

No. **12265**

Supreme Court of Illinois

Holmes.

VS.

Statler.

Supreme Court - Term Term
1856

Samuel Holmes }
vs } appeal from
Samuel Stetler } Marshall

And now comes since
Holmes by Dickey & Wallace his
attorney and says that there
is manifest error in the
proceedings and judgment
afore said - in this -

The Court erred in admitting
incompetent evidence given for
the plaintiff below

The Court erred in rejecting
competent evidence offered by the
defendant in the Court below

The Court erred in giving ^{error of} the
instructions asked by the plaintiff
below

The Court erred in refusing
the instructions asked by defendant

The Court erred in modifying
the instructions asked for by defendant

The Court erred in refusing
the defendant's motion for a
new trial - and since
Holmes says that prays that

judgment may be reversed and
for naught held.

J. L. Dickey
for appellant

A Record of the orders, judgments, decrees and proceedings of the Circuit Court of Marshall County, in the State of Illinois, begun and holden at the Court-house, in the City of Lacon, in said County, on the Seventeenth day of October, in the year of our Lord one thousand eight hundred and fifty-four.

Present, the Honourable Edwin S. Leland, Judge of the Ninth Judicial Circuit of the State of Illinois; Henry L. Crane, Sheriff; and Greenberry L. Fort, Clerk.

Be it remembered, that heretofore, to wit, on the 24th day of August, A. D. 1854, came Samuel Statler, the plaintiff in this cause, by his attorneys, and filed his Praecipe for Summons, which is as follows, to wit:

Praecipe.

State of Illinois, Marshall County, and Circuit Court thereof, to the October Term, A. D. 1854.

Samuel Statler, } In Assumpsit.

vs. Samuel Holmes. } Damages \$1500.00

To G. L. Fort, Esq. Clk. of said Court.

Sir: Issue a summons in assumpsit in the above-entitled cause, returnable to the above-mentioned Term. Direct it to the Sheriff of Marshall County to execute. Put the damages at fifteen hundred dollars.

Respectfully yours, Richmond & Burns,

August, 24th 1854. }

Attys. for plaintiff.

And on the back of which is the following endorsement:

Marshall Circuit Court, Oct. T., 1854. — Samuel Statler,
vs. Samuel Holmes. — Praecipe for summons. — Filed,
August 24th, 1854. G. L. Fort, Clerk.

And on the day last aforesaid the Clerk of said
Court, as requested by said praecipe, issued the following
Summons, to wit:

Summons.

The People of the State of Illinois, to the Sheriff of
Marshall County, Greeting: We command you to Summon
Samuel Holmes, to appear before our Circuit Court, on
the first day of the next term thereof, to be held at
Lacon, within and for the said County of Marshall,
on the 16 day of October next, then and there, in our
said Court, to answer Samuel Statler, in a plea
of assumpsit, in damages of fifteen hundred dollars,
as he saith. Hereof fail not, and make due return of
your doings hereon.

Witness, Greenbury L. Fort, Clerk of our said Court,
and the seal thereof, at Lacon, this 24th day of Au-
gust, in the year of our Lord one thousand
eight hundred and fifty-four.



Greenbury L. Fort, Clerk.

On the back of which are the following endorsement and return:

Samuel Statler, vs. Samuel Holmes. — Summons. No. —
Filed, Oct. 16, A.D. 1854. G. L. Fort, Clerk. Sheriff fees, \$2.00.
Richmond & Burns, Attys. for plff.

Return.

I have served this writ by reading the same to the
within named Samuel Holmes, on this, the 25th day of
August, A.D. 1854, as within commanded.

Sheriff fees: Service, \$.50

8 miles travel .40

Henry L. Crane, Sheriff of

Marshall Co., Ills.

Return of this writ .10
\$1.00
1.00
2.00

Serving notice to take depositions, 1.00.

And on the 3rd day of October, A. D. 1854, came the ~~defendant~~^{plaintiff}, by his attorneys, and filed herein his Declaration, which is as follows, to wit:

Declaration.

State of Illinois, Marshall County, and Circuit Court thereof, to the October Term, A. D. 1854.

Samuel Statler, the plaintiff in this suit, by Richmond & Burns, his attorneys, complains of Samuel Holmes, the defendant in this suit, who has been summoned to answer, &c., in plea of assumpsit, For that whereas the said defendant, on the first day of July, in the year Eighteen hundred and fifty-four, at the County of Marshall, in the State of Illinois, was indebted to the plaintiff in the sum of fifteen hundred dollars, for the price and value of goods, wares and merchandize, then and there sold and delivered by the plaintiff to the defendant, at his request.

And in the further sum of fifteen hundred dollars, for the price and value of a large amount of gold dust, before that time sold and delivered at, Sacramento City, in the State of California, to wit, at the County of Marshall aforesaid, by the plaintiff to the defendant, at his like special instance and request.

And in the further sum of fifteen hundred dollars, for the price and value one hundred ounces of gold

dust, before that time lent and advanced, at the County of Marshall aforesaid, by the plaintiff to the defendant, at his like special instance and request.

And ⁱⁿ the further sum of fifteen hundred dollars, for one hundred ounces of gold dust, before that time, at Sacramento City, in the State of California, to wit, at the County of Marshall aforesaid, lent and advanced by the plaintiff to the defendant, at his like special instance and request.

And in the further sum of fifteen hundred dollars, for so much money, before that time lent and advanced, at Sacramento City, in the State of California, to wit, at the County of Marshall aforesaid, by the plaintiff to the defendant, at his like special instance and request.

And in the further sum of fifteen hundred dollars, for so much money, before that time lent and advanced, at the County of Marshall aforesaid, by the plaintiff to the defendant, at his like special instance and request.

And in the further sum of fifteen hundred dollars, for so much money, before that time, at Sacramento city, in the State of California, to wit, at the County of Marshall aforesaid, paid by the plaintiff for the use of the defendant, at his like special instance and request.

And in the further sum of fifteen hundred dollars, for so much money, before that time, at Sacramento City, in the State of California, to wit, at the County of Marshall aforesaid, had and received by the defendant for the use of the plaintiff.

And in the further sum of fifteen hundred dollars, for so much money, before that time found to be due from the defendant to the plaintiff, on an account then and there stated between them.

And in the further sum of fifteen hundred dollars, for interest money, for the loan and forbearance by the plaintiff to the defendant of divers large sums of money, due and owing from said defendant to the plaintiff, and for divers long spaces of time then elapsed, to be paid unto the plaintiff when he, the defendant, should be thereunto afterwards requested.

And whereas the said defendant, afterwards, on the day and year aforesaid, at the County of Marshall aforesaid, in consideration of the premises respectively, then and there promised to pay the said several monies to the plaintiff on request; yet he hath disregarded his promises, and hath not paid any of the ~~money~~ said monies in this declaration specified, or any part thereof, to the plaintiff damage of fifteen hundred dollars, & therefore he brings suit, &c.

Richmond & Burns, Attys. for plaintiff.

Copy of the Account sued on.

1850 Samuel Holmes, to Samuel Statler, Dr.

Nov. 15.	To goods, wares &c., sold and delivered,	\$1500. 00
" "	" gold dust " " "	\$1500. 00
" "	" 100 ounces, lent and advanced,	\$1500. 00.
" "	" " " " " "	\$1500. 00
" "	" Money " " "	\$1500. 00

"	"	"	"	"	\$1500.00
"	"	"	paid for use of def.	"	\$1500.00
"	"	"	recd. by def. to use of plff.	"	\$1500.00
"	"	"	found due on account stated,	"	\$1500.00
"	"	"	Interest money,	"	\$1500.00

And on the back of which is the following endorsement:
 Marshall Circuit Court, Oct. 1, 1854. — Samuel Statler, vs.
 Samuel Holmes. — Narr. in Assumpsit. — Filed, Oct. 3d,
 1854. G. L. Fort, Clerk. — Richmond & Burns, Attys. for plff.

And on the 20th day of October, A. D. 1854, comes
 the defendant, by his attorneys, and files his Plea herein,
 which is as follows, to wit:

Plea. Samuel Statler, } Circuit Court of Marshall
 vs. } County, Illinois, of October Term,
 Samuel Holmes. } A. D. 1854.

Samuel Holmes, by his attorneys, Ramsey & Fleming,
 comes and defends the wrong and injury when &c., and
 says, that he did not promise in manner and form
 as the said plaintiff in his said declaration hath
 alleged, and of this he puts himself upon the country, &c.
 Ramsey & Fleming, Deft's Attys.

Plff. doth the like. Purple, for Plff.

And on the back of which is the following endorsement:
 Samuel Statler, vs. Samuel Holmes. — Pleas. — Filed,
 Oct. 20th, 1854. G. L. Fort, Clerk.

And on the 17th day of October, A. D. 1854, comes the
 plaintiff, and files herein his Bond for Costs, which

is as follows, to wit:

Bond for Costs. Samuel Stateler, } In the Circuit Court of Marshall
Samuel^{vs.} Holmes. } County. Assumpsit.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay, or cause to be paid, all costs which ~~have accrued~~ shall accrue, or which may have accrued in this action, either to the opposite party, or to any of the officers of this Court, pursuant to the laws of this State. Dated, October 17, 1854.

Benjamin Mooney.

And on the back of which is the following endorsement:

Stateler vs. Holmes. - Bond for Costs. - Filed, Oct. 17th, 1854.
G. L. Fort, Clerk.

And on the 26th day of October, A.D. 1854, being one of the days of said Term, the following Order ~~was~~ is made and entered in this cause, to wit:

Order for Samuel Stateler, } Assumpsit.
Continuance. Samuel^{vs.} Holmes. } Be it remembered, that this day
come the parties hereto, and by agreement this cause
is continued till the next term of this Court.

A Record of the judgments, orders, decrees and proceedings of the Honourable Circuit Court, begun and holden at the Court-house, in the City of Lacon, in the County of Marshall and State of Illinois, on Tuesday, April the Tenth, in the year of our Lord one thousand eight hundred and fifty-five.

Present, The Honourable Edwin S. Seland, Judge of the Ninth Judicial Circuit Court of the State of Illinois; and William H. L. Wallace, State's Attorney for said Circuit; also, Abram Gardner, Sheriff of said County; and Greenberry L. Fort, Clerk of said Court.

Be it remembered, that on the 19th day of April, A. D. 1855, being one of the days of said Term, the following Order is made and entered in this cause, to wit:

Order for
Continuance.

Samuel Steteler, } Assumpsit.
vs.
Samuel Holmes. } This day this cause is continued
by agreement.

A Record of the orders, judgments, decrees and proceedings before the Honourable Circuit Court of the County of Marshall, in the State of Illinois, at a Term thereof begun and holden at the Court-house, in the City of Lacon, in and for said County, on Monday, October the fifteenth, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honourable Madison E. Hollister, Judge of the Ninth Judicial Circuit Court of said State of Illinois; Greenberry L. Fort, Clerk of said Court, and James St. C. Boal, his deputy; and Henry L. Crane, Deputy Sheriff.

Be it remembered, that on the 25th day of October, A.D. 1855, being one of the days of said Term, the following proceedings are had in this cause, to wit:

Motion to
suppress depositions;
overruled.

Samuel Stater, } This day comes the defendant,
vs. Samuel Holmes. } in person and by his attorneys, and moves the Court for leave of the Court to suppress the depositions on file herein of the witness John B. Stater; which said motion is overruled by the Court.

Be it remembered, that heretofore, to wit, on the 6th day of September, A.D. 1854, the plaintiff, by his attorneys, filed herein the following Notice and Interrogatories, to wit:

9
2/2265-67
Notice.

State of Illinois, Marshall County, and Circuit

Court thereof, to the October Term, A.D. 1854.

Samuel Statter, } In Assumpsit.

Samuel^{vs.} Holmes. } To Samuel Holmes, said defendant.

Sir: You will take notice, that on the sixth day of September, next, at 9 o'clock in the forenoon, the said plaintiff will sue out a commission from the office of the Clerk of the Circuit Court of said County, directed to J. M. Cassady, Curtis Bates and Barlow Granger, or either of them, as commissioners, they being residents of Fort Des Moines, in the County of Polk, in the State of Iowa, authorizing and empowering them, or either of them, to take the depositions of John B. Statter, ~~Joseph~~ Vanhorn and Stephen Connor, of said County of Polk, in said state, in answer to the annexed Interrogatories, to be read in evidence on the trial of the above entitled cause, now depending in said Circuit Court, on the part of the said plaintiff; when and where you can attend and file cross-interrogatories, if you see fit.

August 24th, 1854 } Respectfully yours, Samuel Statter.

By Richmond & Burns, his Attys.

Interrogatories.

Interrogatories to be administered to John B. Statter, of the County of Polk, in the State of Iowa, a witness to be produced, sworn and examined before and by the Commissioners named in the foregoing notice, or some one of them, as a witness in the above entitled cause, on behalf of the said plaintiff.

under and by virtue of the commission hereto annexed, as follows, to wit:

Int. 1. Are you acquainted with the parties, plaintiff and defendant, in the title of these Interrogatories named, or either of them? If yea, how long have you known them respectively?

Int. 2. Do you know whether said plaintiff and defendant, or either of them, resided in California, in the latter part of the year 1850? If yea, state how long they resided there, and where they resided there, and whether you resided there at the same time they did.

Int. 3. State whether you know anything about said plaintiff lending, selling or advancing any money or gold dust to the defendant, at or near Sacramento City, in California, or at any other place, in the year 1850, or at any other time. If yea, state where it was, where it was, to what amount, what was the advance made in? was it in money, or gold dust? or what was it? where said defendant agreed to pay it, whether you were present at the time it was done; was anything said about interest? if so, what? and state all that was said by the plaintiff and defendant, or either of them, (if said in the presence of the other,) at the time of such lending or advancing.

Int. 4. State whether you ever heard the defendant say anything about the plaintiff lending him money, or dust; if so, state what he said and all

he said on the subject.

Int. 5. Do you know what was the customary rate of interest for money or gold dust loaned in California, in the year 1850 and subsequently to that time? If so, state all you know about it.

Int. 6. Do you know any other matter or thing that may benefit the plaintiff? If so, state the same fully.

Interrogatories to be propounded to Joseph Vanhorn and Stephen Connor respectively, witnesses to be produced, sworn and examined in the above-entitled cause, before and by the commissioners named in the foregoing notice, or some ^{one} of them, as witnesses in said cause, on behalf of said plaintiff, under and by virtue of the commission hereto annexed, as follows, to wit:

Int. 1. Are you acquainted with John B. Statler? If yes, how long have you known him, and when?

Int. 2. Are you acquainted with the general character of said John B. Statler, among his acquaintances, for truth and veracity?

Int. 3. If you answer the last interrogatory in the affirmative, then you will state what such character is; is it good, or bad?

Int. 4. Did you ever, in California or elsewhere, hear Samuel Holmes say anything about having an intention never to return to the State of Ill.? If so,

what did he say in that regard?

Int. 5. Are you acquainted with Samuel Holmes, the defendant in this suit?

Richmond & Burns, Attys. for plaintiff.

And on the same day aforesaid, the defendant, by his attorneys, filed herein the following cross-interrogatories, to wit:

Cross-Interrogatories.

State of Illinois, Marshall County, ss. and Circuit Court thereof.

Samuel Stateler, } Assumpsit.
vs.
Samuel Holmes. }

To the Clerk of the Circuit Court of said County.

Sir: On the 25th day of August, 1854, the notice hereto attached was served on me. I accordingly request, that if any Commission or *Dedimus Potestatem* is issued in pursuance thereof by said Stateler, that the following cross-interrogatories may be incorporated in the same, to be propounded to said John B. Stateler, Joseph Vanhorn and Stephen Coner. We protest, however, that you, the said Clerk, ought not to appoint either of the persons named in said notice as a commissioner in that behalf, unless from some satisfactory evidence it is made to appear that such person is worthy of the trust thus reposed. We insist that the *dedimus* should be issued to some officer named in the statute, or some impartial known by the Clerk to be (or satisfactorily proven to the Clerk to be) a person worthy of full

confidence.

1st. Cross-interrogatories to be propounded to John B. Steteler.

1st. Where do you now reside? what business do you follow? and where did you reside from August, 1852, until October of that year? and where have you resided from that time until the present?

2nd. State if you have been frequently absent from your home, between October, 1852, and the present time; if so, where have you been? and what has been your business when so absent?

3rd. Did you testify on the subject matter of this examination, at any times or times in 1852 or in 1853, in a deposition or depositions taken in the State of Iowa? If yea, before whom were those depositions taken? and at what place and at what time?

4th. Have you seen any copies of said depositions, or ~~any~~ either of them, since?

5th. Have you seen any written statement of what was in said depositions, or either of them, or any part thereof?

7th. Have you received any communication, written or verbal, from Samuel Steteler, or any other person, about your testimony in this matter? or have you been informed by said Samuel Steteler, or any other person, either by written communication or verbally, of the termination of the suit pending in the Circuit Court of Marshall County, Illinois, between said Samuel Steteler and the defendant Holmes, in regard to the subject matter of the suit now

pending?

8th. Give the original of any such statement or statements, written communication or communications, in your power or possession. If not in your power or possession, explain the the reason why you can not do it, and give a copy, if possible; if not possible, state the reason why, and state from memory the substance of such communication or communications, whether written or verbal, by letter or otherwise.

9th. Who was present when you say Holmes received gold dust or gold of your brother, Samuel Steteler?

10th. In what house, and what part of the house, did it occur, if in a house? and what was the house used for, a dwelling, hotel or mercantile establishment, or for any other purpose? If not in a house, state particularly where it was.

11th. How long had you been in that place or neighbourhood, immediately before said borrowing of which you testify?

12th. Was your brother, Samuel Steteler, with you? and how were you both engaged at the time preceding said transaction, for the space of two or three weeks?

13th. On what day of the month, and in what year was it, that this alleged gold lending took place, and on what day of the week was it? How long was it before you and your brother, ^{Samuel} started home? and did you and your brother

come home together? and how long before you started home had you been making your arrangements, and talking about coming home?

14th Where were you boarding at the time? and where was Holmes boarding at that time?

15th Where did you and your brother procure said gold? and how did he get it? How did he keep it, about his person, or on deposit? What business did he follow? How long had he been in business?

16th Whose house was the money loaned in?

17th Was it measured or weighed? Was it coin, or dust, or lump gold? and if weighed, by what means? on whose scales? and what kind of scales were they?

18th For what purpose did Holmes at that time get said gold?

19th Were you acquainted with Mrs. Eliza Smith, a widow lady, residing in the City of Sacramento, the sister-in-law of Samuel Holmes? Did she, or not, have abundant means and money?

20th Was this alleged loaning before or after the death of Samuel Holmes, Senr, the father of defendant?

21st About how long before or after?

22d By what means do you fix the day of the month, week and year on which you say gold was borrowed?

23d Where is Harvey Evans now? Where was he when you last heard from him? and where has he been all or any part of the time since you

and your brother Samuel came home from California?

24th. Did you ever have any communication with him about this claim of your brother? If so, when did you last talk with him on the subject, and where?

25. How much money did you bring home from California?

26th. How much money, or gold or other valuables did your brother, the plaintiff, bring home from California?

27th. Did you, after your arrival at home, ever inform any person that neither you or your brother had brought home any money? and give as a reason that you had been sick while there, or words to that effect?

28th. Did you, when you returned, come to your home in Marshall County, Illinois? and if not, where did you go to? and if yea, how long did you remain?

29th. How much money or property did your brother make in California? and how did he make it? and what became of it, as far as you know?

30th. Did your brother loan any money, except what you say he loaned to Holmes? If so, ~~for~~ to whom and how much? and where does the person or persons now reside?

31st. Were you well or sick, sound or afflicted? How much physician's care did you require and receive in California, or on your way home? What was the nature of the affliction? and what was the charge of physicians per visit in California?

32. Did you ever live in the State of Illinois? If so, when, how long, and in what County?

18
and what part of the County, did you reside in Illinois?

33rd. What was your age when you left the State of Illinois?

34. Were you ever arrested in the State of Illinois, upon any criminal charge? If so, upon what charge or charges, before what court or courts, justice or justices of the peace, in what county, and how often?

35th. State whether you were not accused and suspected of theft, by some of the citizens of Illinois, and generally supposed to be guilty?

36th. Were you not permitted to go unpunished, on account of your youth?

37. Did you ever tell any person, after your return from California, and before your brother first wrote to you about your testimony in this matter, that your brother had let Holmes have gold in California? If so, state when, where, and to whom?

38th. Were you not indicted by the grand jury of Marshall County, in the State of Illinois, for stealing, - called in law, larceny? Was any other person indicted with you? If so, who was it?

39th. At the time of answering the questions of the plaintiff, in this deposition, which you have answered, did you know what cross questions were to come after them? If so, how did you find it out?

40th. Were you acquainted with Holmes before going to California? If yea, how long had you known him?

41st. How do the streets in Sacramento City, in California,

run? Do they a part run parallel with the river?
and how do the others cross them?

42. Are the streets running parallel with the river
lettered or numbered, and which is it? Give the
letters or numbers, and give a general description
of how the streets run, and how they cross each
other; and which are numbered? those that run
parallel with the river, or those that cross them?

43rd. On what street was the house, in which you say
your brother Samuel loaned Holmes the gold, situated?

44th. What kind of a house was it, brick, stone or wood?
Was it one, ^{or} two, or more stories high? How many
rooms were in it?

45th. Did the street on which the house in which you
say the gold was loaned, run parallel with the
river, ^{or} did it run at right angles from the river?

46. On which side of the street was the house sit-
uated? North or south, east or west, up or down
the river, on the side of the street next the river,
or on the side from the river?

47th. Was the that on which the house was sit-
uated built up with houses, or did this house
stand detached?

48th. What kind of materials were the houses in that
vicinity composed of? and were they dwelling houses
or business houses?

49th. Was that house in the business part of the
City?

50th. Where was your brother's hay-yard situated? on

what street? ~~what street?~~ how far from the river?
Was it in the business part of the city, or near it,
in the outskirts?

51st. Was his hay kept in stacks, on a lot, or was
it kept in buildings? If in buildings, what kind
of buildings were they?

52nd. What kind of buildings had your brother, at
his hay-yard?

53rd. How far was it from the hay-yard to the house
where you say the gold was loaned, and what
direction was it?

54th. How long had you boarded at your brother's
hay-yard, previous to the alleged lending of gold by
your brother to Holmes?

55th. What length of time had you spent or lived
in or about the City? and where, if anywhere
other than at your brother's hay-yard, did you board
in or about the City? and if anywhere, how far
was such point or points from the house in which
you say the lending took place?

56th. What was the nature and extent of the injury to
your leg, which was sore at the time you started
from California?

57th. How was that injury caused or produced? Was
there any time that it disabled you from working?
if so, how long?

58th. Were you able to walk when you started home?
If so, how long had you been able to walk before
starting ~~home~~? and how long before ~~starting~~ ^{you started} was

home was the injury received?

59th. Did the injury occur on or about the day of the general election in California?

60th. How did you happen to be at the house where you say the lending took place? Did you go in company, or alone? Did you go intentionally, or were you passing accidentally? If any person or persons went with you, who were they? Was it in daylight or night, before noon or after noon, when you went into the house? and did you turn to the right or left, north or south, east or west? and did you go upstairs, or was it on the first floor? Was there a cellar under the house? How many windows were there in the room? how many doors?

61. When you left the house, did you go away alone, or in company? and if in company, who left with you? Did Holmes leave before you left? and who went with him? or did you leave him at the house?

62. What did Holmes do with the gold, when he got it from your brother? What did he put it in, a box or a sack? and what kind of materials was it made of? Was it weighed before Holmes got it, or was it weighed after he got it? Did Holmes weigh it, or did your brother weigh it?

What is your age at the present time? Are you married or single? Do you keep house, or board? If you board, with whom do you board? and how long have you boarded with him?

64th. Did you not, on or about the 21st September, 1852, before Stephen J. Carey, Clerk of the District Court of Pottawattomie County, Iowa, at Kanawville, give your deposition in regard to the lending of gold by your brother to defendant Holmes, to be read in evidence in a suit then pending in the Circuit Court of Marshall County, Illinois? and did you not also, on or about the 24th day of March, 1853, before J. M. Casady, in the town of Fort Des Moines, in Polk County, Iowa, have your deposition taken in regard to the same subject matter, and to be read in evidence in the same Court?

Cross-interrogatories to be propounded to Joseph Vanhorn and Stephen Coner respectively.

- 1st. Were you acquainted with John P. Steteler, when he resided in the State of Illinois, in Marshall County? and if yea, at what time did he reside there?
- 2d. How long did you reside in Marshall County, Illinois? and what year did you remove from there to your present residence in Iowa?
3. Is his character for truth and veracity any better at the present time among his neighbours in Iowa, where he now resides, than it was among his neighbours in Marshall County, Illinois, at the time you resided there?
- 4th. Did you state to defendant Holmes, at or near your house, in Polk County, Iowa, the year 1850,

in the presence of L. Burgess, John Kirk, J. A. Lickette and other persons, when on their way to California, that the character of said John B. Steteler was not good for truth and veracity, in that part of the State of Iowa where he now resides, or words to that effect?

5th. Were you well acquainted with the character of John B. Steteler, in the State of Illinois?

6th. How far did you reside from said John B. Steteler, when you resided in Illinois?

7th. Do you know of said John B. Steteler being accused and suspected of theft, by some of the citizens of Illinois?

8. How far do you reside from John B. Steteler? and how far have you resided from him, during his residence in Iowa?

10th. How many persons have you heard speak of his character for truth and veracity, in the neighbourhood where he now resides, and what were their names?

11th. How long has he resided in the neighbourhood where he now resides, in Iowa?

12th. Where were you acquainted with the defendant Holmes?

13. What was and what is the circumstances of deft. Holmes? and what has been the circumstances of Samuel Steteler, during your acquaintance with him?

14th. How long have you known Samuel Steteler? and did he, in Marshall County, Illinois, reside at the same place with his brother, John B. Steteler?

15th. Were you ever in California?

16. How many times have you seen defendant Holmes, and where and at what times? Give the precise times, as near as you can recollect.

17th. Was any person or persons present, when you had conversations with Holmes? If so, who? and where did said conversations take place, and when?

Samuel Holmes.

By Lickey & Ramsay & Fleming, his attorneys.

Should the Commission not be issued to all the persons named in the notice, we claim no advantage from that fact, and will make no objection on that ground.

Lickey & Ramsay & Fleming, for Deft.

And on the same day aforesaid, the said Clerk, in pursuance of the notice above recited, issued the following Commission, to wit:

Commission.

State of Illinois, } ss. In the Circuit Court of said
Marshall County, } County, to the October Term of the
year A. D. 1854.

The People of the State of Illinois, to P. M. Cassady and Curtis Bates, of Fort Des Moines, in the County of Polk, in the State of Iowa, Greeting:

We, confiding in your fidelity, ability and integrity, have nominated and appointed, and by these presents do nominate, constitute and appoint, authorize and empower you, the said P. M. Cassady and Curtis Bates, or either of you, our Commissioners, to examine on their corporal oaths, to be by you or either

of you to them administered, according to law, John B. Stateles, Joseph Vanhorn and Stephen Conner, witnesses named in the notice hereto attached, on all and singular the interrogatories and cross-interrogatories attached to and transmitted with these presents, at some time and place to be by you or either of you appointed, in said State of Iowa; and that you take down the depositions of said witnesses in writing, according to law; to be read in evidence in a cause now pending and undetermined in said Circuit Court of Marshall County, wherein Samuel Statler is plaintiff, and Samuel Holmes is defendant; and that you return said deposition and interrogatories and cross-interrogatories, together with these presents, to the Clerk of said Court, sealed up and endorsed according to law, with all convenient speed.

L. S.
Conner

Witness, Greenberry L. Fort, Clerk of
our said Court, and the seal thereof,
at Lacon, this sixth day of September, A.D. 1854.
Greenberry L. Fort, Clerk.

And on the 17th day of October, A.D. 1854, being one of the days of said term, the following depositions ~~are filed~~ opened under a general order of the Court, and filed herein; which said depositions are as follows, to wit:

Deposition of Stephen Conner, taken before P. M. Casady, Commissioner, in accordance with the

annexed Commission, at Fort des Moines, Polk County, Iowa, on the 23d day of September, 1854. The said Stephen Conner, being duly sworn by said Commissioner, deposes as follows:

Interrogatory 1. Are you acquainted with John B. Statter? If yea, how long have you known him, and when?

Ans. I am acquainted with John B. Statter; I have been acquainted with him about four years; acquaintance commenced in the year 1850, and have known him ever since that time.

Interrogatory 2. Are you acquainted with the general character of said John B. Statter, among his acquaintances, for truth and veracity?

Answer. I am acquainted with the character of said John B. Statter, among his acquaintances, for truth and veracity.

Interrogatory 3. If you answer to the last interrogatory in the affirmative, then will you state what such character is; is it good or bad?

Answer. His character is good, among his neighbours, for truth and veracity.

Interrogatory 4. Did you ever, in California or elsewhere, hear Samuel Holmes say anything about having an intention never to return to the State of Illinois? If so, what did he say in that regard?

Answer 4. I never did hear him say anything about it; neither was I acquainted with him, in California or elsewhere.

Cross Int. 1. Were you acquainted with John B. Statter, when he resided in the State of Illinois and Marshall County.

If yes, at what time did he reside there?

Ans. 1. I was not acquainted with John B. Statler, in the State of Illinois.

Cross Int. 2. How long did you reside in Marshall County, in the State of Illinois? and what year did you remove from there to your present residence in Iowa?

Ans. 2. I never lived in Marshall County, Illinois.

Cross Int. 3. Is his character for truth and veracity any better at the present time, among his neighbours in Iowa, where he now resides, than it was among his neighbours in Marshall Co., Illinois, at the time he resided there?

Ans. 3. His character in Iowa, among his neighbours, is good; do not know what his character was in Marshall County, Illinois.

Cross Int. 4. Did you state to the defendant Holmes, at or near your home, in Polk County, Iowa, in the year 1850, in the presence of L. Burgess and John Kirk and other persons, when on their way to California, that the character of John B. Statler was not good for truth and veracity in that part of the State of Iowa where he now resides or boards?

Answer. I did not have any such conversation; and I never resided in Polk County, Iowa.

Cross Int. 5. Were you well acquainted with the character of John B. Statler, in the State of Illinois?

Answer. I was not acquainted with him at all in Illinois.

Cross Int. 6. How far did you reside from John B. Statler, when you resided in the State of Illinois and I never resided in Marshall County, Illinois.

Answer.

I lived in Warren County, in the State of Illinois, about thirteen years since.

Interrogatory 7.

Do you know of said John B. Statler being accused and suspected of theft by some of the citizens of Illinois?

Answer.

I do not.

Interrogatory 8.

How far do you reside from John B. Statler, and how far have you resided from him, during his residence in Iowa?

Answer 8.

We both live in the same house, at this time. Part of the time, I lived about six miles from him, and then Statler moved to the Bluff, about one hundred and fifty miles, and then he moved to Greenbush, about seven miles from me; he then moved to Clark County, about twenty five miles, and then he moved to within about fourteen miles of me, and then he moved back to where he now resides.

+ Interrogatory 10.

How many other persons have you heard speak of his character for truth and veracity, in the neighbourhood where he now resides, and what were their names?

Ans. 10.

I do not recollect the number, but have heard several. I can name the following persons I have heard speak of his character: Samuel T. Saint, Abram Gayhart, William Gayhart, George Bullion, David Lippincott, Thomas Lippincott, Mr. Fields, William Smith, Wilson Wheat, Augustus Wheat, James Conner, Joseph Conner, Joseph Guyger, William Conner, Joseph Vanhorn.

Interrogatory 11.

How long has he resided in the neighbourhood where he now resides, in Iowa?

- Answer 11. He has resided in the neighbourhood about eighteen months.
- Introq. 12. Where were you acquainted with the defendant Holmes?
- Answer 12. I am not acquainted with him at all.
- Interrogatory 13. What was, and what is, the circumstances of defendant Holmes? and what has been the circumstances of Samuel Statter, during your acquaintance with him?
- Answer 13. I do not know anything about the circumstances of either Holmes or Statter.
- Interrogatory 14. How long have you known Samuel Statter? and did he, in Marshall County, Illinois, reside at the same place with his brother, John B. Statter?
- Answer 14. I have known him about two years; and I do not know where he resided in ~~is~~ Illinois.
- Int. 15. Were you ever in California?
- Ans. 15. I was there in the year 1850.
- Int. 16. How many times have you seen the defendant Holmes, and where and what times? give the precise times, as near as you can recollect.
- Ans. 16. I have never seen him to know him.
- Int. 17. Was any person or persons present, when you had conversation with Holmes? If so, who, and where did said conversation take place, and when?
- Ans. 17. I never had any conversation with him.

Sworn to and subscribed before }
 me, Sept. 28^d, 1854. } Stephen^{his} Conner,
 P. M. Calady, } mark.
 Commissioner. }

Deposition of John B. Statter, taken before
P. M. Casady, Commissioner, in accordance with the
annexed Commission, at Fort des Moines, Polk County,
Iowa, on the 27th day of September, 1854. The said
John B. Statter, being duly sworn by said Commission-
er, deposes as follows:

Interrogatory 1. Are you acquainted with the parties, plaintiff and de-
fendant, in the title of these interrogatories named, or either
of them? If yea, how long have you known them respectively?

Ans. I am acquainted with them both. The plaintiff is
my brother, younger than I am; I have known him
from infancy. I know Samuel Holmes, the defendant;
have been somewhat acquainted with him for about
eleven years.

Int. 2. Do you know whether said plaintiff and defendant,
or either of them, resided in California, in the latter
part of the year 1850? If yea, state how long they
resided there, and when they resided there, and
whether you resided there at the same time they did.

Ans. I know that Samuel Statter and Samuel Holmes
both resided, in the year 1850, in Sacramento City, State
of California. I arrived at Sacramento City the 17th
August, A. D. 1850, and left there on the 29th November
of same year. Both plaintiff and defendant resided
in Sacramento City, California, six weeks immediately
preceding my departure from California, probably longer.

Int. 3. State whether you know anything about said
plaintiff lending, selling or advancing any money or

gold dust to the defendant, at or near Sacramento City, California, or at any other place, in the year 1850, or at any other time. If yes, state where it was; when it was; to what amount; was the advance made in money or gold dust, or was it; when said defendant agreed to pay it; whether you were present at the time it was done; was anything said about interest; if so, what; and state all that was said by the plaintiff and defendant, or either of them, if said in the presence of the other, at the time of such lending or advancing.

Answer B. About the 9th of November, 1850, in Sacramento City, in California, Samuel Holmes made application to me to borrow some money. I replied that I was going to start home soon, and had no money to loan. He then wanted to know of me if he could not borrow money of my brother, Samuel Statter. I told him that I thought he could. I told him he had the money, and had lent some previously. He then wanted me to go and fetch my brother down to see him, which I did. He then asked my brother if he could lend him four hundred dollars; said he wanted it to pay the expenses of his father's sickness and burial, and also the expenses of his own sickness. My brother told him he could have the money, and weighed him out and delivered to him, Holmes, twenty-five ounces of gold dust, in my presence. Said gold dust was then worth sixteen dollars (\$16.) per ounce. This took place in Sacramento City, in California, about the ninth

of November, 1850. Holmes agreed to pay the money to my brother, if he could, in California; if not, when he got home to Illinois. There was nothing said in my presence about interest.

Int. 4. State whether you heard the defendant say anything about the plaintiff lending him money or dust. If so, state what he said, and all he said on the subject.

Answer 4. I saw defendant some two or three times after the lending of the money, and I do recollect having had conversation relative to the loaning of the money. He thought he would not be able to pay my brother, before he started home.

Int. 5. Do you know what was the customary rate of interest for money or gold dust loaned in California, in the year 1850, and subsequently to that time? If so, state what you know about it.

Answer 5. I do not know the rate of interest since I left California. During my residence there, I saw money loaned at five (5) per cent. per month; and that I believe to have been the customary rate of interest at that time.

Int. 6. Do you know any other matter or thing that may benefit the plaintiff? If so, state the same fully.

Answer. I do not recollect anything at this time.

Cross-interrogatories propounded to John B. Statler.

First. Where do you now reside? What business do you follow? and where did you reside from August,

1852, until October of that year? and where have you resided from that time until the present?

Answer.

I reside now in Clark County, Iowa, and follow farming. I resided from August, 1852, until October of the same year, in Iowa. I was not permanently settled in any portion of said State of Iowa. Since October, 1852, I have resided in Polk, Warren and Clark Counties, Iowa.

+ Int. 2. State if you have been frequently absent from your home, between October, 1852, and the present time. If so, where have you been, and what has been your business when so absent?

Answer 2. I have been from home, but only for a few days at a time, and not engaged in any particular business when absent.

Cross Int. 3. Did you testify on the subject matter of this examination, at any time or times in 1852 or 1853, in a deposition or depositions taken in the State of Iowa? If yes, before whom were those depositions taken? and what place, and at what time?

Answer 3. I have testified ^{twice} in this matter. Once in the town of Kanesville, before the County Clerk of Pottawattomie County, and the other time at Fort Des Moines, before Bates and Casady, or one of them. I have no recollection of the precise time, but the first time was in 1852, and the other time in 1853

33)
+ Int. 4. Have you seen any copies of said depositions, or either of them, since?

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Answer 4. I have seen a statement, purporting to contain the

answers of the depositions taken at Kanesville, and nothing since.

Int. 5. Have you seen any written statement of what was in said depositions, or either of them, or any part thereof?

Answer. Nothing more than what I have stated in answer to Question or Interrogatory 4th.

Int. 6. From whom did you receive said copy or written statement of the contents of those depositions, or any part thereof?

Answer 6. The said communication or statement was signed, S. L. Richmond, and handed to me by James Dinwiddie.

+ Int. 7. Have you received any communication, written or verbal, from Samuel Statter, or any other person, about your testimony in this matter? or have you been informed by said Samuel Statter, or any other person, either by written communication or verbally, of the termination of the suit pending in the Circuit Court of Marshall County, Illinois, between said Samuel Statter and the defendant Holmes, in regard to the subject matter of the suit now pending?

Answer 7. I have never heard anything about my testimony. I was informed, by letter from Samuel Statter, that he had withdrawn his suit.

Int. 8. Give the original of any such statement or statements, written communication or communications, if in your power or possession. If not in your power or possession, explain the reason why you can not do it, and give a copy, if possible; if not possible, state

the reason why, and give the substance of such communication, or communications; were they written or verbal, by letter or otherwise?

Answer 8. I presume I have the letter from Samuel Statler to myself. It is in Clark County, Iowa, about forty miles from this place. I will give you from memory the substance of the letter relation to this subject. "It stated that he, Samuel Statler, had withdrawn his suit with Holmes." The reason why the suit was withdrawn was not stated in ^{the} said letter.

Int. 9. Who was present when you say that Holmes received gold dust or gold from your brother, Samuel Statler?

Answer. Harvey Evans was present, and some others, but I do not recollect their names.

Int. 10. In what house, and what part of the house, did it occur, if in a house? and what was the house used for, a dwelling, hotel, or mercantile establishment, or any other purpose? If not in a house, tell particular where it was.

Answer 10. It was in a ~~boarding~~ house that I think was used for a boarding house, and in a bar room.

Int. 11. How long had you been in that place or neighbourhood, immediately before said borrowing of which you testify?

Answer 11. I think I arrived in Sacramento City on the 17th of August, 1850, and remained there until the borrowing of the money took place.

Int. 12. Was your brother, Samuel Statler, with you, and how were you both engaged, at the time preceding said

transaction, for the space of two or three weeks?

Answer 12. We were then both boarding at one house; he was keeping a hay-yard, and I was making preparations to return home.

Int. 13. On what ~~kind~~ day of the month, and what year, was it that this alleged gold lending took place, and what day of the week was it? How long was it before you and your brother started home? and did you and your brother Samuel come home together? and how long before starting home had you been making your arrangements and talking about coming home?

Answer 13. It was on the Ninth of November, 1850, and I do not recollect the day of the week. We started home on or about the 29th of November, 1850. We came together as far as St. Louis, Missouri. I had been talking of returning home some two months before I started. My brother Samuel had been talking, some two months before starting, of returning ~~home~~ the same fall, but made no permanent arrangements to return until about ten days before starting.

Int. 14. Where were you boarding at the time? and where was Holmes boarding at that time?

Answer 14. I was boarding at the Redwood House, and Holmes was sick at the house where the money was borrowed; I do not know the name of the house. The Redwood House was near the hay-yard; and I cooked out-doors and slept in the house.

Int. 15. Where did your brother procure said gold, and how

did he get it? How did he keep it, on his person, or on deposit? What business did he follow? How long ~~did he keep~~ had he been in business?

Answer 15. He procured part by keeping stock and selling hay, and I do not know where he got the balance. At the time he loaned this money, he kept the money about his person. His business, after I got to California, was keeping hay-yard and selling stock. I know of his being in business from the 17th of August until the time of his selling out, in November.

Int. 16. Whose house was the money loaned in?

Answer. I do not know who was the proprietor of the house.

Int. 17. Was it measured, or weighed? Was it coin, or dust, or lump gold? and if weighed, by what means, on whose scales, and what kind of scales were they?

Answer 17. It was weighed on ordinary gold scales, so called. It was gold dust. I do not know who owned the scales; and they were such scales as miners usually used for weighing gold.

Int. 18. For what purpose did said Holmes at that time get said gold?

Answer 18. He said he wanted it to pay his father's expenses for sickness and burial, and his own expenses for sickness.

Int. 19. Were you acquainted with Mrs. Eliza Smith, a widow lady, residing in the City of Sacramento, a sister-in-law of Samuel Holmes? Did she, or did she not, have abundant means and money?

Answer 19. I have seen a Mrs. Eliza Smith, in Sacramento City, but did not know her to be a sister-in-law of Samuel

Holmes, and do not know anything about her circumstances.

Int. 20. Was this alleged loaning before or after the death of Samuel Holmes, senior, the father of the defendant.

Answer. It was after the death of his father.

Int. 21. About how long before or after?

I can not state the exact time.

Int. 22. By what means do you fix the day of the month, week and year on which you say that gold was borrowed.

Answer. I fix the day of the month and year by seeing it charged at the time the money was loaned. The day of the week I do not fix.

Int. 23. Where is Harvey Evans now? where was he when you last heard from him? and where has he been all or any part of the time since you and your brother Samuel came home from California?

Answer 23. I do not know where he is now. He was on the plains, going to Oregon, when I last heard from him. He has been in this State, Polk County, part of the time, and part on his way to Oregon.

Int. 24. Did you ever have any conversation with him about this claim of your brother? If so, when did you last talk with him on the subject, and where?

Answer 24. I have had conversation with him on the subject in Polk County, Iowa, after my return from California.

Int. 25. How much money did you bring home with you from California?

Answer. I had twenty-five cents, after paying my bill at Fort

Des Moines.

Int. 26. How much money or gold or other valuables did your brother, the plaintiff, bring home from California?

Answer 26. I do not know how much he did bring home.

Int. 27. Did you, after your arrival at home, ever inform any person that neither you or your brother had brought home any money, and give as a reason that you had been sick a while there, or words to that effect?

Answer 27. I have stated that I was sick there, and did not bring any money home with me. I do not recollect stating anything about my brother, or the amt. of money he brought home.

Int. 28. Did you, when you returned, come to your home in Marshall County, Illinois? and if not, where did you go to? and if yea, how long did you remain?

Answer 28. I did not go to Marshall County, Illinois, but came to Polk County, Iowa.

Int. 29. How much money or property did your brother make in California? and how did he make it? and what became of it, as far as you know?

Answer 29. I do not know how much he made. After I arrived there, he made it by the business he was at, viz, selling hay, and keeping and selling stock. Part he loaned to Holmes, part expended in returning from California, and the balance I know nothing about.

Int. 30. Did your brother loan any money except what you say he loaned to Holmes? If so, ~~how~~ to whom, and how much? and where does the person or persons reside?

Answer 30. I heard that he loaned money to Ham and Chandler, and I heard to the amt. of eight hundred dollars. They resided then in California, but I do not know where they reside now.

Int. 31. Were you well or sick, sound or afflicted? How much physician's care did you require and receive in California, or on your way home? What was the nature of the affliction? and what was the charge of physicians for visit, in California?

Answer 31. Sometimes well and sometimes sick. I doctored some in California, but not any on the way home. I had diarrhea or dysentery. For regular calls of physicians, the charge was sixteen dollars.

Int. 32. Did you ever live in the State of Illinois? If so, when, how long, in what County, and in what part of the County, did you reside in Illinois?

Answer 32. I have lived in Marshall County, Illinois. I moved there about sixteen years since, and left there about seven since. I resided in the North part of the County.

Int. 33. What was your age when you left the State of Illinois?

Answer 33. I was about twenty-three years of age.

Int. 34. Were you ever arrested, in the State of Illinois, upon any criminal charge? If so, upon what charge or charges? before what Court or Courts, Justice or Justices of the peace? and in what County? and how often?

Answer 34. I was arrested for taking some apples from the wagon of a person, and before the Marshall County Court.

Circuit Court, and only once.

Int. 35. State whether you were not accused and suspected of theft by some of the citizens of Illinois, and generally supposed to be guilty.

Answer. Not that I know of, except as stated above in interrogatory No. 34.

Int. 36. Were you not permitted to go unpunished, on account of your youth?

Answer 36. Perhaps that was the reason that there was no fine assessed against me.

Int. 37. Did you ever tell any person, after your return from California, and before your brother first wrote to you about your testimony in this matter, that your brother had let Holmes have gold in California? If so, state when, where, and to whom.

Answer 37. I did tell Van Horn, some time in the Spring of 1851, in Polk County, Iowa.

Int. 38. Were you not indicted by the Grand jury of Marshall County, in the State of Illinois, for stealing, called in law larceny? and was there any other person indicted with you? If so, who was it?

Answer 38. I believe I was indicted by the Grand jury of Marshall County and State of Illinois, for taking apples, as I have above stated. Samuel Statler and Jacob Burnham were also indicted for the same offence, at the same time.

Int. 39. At the time of answering the questions of the plaintiff, in this deposition, which you have answered, did you know what cross-questions were to come after them? If so, how did you find it out?

Answer 39. I had no knowledge whatever what cross questions were to follow.

Int. 40. Were you acquainted with Holmes, before going to California? If yea, how long had you known him?

Answer 40. I knew Holmes before I went to California, and I knew him in the State of Illinois, before I came to Iowa, perhaps four years.

Int. 41. How do the streets in Sacramento City, California, run? Do part run parallel with the river? and how do the others cross them?

Answer 41. I believe some run parallel with the river, and the others cross them at right angles, as I very believe.

Int. 42. Are the streets running parallel with the river lettered or numbered? and which is A? Give the letters or numbers, and give a general description of the direction the streets run, and how they cross each other; and which are lettered and which are numbered, those that run parallel with the river, or those that cross them?

Answer 42. I believe those running parallel with the river are numbered. I do not know where A is; I know where J, K and L streets are said to be, and I think they run east and west, or at right angles with those streets parallel with the river.

Int. 43. On what street was the house, in which you say your brother Samuel loaned Holmes the gold, situated?

Answer 43. I think the house was situated on a street called K.

Int. 44. What kind of a house was it, brick, stone or wood? one or more stories high? How many rooms were in it?

Answer. The house was wood; do not know how many

stories high, or how many rooms there were in it.

Int. 45. Did the street in which the house in which you say the gold was loaned run parallel with the river, or did it run at right angles from the river?

Answer 45. The street run at right angles from the river.

Int. 46. On which side of the street was the house situated, North or South, East or West, up or down the river, on the side of the street near the river, or on the side from the river?

Answer 46. The house stood on the South side of the street.

Int. 47. Was the street on which the house was situated built up with houses, or did this house stand detached?

Answer 47. The street was built tolerably compact; could ~~not~~ say if the house was detached, or joined by other buildings.

Int. 48. What kind of materials were the houses in that vicinity composed of? and were they business houses or dwelling houses?

Answer 48. Principally built of wood; both dwelling and business.

Int. 49. Was that house in the business part of the city?

Answer 49. It was not in the principal business part of the city.

Int. 50. Where was your brother's hay-yard situated, on what street, which side of the street, how far from the river? Was it in the business part of the city, or was it in the outskirts?

Answer 50. Hay yard was situated on the south side of a street called L; do not know the exact distance from the river, and was in the outskirts of the city.

Int. 51. Was his hay kept in stacks, on a lot, or was it kept in a building? If in ~~a~~ buildings, what kind

of buildings were they?

Answer. The hay was kept in one rick, on a lot.

Int. 52. What kind of buildings had your brother at his hay-yard?

Answer. Had no buildings of his own at his hay-yard.

Int. 53. How far was it from the hay-yard to the house where you say the gold was loaned? and what direction was it?

Answer 53. Two hundred and fifty yards, or thereabouts. I think the direction from the hay-yard to the house about north west.

Int. 54. How long had you boarded at your brother's hay-yard previous to the alleged lending of the gold by your brother to Holmes?

Answer 54. I boarded at the hay-yard from the time I arrived in Sacramento City to the time of the loaning of the money, but slept part of the time, in the Redwood House, so called.

Int. 55. What length of time had you spent or lived in or about the City? and where, if any where other than at your brother's hay-yard, did you board in or about the City? and if anywhere, how far such point or points from the house in which you say the alleged lending took place?

Answer 55. From the time of arriving, the 17th of August, to the time of lending the money.

Int. 56. What was the nature and start of the injury to your leg, which was sore at the time you started home from California?

Answer 56. It was injured by the breaking down of a carriage, breaking a bone.

Int. 57. How was that injury caused or produced? Was there any time it disabled you from walking? If so, how long?

Answer 57. Injury was caused by breaking down of a carriage. I walked on crutches from the time of the accident.

Int. 58. Were you able to walk, at the time you started home? If so, how long had you been able to walk before starting? and how long before you started home was the injury received?

Answer 58. I was able to walk on crutches, and did walk nearly to the river; had been able to walk on crutches from the time of receiving the injury; and received the injury some four or five days before starting from home.

Int. 59. Did the injury occur on or about the day of the general election in California?

Answer 59. I was going to vote for city officers; don't know whether it was general election or not.

Int. 60. How did you happen to be at the house where you say the landing took place? Did you go in company, or alone? Did you go intentionally, or were you passing accidentally? If any person or persons were with you, who were they? Was it in daylight or night, before noon or after noon? When you went into the house, did you turn to the right or left, ~~east or west~~, north or south, east or west? Did you go up stairs, or was it on the first floor? Was there a cellar under the house? How many win-

dows in the room, and how many doors?

Answer 60. I heard Holmes was sick, and went down to see him, and went alone; went intentionally to see him, and that evening Holmes talked with me about borrowing the money; and the next morning according to Holmes' request, myself and brother went down in the forenoon, and the money was handed over as stated in the first Interrogatories. We walked into the house, and on the first floor took a seat. Don't know anything about a cellar; don't know how many windows or doors.

Int. 61. When you left the house, did you go away alone or in company? and if in company, who left with you? Did Holmes leave before you left? and who went with him? or did you leave him at the house?

Answer 61. The morning the money was loaned, I left in company with my brother and Evans; Holmes remained at the house.

Int. 62. What did Holmes do with the gold, when he got it from your brother? What did he put it in, a box or sack? and what kind of material was it made of? Was it weighed before Holmes got it, or was it weighed after he got it? Did Holmes weigh it, or did your brother weight it?

Answer 62. He put it in a paper, and then put it in a cloth. I think the paper was made of rags, and the cloth was made from silk, cotton or flax. The gold was weighed before Holmes received it; and they were both engaged in weighing it.

Int. 63. What is your age at the present time? Are you married or single? Do you keep house or board? If you board, with whom do you board? and how long have you boarded with him?

Answer 63. I am thirty years old, and am married, and keep house, and living in the house with Conner, but furnish my own food, and sleep in my own bed.

Int. 64. Did you not, on or about the 21st of September, 1852, before Stephen T. Carey, Clerk of the District Court, Pottawattamie County, Iowa, at Kanesville, give your deposition, in regard to the lending of gold by your brother to the defendant Holmes, to be read in evidence in a suit then pending in the Circuit Court of Marshall County, State of Illinois? Did you not also, on or about the 24th of March, 1853, before P. M. Casady, in the town of Fort Des Moines, Polk County, Iowa, have your depositions taken, in regard to the same subject matter, and to be read in evidence in the same Court?

Answer 64. I did have my deposition taken before the Clerk of the District Court of Pottawattamie County, Iowa, time I do not recollect; and also my deposition was taken in Fort Des Moines, before Casady or Bates, some time in the year 1853.

John B. Steteler.

Sworn to and subscribed
before me, the 27th Sept., 1854.

P. M. Casady, Commissioner.

I, J. P. M. Casady, of the County of Polk and State of Iowa, a Commissioner appointed by a *dedimus potestatem*, or commission, issued of the Clerk's Office of the Circuit Court of Marshall County, in the State of Illinois, bearing teste in the name of Grenberry L. Fort, Clerk of the said Circuit Court, with the seal of said Court affixed thereto, and to me and Curtis Bates, or either of us directed, to take the depositions of the said Stephen Conner and John B. Statter, witnesses, whose names are subscribed to the foregoing depositions, do hereby certify, that previous to the commencement of the examination of the said Stephen Conner and John B. Statter, as witnesses in the said suit between the said Samuel Statter, plaintiff, and the said Samuel Holmes, defendant, they were duly sworn to testify the truth in relation to the matters in controversy between the said Samuel Statter, plaintiff, and the said Samuel Holmes, defendant, so far as they should be interrogated concerning the same; that the said deposition of Stephen Conner was taken at my office, at the town of Fort Des Moines, Polk County, Iowa, on the 23d day of September, 1854; and the said deposition of John B. Statter was taken at my office aforesaid, in the town, County and State aforesaid, on the 27th day of September, 1854; and that after said depositions were taken by me as aforesaid, at the times aforesaid, the interrogatories and answers thereto as written down were read over to the said witnesses; and that thereupon the said depositions were signed and sworn to by the said deponents, Stephen Conner and John B. Statter, at the times specified above, before me as such commissioner, at the place and on the days aforesaid. Given under my hand, this 27th day of September, 1854.

J. P. M. Casady, Commissioner.

And on the 6th day of March, A.D. 1855,
came the plaintiff, by his attorneys, and filed herein
the following notice and interrogatories, to wit:

Notice.

State of Illinois, Marshall County, and Circuit
Court thereof, to the April Term, A.D. 1855.

Samuel Statter,

vs. Samuel Holmes.

Sir: You are hereby notified
that on the 6th day of March next, at ten o'clock
in the forenoon, I shall attend at the office of the
Clerk of the Circuit Court of said County, at the
Court-house, in Lacon, in said County and State,
and ~~then~~ shall then and there see out a commission,
directed to P. Gad Bryan and J. E. Williamson, of
Indianola, in the State of Iowa, as commissioners,
directing and empowering them, or either of them, to
take the depositions of James H. Pryor, David C.
Commins, James Mount and Ephraim Pearson, resi-
dents of Indianola, in Iowa, and witnesses for said
plaintiff, upon and in answer to the interrogatories
hereto annexed, to be read in evidence on the trial
of the foregoing entitled cause, now depending and
undetermined in said Circuit Court of said Marshall
County, Illinois, when and where you can attend, and
file cross-interrogatories, if you see fit. Yours, &c.,

Feb. 23^d, 1855.

Richmond & Burns,

To Samuel Holmes, or
Ramsey & Fleming, his Attys.)

Attys. for plff.

Interrogatories to be administered severally and separately to each of the witnesses named in the foregoing notice, by virtue of the commission hereto attached.

Interrogatories.

- Int. 1. Are you acquainted with John Statler? If yea, how long, when, and where, have you known him?
- Int. 2. Are you acquainted with said John Statler's general character for truth and veracity, in the neighbourhood where he resides, or has resided?
- Int. 3. If, in answer to the last interrogatory, you state that you are acquainted with said Statler's general character for truth and veracity, in the neighbourhood where he resides, or has resided, then you will state what that character is; is it good or bad?
- Int. 4. If you answer number two of the foregoing interrogatories in the affirmative, then you will state whether, from what you know of said Statler's general character, you would believe him on oath.

Richmond & Burns, Attys. for plff.

State of Illinois, } S. L. Richmond, being first duly
Marshall County. } sworn, on oath saith, that on the
23^d day of February, 1855, he served a copy of the
foregoing notice and interrogatories on Ramsey &
Fleming, by delivering the same to Silas Ramsey.

And on the same day last aforesaid, came the defendant, by his attorneys, and filed herein the following Cross-interrogatories, to wit:

State of Illinois, Marshall County, and Circuit Court thereof.
Samuel Steteler, } Assumpit.
Samuel^{rs} Holmes. } To the Clerk of the Circuit Court
of said County. Sir: On the 23rd day of February,
1855, the notice hereto attached was served on the
undersigned, attorneys of the defendant. We accordingly
request, that if any Commission, or *Dedimus Potestatem*,
is issued in pursuance thereof by said Steteler, that
the following cross-interrogatories may be incorporated
in the same, to be propounded to said James H. Pryor,
David C. Commins, James Mount and Edward Pearson.
We protest, however, that you, the said Clerk, ought
not to appoint either of the persons named in said
notice as a commissioner in that behalf, unless from
some satisfactory evidence it is made to appear that
such person is worthy of the trust thus reposed.
We insist that the *dedimus* should be issued to
some officer named in the statute, or some impartial
person, known by the Clerk to be, (or satisfactorily
proven to the Clerk to be) a person worthy of full
confidence.

Cross-
Interrogatories
1st. Where you acquainted with John B. Steteler, when
Pryor, Daniel C. Commins, James Mount and Ephraim
Pearson.

he resided in Marshall County, Illinois? If yea, at what time did he reside there? and how long were you acquainted with him there?

2nd. Did you ever reside in Marshall County, Illinois? If yea, how long? and when did you remove from there? and where did you remove to?

3rd. Is the reputation of John B. Statter for truth and veracity any better at the present time, among his neighbours in Iowa, where he now resides, than it was among his neighbours in Marshall County, Illinois, at the time he resided there?

4th. Were you well acquainted with the character of John B. Statter, in the State of Illinois?

5th. Do you know of said John B. Statter being accused and suspected of theft by some of the citizens of Marshall County, Illinois?

6th. How long have you resided in Iowa? and how long has John B. Statter resided in Iowa? and how long has he resided where he now resides?

7th. How far does John B. Statter reside from where you reside? and how long has he resided there? and what business does he follow, and what business has he followed since he has been in Iowa?

8th. How many persons have you heard speak of his character for truth and veracity, in the neighbourhood where he resides? and what were their names?

9th. Is the neighbourhood where John B. Statter now resides, in Iowa, densely or sparsely populated? In what County and in what Township, and in what

part of the County and Township, does he reside in?
Give the number of the section.

10th. In what part of Iowa did John B. Steteler reside,
before he removed to the place where he now resides?
and how long did he reside there?

11th. In what County and in what Township, and in
what part of the County and Township, do you reside
in? Also give the number of the section you reside on.

12th. Has John B. Steteler, since he first settled in the
neighborhood where he now resides, removed from there
and returned? and if yea, when did he remove? and
where did he remove to? and at what time did he
return? and what did he follow when absent?

Samuel Holmes,
by Ramsey & Fleming, his Attys.

And on the same day aforesaid, the said Clerk,
in pursuance of the notice above recited, issued the
following Commission, to wit:

STATE OF ILLINOIS, MARSHALL COUNTY, SS.

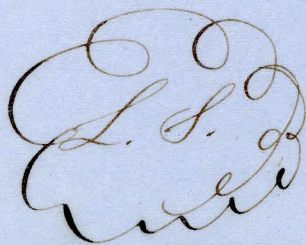
THE PEOPLE OF THE STATE OF ILLINOIS,

To *P. Gad Bryan, and J. E. Williamson, of*
Indianola, in the State of Iowa, or either of you,

, GREETING :

KNOW YE, that we, confiding in your ability, skill and fidelity, have appointed you, and by these presents do appoint, authorize and empower you, at a certain time and place, to be by you appointed for that purpose, to cause the witnesses whose names *are* mentioned in the caption of the annexed interrogatories, to come before you, and then and there diligently and faithfully to examine *them* on oath upon the said interrogatories, in the order in which they are propounded; and you will cause the answers of the witnesses thereto, to be reduced to writing, in the order in which they shall be proposed and answered; and you will then cause the witnesses to sign *their* names to the same in your presence. You will also annex a certificate, subscribed by yourselves at the foot of the deposition, stating that the same *were* sworn to and signed by the deponent *s* and the time and place when and where the same *were* taken. The deposition *s* thus taken and subscribed, and all exhibits produced or referred to by the witnesses together with this commission and the annexed interrogatories, you will inclose, seal up and direct to the Clerk of the Circuit Court of the County of Marshall, in the State of Illinois, with the names of the parties litigant endorsed thereon.

WITNESS **G. L. FORT**, Clerk of the Circuit Court of said County of Marshall, and the seal of said Court being hereto affixed, this *sixth* day of *March*, in the year of our Lord one thousand eight hundred and fifty-*five*.



G. L. Fort, Clerk.

 The return, if taken by a magistrate, should be accompanied by a certificate of his official character, under the great seal of the State of _____ or of the proper court of record of the county of which he is a resident.

 RETURN BY MAIL, POSTAGE PAID.

A Record of the judgments, orders, decrees and proceedings of the Honourable Circuit Court, begun and holden at the Court-house, in the City of Lacon, in the County of Marshall and State of Illinois, on Tuesday, April the Tenth, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honourable Edwin S. Leland, Judge of the Ninth Judicial Circuit Court of the State of Illinois; William H. L. Wallace, State's Attorney for said Circuit Court; also, Abram Gardner, Sheriff of said County; and Greenberry L. Fort, Clerk of said Court.

Be it remembered, that on the 10th day of April, A. D. 1855, being the first day of said Term, the following Depositions are opened under a general order of the Court, and filed herein, to wit:

Depositions.

Depositions of witnesses produced, sworn and examined on the 27th day of March, in the year of our Lord one thousand eight hundred and fifty-five, at our office, in Indianola, Warren County, State of Iowa, by virtue of a Commission issued from the Circuit Court of the County of Marshall, in the State of Illinois, to P. Gad Bryan and J. E. Williamson directed, commissioners for the examination of certain witnesses named in the caption of the interrogatories attached to and accompanying said Commission, in a certain cause pending in said Circuit Court, wherein Samuel Statter is plaintiff, and Samuel Holmes

is defendant, on the part of the plff.

James H. Pryor, of the County of Warren and State of Iowa, of lawful age, being first duly sworn, deposeseth and saith as follows, to wit:

Ques. 1st. Are you acquainted with John Statler? If yea, how long, when, and where, have you known him?

Ans. I am acquainted with him. It is four or five years ago this March since I first knew him. I first knew him in the County of Polk, and afterwards in the County of Warren, State of Iowa.

Ques. 2. Are you acquainted with said John Statler's general character for truth and veracity, in the neighbourhood where he resides, or has resided?

Ans. 2. I am.

Ques. 3. If, in answer to the last interrogatory, you state that you are acquainted with said Statler's general character for truth and veracity, in the neighbourhood where he resides, or has resided, then you will state what that general character is; is it good, or bad?

Ans. 3. It is tolerably good.

Ques. 4. If you answer number two of the foregoing interrogatories in the affirmative, then you will state whether, from what you know of said Statler's general character, you would believe him on oath.

Ans. 4. I would.

James H. Pryor.

State of Iowa, } ss. Subscribed and sworn to before the
County of Warren, } undersigned, Commissioners appointed

by the Circuit Court of Marshall County and State of Illinois, at our office, in Indianola, this 27th day of March, A. D. 1855.

P. Gad Bryan.

J. E. Williamson.

Mrs. David D. Cummings, of the County of Warren and State of Iowa, of lawful age, being first duly sworn, deposes and saith as follows, to wit:

Quest. 1. Are you acquainted with John Statler? If yes, how long, when, and where, have you known him?

Ans. 1. I am. I first became acquainted with him five years ago last June. I first knew him in Polk, afterwards in Warren County, Iowa.

Quest. 2. Are you acquainted with said John Statler's general character for truth and veracity, in the neighbourhood where he resides, or has resided?

Ans. 2. I am.

Quest. 3. If in answer to the last interrogatory, you state that you are acquainted with said Statler's general character for truth and veracity, in the neighbourhood where he resides, or has resided, then you will state what that general character is; is it good, or bad?

Ans. 3. I consider it good.

Quest. 4. If you answer No. 2 of the foregoing interrogatories in the affirmative, then you will state whether, from what you know of said Statler's general character, you would believe him on oath.

Ans. 4. I would.

David D. Cummings.

State of Iowa, } ss. Subscribed and sworn to before the
County of Warren, undersigned, Commissioners appointed
by the Circuit Court of Marshall County and State
of Illinois, at our office, in Indianola, this 27th day
of March, A. D. 1855.

P. Gad Bryan.

J. E. Williamson.

State of Iowa, } ss. We, P. Gad Bryan and J. E.
Warren County, Williamson, appointed, authorized
and commissioned by the Circuit Court of Marshall
County, in the State of Illinois, to take the depositions
of the witnesses named in the caption of the foregoing
interrogatories, in the cause of Samuel Statter vs. Samuel
Holmes, pending in the Circuit Court aforesaid, do hereby
certify, that James H. Pryor and David D. Comming,
prior to the taking of said depositions, on the Twenty-
seventh day of March, A. D. 1855, the day appointed by
us for ^{the} taking of the same, were by J. E. Williamson
each and severally duly sworn the truth to speak
in relation to the matters in controversy in the suit
or cause above mentioned, so far as they might separately
be interrogated thereto; and that the said depositions
were, on the day and in the year above ~~written~~ men-
tioned, at our office, in Indianola, Warren County, State
of Iowa, taken, and by P. Gad Bryan reduced to wri-
ting, and signed and sworn to severally by said
James H. Pryor and David D. Comming, at the time

and place above mentioned, and in our presence.

In testimony whereof we have hereunto set our hands,
this the 27 day of March, A. D. 1855.

P. Gad Bryan.

J. E. Williamson.

Depositions of witnesses produced, sworn and examined on the 27th day of March, in the year of our Lord one thousand eight hundred and fifty-five, at our office, in Indianola, Warren County, and State of Iowa, by virtue of a Commission from the Circuit Court of Marshall County, State of Illinois, to P. Gad Bryan and J. E. Williamson directed, commissioners for the examination of certain witnesses named in the caption of the interrogatories attached to and accompanying said Commission, in a certain cause pending in said Circuit Court, wherein Samuel Statler is plaintiff, and Samuel Holmes is defendant, on the part of the deft.

James H. Pryor, of the County of Warren and State of Iowa, of lawful age, being first duly sworn, deposeseth and saith as follows, to wit:

Quest. 1. Were you acquainted with John B. Statler, when he resided in Marshall County, Illinois? If yea, at what time did he reside there? and how long were you acquainted with him there?

Ans. 1. I was not acquainted with him there.

Quest. 2. Did you ever reside in Marshall County, Illinois?
If yea, how long? and when did you remove from there?

and where did you remove to?

Ans. 2. I never resided there.

Ques. 3. Is the reputation of John B. Statler for truth and veracity any better at the present time, among his neighbours, in Iowa, where he now resides, than it was among his neighbours in Marshall County, Illinois, at the time he resided there?

Ans. 3. I do not know.

Ques. 4. Were you acquainted with the character of John B. Statler, in the State of Illinois?

Ans. 4. I did not know him there.

Ques. 5. Do you know of said John B. Statler's being accused and suspected of theft by some of the citizens of Marshall County, Illinois?

Ans. 5. I do not.

Ques. 6. How long have you resided in Iowa? and how long has John B. Statler resided in Iowa? and how long has he resided where he now resides?

Ans. 6. I have resided in Iowa five years. I do not know how long said Statler has resided in Iowa, and I do not know where he now resides. He left this County about two years ago, as well as I can recollect.

Ques. 7. How far does John B. Statler reside from where you reside? and how long has he resided there? and what business does he follow? and what business has he followed, since he has been in Iowa?

Ans. 7. I do not know where he now resides, or what business he now follows. When he resided here, a part

of the time we lived in the same house; the balance of the time I was acquainted with him here, we lived from a mile to two miles apart. While I knew him, his chief occupation was breaking prairie.

Ques. 8. How many persons have you heard speak of his character for truth and veracity, in the neighbourhood where he now resides? and what were their names?

Ans. 8. I am not acquainted with any person where he now resides, that I am aware of.

Ques. 9. Is the neighbourhood where John B. Statler now resides, in Iowa, densely or sparsely populated? In what County and in what Township, and in what part of the County and Township, does he reside in? Give the number of the section.

Ans. 9. I do not know whether the neighbourhood he resides in is densely populated, or not. I do not know in what County or Township he resides, nor what part of the County and Township, and I do not know the number of the section.

Ques. 10. In what part of Iowa did John B. Statler reside, before he removed where he now resides? and how long did he reside there?

Ans. 10. In Warren County, when I knew him last. He resided here two or three years, with the exception of a few short intervals.

Ques. 11. In what County and in what Township, and in what part of the County and Township do you reside in? Also give the number of the section you reside on.

Ans. 11. In Warren County, in Township Seventy-seven, Range

Twenty-four, in the North part of the County, and in the west part of the Township. I do not remember the number of the section.

Ques. 12. Has John B. Statler, since he first settled in the neighbourhood where he now resides, removed from there, and returned? If yea, when did he remove? and where did he remove to? and at what time did he return? and what did he follow when absent?

Ans. 12. I do not know.

James H. Pryor.

State of Iowa } ss. Subscribed and sworn to before the
Warren County, } undersigned, Commissioners appointed by
the Circuit Court of Marshall and State of Illinois,
at our office in Indianola, this 27th day of March,
A. D. 1855.

P. Gad Bryan.

J. E. Williamson.

Also, David D. Cummings, of the County of Warren and State of Iowa, of lawful age, being first duly sworn, deposeth and saith as follows, to wit:

Ques. 1. Were you acquainted with John B. Statler, when he resided in Marshall County, Illinois? If yea, ~~how long~~ did at what time did he reside there? and how long were you acquainted with him there?

Ans. 1. I was not acquainted with him there.

Ques. 2. Did you ever reside in Marshall County, Illinois? If yea, how long? and when did you remove from there? and where did you remove to?

Ans. 2. I never resided there.

Ques. 3. Is the reputation of John B. Statler for truth and veracity any better at the present time, among his neighbours, in Iowa, where he now resides, than it was among his neighbours in Marshall County, Illinois, at the time he resided there?

Ans. 3. I do not know.

Ques. 4. Were you well acquainted with the character of John B. Statler, in the State of Illinois?

Ans. 4. I was not.

Ques. 5. Do you know of said John B. Statler being accused and suspected of theft by some of the citizens of Marshall County, Illinois?

Ans. 5. I do not.

Ques. 6. How long have you resided in Iowa? and how long has John B. Statler resided in Iowa? and how long has he resided where he now resides?

Ans. 6. I have resided in Iowa four years the first day of last October. I don't know how long said Statler resided in Iowa; he was here when I came. I was acquainted with him about one year before I removed to this state. I don't ~~know~~ how long he has resided where he now resides.

Ques. 7. How far does John B. Statler reside from where you reside? and how long has he resided there? and what business does he follow? and what business has he followed, since he has been in Iowa?

Ans. 7. I do not know where he now resides, nor how long ~~has~~ has resided there, nor what business he

now follows. While he lived near me, his principal occupation was prairie breaking.

Ques. 8. How many persons have you heard speak of his character for truth and veracity, in the neighbourhood where he now resides? and what were their names?

Ans. 8. I do not know that I am acquainted with any person where he now ~~resides~~ lives.

Ques. 9. Is the neighbourhood where John B. Statter now resides, in Iowa, densely or sparsely populated? In what County and in what township, in what part of the County and township, does he reside in? Give the number of the section.

Ans. 9. I do not know any thing about it.

Ques. 10. In what part of Iowa did John B. Statter reside, before he removed to the place where he now resides? and how long did he reside there?

Ans. 10. When I first knew him, he lived in Polk County, afterwards in Warren County, Iowa. He lived here about five years, since I knew him, except when absent to California.

Ques. 11. In what County and in what Township, and in what part of the County and Township, do you reside in? also give the number of the section you reside on.

Ans. 11. Warren County, Township Seventy-seven, Range Twenty-four, in the north part of the County, and east part of the Township, I think on Section Twelve.

Ques. 12. Has John B. Statter, since he first settled in the neighbourhood where he now resides, removed from

there and returned? and if yea, when did he removed? and where did he remove to? and at what time did he return? and what did he follow when absent?

Ans. 12. I don't know anything about it.

David S. Cummings.

State of Iowa, ss. Subscribed and sworn to before Warren County, the undersigned, Commissioners appointed by the Circuit Court of Marshall County and State of Illinois, at our office, in Indianola, this 27th day of March, A. D. 1855.

P. Gad Bryan.

J. E. Williamson.

State of Iowa, ss. We, P. Gad Bryan and J. E. Williamson, appointed, authorized and commissioned by the Circuit Court of Marshall County, in the State of Illinois, to take the depositions of the witnesses named in the caption of the foregoing interrogatories, in the cause of Samuel Statler vs. Samuel Holmes, pending in the Circuit Court aforesaid, do hereby certify, that James H. Pryor and David S. Cummings, prior to the taking of said depositions, on the Twenty-seventh day of March, A. D. 1855, the day appointed by us for the taking of the same, were by J. E. Williamson each and severally duly sworn the truth to speak in relation to the matters in controversy between the parties in the suit or cause above mentioned, so far as they might separately

be interrogated thereto; and that the said depositions were, on the day and in the year above mentioned, at our office, in Indianola, Warren County, State of Iowa, taken, and by P. Gad Bryan reduced to writing, and signed and sworn to severally by said James H. Poyer and David L. Cummings, at the time and place above mentioned, and in our presence.

In testimony whereof, we have hereto set our hands, this the 27th day of March, one thousand eight hundred and fifty-five.

P. Gad Bryan.

J. E. Williamson.

A Record of the orders, judgments, decrees and proceedings of the Honourable Circuit Court of the County of Marshall, in the State of Illinois, at a Term thereof begun and holden at the Court-house, in the City of Lacon, in and for said County, on Monday, October the fifteenth, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honourable Madison E. Hollister, Judge of the Ninth Judicial Circuit Court of the State of Illinois; Greenberry L. Fort, Clerk of said Court, and James St. C. Boal, his deputy; and Henry L. Crane, Deputy Sheriff.

Be it remembered, that on the 27th day of October, A. D. 1855, being one of the days of said Term, this cause having come on for trial, the Court, at the request of the plaintiff, instructed the jury as follows, to wit:

Plaintiff's

Instructions

And at the same time, the Court, at the request of the defendant, instructed the jury as follows, to wit:

Defendant's
Instructions.

Samuel Statter,

vs.
Samuel Holmes.

Instructions for Defendant.

1st.

Given

If the jury believe from the evidence, that John B. Statter has testified ~~wilfully~~ knowingly and wilfully false, in regard to any one material fact, they may entirely disregard his whole testimony.

2d.

Given.

The jury are the sole and ~~only~~ exclusive judges of the credibility of witnesses; and if they should believe that the witness John B. Statter has knowingly and wilfully sworn falsely, and if there is no other evidence in the case proving that the defendant is indebted unto the plaintiff, then the jury may find for the defendant.

3d.

Given.

The circumstances of the parties, together with all the facts proved in this case, are proper for the consideration of the jury, in determining whether the defendant probably borrowed the money of the plaintiff.

4.

Given.

There is no evidence in this case that would warrant the jury in rendering a verdict for interest at a higher rate than six per cent. upon the money, even should they believe that Holmes borrowed it.

5.

Given.

If the jury should believe from the evidence, and from all the facts proved in the case, that it is improbable that Holmes borrowed the money in question, and should also disbelieve the evidence of John B. Statter, they should find for the defendant.

And on the back of which is the following endorsement:

(72)

Stateler, vs. Holmes. — Left's Instructions. — Filed, October 27th, 1855. G. L. Fort, Clerk.

And on the same day last aforesaid, the following Verdict and judgment were rendered in this cause, to wit:

Verdict.

Samuel Stateler, } Assumpsit.

vs.
Samuel Holmes. }

This day this cause coming on to be heard and tried, the issue being joined, a jury comes to try the same, to wit: Nathaniel Emerick, Ezra Calif, Enoch Sawyer, James M. Vansant, Geo. C. Johnson, Robert Miller, Wm. Gaper, Alden Hull, Samuel Haines, L. P. Bates, Miner T. Jay, Hiram Atwood, twelve good and lawful men, chosen, empannelled and sworn, who, after hearing the evidence adduced, and the argument of counsel, retire to consider of their verdict; and after due deliberation, return into Court and say: We, the jury, find the issue joined in favour of the plaintiff, and assess his damages at the sum of five hundred and nineteen dollars and thirteen cents. Whereupon comes the defendant, and moves the Court for a new trial in this cause; and the plaintiff also comes, and, by leave of the Court enters herein a remittitur of the interest embraced in said verdict, amounting to one hundred and nineteen dollars and thirteen cents; and the Court, after hearing the argument of counsel, and being fully advised in the premises, is of the opinion that the same be overruled, which is accordingly so ordered.

Motion for new trial.

Remittitur.

Judgment.

\$400.00

It is therefore considered by the Court, that the plaintiff have and recover of the said defendant the sum of four hundred dollars, and also his costs and charges by him about his suit in this behalf expended; and it is ordered that execution issue for the said judgment of four hundred dollars and costs, as aforesaid. Whereupon comes again the said defendant, and prays an appeal to the Supreme Court of this State; which said appeal is allowed, upon condition that the said defendant enter into bond, in the penal sum of eight hundred dollars, within twenty days from the adjournment of this Court, with William White, as security.

And on the same day last aforesaid, came the defendant, by his attorneys, and filed herein his Bill of Exceptions, which is as follows, to wit:

Bill of Exceptions.

Samuel Stetler, } Circuit Court, Marshall
vs. Samuel Holmes. } County, October Term, 1855.

Be it remembered, that on the trial of this cause, the plaintiff to prove the issues on his part, introduced and read in evidence the deposition of John B. Stetler, taken herein, which deposition is as follows, to wit: (See deposition, ante.)

The plaintiff then introduced Jacob Stetler, a witness, who being sworn, testified, that he was the father of the plaintiff; that he and the plff. resided together, in the year 1853; that in May or June of that year he met Holmes upon Sandy

Creek, in Marshall County; witness had a skiff, and Holmes asked him to take him over the Creek, and as they were passing over, they got to talking about the difficulty between the parties; witness said he thought parties could settle better than to have it tried in Court; Holmes told witness that "the money was got for his father;" did not state what money.

On cross-examination, the witness stated, that he had never told the plaintiff of the above statement of Holmes, until after the former trial of this cause. That at the time Holmes made said statement, there was a suit of said plffs against the Deft. then pending in the Circuit Court of Marshall County, for the recovery of the same money for which this suit is brought. That that suit was afterwards tried, and that witness was present during all said trial, but was not sworn as a witness.

On direct examination being resumed, said witness stated he was security for costs of said first suit.

The plaintiff here rested his case.

The defendant then, to prove the issues on his part, introduced William White, a witness, who being sworn, testified, That the plaintiff returned from California about February, 1851. That deft. returned from California about July or August, 1852. That deft. is a son-in-law of witness. That when deft. left Marshall County, for California, he left in the charge of deft's wife and witness, about \$2000. in property and money loaned. That he was then

responsible, and has been ever since. That his circumstances were well known in the neighbourhood, (and that plff. knew them.) That witness, during the absence of said deft., assisted deft's wife in the management of deft's affairs. That a few days after the plff. returned from California, witness saw him, and asked him how Holmes was. Plaintiff said he did not know; that he had seen Holmes but once in California, and that he had the cholera; said he did not know Holmes' circumstances. Witness also testified, that he was present at a conversation between plaintiff and deft., about a month after deft. returned from California. That the plaintiff asked deft. to "pay him that trifle he owed him." Deft. asked what trifle he meant. That plaintiff answered, that little he borrowed of him. Deft. said he had never borrowed any. Deft. then asked plff. what the amount was. Plff. said he could not tell without looking at his books, at home. Deft. laughed at him. This was just before the first suit was brought. Witness also testified, that the plff. had no property before going to California, and had none after his return, between that time and the time of Holmes return, to witness's knowledge. Witness lived four or five miles from plff. That plff. never made any claim against Holmes, until after Holmes' return, to witness' knowledge.

Defendant then introduced Adam Overmire, a witness, who being sworn, testified, That he had a

conversation with plff., a short time after the commencement of the first suit on this claim. That plff. stated that he loaned deft. 25 ounces of gold, in California; that he took no note; that the reason he did not get a note from Holmes, before leaving California, was, he left California in a hurry, and knew Holmes had property here, and that it would not be lost. This was in answer to a question put by witness to plaintiff, asking him why he did not get a note from Holmes, at the time he left, (as Holmes was then not expected to live.

Deft. then introduced Campbell Shields, a witness, who being sworn, testified, That he had a conversation with plaintiff, in August, 1852. That plaintiff told witness that he, plaintiff, met deft. in the street of Sacramento, in California; that plaintiff deft. wanted to borrow money; that plaintiff put his hand in his pocket, and pulled out four hundred dollars, and gave it to defendant.

Deft. then introduced Mrs. White, who being sworn, testified, That immediately after the plaintiff's return from California, the deft's wife sent for plaintiff, to learn something of her husband. That plaintiff came to witness' house, and told deft.'s wife that he had never seen deft. but once in California, to speak to him; that he was then lingering in a fever. Deft's wife asked him if he knew whether deft. had any money or not. Plaintiff said he did not know. Witness then said to plff. that witness

supposed plff. had made money in California. Plaintiff said he had not; that with the exception of some money he had loaned to Hams and his partner, that it had taken all he had made to pay doctors' bills for himself and ~~his~~ brother, and his expenses home. He then held up his finger, and pointed to a gold ring on it, and said he had that left.

Deft. then introduced John Talbott, a witness, who being sworn, testified, That some time in the spring after the plaintiff had returned from California, he came to the deft's wife, and said he understood she had some money, that ~~she~~ had been paid ^{her} for a farm which Holmes sold before going to California, and wanted to borrow some; said he would give good security.

Deft. then introduced Theodore Cummings, who being sworn, testified, That he had a conversation with plff., shortly after plff. returned from California. That witness enquired if plff. knew anything of Holmes. Plaintiff said he did not know anything about Holmes; that he saw him but once; he was then sick.

Deft. then introduced Jonas L. Ball, a witness, who testified, That he had a conversation with plff., shortly after his return from California. That plff. stated, he had seen Holmes but once or twice in California; that he knew nothing of his circumstances.

The defendant then proved that the witness John B. Stetler was a resident of Marshall County from 1836 or 1837, up to the fall of the year 1847 or 1848.

That since the year 1848, the said John B. Stateler has resided at different places in the State of Iowa, and in the State of California.

Defendant then offered to prove that the general character and reputation of said John B. Stateler for truth and veracity, during all the period of time which he resided in Marshall County, was bad; to which evidence the plaintiff, by his counsel, then and there objected; which objection was sustained by the Court, and said evidence excluded; to which decision of the Court, in sustaining said objection, and excluding the said evidence, the deft., by his counsel, then and there excepted.

The defendant then offered to prove that the plaintiff had, before the commencement of this suit, commenced successively two other and prior suits against the deft., upon the same claim, and after continuing the same for a time, had taken a nonsuit in each of said causes; to which evidence the plff., by his counsel, then and there objected; which objection was sustained by the Court, and said evidence excluded; to which ruling of the Court, in sustaining said objection, and excluding said evidence, the deft., by his counsel, then and there excepted.

The defendant then called Samuel L. Richmond, and asked him how many suits the plaintiff had commenced for the present cause of action. Plaintiff objected to the evidence, and the Court sustained the

objection, and plaintiff excepted.

The said Richmond then testified, in answer to plaintiff's interrogatories, that in the fall of 1851, or winter of 1852, plaintiff came to his office, and counselled with him about bringing a suit against defendant, for the claim now in suit. That defendant had not then returned from California; and witness advised plaintiff that inasmuch as said Holmes had left his family behind, and had not changed his residence from Marshall County, that an attachment would not lie; and, that he knew of no process by which the courts could acquire jurisdiction in the case. To the admission of all which evidence, the defendant, by his counsel, then and there objected; which objection was overruled by the Court, and said evidence admitted; to which ruling of the Court, in overruling said objections, and admitting said evidence, the defendant, by his counsel, then and there excepted.

The Court then, at the request of the plaintiff, gave the following instructions to the jury:

(See plaintiff's instructions, ante.)

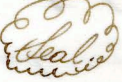
To the giving of each and all of said instructions, the defendant, by his counsel, then and there objected; which objection was by the Court overruled, and said instructions given to the jury; to which said ~~objection~~ decision of the Court, in overruling said objection, and in giving the said instructions, the deft., by his counsel, then and there excepted.

The deft. then asked the Court to instruct the jury as follows: (See defendant's instructions, ante. The words underscored, in No. 4, were interlined.) But the Court refused to give said instruction marked (4) as asked, but qualified the same by adding, after the word interest, the words "at a higher rate than six per cent.;" to which decision and ruling of the Court, in qualifying said instruction, the deft., by his counsel, then and there excepted.

The jury then returned the following verdict: (See verdict, ante.)

The defendant then entered his motion for a new trial of said cause, which motion was argued by counsel, and being considered by the Court, was overruled, and judgment entered upon said verdict, as follows: (See judgment, ante.) To which decision of the Court, in overruling said motion for a new trial, and rendering judgment on the verdict of jury, the deft., by his counsel, then and there excepted; and prays that this his Bill of Exceptions may be signed and sealed; which is accordingly done.

Before the decision of the Court upon the motion for a new trial, the plaintiff entered a remittitur for the sum of one hundred and nineteen dollars, being the interest allowed by the jury in their verdict.

M. E. Hollister. 

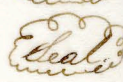
And on the same day last aforesaid, to wit, the 27th day of October, A. D. 1855, came the defendant, and filed herein his Appeal Bond, which is as follows, to wit:

Appeal Bond.

Know all men by these presents, that we, Samuel Holmes and William White, are held and firmly bound unto Samuel Stetler, in the penal sum of eight hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly, by these presents. Witness our hands and seals, at Lacon, this 27th day of October, A. D. 1855.

The condition of the above obligation is such, that whereas the said Samuel Stetler did, on the day of the date hereof, recover a judgment against the above-bounden Samuel Holmes, in the Circuit Court of Marshall County, for the sum of four hundred dollars, with costs of suit, from which judgment the above-bounden Samuel Holmes has taken an appeal to the Supreme Court of the State of Illinois; Now if the said Samuel Holmes shall well and truly pay, or cause to be paid, the said judgment, together with all costs, interest and damages thereon, in case said judgment shall be affirmed, and shall also duly prosecute his said appeal, then this obligation to be void; else to remain in full force.

Samuel Holmes. 

Wm. White. 

State of Illinois, } ss. J. G. L. Fort, Clerk of the
Marshall County, Circuit Court for said County,
do certify, that the foregoing Record, from page 1
to page 79 inclusive, is a true and correct transcript
of the papers on file, and the proceedings had, in
the case of Samuel Stater vs. Samuel Holmes,
in said Court.



Witness my hand, and the Seal of
said Court, at Lacon, this 30th
day of May, A.D. 1856.

J. G. L. Fort, Clerk.

By Jas. St. C. Boal, Deputy.

Clerks fees

Transcript 24.75

Cert & seal $\frac{35}{\$25.10}$

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Holmes vs Statton

Filed June 17. 1856

L. Leland
Clerk

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Halmes vs. Statel

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