than he now is. His expenses for moving to and from his farm and the sacrifice of property and loss of time being, I think, not less than one thousand dollars.

W. J. Schroyer

Interrogatory propounded to the said Dr. G. S. Goodhart, a witness produced and sworn as aforesaid on the part of said Joseph J. Schroyer and his answer thereto as follows —

1st. Interrogatory — Please give your name, age, residence and profession —

Answer to 1st. Interrogatory — My name is G. S. Goodhart, my age is 35 years and my profession a Physician.

2nd Interrogatory — How long have you followed

of your present occupation and are you acquainted with the anatomy of the human frame, the art & science of surgery & skilful in the treatment of injuries?

Answer to 2^a Interrogatory — I have followed my present occupation eleven years and am well acquainted with the anatomy of the human frame and the art or science of surgery and consider myself skilful in the treatment of injuries.

3^a. Interrogatory — Are you acquainted with any of the parties in the above entitled cause? If yes, how long have you known them or either of them?

Answer to 3^a Interrogatory — I am acquainted with the Plaintiff Joseph J. Schroyer and have been acquainted with him more than five years.

4th. Interrogatory — Have you been called on by the Plaintiff Joseph J. Schroyer to attend him in your professional character? If so please describe the case you were called on to attend to, its first and last appearance to you?

Answer to 4th. Interrogatory — He called upon me professionally about six weeks ago with a lameness in his left arm which could be traced to the shoulder joint, attended with considerable pain of a rheumatic character and which extended from the shoulder to the fingers and increased by motion or exercise of the arm and it still is in the same situation or

condition. There is no apparent swelling or deformity of the arm.

5th. Interrogatory — If you speak of any injury the Plaintiff Joseph J. Schroyer has received, please describe the cause indicated thereby. Your knowledge and professional opinion of the suffering produced therefrom and how far it has impaired the Plaintiff's health, ability for manual or other labor as to defend himself and whether such injury is likely to be permanent?

Answer to 5th. Interrogatory — The injury may have been produced by external violence or a forcible twist of the arm, or continual pressure against the shoulder — a fall or a blow. The injury would be accompanied with more or less pain of a temporal or a permanent nature. It at times continues during the life-time of the patient in consequence of the injury sustained by the long tendon of Biceps or other muscles & by nerves appropriated to the arm, depriving the individual of the action of his arm either for manual labor or self defense. The general health would not suffer except so far as the loss of the use of the limb is concerned and the annoyance of repeated pains.

6th. Interrogatory — Have you any further knowledge or professional opinion that would be of benefit to the plaintiff in this cause? If so

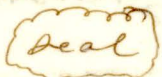
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They were duly sworn by me as such Justice of the Peace
and as such commissioners to testify the truth in relation to the matters
in controversy between the said Joseph J. Schroyer Plaintiff
and the said John Feink, Martin O. Walker and others defendants

please state it as fully as if particularly interrogated
thereto.

Answer to 6th. Interrogatory — I have not,
G. L. Goodhart M. D.

I, John Pursel, Justice of the Peace in and for the
County of Hamilton and State of Ohio and a Com-
missioner duly appointed to take the depositions
of the said William J. Schroyer and G. L. Goodhart
witnesses whose names are respectively subscribed
to the foregoing depositions do hereby certify that pre-
vious to the commencement of the examination
of the said William J. Schroyer and the said G. L.
Goodhart as witnesses in the said suit between
the said Joseph J. Schroyer, Plaintiff and the said
John Feink, Martin O. Walker and others Defendants
so far as they should be interrogated concerning the
same, that the said depositions were taken at my
office in the Township of Harrison in the County
of Hamilton and State of Ohio on the 25th. day of
April A. D. 1855 and that after said first deposition
to wit, the one to which the name of William J. Schroyer
is subscribed was taken by me as aforesaid, the in-
terrogatories and answers thereto as written down were
read over to the said William J. Schroyer witness
aforesaid and that thereupon the same was signed
and sworn to by the said deponent Wm J. Schroyer
before me. And that after said second deposi-

sion to wit the one to which the name of G. S. Goodhart is subscribed, was taken by me as aforesaid the interrogatories and answers thereto as written down were read over to the said G. S. Goodhart witness as aforesaid and that thereupon the same was signed and sworn to by the said deponent G. S. Goodhart before me, the oath being administered by me as such Justice of the Peace and as such commissioner to each of said deponents at the place and on the day and year last aforesaid
Given under my hand and seal this 25th. day of April Eighteen hundred & fifty five

John Purcell 
Justice of the Peace & Commissioner

I, Thomas Spooner, Clerk of the Court of Common Pleas within and for said County of Hamilton, do hereby certify that John Purcell before whom the foregoing depositions appear to have been taken was at the time of taking the same and signing his attestation thereto an acting Justice of the Peace in said County duly elected, commissioned as qualified as such and that full faith and credit are due to all his official acts as such Justice of the Peace

In Testimony whereof, I
the Clerk aforesaid, have



herunto set my hand, and affixed
ed the Seal of the said Court at
Cincinnati, in said County this
27th. day of April A. D. 1855

Thomas Spooner
Clerk Court of Common Pleas
Hamilton County, Ohio
By E. Page Deputy

The Depositions of Dr. Charles M. Duncan and Samuel Waugh taken before George Dent, Clerk of the Circuit Court in and for the County of Putnam in said State, at the office of said Clerk in Hennepin Illinois, on the 22^d day of April A. D. 1854 at or after 10, o'clock A. M. of said day in pursuance of the attached notice & to be read in evidence on the trial of said cause -

The said Charles M. Duncan being previous to his examination duly sworn by said Clerk to testify the truth in relation to the matter in controversy, so far as he should be interrogated, testified in answer to the following interrogatories as follows to wit,
1st Interrogatory - Please state your ^{name,} age, residence and occupation?

Answer. Name, Charles M. Duncan, Age 26 years, Residence, Hennepin, Illinois, Occupation Physician.

2^d Interrogatory - Are you acquainted with the parties to this suit, & with which of them, if any?

Answer - I know the plaintiff, & defendants Frink & Parmely.

3^d Int - Please state if you know of the upsetting of a Stage Coach at Hennepin, Illinois, on the 21st day of August 1852, if so, what coach, to whom did it belong & on what route was it running?

Answer - I know of an accident with 2 coaches about that time, at Hennepin Illinois, & also knew that one of the coaches had been upset or smashed

The coach to which I particularly refer was one of the stages of Frink & Co. I supposed - one of the regular line - on the mail route from Springfield via Hennepin &c. to La Salle, connecting from above with boats at Henry or at the next stations below Hennepin. It was a coach in the line then carrying the mail on said route -

4th. Int - Please state the cause of the upsetting of said coach & the nature of the ground upon which it upset -

Answer - It was on good ground, level, & the cause must have been carelessness, otherwise the coach could not have been upset.

5th. Int - Please state if you know, whether any one, a passenger in said coach was hurt by said accident & if so, what was his name? Where was he from & where going?

Answer - A man was hurt by the upsetting. The best of my recollection is that his name was Schroyer. I do not recollect where he was from nor where he was going. I think he told me where he lived or would like to go & that I advised him to go if he could get a convenient way of traveling easily.

6th. Int - Please state the injury said person received by the upsetting of the coach & its extent or character & appearance.

Answer - He was badly bruised about the
(G D)

not to be made

shoulders - almost disabled - rather unable to move himself - I was called soon after the accident, to visit him professionally, I thought on first seeing him that his shoulders were dislocated, but on examination found that they were not - He was bruised in other places; but slightly.

7th. Int - Please state what you did for him?

Answer - When I went to him camphorated spirits were being applied & I directed the continuance of the same application & treatment.

8th. Int - Please state professionally concerning injuries, by sprains, strains of muscles, nerves tendons &c. compared with dislocations & fractures & if the plaintiff had strain, bruise or sprain of limb, state your opinion as to the same being seriously hurt, also as to the probability of its remaining a lasting injury.

Answer - The difference in degree of injury by sprains &c. as compared with dislocations &c. would depend upon the parts affected & upon the causes, way of receiving & extent of the injury. Bruises might be worse than dislocations, & again dislocations might be worse than bruises - varying according to extent & parts implicated. - The plaintiff was seriously bruised about the shoulders & the injury to him by the bruises would probably be more lasting & worse than simple dislocation of the shoulders. The effects, I suspected would

be more developed in a few days after I saw him. As a consequence of severe bruises the use of muscles or injured might be lost - The injury to the plaintiff was by severe contusions with strains resulting therefrom.

(G.D.)

C. M. Duncan M. D.

The said Samuel Waugh having likewise been duly sworn testified and deposed as follows to wit,

Int. 1st. — What is your name, age, occupation and residence?

Answer — Name, Samuel Waugh, Age, 54, Occupation, Hotel business, Residence, Hennepin Illinois.

Int. 2nd — Do you know the parties to this suit? Do you know Frink & Walker or any of the firm who were proprietors of the stage line from Springfield Illinois, to La Salle, Illinois about the 21st of August 1852?

Answer. I know defendants Frink, Walker & Parmely & probably defendant Burnell. The stage firm were John Frink & Co. proprietors of that stage line.

Int. 3rd — Please state whether you have been agent for said firm? If yea, How long have you been?

Answer — I received fare for them about the

time already mentioned & afterwards & also for several years before.

Int - 4th, — Please state whether you know of the upsetting of a stage coach at Glennequin Illinois about the 21st. of August 1852?

Answer — There were 2 stage coaches upset in Glennequin about that time.

Int - 5th. What coaches?

Answer — 2 belonging to John Frink & Co. mail Coaches.

Int - 6th. — On what route were they running?

Answer — On the route from Springfield to La Salle.

Int. 7th — Did the Springfield & La Salle line run through Glennequin?

Answer — No.

Int. 8th. — Was the coach upset one that usually brought passengers from Springfield & Peoria to La Salle?

Answer — Both of the coaches were such.

Int. 9th. — State if you know how the said Frink & Co's. stages were connected between Springfield & Henry & if this coach ran in such connection?

Answer — Coaches ran from Springfield to Peoria. From Peoria a boat ran to Henry. Coaches or stages ran (to form the connection between Henry & La Salle.

Int. 10th. — State, if you know, the cause of the

coaches upsetting at said time & place and the nature of the ground on which they upset?

Answer — I know of no other cause of coaches upsetting there except carelessness. The drivers were drunk, running the teams trying to pass each other; ground level.

11th. Int — State if any person was hurt, if so how?

Answer — There was a gentleman in one of the coaches was hurt by the upsetting of the coach, & was taken to the Hennepin Hotel where I was,

12th. Int — Did you hear the name of the man injured?

Answer — I did, but can't recollect it.

13th. Int — Was his name put down on your Register on the 21st. of August 1852?

Answer — No.

14th. Int — Was any Physician called to the man hurt? If yes, What was his name?

Answer — Dr. Charles M. Duncan was called,

15th. Int — Please state, if you know, whether John Frink & Co. had the line of stages between Springfield & La Salle through Hennepin?

Answer — They were proprietors of that stage line.

16th. Int — Please state, if you know, whether or not the said stage company fitted up a boat & made their stage connections between Peoria & Henry by water & carried the stage

passengers through that way?

Answer - They did.

Samuel Waugh

State of Illinois
Putnam County S.D.

I, George Dent Clerk of the
Circuit Court in and for said County, do
herely certify, that the foregoing Depositions
of Dr. Charles M. Duncan and Samuel Waugh
were taken before me at my office in Hennepin
in said County, this day, after 10. O'clock A. M.,
and were reduced to writing by a disinterested
person and read to and signed and sworn
to by said witnesses respectively, and that
said witnesses previous to their examination
were by me duly sworn to testify, so far as they
should be interrogated, the truth in relation to
the matter in controversy in the suit named
in the caption to said Depositions. In testi-
mony Whereof I hereby subscribe my name
and affix the seal of said Court
at my said office, this 22nd day of
April A. D. 1854



Geo. Dent Clerk
By Thomas Dent Deputy

Clerks fees - 4 oaths - .20

Taking & certifying depositions 1.80 — 2.00

Witnesses fees Dr Chas. M. Duncan 1 day .50, Saml Waugh 1 day .50 — 1.00

3.00

Paid by E. B. Ames Atty. for Plff Schroyer

April 22^d 1854,

Geo. Dent - Atk.

After reading the depositions aforesaid the Plaintiff here rested his case

There was no evidence offered on the part of the Defendants

The Plaintiff then asked the Court to instruct the Jury as follows —

1st. If the Jury shall believe from the evidence that the Plaintiff was a passenger on the Stage Coach of Defendants "and that the Defendants were common carriers of passengers at the time," And that while the said Stage coach was under the exclusive management and control of the defendants, or their agents, upon the journey mentioned in the Declaration and while the plaintiff was a passenger therein, the said Stage Coach was overturned, and the plaintiff received an injury thereby in consequence of drunkenness or negligence of the driver or in consequence of the negligence of the Defendants

Given as amended

or their drivers or agents without any carelessness on the part of the Plaintiff, they should find for the Plaintiff

The words "and that the Defendants were common carriers of passengers at the time," and which are underscored in the 4th. & 5th. lines of the foregoing instructions were interlined as an amendment by the Court.

" 2^d " That in assessing damages for the injury the
" Jury may believe from the evidence, the plaintiff
" to have received from the drunkenness or carelessness of the defendant's driver or agent, if any they find
" the Jury are not confined to consider the direct expenses the plaintiff incurred if any is proved, but
" also are to consider the loss of time and such damages
" in future to the plaintiff as may be likely to result
" and from the evidence may appear to be the natural
" and probable result of the injuries received by the
" plaintiff "

Which were given by the Court and to which the Defendant objected, but the Court overruled said objection and gave said instructions to the jury to which decision of the Court in overruling said objection and giving said instructions to the jury the Defts. then and there excepted -

The Defendant then asked the Court to give to the jury the following instructions

Refused

1st. — That to entitle the plaintiff to recover in this action
 it should be alleged in the Declaration and proved
 by him that the defendants were Common Carriers
 at the time of the injury to the plaintiff, and that
 there being no such allegation in the declaration that
 they were such Common carriers there is no founda-
 tion for proof of the fact and therefore the plaintiff
 cannot recover in this action "

Given as amended

2nd — To entitle the plaintiff to recover it is necessary
 for him under the declaration in this cause to prove
 some relation by a contract express or implied between
 the defendants and the plaintiff, and unless he has so
 done you will find for the defendants, " which
was amended by the Court as follows: but if the
 jury shall find from the evidence that at the time
 of the injury the plaintiff was a passenger in the
 Stage coach of the defendants, this is evidence from
 which the jury may infer a contract to carry him and
 it is not necessary to show that the fare was actually
 paid) "

Refused

3rd — That to entitle the plaintiff to recover in this action
 it should be alleged and proved that the defendants
 were Common carriers — That there being no allega-
 tion in the declaration that they were such carriers there
 was no foundation for proof of the fact and therefore
 the plaintiff cannot recover in this action "

of which the Court refused to give the instructions numbered 1st and 3rd and gave instruction numbered 2nd as amended by the Court; to which refusal of the Court to give to the jury instructions numbered 1st and 3rd and to the amendment to instruction numbered 2 as amended by the Court the defendants then and there objected, but the Court overruled said objection, to which decision of the Court in overruling said objection and refusing to give to the jury Instructions numbered 1st and 3rd and amending Instruction numbered 2nd the plaintiff then and there excepted.

Thereupon a verdict was rendered by the jury in favor of the plaintiff for the sum of five thousand dollars damages. A Motion for a new trial was therefore made by the said Defendants through his Counsel which said motion was then and there overruled by the Court on the plaintiff entering a remittor of \$2200⁰⁰ and the decision of said Court in overruling said motion was then and there excepted to. And because none of the said exceptions so offered and made to the decisions of the said Court do appear upon the record of the said trial therefore on the prayer of the said defendants by their said Counsel the Judge of the said Court hath to this Bill of exceptions set his seal according to the Statute in such case made and provided this twelfth day of April

one thousand eight hundred and fifty six

George Manierre
Judge 7th Judicial

Circuit Court

Seal

(The following endorsement is in pencil on Bill of Exceptions)
I think the above is correctly set forth & waive all objections
to the time - as we extend same to this Bill of Exceptions
to the 16th present day

(W. H. Stickney)

State of Illinois }
Cook County, } ss

I Louis D Hoard Clerk
of the Circuit Court in and for said County and
State, do hereby certify that the above and
foregoing is a true & perfect transcript of
all the papers filed & proceeding had and
entered of record in the foregoing entitled
Cause -



In witness whereof I have here-
unto set my hand and affixed
the seal of said Court at Chicago
this 11th day of June A.D. 1886

L D Hoard

fees for transcript \$16.00

Chas. C. Cook & Co,
Ills

Sup^r Ct. of Illinois

Apr^c Term 1857.

Error to Court Cir^t Court
John Smith et al D^{ff} in error

vs
Joseph J Schroyer Deft^s in Error

On the Misjoinder of Issues

Assuming that there is no error shown
in the Record of above cause & that
the Sup^r Court will sustain as material
after ~~Verdict~~, I have given some attention
to the mistake first brought to notice in
the Supreme Court of the Clerical error
in entering wrong surnames to two of
the parties defendants below

Nov 19th 1855 - The Clerk entered on his record
the title of the cause, misspelling the names
of three* of the defendants (not however altering the
sound of R Stewart's name) proceeding to
state, "This day came the said parties by their
attorneys & issue being joined it is ordered that
a jury come &c"

This mistake did not alter the issue - Same parties
came by their attys & tried the issue, previously
joined & filed in the cause - The Dec^t. was against
the right parties Defendants & the plea in their
right names The Dec^t. was read to the jury

The Verdict of the jury was, We the jury
find ^{the issue} for the Plaintiff & assess his damages
at \$5000 - ^{the sum of}

The verdict was against the parties who
had joined the issue, not against those

* Only two on the minute the
name of Damon is here correctly
entered -

Nov 20th The verdict is en-
tered, against all the right
parties, except D & Moore is
spelled D S Moore -

whose names the Clerk that day misstated
or misspelled upon his minutes

The jury^t was entered Apr^l 4th 1856. against
all the Defendants named in the Declara-
tion, the Clerk again misspelling the
surnames ~~of two~~ ^{of one} of them D. S. Moore is
here D. S. Morris - It is not Dawson herein but spelled

Dawson Now by a standing rule of the Supreme
Court no other errors shall be enquired
into but such as are assigned

Gilbert et al vs Maggord / Deam
mon p 2471.

The above mistake if an error is
not assigned as such

It was not an error in the verdict
for the verdict (though informal) was for
the Plaintiff; & against whom? against
the parties who had joined in the
pleading, not against the misnamed
or misspelled names, the Clerk had
entered on his minutes in referring to the
Cause; If an error or mistake in
entering the jury^t it was not an
error of the Court in rendering
jury^t on the verdict - The error
if any is clearly not assigned.
And the Court will not seek out an er-
ror, when the mistake of a Clerk would
so seriously injure the Plaintiff

In 16th Ill. Rep^r p 112. Brockman et al
vs McDonald, the point decided as soon
differs essentially from this - one party

have been mistaken or misspelled to have been of life importance to the pleadings, the trial or the judgment.

The misspelling of Stewart's name Nov 19 1835 making it Stewart & afterwards April 4th entering correct again as Stewart gives evidence of the carelessness and inattention of the Clerk in copying the names by sec 3. Chap 5. R. C. M. power to amend 2 & 4 sec 2 " " " " No jury shall be reversed by reason of any imperfection that would have been aided & cured by the Chap. 5. &c

The Case in 2^d Gilman 412 is not similar to this - There jury was on award against two - One only having been sued - No mistake of name - no such name in Cause to be mistaken

It being apparent that the names of the true & right defendants were in issue & that the misnomer in calling or spelling one Morris for Moore & Dawson for Damon did not alter that issue - And that the misnomer or misspelling of their names is not assigned for error, - and there being no precedents applicable - And the Statute of Amendment & Joinders intended to cure such mistakes, and great injustice to be done Plaintiffs by a reversal of jury. Should not jury. be confirmed - Leaving to the

Discussion of Supreme Court to make
the amendment, direct the Circuit
Court to make it, or leave the
mistake unnoted as not being
assigned.

W. H. Stetson for
Deft in error

John Frink & Co
Opps in Conn

103
Joseph Schroyer Dapt

Ad² Brief

For Justin Seates
in Baton
r Skinner

Supreme Court —
3^d C. Division
Frank et al }
vs }
Schroyer }

1st Reasons why super
sedecas should be allowed —
The declaration contains no
allegation that defendants were
Common Carriers — nor does
it allege facts which ^{would} constitute
them Common Carriers — There
was therefore no foundation in
the pleadings for treating defendants
below as such — or permitting
the jury to treat them as such —
Each instruction therefore based
upon that hypothesis was erroneous
and the instructions asked by
the defendants below & refused
ought for the same reason to
have been given — It is essential
to constitute a common carrier
of passengers — that he must be
in the habit of carrying passengers
for hire — The declaration per
haps charges the habit of carrying
passengers — but does not say in
that connection — "for hire"
(over)

It charges that defendants were to carry this plaintiff for hire - but that makes only "a Carrier pro hac vice" - or the case of a farmer undertaking to carry a passenger on a single journey for hire - this is not a common carrier. -

2nd Under such a declaration the mere fact that plaintiff below was a passenger in depts Carriage - would not warrant the inference of a Contract for hire - and therefore the qualification to depts last instruction was clearly erroneous -

3^d The new trial ought to have been granted because the proof does not support or tend to support either Count in the declaration - the 1st Count makes plaintiff a passenger to be carried from Springfield to LaSalle - The 2nd makes him a passenger to be taken from Peoria to Hannibal & LaSalle - in each in a coach running between these terminals

Whereas the proof shows no continuous line of stages either from Springfield or Peoria north - but a break in the line from Peoria to Henry supplied by boats - and the passenger is nowhere shown to have been a passenger except from Henry north - The allegations must be supported by the probata - but this variance is fatal -

4th - The declaration nowhere alleges a permanent injury as a ground of damages - but limits the effects in every instance by the words from thence hitherto - The court therefore erred in instructing the jury to allow damages for future probable suffering &c -

5th - The verdict and trial was not between the parties to the issue - Morris and Dawson being parties to the trial & judgment, instead of Moore and Darnon who were parties to the issue - For this irregularity the judgment against parties, not served with process - (not declared

against — not having pleaded — was
clearly erroneous —

T. L. DeKey for
plaintiff in
Error

Frank et al
vs
DeKey

Short argument
Points &c
by T. L. DeKey

Filed July 18. 1858
L. Leland
Clerk

State of Illinois

Supreme Court April Term 1867

Joseph J. Schryver Defendant in Error
ad.

John Frink & others Plffs in Error

Verdict in Error

And the said Defendants in Error
comes & says that in said Record
proceedings & judgment of the Court below
there is no material error & that he
is ready to verify &c

W. H. Stutney for
Defn in Error

Joseph Schuyler
Deft in error
an.

Mr Frank Lottman

~~~~~  
Garden in error  
~~~~~

Filed April 22 1887
L Leland
Clk

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of Cook — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of Cook county, before the Judge thereof, between Joseph J. Schroyer Plaintiff & John Frink & others

defendants it is said that manifest error hath intervened, to the injury of the said John Frink & others

as we are informed by their complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Joseph J. Schroyer

that he be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the Second Monday in June — next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said Joseph J. Schroyer notice, together with this writ.

WITNESS, the Hon. ~~Samuel H. Treat~~ Walter B. Scates, Clk. of Justice of our said Court, and the Seal thereof, at Ottawa, this 23^d day of July in the Year of Our Lord One Thousand Eight Hundred and Fifty-six.

L. Leland
Clerk of the Supreme Court.
By J. B. Rice Deputy

43 / Bw

John Krinkel

vs

Joseph J. Schroyer

Seire Facias

Not found in my County
June 7th 1856.

Fees & Return — 104

James S. Beach Coroner
& Ex-Officio Acting Sheriff
By H. S. Buckley Dy. Shff

Filed May 18 1857

L. Seland
Clerk

Supreme Court - Northern Division
John Fink et al
vs
Joseph J. Schroyer } Error to Cook

Know all men by these presents
that we John Fink as principal
and D. C. Park Davis as security
are held and firmly bound to Joseph
J. Schroyer in the penal sum of
Six thousand dollars - for the pay-
ment of which we bind ourselves - our
heirs - executors and administrators
jointly & severally - to the said Joseph
J. Schroyer his heirs executors and
administrators - by the these presents
signed and sealed by us this 30th
day of June 1856 -

Yet upon this Condition
- at the ^{last} March Vacation Term of
Circuit ^{Court} of Cook County - Illinois
a judgment was rendered in favor
of said Joseph J. Schroyer and
against the said John Fink and
Martin O. Walker - Greenville Kimball
Cyrus D. Davis, David S. Morris, Loren
R. Singer - Aaron R. Burnell - Robert
Stewart Orron C. Parnely - Edward
~~A. Dunsen~~ Bipell Humphrey and

Daniel B. ~~Hibbard~~ for twenty eight
hundred dollars damages together with
costs to be taxed - And whereas the
said John Frink et al are about
to sue out of the ^{Office of the Clerk of the} Supreme Court at
Ottawa - a writ of Error - with a view
of having said judgment reversed - and
~~are~~ are about to ask that said writ
of Error may be made a Supersedeas
Now therefore if ~~such~~ said John
Frink et al - shall prosecute said
writ of Error with effect - and
pay said judgment and all costs
and damages which have been or
may be adjudged against them
in case said judgment be not
reversed - then this bond to be
void otherwise of force

John Frink et al

D. B. Park, David Seal

John Frink et al
vs
D. B. Park
Superior Court

Filed July 23. 1858

W. L. Seal
Clerk

STATE OF ILLINOIS,
Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of *Cook* — Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of *Cook* county, before the Judge thereof, between *Joseph J. Schroyer*

plaintiff, and *John Trunk & Als*

defendants it is said manifest error hath intervened, to the injury of the aforesaid *John Trunk & Als*

as we are informed by *their* complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the *Second Monday in June* — next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. ~~Walter B. Scates~~ **SAMUEL H. TREAT**, Chief Justice
 of our said Court, and the Seal thereof, at Ottawa, this *23^d* day of *July*
 in the Year of Our Lord One Thousand Eight Hundred and Fifty-*six*

L. Selund

Clerk of the Supreme Court.

By J. B. Rice Deputy

John Frank et al
vs
Joseph J. Schroyer
Writ of Error

This Writ of Error
is made a Superse-
deas and as such
is to be obeyed by
all concerned

L. Leland

Clerk

By J. B. Rice Deputy

Filed July 23. 1856

L. Leland
Clerk

Supreme Court - Illinois

I Warren. T. Hecox being duly
sworn - do depose & say - that
I am acquainted with - D. M.
Park Davis - and with his pecuniary
circumstances - That he owns, very
valuable real estate in the city
of Chicago - ~~resides~~ and in my judg-
ment - he is pecuniarily responsible
for at least thirty thousand dollars
- He resides in Chicago Cook
Co Illinois

W. T. Hecox

Sworn to and Subscribed before
me this first day of July
A. D. 1886

W. C. Sumner
Notary Public

John Frink et al

vs

Joseph J. Schuyler

Affidavit of
responsibility of
security

Filed July 18 1856

L. Leland

Clerk

Error to book

Lo. J. Schuyler Defts & Error
ads
John Smith & others Plffs in Error
In Sup Court of Illinois

Respecting the mispison of the
Clerk of the Cook Circuit Court (in
entering on his minutes the trial
of this cause & in entering up judgment
by misspelling & altering the sound
of the surnames of two of the Defts
below;

It is answered

1st There is no objection taken to
this in the Assignment of Errors
it is not assigned for Error &
the Sup. Court will not notice it
unless assigned. Gilbert et al vs
Magford [1st Scammon p 471.] -

2^d Without waiving the above it
may be further suggested that
the mispison of the Clerk is very clear
The Dec't & the Plea were correct the
issue was made up & no objection
by Demurrer or otherwise as to parties
The jury found the issue for the Plff.
The copying of the names wrongly by

the Clerk on his Minutes of the trial
could not & did not alter the
issue. Now is the just defect
for a title misprison - The parties
were more rightly named - The
Supreme Court may amend the judge's
if they think necessary - This is the
letter & the spirit of Chap 8th of the
Revised Code of Illinois, Amendments
& Joinders - Page 49 sec 3 The Supreme
Court may correct misprison of Clerk, also
by Sec 9. to correct mis title of surnames

Moff vs Hunt et al 13th Ills 571. Circuit
Court is allowed to amend Summons of
Justice of Peace on appeal by changing
the name of one of the Plaintiffs from
David to Daniel when the answer
which was filed contained the true name
because there was something to amend
by -

Amendments allowed when any thing
to amend by see Lam v Morse et al
11 Ills 589.

See Duncan vs McAfee 3d Scam^{2d} p 93
Sup^{2d} Court may amend.

Evincing the misprison & negligence of the
Clerk see Abstract. Nov 19. name of one
spelled R. Stuart, April 4. R Stewart.

If the minutes made by the Clerk of the trial is taken as the issue joined then neither the Plyff or Errol Morris and Dawson or either or all of those who joined that issue can now object that they were not Decided against, by joining that is one they admitted they & the right parties were properly served & decided against & the verdict was properly against them and the judgment thereon correct.

In 16th Ills Rep. 112 Brothman et al Plyff or Errol vs McDonald, there is no analogy to this case.

There suit was instituted against J. H. S. Brothman & Jos. Miller judgment rendered against the Brothman & one Campbell.

There was neither sum^l, service sent^l or appearance by Campbell - His Christian name is diff^t from that of Miller & surname so diff^t that there is no room even to suspect a clerical mistake & none alleged. In this case the Christian name and initial letters of Christⁿ names are the same, and Morris & Dawson almost speak in looking at them the case with which a careless or hasty Clerk might copy them for Moore & Dawson.

Also 2^d Eilman has nothing applicable
to misnomer or misprison There
p 412. Indg was on award against
two & only one had been sued.
(Record does not show that he afterwards
became a party / by pleading or otherwise)

5th Hill Indg can not be confirmed as
to one & reversed as to another. It is
not applicable here

Same 2^d Hill. Cause reversed against
all for injury of one - not a point

12th Johnson. Justice gave judgment against
two, one not served - not a point

13. Ills p 22 judgment partly entered in favor
of several defendants "an interest" is
not applicable -

So far as examined met no decision
respecting a misprison of Clerk or
misnomer of Defts in a judgment
Leaving the Court to apply the Statute of
Amendments & Joinders & this mis
prison or to avoid any
question on the ground first
above mentioned. If an error
it is not assigned & while the confir
mation of the Judgment will work no in
justice to Plaintiffs in Error a reversal
would work great injustice to Deft.

W. H. Stutling for Deft.
in Error

63.
Frank & Co.
Schuyler
May 10, 1857
an
Joseph Schuyler of
the
Frank & Co.
of
the
of

Supreme Court - June Term 1857 -

Fink et al
vs } Error to Circuit Court of
Joseph J. Shroyer } Cook County -

3

Joseph J. Shroyer Sept 4th 1852 ^{sued out} a summons
in ~~an~~ case against John Fink, Martin O.
Walker Granville Kimball, Cyrus D. Davis
Daniel S. Moore Lorenzo P. Sanger - Aaron
R. Burnell Robert Stewart, Orion C. Par
mely - ~~Edward A. Darnon~~ Bissell Hum
phrey & Daniel B. Hibbard as defendants
returnable to the December Term 1852 -

5

On the 7th of April 1853 - Shroyer
as filed his declaration - by which
he complained of John Fink et al named
in the summons as defendants

that ~~said defendants~~ ^(10th) on 16th of August
1852 - said defendants, were the owners
of a certain stage Coach by them used and
employed in carrying passengers - from
Springfield in Sangamon County to LaSalle
in LaSalle County - and divers other places
and then & there received into their said coach
~~at~~ plaintiff as a passenger therein to be con
veyed thereby on a journey viz from
Springfield to LaSalle for certain fare
to said defendants in that behalf - to be paid

6

And by reason thereof defendants ought
carefully to have conveyed ~~the said~~ plaintiff
by said coach on said journey from Springfield
to LaSalle

7 Yet defendants conducted so by the carelessness
of defendants & their servants in that behalf
said Coach while carrying plaintiff on said
journey - and before arrival at LaSalle - was
over set by means whereof plaintiff being
therein was bruised wounded & injured and one
of his arms became fractured - injured, strained
and the use thereof destroyed - so that plff
lost the use thereof from thence hitherto &
plaintiff was otherwise greatly injured so that
he became sick, sore & disordered from thence
hitherto - During all which time plaintiff suffered
great pain and was hindered in transacting
his business and thereby lost gains &c and
by means whereof he was compelled to abandon
an intended visit & return a great distance to
his home at great expense - & was forced to
pay \$1000 in endeavoring to cure his said
ailments & in travelling to his home - Whereupon
he says he has sustained damages to ten thousand
dollars - &c -

8 On 19th April 1853 - Schroyer filed an
amended declaration alleging

9 that said defendants when &c were the owners
of a certain other Coach used by them in carrying
passengers from Springfield to LaSalle & divers
other places - And then & there were the owners
of a certain other stage Coach by them used
in carrying passengers from Peoria to LaSalle
and of a certain other stage Coach by them
used in carrying passengers from Peoria to
Hennepin & LaSalle -

And being such owners of said stage coach
defendants received into said Coach plaintiff

as a passenger to be carried thereby on a journey
viz from Peoria to Hennepin & LaSalle

10 Yet defendants through carelessness of
themselves & their servants - said coach whilst
the same was carrying plaintiff from Peoria
to Hennepin & LaSalle - at Hennepin aforesaid
was over set & thrown down whereby plain
tiff then being therein was bruised & injured
and one of his arms bruised & strained and
the use thereof destroyed and was greatly
injured inasmuch that plaintiff was
compelled to abandon his business and was
sick & disordered from thence hitherto
and suffered great pain & lost profits and was
forced to & did pay out ~~\$1000~~ about \$1000
in the endeavor and about the curing of said
wounds & bruises - Wherefore he claims ten
thousand dollars damages -

11 On 27th of October - 1853 - Defendants entered
in declaration filed a plea of not guilty -
12 Plaintiff joined the issue

Dec 5th 1854 - by order of the Court the depoi-
tions of Dr Morris, Isaac Newman - Franklin
Mitchell & William J. Schroyer were supplied

13 November 19th 1855 - a jury was sworn to try
the issue joined in the case between Joseph
J. Schroyer plaintiff and John Frank -
Martin O. Walker - G. Kimball - C. D. Davis
D. S. Morris L. P. Sanger - A. R. Burnell
R. Stuart - O. C. Parmely - Edward A
Dawson - Bipele Humphreys and D.
B. Hubbard -

and having heard the evidence retired to consider -

14

Nov 20th 1855 - Verdict for plaintiff for five thousand dollars - and defendants move for a new trial - & in arrest of judgment

15

April 4th 1856 - Ordered that said motion for a new trial be sustained unless the plaintiff remit \$2200, of the verdict - Whereupon plaintiffs attorney enters a ~~remittitur~~ "remitter" for \$2200, and agrees to take judgment for \$2800. dollars under suggestion of the Court that a new trial will not be granted - which is entered of record - and thereupon the Court ordered that ^{the} motion ~~to~~ be overruled and rendered judgment for \$2800 and Costs in favor of Joseph J. Schroyer and against John Fink, Chas. O. Walker - G. Kimball C. D. Davis - D. S. Morris - S. T. Sanger - A. R. Burnell - R. Stewart D. C. Parnely - E. A. Dawson - Bipole Humphreys - and D. B. Hubbard -

Bill of Exceptions filed April 14th 1856 - sets forth that on the trial -

Dr A. B. New Kirk testified that witness, at his office, examined plaintiffs arm which was pretty seriously injured, bruised and swollen - so that witness could not then tell what the extent of the injury was or what it might be - that plaintiff was a heavy man - over common size and about 45 years old - that there

was no dislocation nor fracture of the bones - that the injury did not prevent plaintiff from walking with his arm in a sling. Witnesses had examined plaintiffs arm twice since - the last time (not long ago) the ligament over the shoulder was injured - had grown stiff - formed a different matter and adhered to the bone - he could not raise his arm - An injury of that kind was worse than a broken bone, and in all probability must be permanent.

18

Francis Rattle testified he was passenger in Coach belonging to defendants about August 1882 - The stage route was from Springfield through Peoria to La Salle - the connection between Peoria and Henry was by boat run by defendants as part of the line - Three Stage-Coaches started together from Henry - plaintiff was in the first, witness in the second - on the way the drivers were drinking and racing - and about an hour before sunset - within a mile of Hennepin - the third coach attempted to pass ahead - the driver of the coach carrying plaintiff put on the lash, and they raced into Hennepin - one coach upset in Hennepin - the other, carrying plaintiff, ran off on

the paravie - turned suddenly around a fence and upset on level ground. Witness saw plaintiff picked up - taken to a house - a physician called - some applications made - when witness and plaintiff then proceeded to La Salle and thence by packet boat to Chicago.

Defendants attorney Admitted that all defendants named in declaration were owners of said line of coaches carrying passengers on said route.

Doctor Morris, a resident of DeCATUR Wisconsin, testified that witness was once called to see plaintiff's arm - the arm had received a severe injury - and from the injury there remained a weakness - probably permanent - Witness thinks there were extensive adhesions in membranes and muscles, crippling the freedom of arm movement, and implicating the circulation, so that arm was permanently injured. and, to a great extent, the use of it lost - the pain and suffering which plaintiff endured must have been severe - the lameness must be permanent and perhaps continue painful at times

Franklin Mitchell, a farmer, residing in Wisconsin testified that previous to August 1852. plaintiff was apparently sound in body and limb - Witness saw him in September 1852. plaintiff had received a severe injury in right arm - it was badly swollen and appeared to be very painful - it appeared to affect his general health very much and to entirely disqualify him for labor - the pain seemed to be caused by a severe bruise or contusion in right arm extending from the ^{wrist} waist to the shoulder of the arm affected - Saw him as often as every three or four days - knew him to be suffering from his arm from September 1852 to April 1854 - Witness resided during that time within 80 rods of the plaintiff - Plaintiff was a farmer from August 1852 to April 1854 - do not know what his previous occupation was - Plaintiff has been obliged to stop labor occasionally since August 1852 & finally quit farming altogether on account of lameness in his right arm, which disabled him entirely from labor - ~~plaintiff did reside in Green Co. Wisconsin from the summer of 1852 until April 1854 - Witness thinks he now resides in Ohio. Dr. P. P. Springstead & Dr. R. P. R. were called to plaintiff's house - do not know that they were called to see plaintiff~~

Abner Mitchell, a farmer in Wisconsin, testified that prior to August 1852 plaintiff was apparently sound in body and limb - that since that he had a severe injury in the right arm - that in September 1852 it was badly swollen and apparently very painful. Seemed to affect his general health severely and disqualified him for manual labor, and became ^{more swollen} ~~swelled~~ & painful when he attempted to labor - it was swollen from the wrist to the collar bone in September 1852 and continued so for about three months - The swelling then gradually subsided - and irregularities appeared, some parts continuing swollen, and others were unnaturally depressed.

Plaintiff's occupation was farming from 1852 to 1854 - before that he was merchandising - He finally quit farming on account of his arm -

Van B. S. Newman, a farmer in Wisconsin, testified that prior to August 1852 plaintiff was apparently well - his arm is now lame - ~~For~~ Witness first observed this the latter part of August 1852 - the arm was badly swollen from the wrist to the shoulder & apparently painful - injured his health and unfitted him for manual labor - from 1852 to 1854 plaintiff was farming

test

before that merchandising - plaintiff was obliged to stop labor frequently and finally to quit it altogether on account of his arm troubling him - he used a good deal of medicine about his arm - he was unable to drive his team back to Ohio and had to take public conveyance -

William J. Schroyer, a daguerian artist of Ohio, by deposition testified - that before August 1852 plaintiff was sound and healthy and lived in Ohio, and was absent from home from the 3^d of July to sometime in September of that year - left home to travel through Illinois, Iowa and Wisconsin - returned in September 1852 with his left shoulder and left arm badly bruised ~~to~~ and black and blue from shoulder to hand and so lame or sore that he was unable to use it for any purpose, and had to carry it in a sling - It is still lame & painful, and he has not much use of it - when he takes cold the left side of his neck and his left shoulder become stiff and lame - his general health renders him much less able to labor than formerly - When he tries to use his arm it gives out - his pain is such that he cannot rest as usual at night - Up to the Spring of 1852 plain-

tiff was a merchant in Cincinnati. he then gave up that business and went west to buy a farm - while absent - went to Wisconsin and bought one and moved to it in the fall and after farming one season found himself unable to do the work on account of his arm and shoulder and quit farming and moved back to Ohio where he has since been engaged as a merchant. has frequently applied medicine to the injuries and still does to alleviate the pain - he was at the expense of moving from Ohio to Wisconsin and from Wisconsin to Ohio in consequence of the injury - was compelled to make sacrifice in sale of his horses, stock, farming utensils grain and household goods - Save for the injuries he would have been able to continue farming and would now have been on Isid farm in Wisconsin and worth probably at least one to two thousand dollars more than now

in the Spring
of 1854

Dr. S. S. Goodhart, a physician, testified that he had followed his occupation eleven years - was skilled in surgery and the anatomy of the human frame. Considered himself skillful in the treatment of injuries, by his deposition (April 25th 1855) testified, that about six weeks before that time, Plaintiff called upon him

proportionately, with a lameness in left arm, traceable to shoulder joint attacked with much pain, which was increased with muscular exercise of arm. There is no swelling or deformity. The injury was liable to be permanent.

Charles M. Duncan, a physician of Keosauqua, Illinois, (by deposition of April 22nd 1854) testifies,

He knew of an accident of two coaches, or Keosauqua about August 1852 — and that one of the coaches had been split or smashed — (one of the stages of Smith and Co) of the regular line on mail route from Springfield, by Keosauqua to La Salle — connecting from above with boats at Henry — It was a coach in the line then carrying the mail in the line from one mail route — it was upset from carelessness — plaintiff was hurt thereby — I advised him to go home if he could get a convenient way of travelling — He was badly bruised about the shoulders — in other places but slightly — The bruises about the shoulders would probably produce a lasting and more injury — from the simple distraction — Samuel Hall, hotel keeper at Keosauqua Illinois, testifies —

that he knew Smith, Walker and probably Burnett — The stage firm were John Smith & Co —

received fare for that time — about that
time & afterwards & for years before —
In August 1852 two mail coaches of John
Smith & Co were upset in Minnesota,
running on the route from Springfield to
La Salle through Minnesota — usually
carrying passengers from Springfield to La
Salle — Coaches ran from Springfield
to ~~La Salle~~ ^{Peoria} — from Peoria a horse
car ran to Henry — then coaches from
Henry to La Salle — The cause
of the accident was the drunkenness of
the driver —

John Smith & Co were the proprietors of the
stage line between Springfield and
Minnesota — they fitted up a coach
between Peoria & Henry, and made their
stage connect with between Peoria and
Henry by water taking their stage
passengers through that way —
the above is all the evidence
afforded

The court at the request of plaintiff
gave the following instructions

By the Jury believe from the evidence that the plaintiff was a passenger on the Stage Coach of Defendants "and that the defendants were common carriers of passengers at the time" and that while the said Stage Coach was under the exclusive management and control of the defendants, or their agents upon the journey mentioned in the declaration and while the plaintiff was a passenger therein, the said stage Coach was overturned, and the plaintiff received an injury thereby in consequence of drunkenness or negligence of the driver or in consequence of the negligence of the defendants or their agents, without any carelessness on the part of the plaintiff, they should find for the plaintiff.

2nd That in assessing damages for the injury the Jury may believe from the evidence the plaintiff to have received from the drunkenness or carelessness of the defendant driver or agent, if any they find, the Jury are not confined to consider the direct expenses the plaintiff incurred if any is proved, but also are to consider the loss of time and such damages in future to the plaintiff as may be likely to result and from the evidence may appear to be the natural ~~and~~ and probable result of the injuries received by the plaintiff.

To the giving of which said instructions the said defendants by their counsel

then and there excepted —

~~The court was requested~~ Defendants asked the following instructions — which were refused & defendants excepted —

That to entitle plaintiff to recover in this action it should be alleged in the declaration and proved ~~that~~ defendants were common carriers at the time of the injury to the plaintiff — And that there being no such allegations in the declaration that they were such common carriers there is no foundation for proof of the fact. And therefore the plaintiff can not recover in this action —

leged That to entitle plaintiff to recover in this action it should be alleged ~~and~~ and proved that defendants were common carriers — that there being no allegation in the declaration that they were such carriers there was no foundation for ~~proof~~ proof of the fact, and therefore plaintiff cannot recover in this action.

~~Defendant further asked the court to instruct~~ The Court ~~to~~ instructed the jury for defendant as follows — "To entitle plaintiff to recover it is necessary for him under the declaration in this cause to prove some relation by contract

express or implied between the plaintiff and the defendants and the plaintiff - and unless he has so done you will find for the defendants." The court added to this instruction, as an amendment, the following "But if the jury shall find from the evidence that at the time of the injury plaintiff was a passenger in the stage coach of defendants - this is evidence from which the jury may infer a contract to carry him, and it is not necessary to show that the fare was actually paid" ^{To the giving} ~~beginning~~ of which qualification defendant excepted -

~~The refusal of new trial was~~
Defendants excepted to the over-
ruling of motion for new trial.

L. L. Dickery
for plttf in error

Frink et. al
vs.
Schroyer.

Abstract.

Filed July 18. 1856
L. Leland
Clerk

For better ref
erence

STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, A. D. 1857.

Error to the Circuit Court of Cook County.

FRINK *et al* vs. JOSEPH J. SCHROYER.

ABSTRACT OF THE RECORD.

JOSEPH J. SCHROYER, Sep. 4, 1852, sued out a summons in case against John Frink, Martin O. Walker, Granville Kimball, Cyrus D. Davis, David S. Moore, Lorenzo P. Sanger, Aaron R. Burnell, Robert Stewart Orson C. Parmely, Edward A. Damon, Bissell Humphrey, and Daniel B. Hibbard, as defendants, returnable to the December Term, 1852.

On the 7th of April, 1853, Schroyer filed his declaration by which he complained of John Frink *et al.* named in the summons, as 'defendants. That on the 10th of August, 1852, said defendants were the owners of a certain stage coach by them used and employed in carrying passengers from Springfield, in Sangamon county, to La Salle, in La Salle county, and divers other places, and then and there received into their said coach plaintiff as a passenger, therein to be conveyed thereby on a journey, viz: from Springfield to La Salle, for certain fare, to said defendants' in that behalf. And by reason thereof defendants ought carefully to have conveyed plaintiff by said coach on said journey from Springfield to La Salle. Yet by the carelessness of defendants and their servants, in that behalf, said coach, while carrying plaintiff on said journey, and before arrival at La Salle, was upset, by means whereof plaintiff, being therein, was bruised, wounded, and injured, and one of his arms became fractured, injured, strained; *and the use thereof destroyed*, so that plaintiff lost the use thereof from thence hitherto, and plaintiff was otherwise greatly injured so that he became sick, sore and disordered from thence hitherto; during all which time plaintiff suffered great pain, and was hindered in transacting his business and thereby lost gains, &c. And by means whereof he was compelled to abandon an intended visit and return a great distance to his home, at great expense, and was forced to pay \$1,000 in endeavoring to cure his said ailments and in traveling to his home, whereupon he says he has sustained damages to ten thousand dollars, &c.

On the 19th April, 1853, Schroyer filed an amended declaration, alleging that said defendants, when &c., were the owners of a certain other coach used by them in carrying passengers from Springfield to La Salle and divers other places, and then and there were the owners of a certain other stage coach by them used in carrying passengers from Peoria to La Salle, and of a certain other stage coach by them used in carrying passengers from Peoria to Hennepin and La Salle, and being such owners, defendants received into said coach plaintiff as a passenger to be carried thereby on a journey, viz: from Peoria to Hennepin and La Salle; yet defendants, through carelessness of themselves and their servants, said coach, whilst the same was carrying plaintiff from Peoria to Hennepin and La Salle, at Hennepin aforesaid, was upset and thrown down, whereby plaintiff, then being therein, was bruised and injured, and one of his arms bruised, strained *and the use thereof destroyed* and was greatly injured, insomuch that plaintiff was compelled to abandon his business, and was sick and disordered from thence hitherto, and suf-

Dr. Morris, a resident of Decatur, State of Wisconsin, testified, that he, witness, was once called to see plaintiff's arm; the arm had received a severe injury, and from the injury there remained a weakness, probably permanent. Witness thinks there were extensive adhesions in membranes and muscles, crippling the freedom of arm movement, and implicating the circulation, so that arm was permanently injured, and to a great extent, the use of it lost. The pain and suffering which plaintiff endured must have been severe. The lameness must be permanent, and perhaps continue painful at times.

Franklin Mitchell, a farmer, residing in Wisconsin, testified, that previous to August, 1852, plaintiff was apparently sound in body and limb. Witness saw him in September, 1852; plaintiff had received a severe injury in right arm, it was badly swollen, and appeared to be very painful; it appeared to affect his general health very much, and to entirely disqualify him for labor. The pain seemed to be caused by a severe bruise or contusion, in right arm, extending from the wrist to the shoulder of the arm affected. Saw him as often as every three or four days; knew him to be suffering from his arm from Sept., 1852, to April, 1854; witness resided during that time within 80 rods of the plaintiff. Plaintiff was a farmer from August, 1852, to April, 1854; do not know what his previous occupation was. Plaintiff has been obliged to stop labor occasionally since August, 1852, and finally quit farming altogether on account of lameness in his right arm, which disabled him entirely from labor.

Abner Mitchell, a farmer in Wisconsin, testified that prior to August, 1852, plaintiff was apparently sound in body and limb; that since that time he had a severe injury in the right arm; that in September, 1852, it was badly swollen and apparently very painful; seemed to affect his general health severely, and disqualified him for manual labor, and became more swollen and painful when he attempted to labor. It was swollen from the wrist to the collar bone, in September, 1852, and continued so for about three months. The swelling then gradually subsided, and irregularities appeared, some parts continuing swollen and others were unnaturally depressed.

Plaintiff's occupation was farming from 1852 to 1854; before that he was merchandizing. He finally quit farming on account of his arm.

Van B. S. Newman, a farmer in Wisconsin, testified that prior to August, 1852, plaintiff was apparently well; his arm is now lame. Witness first observed this the latter part of August, 1852. The arm was badly swollen from the wrist to the shoulder, and apparently painful; impaired his health and unfitted him for manual labor from 1852 to 1854. Plaintiff was farming—before that merchandizing. Plaintiff was obliged to stop labor frequently, and finally to quit it altogether on account of his arm troubling him. He used a good deal of medicine about his arm. He was unable to drive his team back to Ohio, and had to take public conveyance.

William J. Schroyer, a Daguerrean Artist, of Ohio, by deposition testified that before August, 1852, plaintiff was sound and healthy, and lived in Ohio, and was absent from home from the 3d of July to some time in September of that year. Left home to travel through Illinois, Iowa, and Wisconsin. Returned in September, 1852, with his left shoulder and left arm badly bruised, and black and blue from shoulder to hand, and so lame or sore that he was unable to use it for any purpose, and had to carry it in a sling. It is still lame and painful, and he has not much use of it. When he takes cold the left side of his neck and his left shoulder became stiff and lame. His general health renders him

much less able to labor than formerly. When he tries to use his arm it gives out. His pain is such that he cannot rest as usual at night. Up to the spring of 1852 plaintiff was a merchant in Cincinnati. He then gave up that business and went west to buy a farm. While absent, went to Wisconsin and bought one, and moved to it in the fall, and after farming one season found himself unable to do the work on account of his arm and shoulder, and quit farming and moved back to Ohio, where he has since been engaged as a merchant. Has frequently applied medicine to the injuries, and still does, to alleviate the pain. He was at the expense of moving from Ohio to Wisconsin and from Wisconsin to Ohio in consequence of the injury; was compelled to make sacrifice in the sale of his horses, stock, farming utensils, grain, and household goods. Save for the injuries, he would have been able to continue farming, and would now have been on said farm in Wisconsin, and worth probably at least one to two thousand dollars more than now.

Dr. G. S. Goodhart, a physician, by his deposition, (April 25th, 1855,) testified, that about six weeks before that time, plaintiff called upon him professionally, with a lameness in left arm, traceable to shoulder joint, attended with much pain, which was increased with muscular exercise of arm; there is no swelling or deformity of the arm. The injury was liable to be permanent.

Charles M. Duncan, a physician of Hennepin, Illinois, (by deposition of April 22nd, 1854,) testified. He knew of an accident of two coaches at Hennepin, about August, 1852, and that one of the coaches had been upset or smashed, (one of the stages of Frink & Co.,) of the regular line on mail route from Springfield by Hennepin to La Salle, connecting from above with boats at Henry, or at the next station below Hennepin. It was a coach in the line, then carrying the mail in the line on said route; it was upset from carelessness; plaintiff was hurt thereby. I advised him to go home if he could get a convenient way of travelling. He was badly bruised about the shoulders, almost disabled, in other places but slightly—the effects I expected would be more developed in a few days after I saw him.

The Court, at the request of the plaintiff, gave the following instructions:—

If the jury believe, from the evidence, that the plaintiff was a passenger on the stage coach of defendants, "*and that the defendants were common carriers of passengers at the time,*" and that, while the said stage coach was under the exclusive management and control of the defendants or their agents, upon the journey mentioned in the declaration, and while the plaintiff was a passenger therein, the said stage coach was overturned, and the plaintiff received an injury thereby, in consequence of drunkenness or negligence of the driver, or in consequence of the negligence of the defendants or their agents, without any carelessness on the part of the plaintiff, they should find for the plaintiff.

2d. That in assessing damages for the injury, the jury may believe from the evidence the plaintiff to have received from the drunkenness or carelessness of the defendants, driver, or agent, if any they find, the jury are not confined to consider the direct expenses the plaintiff incurred, if any is proved, but also are to consider the loss of time, and such damages in future to the plaintiff as may be likely to result, and from the evidence may appear to be the natural and probable result of the injuries received by the plaintiff.

The words underscored in the first instruction above, to wit: "and

that the defendants were common carriers of passengers at the time," were interlined as an amendment to Plaintiff's instruction by the court.

To the giving of which said instructions the said defendants, by their counsel, then and there excepted.

1st. Defendants asked the following instructions, which were refused, and defendants excepted:

That, to entitle plaintiff to recover in this action, it should be alleged in the declaration and proven, that the defendants were common carriers at the time of the injury to the plaintiff, and that there being no such allegation in the declaration, that they were such common carriers, there is no foundation for proof of the fact, and therefore the plaintiff cannot recover in this action.

3d. That, to entitle the plaintiff to recover in this action, it should be alleged and proved that defendants were common carriers; that there being no allegation in the declaration that they were such carriers, there was no foundation for proof of the fact, and therefore plaintiff cannot recover in this action.

The 2d instruction asked for by defendant's counsel, was amended by the court and given.

2d. To entitle the plaintiff to recover, it is necessary for him under the declaration in this cause, to prove some relation by contract, express or implied, between the defendants and the plaintiff, and unless he has so done, you will find for the defendants.

The following is the amendment added by the Court:—

But if the jury shall find, from the evidence, that at the time of the injury plaintiff was a passenger in the stage coach of defendants, this is evidence from which the jury may infer a contract to carry him, and it is not necessary to show that the fare was actually paid.

To the giving of which qualification defendant excepted.

Defendants excepted to the overruling motion for new trial.

T. L. DICKEY,
For Plaintiff in Error.

W. H. STICKNEY,
For Defendants in Error.

02
Frank & al

vs
Ochroga

For Defendants in Error.
W. H. STICKNEY,

For Plaintiff, ex Error.
T. L. DICKER,

Defendants excepted to the overruling motion for new trial.
To the giving of which qualification defendant excepted.

not necessary to show that the fare was actually paid.

evidence from which the jury may infer a contract to carry him, and it is injury plaintiff was a passenger in the stage coach of defendants, this is

But if the jury shall find, from the evidence, that at the time of the

The following is the amendment asked by the Court:—

done, you will find for the defendants.

implied, between the defendants and the plaintiff, and unless he has so declaration in this cause, to make some relation by contract, express or

3d. To entitle the plaintiff to recover, it is necessary for him under the the court and given.

The 3d instruction asked for by defendant's counsel, was amended by cover in this action.

was no foundation for proof of the fact, and therefore plaintiff cannot re- being no allegation in the declaration that they were such carriers, there

alleged and proved that defendants were common carriers; that there 3d. That, to entitle the plaintiff to recover in this action, it should be

recover in this action.

is no foundation for proof of the fact, and therefore the plaintiff cannot

legation in the declaration, but they were such common carriers, there

at the time of the injury to the plaintiff, and that there being no such al- in the declaration and proved, that the defendants were common carriers

That, to entitle plaintiff to recover in this action, it should be alleged and defendants excepted:

1st. Defendants asked the following instructions, which were refused, counsel, then and there excepted.

To the giving of which said instructions the said defendants, by their were interlined as an amendment to Plaintiff's instruction by the court, that the defendants were common carriers of passengers at the time."