

14323

No. \_\_\_\_\_

# Supreme Court of Illinois

Loy

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vs.

Steamboat F. X. Aubrey

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 114

14323

*Loyd vs  
Anthony*

1862

State of Illinois } ss Third Grand Division  
Supreme Court } April Term 1862

Thomas Loy }  
vs: } error to LaSalle County  
The Steam Boat } Circuit Court.  
F. F. Aubrey } E. F. Bull attorney for

said Plaintiff in error being first duly sworn according to law on oath says that he has made diligent enquiry for the said defendant and has been unable to find the same. But affiant has been informed that said defendant was now running as a steamboat upon the ~~the~~ upper Red river in the State of Arkansas. and ~~has been~~ was at the time of the breaking out of the Southern Rebellion and that since that time, last mentioned affiant has been unable to ascertain anything about the whereabouts of said defendant, and affiant believes the above information to be true. Affiant further states that he has made diligent enquiries in order to ascertain the whereabouts, and the post office address of the Illinois River Packet Company, which was the owner of said defendant at the time of the trial of this case below, and ~~among~~ <sup>besides</sup> other persons of whom affiant has made enquiries, for said Illinois Company, affiant enquired of David L. Hoop, who appeared as their attorney and defended this suit below, and affiant has been unable

from that or any other source & ascertain  
the whereabouts, location of or Post Office  
addresses of said Company. Affiant  
further states that <sup>hoping to bring notice to the attention of said Court of the</sup> he mailed a copy  
of the paper containing the notice of  
publication, duly marked so as to  
attract notice, to ~~the~~ the President  
of said Company ~~and~~ at Chicago  
Illinois and also at St Louis Mo.  
and that said papers were mailed  
sometime during the latter part of  
March A.D. 1862 <sup>and aff</sup>

~~Subscribed & sworn to before me } E. F. Bull  
this 23<sup>rd</sup> day of April 1862 }~~

Affiant further states that he does not  
know who the owner of said defendant is  
nor whether said Packet Co. is now in existence  
and the attorney for said defendant below  
informed affiant that he knew nothing  
about it and could give affiant no informa-  
tion ~~on the subject~~ as to the address of the Company  
and did not give affiant any information as to its whereabouts or existence  
Subscribed & sworn to before me } E. F. Bull  
this 23<sup>rd</sup> day of April 1862 }

L. Leland Clark  
J. B. Kane Deputy

Thomas Long  
Vs:

St. Bot. F. N. Aubrey

Affidavit of the  
making of notices.

Filed Apr. 24, 1862  
L. Seland  
Clerk.

~~Proof sufficient and~~  
order of publication  
~~granted~~  
allowed sustained  
~~allowed~~

James Gray

10

Steamboat Aubrey

I do not think that there is any sufficient notice given to the defendant to require it to join in error for the following reasons

Rule 30 25 Ills 16. provides that in case affidavit is filed showing that defendant or defendants have gone out of the state so that process of summons can not be served on him her or them that publication of notice to defendant may be made

The only affidavit filed with the clerk before the publication of the notice and which was filed Dec 5<sup>th</sup> 1862 says that the defendant has gone out of the state so that process of cannot be served upon it.

This would authorize the publication of notice to the defendant under the rule

The notice published was not a notice to the defendant which was the Steamboat, the owner or owners of

The Steamboat are notified

Can the owners of the boat who may all live in the State be brought in by publication simply because the boat has gone out of the State.

If the owners are the proper persons to notify then it must appear that they could not be served with process.

The affidavit filed today ought not to be considered because the rule requires it to be filed with the clerk before the notice issues. The notice can issue only upon the filing of a proper affidavit.

It will not do to publish a notice without filing the affidavit required by law and then file an affidavit at the term.

The requirements of the law must be obeyed or the court gets no jurisdiction of the person.

B. C. Cook

114  
Thomas Lay

Steamboat E. A. Aubrey

Suggestions against  
motion

Filed Apr. 24. 1862  
L. Seland  
Clk.

State of Illinois }<sup>ss</sup> Third Grand Division  
Supreme Court } April Term A.D. 1862

Thomas Loy, Plaintiff  
in Error

vs:

The Steam Boat F. K.  
Aubrey Defendant in error

error to LaSalle County  
circuit court -

L. Leland Esq  
clerk of said Court

Will you please issue writ of error & scire facias as above to Shff.<sup>s</sup> LaSalle & Cook counties, file the enclosed record and affidavit and send notice for publication to the LaSalle Press -

I wish you would send the notice directed to S. C. Webster, LaSalle Press, LaSalle Ills. by ~~to~~ next mail -

I will pay you your fees when I am up at which time I will get the sci. fas.

Yours &c

E. F. Bull

for Pff. in error

LaSalle Feb. 6<sup>th</sup> 1862

114  
Had Log Pff in error  
vsi

St. St. F. X. Aubrey Dept in error

Receipt

Filed Feb. 5. 1862  
A. Deland  
Ch.

P. H. Bull  
for Pff. in error

State of Illinois } ss Third Grand Division  
Supreme Court } April Term A.D. 1862

Thomas Loy }  
vs } Error to LaSalle County.  
The Steam Boat }  
F. X. Aubrey. }

Suggestion by Plaintiff in error in support of sufficiency of proof of publication of notice -  
1<sup>st</sup> By the Statute under which these proceedings are had (Scates Ed. 789) the Plaintiff has a right to proceed against the defendant the same as against a person - This Statute is not an amendment, as the court will see by reference to the session laws is not an amendment to the Attachment law against boats and vessels, but to Chapter 102 of Revised Stat.

2<sup>nd</sup> The affidavits on file show that proper diligence has been used to get notice to the owners of defendant than was necessary and if they are not ~~in~~ notified it is no fault of the Plaintiff, but they were actually notified else why do their attorney appear in this court -

- Over -

3<sup>rd</sup> If this notice is not sufficient I would respectfully suggest that it will be impossible to make one that will be under the present rules and the plaintiff is without remedy -

4<sup>th</sup> The owners of the *Def.* were not parties to the suit and could not be under the Statute hence there was no ~~power~~ <sup>right</sup> to issue summonses or to serve the same on them, ~~but the~~

5<sup>th</sup> The objection that the notice is to the owners and not to the defendant seems to me futile for the reason that they are the parties interested and ~~the~~ the *Def.* was not capable of receiving notice and was out of the jurisdiction of the court so that notice could not be served on her master, or captain

The objection to the form of the notice is merely technical to say the least and so that the object contemplated by the rule of this court is accomplished I can not see that it makes any difference what the particular form of the notice may be.

No. 114

Thos Lory

<sup>As</sup>  
The Steam Boat

J. K. Aubrey

Suggestions in support  
of sufficiency of Proof  
of Publication of notice

Filed Apr 24. 1862  
L. Ireland  
Clerk

E. F. Bull  
Ref. 207

State of Illinois <sup>235</sup> Third Grand Division, April  
Supreme Court <sup>vs</sup> Term A.D. 1862

Thomas Loy Plaintiff  
in error

vs:  
The Steam Boat F. X.  
Aubrey Defendant in error

Error to LaSalle County  
Circuit Court

E. F. Bull, attorney for  
said plaintiff being first duly sworn  
according to law on oath deposes  
and says that said defendant has  
gone out of the State of Illinois, so  
that process cannot be served on it,  
Subscribed & sworn to before  
me this 6<sup>th</sup> day of February 1862

E. F. Bull

Wm M. Witt

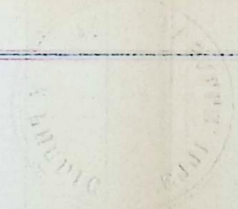
Notary Public  
for city of LaSalle

114

Thos. Loy. Pff in error  
vs.

St. Bl: F. X. Aubrey deft in error

Aff't. for notice of  
Publication



Filed Feb. 5<sup>th</sup> 1862  
L. Leland Clerk

State of Illinois, ss Third Grand Division, April  
Supreme Court ss Term A.D. 1862

Thomas Loy

vs

The Steam Boat F.  
X. Aubrey

Error to LaSalle County  
Circuit Court. -

STATE OF ILLINOIS, SS. Supreme Court  
within and for the Third Grand Division of  
said State. Thomas Loy, Plaintiff in Error, vs.  
The Steamboat F. X. Aubrey, Defendant in Error.  
—Error to La Salle County Circuit Court.

Whereas the above named Thomas Loy has sued  
out a Writ of Error from said Supreme Court, to  
reverse a judgment which the said Steamboat F.  
X. Aubrey obtained against him in said Circuit  
Court of La Salle County, which said Writ of  
Error is now pending in said Supreme Court: and  
whereas a Writ of *Scire Facias*, returnable on the  
first day of the next term of said Supreme Court,  
to be holden at Ottawa, in said State of Illinois,  
on the first Tuesday after the third Monday in  
April next, has been duly issued herein according  
to law: and whereas, also, it appears by affidavit  
on file in the Clerk's office of said Supreme Court,  
that the said Steamboat F. X. Aubrey has gone  
out of the State of Illinois, and without the reach  
of the process of this Court:

Now, therefore, the owner or owners of said  
Steamboat F. X. Aubrey are hereby notified to be  
and appear before the Justices of said Supreme  
Court, at the next term thereof, to be holden at  
Ottawa, in said State, on the first Tuesday after  
the third Monday in April next, A. D. 1862, to  
hear the record and proceedings of said judgment  
of said Circuit Court brought into said Supreme  
Court on return of said Writ of Error and the  
errors assigned, if you shall see fit, and further to  
do and receive what said Supreme Court shall order  
in this behalf.

Dated this 6th day of February, A. D. 1862.

Attest: L. LELAND, Clerk.

E. F. BULL, Att'y for P'ff in Error. 49

J. E. C. Webster, publisher  
and proprietor of the LaSalle  
County Press, a weekly  
newspaper, published in  
the County of LaSalle and  
State of Illinois, ~~do hereby~~  
and of general circulation  
therein, do hereby certify  
that the annexed notice  
of Publication in the above  
entitled cause was published  
on the regular days of issue

for six successive weeks in said paper, the  
first publication being on Saturday the 15<sup>th</sup> day  
of February, and more than sixty days before the  
22<sup>nd</sup> day of April A.D. 1862. ~~and the~~  
LaSalle Ills. Apl. 22<sup>nd</sup> 1862

J. E. C. Webster  
Publisher LaSalle County Press

State of Illinois } ss

Laballe County }

on this 23<sup>rd</sup> day of April A.D.

1862, personally appeared before me the undersigned a Notary Public in and for the County of Laballe in said County, E.C. Webster, to me personally known, and being by me first duly sworn on oath says that the matters and things set forth in the foregoing certificate by him subscribed are true to

~~the best of his~~ witness my hand and seal notarial this day & year aforesaid

E. F. Bull

Not. Pub.

114

Thos. Long

205

St. Mt. F. N. Aubrey

Prof. Publication

Fils April 24. 1862

L. Ireland

OK

State of Illinois }  
 La Salle County }

Was before the Honorable  
 Madison E. Hollister Judge  
 of the ninth Judicial District of the State of Illi-  
 nois and the presiding judge of the La Salle  
 County Circuit Court, at a term of said Court com-  
 menced and held at the Court House in Ot-  
 tawa in said County and State on the Second  
 Monday in the month of June, the same being  
 the thirteenth day of June, in the year of Our  
 Lords One Thousand eight hundred and fifty  
 nine, and of the Independence of the United  
 States of America the Eighty third  
 Year, The Honorable Madison E. Hollister Presiding Judge  
 John F. Nash Clerk  
 Washington Bushnell State Attorney  
 Francis Warner Sheriff.

Be it remembered that on the 21<sup>st</sup> day of April 1859  
 a process was filed with the Clerk of said Court  
 in the words and figures following, to wit;

State of Illinois }  
 La Salle County }

Thomas Loy  
 Versus  
 The Steam Boat F. X. Aubrey, a Steam Boat navigating  
 the Illinois River, within and the Mississippi River bounding  
 upon the said State of Illinois.

Trespass, Damages

To John F. Nash Esq,  
Clerk of Saide Court. }

Issue a warrant against  
said Boat, to the Sheriff of Saide County, returnable  
as other writs, directing the said Sheriff to seize  
the said Boat her apparel and furniture, or such  
parts thereof as shall be sufficient to satisfy the  
saids plaintiffs damage of \$3000 -

April 20<sup>th</sup> 1859.

Strain & Bull

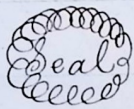
Plff's attys. "

Copy of Warrant issued & out of and under the  
Seal of Saide Court pursuant to foregoing precept;

State of Illinois }  
Saide County } The People of the State  
of Illinois to the Sheriff of Saide  
County Greeting;

We command you to seize the Steam  
Boat "F. X. Aubrey", (if to be found in your  
County) a Steam boat navigating the Mississippi  
river bordering upon, and the Illinois river within  
the Saide State of Illinois, or such of her  
apparel or furniture as may be necessary to satisfy  
the demands herein of Thomas Loy; and the said  
Steam Boat "F. X. Aubrey", or such part of the  
apparel or furniture aforesaid, safely keep

and detain until discharged by due course of law, to answer to the said Thomas Loy in a plea of Trespass, to his damage as he says of three thousand dollars, before our Circuit Court of said County and State at the next term thereof to be holden at the Court house in Ottawa in said County on the second Monday in the month of June next; And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.



Witness John F. Nash clerk of said Court and the Seal thereof at Ottawa this 21<sup>st</sup> day of April A. D. 1859.  
J. F. Nash Clerk.

— Endorsement of Sheriff on back of same —

"Served the within warrant by reading to George V. Stackpole, Master of the within named Steam Boat and attaching said Steam Boat, her engines & machinery and leaving said Boat in charge of George V. Stackpole, Master, as per bond herewith filed, dated this 23<sup>rd</sup> day of April a. d. 1859.

Servant	100
15 miles	75
Expense	<u>100</u>
Paid	\$ 2,75

J. Warner Sheriff.  
by C. F. P. Buck Deputy.


Copy of Re-delivery bonds mentioned in the foregoing return of the Sheriff, on back of the warrant issued in this cause, now on file in the office of the Clerk of said Court, the filing of which bears date April 30. 1859;

“ State of Illinois vs Know all men by these La Salle County presents that we the Illinois River Packet Co. of Illinois & George V. Stackpole as Master of said Boat & Richards Cady of the County of La Salle and State of Illinois are held and firmly bound unto Francis Warner Sheriff of La Salle County in the Penal Sum of Six Thousand Dollars goods and lawful money of the United States for the payment of which we healy jointly and severally bind ourselves, our heirs, executors, and administrators, Sealed with our seals this 23 day of April A. D. 1859.


Whereas by virtue of a certain warrant in Trespass issued out of the Circuit Court of La Salle County State of Illinois, wherein Thomas Loy is Plaintiff and the Steam Boat F. X. Huber, a Steam Boat navigating the waters of the Mississippi River bordering upon, and the Illinois River within the said State of Illinois is defendant, and said Warrant is returnable to the Circuit Court of La Salle County at the next term thereof to be holden


5  
at the Court House in Ottawa in said County on  
the second Monday of June next, Whereas the  
said Francis Warner Sheriff of La Salle County  
has seized upon the said Steam Boat F. X. Aubrey  
her Engines & Machinery to satisfy the demands of  
said Warrant, which is Three Thousand Dollars  
& Costs, and at the request of the above named  
George V. Stackpole and Illinois River Packet  
Co. & Richard Cody, has left said Steam Boat  
F. X. Aubrey and Engines & Machinery in the  
possession of George V. Stackpole, the Master  
or Captain of said Boat.

Now if the saids Boat her Engines & ma-  
chinery as specified in the seizure and levy made  
on said Warrant or said sum of Six Thousand  
Dollars shall be forthcoming to answer the judgment  
under said seizure then this obligation to be void  
otherwise in full force and virtue.


Dated this 25<sup>th</sup> day of April, 1859. } Illinois River Packet Co. 

A. D. 1859.

By Geo. V. Stackpole 

Geo. V. Stackpole 

Witness Daniel Cosgrove.

R. Cody 

On the 21<sup>st</sup> day of April 1859 there was filed with  
the clerk of said Court an affidavit & Bill of Par-  
ticulars in the words and figures following to  
wit;

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State of Illinois } ss. Circuit Court of said  
La Salle County } County June Term thereof A.D. 1859

The Steam Boat F. X. Aubrey  
vs Thomas Loy Dr.

1859 April 9<sup>th</sup>

Exhibit "A"

To damage done him by assault and battery committed in his person by mate of said boat, whilst he was a passenger on said boat, on the Illinois River, within the State of Illinois on or about April 8<sup>th</sup> 1859. \$ 3000.-

La Salle April 9<sup>th</sup> 1859.

State of Illinois }  
La Salle County } ss: Thomas Loy of lawful  
age being first duly sworn according to law on oath deposes and says that on or about the Seventh day of April A.D. 1859, he took passage on the abve named Steam Boat F. X. Aubrey, (then and from thence, hitherto navigating the Mississippi River, bordering on, and the Illinois River within the State of Illinois) with the knowledge and consent of the officers of said boat, for the purpose of coming to the port of La Salle in said County of La Salle and State of Illinois, that on or about the Eighth day

7 of April A. D. 1859, whilst affiant was on the  
passage from said St. Louis to said La Salle,  
on board of said Boat as a passenger as  
aforesaid and whilst said Boat was navigating  
the Illinois River within said State of Illinois  
the mate of said Steam Boat, (who was  
known by the name of "Liverpool Tom",  
whilst acting as such mate did wrongfully  
and unlawfully assault and violently beat,  
kick, wound and bruise the person of  
affiant, and broke the thigh of affiant  
and thereby greatly damaged affiant to  
the amount of Three Thousands, and that  
the foregoing annexed bill of particulars  
marked "A." is a true bill of particulars  
of his demands against said Steam Boat  
in the premises.

Thomas Loy.

Subscribed & Sworn to before me this 21<sup>st</sup> day  
of April A. D. 1859.

Witness my hand and Seal

John Fornstal, *Seal*

Police Magistrate in the  
City of La Salle, said County and State  
above mentioned.

On the Third (3<sup>d</sup>) day of June A. D. 1854,  
 the plaintiff in the foregoing entitled Suit  
 filed with the Clerk of said Circuit Court,  
 his certain declaration therein, which said  
 declaration was by leave of the Court <sup>(as per order hereafter to follow)</sup> amended,  
 and filed as amended on the 22<sup>d</sup> day of  
 June 1854, and is in the words and figures fol-  
 lowing, to wit;

State of Illinois } ss.  
 La Salle County } Circuit Court for said  
 County, June Term thereof A. D. 1854

Thomas Loy  
 vs  
 The Steam Boat  
 F. W. Aubrey

} Trespass.

And now comes  
 the said plaintiff by Strain  
 & Bull his attorneys by leave  
 of the Court for that purpose just had and  
 obtained, and files this his amendment to  
 his said declaration herein, in the words and  
 figures, following, to wit;

"Thomas Loy, the  
 plaintiff in this Suit by Strain & Bull his  
 Attorneys complains of the Steam Boat  
 F. W. Aubrey, which at the time of com-  
 mitting the several grievances hereinafter  
 mentioned, was a Steam Boat navigating the

rivers bordering upon and the rivers within the State of Illinois, to wit, the Mississippi river bordering upon and the Illinois River within the State of Illinois, &c.

Strain & Bull  
 Jffs attys

1<sup>st</sup> State of Illinois } Circuit Court for Said  
 La Salle County } County June Term thereof  
 A. D. 1859.

Thomas Loy by Strain & Bull his attorneys complains of the Steam Boat F. W. Aubrey, a Steamboat navigating the waters bordering upon and the waters within the State of Illinois, which was seized by warrant to answer unto the plaintiff in a plea of Trespass, For that, heretofore to wit, on the eighth day of April A. D. 1859, at, to wit at Said County of La Salle a certain man known by the name of Liverpool Tom, then and there being, the mate of said defendant with force and arms assaulted the plaintiff, who was then and there a passenger on board of said Steam Boat, (by and with the consent of the Captain of said Steam Boat) and beat, bruised, pushed, dragged and pulled about, kicked, wounded and ill treated him,

(the plaintiff) whereby the plaintiff's leg was greatly injured and was broke and the plaintiff became and was sick soon, lame, and disordered and so continued for a long time to wit, from thence until the commencement of this suit, during all which time the plaintiff suffered great pain and was prevented from transacting his necessary affairs and business and also thereby, the plaintiff was obliged to subject himself to liability to pay and became liable to pay great expences to wit; to the amount of one thousand dollars, in and about the endeavoring to be cured of the injuries so sustained by him and thereby also, divers large quantities of blood which issued and flowed from said wound of the plaintiff, ran and flowed on the clothes and wearing apparel to wit; one coat, one waistcoat, one shirt, one pair of trousers, of the plaintiff, wherewith the plaintiff was then clothed of the value of twenty five dollars, and greatly damaged and spoiled and soiled the same so that the same thereby became of little or no use or value to the plaintiff and other usings to the plaintiff then did, to wit at the County aforesaid against the peace

and dignity of the people of the State of Illinois and to the damage of the plaintiff of three thousand dollars.

2<sup>nd</sup>

And also for that afterwards to wit; on the Eighth day of April A. D. 1859. at, to wit; at said county of La Salle a certain man known by the name of "Liverpool" then and there being the second mate of said defendant with force and arms assaulted the plaintiff who was then & there a passenger on board of said Steam Boat, and beat, bruised, pushed, dragged and pulled about, kicked, wounded and ill treated him, (the plaintiff) whereby the plaintiff's thigh bone was greatly injured and was broke and the plaintiff became and was sick, sore lame and disordered and so continued for a long time, to wit from thence until the commencement of this suit, during all which time the plaintiff suffered great pain, and was prevented from transacting his necessary affairs and business, and also thereby the plaintiff was obliged to subject himself to liability to pay and became liable to pay great expenses to wit; to the amount of five hundred dollars in and about

12.

The endeavoring to be cured of the injuries so sustained by him and other wrongs to the plaintiff then did, to wit at the County aforesaid against the peace and dignity of the people of the State of Illinois, and to the damage of the plaintiff of three thousand dollars

3<sup>dB</sup>  
7

And also for that afterwards to wit, on the 8<sup>th</sup> day of April A. D. 1859, at, to wit the County of La Salle aforesaid, a certain man, (whose name is to said plaintiff unknown,) then and there being the mate of said defendant with fire and arms did assault the plaintiff who was then and there a passenger on board of said Steam Boat, (by and with the consent of the officers in command of said Steam Boat,) and did then & there beat, bruise, push, drag and pull about, kick, wound and ill treat him (the plaintiff) whereby the plaintiff by was greatly injured and was broke and the plaintiff became and was sick, lame and disordered, and so continued for a long time, to wit, from thence to the commencement of this suit, during all which time the plaintiff suffered great pain and was prevented

from transacting his necessary affairs and business, and also thereby the plaintiff was obliged to subject himself to liability to pay, and became liable to pay great expenses to, wit; to the amount of one thousand dollars in and about the endeavoring to be cured of the injuries so sustained by him, and other wrongs to the plaintiff, then did, to wit; at the county aforesaid, against the peace and dignity of the people of the State of Illinois and to the damage of the plaintiff of three thousand dollars.

4<sup>th</sup>

And also for, that afterwards to wit, on the eighth day of April A. D. 1859, at, to wit, said County of La Salle, a certain man whose name is to this plaintiff unknown, then & there being the second mate of said Steam Boat with force and arms did assault the plaintiff, who was then & there a passenger on board of said Steam Boat, and with force and arms did beat, bruise, push, drag and pull about, kick, wound and ill treat him, (the plaintiff) whereby the plaintiff's thigh bone was greatly injured and was broke and the plaintiff became and was sick, sore, lame, and disordered and so continued for a long time, to wit, from thence until

The commencement of this suit during all which time the plaintiff suffered great pain and was prevented from transacting his necessary affairs and business and also thereby the plaintiff was obliged to subject himself to liability to pay and became liable to pay great expenses, to wit; to the amount of five hundred dollars in and about the endeavoring to be cured of the injuries so sustained by him and other wrongs to the plaintiff then did, at, to wit; the County of La Salle aforesaid - against the peace and dignity of the people of the State of Illinois and to the damage of the plaintiff of three thousand dollars.

5<sup>th</sup>.

And also for that afterwards on, to wit; the Eighth day of April A. D. 1859, at, to wit the county of La Salle aforesaid a certain man known by the name of "Liverpool Tom" then & there being an officer of said Steam boat and in charge thereof, with force and arms assaulted the plaintiff, who was then & there a passenger on board of said Steam Boat (by and with the consent of the Officers in charge of said Steam Boat) and beat, bruised, pushed, dragged and pulled about,

Kicked, wounded and ill treated him (the plaintiff) whereby the plaintiff's leg was greatly injured and his thigh bone was broke, and the plaintiff became and was sick, sore, lame and disordered, and so continued for a long time to wit, from thence until the commencement of this suit during all which time the plaintiff suffered great pain and was prevented from transacting his necessary affairs and business, and also thereby the plaintiff was obliged to subject himself to liability to pay and became liable to pay great expenses to wit, to the amount of one thousand dollars, in and about the endeavoring to be cured of the injuries so sustained by him, and other wrongs to the plaintiff then did at, to wit, the County aforesaid against the peace and dignity of the people of the State of Illinois - and to the damage of the plaintiff of three thousand dollars, -

6<sup>th</sup>/<sub>11</sub>

And also, for that afterwards, on to wit, the eighth day of April A. D. 1859, at to wit, the County aforesaid a certain man (whose name is to said plaintiff unknown) then and there being an officer in charge of said Steam Boat, did, with force and

arms assault said plaintiff who was then  
 and then a passenger on board of said  
 Steam Boat and did beat, bruise, push,  
 drag and pull about, kick, wound and  
 ill treat him, (the plaintiff whereby the  
 plaintiffs leg was greatly injured and  
 his thigh bone was broke and the plaintiff  
 became and was sick, sore, lame and  
 disordered, and so continued for a long  
 time to wit; from thence until the com-  
 -mencement of this suit during all which  
 time the plaintiff suffered great pain and  
 was prevented from transacting his neces-  
 -sary affairs and business and also thereby  
 the plaintiff was obliged to subject him-  
 -self to liability to pay and became liable  
 to pay great expenses to wit; to the amount  
 of five hundred dollars in and about  
 the endeavoring to be cured of the injuries  
 so sustained by him and other wrongs to  
 the plaintiff then did at; to wit, the count  
 of said, against the peace and dignity  
 of the people of the State of Illinois, and  
 to the damage of the plaintiff of three  
 thousand dollars.

and  
 11

And also for that afterwards to wit;  
 on the Eighth day of April A.D. 1859.

at, to wit, the County aforesaid a certain man known by the name of "Liverpool Tom", then and then being one of the crew of said Steam Boat, by and under the direction of the officers then and then in command of said Steam Boat, with force and arms assaulted, the plaintiff, who was then & then a passenger on board of said Steam boat, and beat, bruised, pushed, dragged and pulled about, kicked, wounded and ill treated him (the plaintiff) whereby the plaintiff's leg was greatly injured and his thigh bone was broke and the plaintiff became and was sick, sore, lame, and disordered, and so continued for a long time, to wit, from thence until the commencement of this suit, during all which time the plaintiff suffered great pain and was prevented from transacting his necessary affairs and business, and also thereby, the plaintiff was obliged to subject himself to a liability and became liable to pay great expenses, to wit, to the amount of one thousand dollars in and about the endeavoring to be cured of the injuries so sustained by him and other sums to the plaintiff then did at, to wit the County aforesaid against the peace and

dignity of the people of the State of Illinois  
and to the damage of the Plaintiff of three  
thousands dollars.

8<sup>th</sup>  
11

And also for that afterwards to wit, on  
the day and year aforesaid at to wit;  
the County aforesaid, a certain man whose  
is to the Plaintiff unknown then and there  
being one of the crew of Said Steam Boat,  
by and under, the direction of the officers  
then & there being in command of said Steam  
Boat, did with force and arms assault said  
Plaintiff who was then & there a passenger  
on board of Said Steam Boat, and did  
beat, bruise, push, dragg and pull about,  
kick wound and ill treat him, (the  
Plaintiff) whereby the Plaintiff's leg  
was greatly injured and his thigh bone  
was broke and the Plaintiff became and  
was sick sore, lame and disorderd and  
so continued for a long time, to wit; from  
thence until the commencement of this suit  
during all which time the Plaintiff suffered  
great pain and was prevented from trans-  
acting his necessary affairs and business  
and also thereby the Plaintiff was obliged  
to Subject himself to liability to pay  
and became liable to pay great expense

to wit; to the amount of five hundred dollars  
 in and about the endeavoring to be cured of  
 the injuries so Sustained by him and other  
 wrongs to the plaintiff then did, at, to wit;  
 the County aforesaid, against the peace and  
 dignity of the People of the State of Illinois  
 and to the damage of the plaintiff of  
 three thousand dollars.

9<sup>th</sup> And, <sup>also for</sup> that afterwards to wit; on the day  
 & year aforesaid, at, to wit the County aforesaid,  
 a certain man known by the name of "Linn  
 Pool Farm" then and there being the mate of  
 Said defendant, with force and arms assaulted  
 Said plaintiff who was then & there a pas-  
 senger on board of Said defendant, and beat  
 bruised, pushed, dragged and pulled about,  
 kicked, wounded and ill treated him (the  
 plaintiff), whereby the plaintiff's leg was greatly  
 injured and his thigh bone was broke and  
 the plaintiff became and was sick, sore,  
 lame and disordered and so continued for  
 a long time, to wit; from thence until  
 the, the commencement of this suit, during  
 all which time the plaintiff suffered great  
 pain and was prevented from transacting  
 his necessary affairs and business and other

wrongs to the plaintiff then did, at, to wit; the County of La Salle aforesaid, against the peace and dignity of the people of the State of Illinois and to the damage of the plaintiff, of three thousand dollars.

10<sup>th</sup>

And also for that afterwards to wit, on the Eighth day of April A. D. 1859, at to wit; the County of La Salle aforesaid, a certain man known by the name of "Liverpool Tom", then & there being the second mate of said defendant with force and arms assaulted said plaintiff, who was then and there a passenger on board of said defendant and beat, bruised, pushed, dragged and pulled about, kicked, wounded and ill treated him (the plaintiff) whereby the plaintiff's leg was greatly injured and his thigh bone was broke and the plaintiff became and was ~~badly~~ sick, sore, lame and disabled, and so continued for a long time; to wit, from thence until the commencement of this suit, during all which time the plaintiff suffered great pain and was prevented from transacting his necessary affairs and business and other wrongs to the plaintiff then did, at, to wit; the county

aforsaid against the peace and dignity of the people of the State of Illinois and to the damage of the plaintiff of three thousand dollars.

11<sup>th</sup>

And also for that, afterwards, to wit; on the 4<sup>th</sup> year aforsaid, at to wit; the county aforsaid a certain man known by the name of "Lincoln Tom" then and there being one of the officers in command of said boat, with force and arms, assaulted the plaintiff who was then & there a passenger on board of said - and beat, bruised, pushed, dragged, and pulled about, kicked, wounded and ill treated him (the plaintiff) whereby the plaintiffs leg was greatly injured and his thigh bone was broken, and the plaintiff became and was sick, sore, lame and disordered and so continued for a long time to wit; from three until the commencement of this suit, during all which time the plaintiff suffered great pain and was prevented from transacting his necessary affairs & business, and other wrongs to the plaintiff then did at, to wit the county aforsaid, to the peace and dignity of the people of the State of Illinois, and to the damage of said plaintiff three thousand dollars, and therefore he sues &c

Strain &amp; Bull

Plaintiff's attorney

On the 13<sup>th</sup> day of June, the same being one of the days of the June Term of said Court for the year 1859, an order was entered of record in said cause in the words and figures following, to wit:

" *N*  
 Thomas Lacy }  
 146 vs } Trespass.  
 The Steam Boat }  
 F. V. Aubrey } -liff by Strain & Ball his attorneys  
 the defendant is ruled to plead herein on or before the coming in of the Court next Saturday morning. "

On motion of the plain-

On the 14<sup>th</sup> day of June 1859, there was filed in said cause an affidavit in the words and figures following, to wit;

" *N*  
 Thomas Lacy }  
 vs } La Salle County Circuit Court  
 Steam Boat F. V. Aubrey } June Term A. D. 1859.

State of Illinois }  
 La Salle County } David L. Haugh being  
 first duly sworn, on oath de-  
 poses & says that he is attorney  
 for the defendant in the above entitled cause, & that the plaintiff in said cause is utterly without pecuniary responsibility; & is so unsettled as to en-

danger the Officers of the Court with respect to their legal demands.

David S. Hough

Subscribed & Sworn to before

me this 14<sup>th</sup> day of June

A.D. 1859. D. F. Nash clerk 3,,

On Tuesday June 14<sup>th</sup> 1859, an order was entered of record in said Cause in the words and figures following, viz:

Thomas Loy }  
 146. vs }  
 The Steam Boat F. X. Aubrey } Trespas.

On motion of the defendant by D. S. Hough her attorney the plaintiff is ruled to file security for costs herein or show cause to the contrary on or before next Monday morning."

On the 17<sup>th</sup> day of June 1859, the defendant's attorney filed a demurrer to plaintiff's declaration in the words and figures following, to wit;

"Thomas Loy }  
 vs }  
 Steamboat F. X. Aubrey }  
 Sa Salle County Circuit Court  
 June Term A.D. 1859.

And now comes the said defendant by D. L. Hough, its attorney, and defends the wrong & injury whereof, & says that the said several counts of the said declaration & the matters and things therein contained, in manner & form as the same are before pleaded and set forth are not sufficient in law, nor are either of said counts in said declaration sufficient in law for the said plaintiff to have & maintain his aforesaid action thereof against the said defendant, and that the said defendant is not bound by law to answer the same; wherefore the said defendant prays judgment, &c.

David L. Hough

Def'ts atty. "

On Tuesday June 21<sup>st</sup> 1859, the same being one of the days of the Term Term of said Court for said year an order was entered of record in said cause in the words & figures following, to wit:

" Thomas Lough }  
 146. } vs } Inass.  
 The Steam Boat }  
 J. H. Aubrey } This day the plaintiff  
 } Comes by Strain & Bull  
 his attorney and the defendant by D. L. Hough

After attorney and after hearing the arguments of counsel the court sustain the defendant's demand to plaintiff's declaration.

Therefore it is ordered by the court, on motion, that plaintiff's attorney have leave to amend their declaration, and that this cause be continued at plaintiff's cost to be taxed. "

On the 20<sup>th</sup> day of June 1859, a bond for costs and affidavit accompanying same were filed with the clerk of said court and are in the words and figures following, viz:

" State of Illinois } Circuit Court for said  
 La Salle County } County, June Term thereof  
 A. D. 1859.  
 Thomas Long }  
 vs }  
 Steam Boat T. V. Aubrey } Trespas.

We, do hereby enter ourselves security for costs in the above entitled cause and acknowledge ourselves bound to pay or cause to be paid all costs which may accrue in the above entitled cause either to the opposite party or to any of the officers of this Court, in pursuance of the laws of the State of Illinois.

*La Salle*  
Dated June 10<sup>th</sup> 1859.

Witnesses  
W. E. Drey,  
Michael <sup>his</sup> Casey  
<sub>mark</sub>  
Peter <sup>mark</sup> Ferren  
Laurence <sup>his</sup> Tommens  
<sub>mark</sub>

State of Illinois }  
Lee County } Michael Casey and  
Laurence Tommens each  
being first duly sworn ac-  
cording to law on oath depose and say  
that they are the same persons who signed  
the bond for costs in Trespass suit now pend-  
ing in La Salle County Circuit Court when  
in Thomas Loy is plaintiff and Steam Boat  
A. K. Aubrey is defendant and that they  
and each of them are worth over and above  
their debts and all homestead and other  
exemptions, the sum of five hundred dollars,  
at least

Witness, W. E. Drey. - Michael <sup>his</sup> Casey  
<sub>mark</sub>  
Laurence <sup>mark</sup> Tommens

Subscribed & Sworn to before me this 10<sup>th</sup>  
day of June A.D. 1859. Witness my hand  
Seal



W. M. Taylor N.P. "

On Wednesday June 22<sup>d</sup> 1859, the same being one

of the days of the Term term of said Court for said year, an order was entered of record in said cause in the words and figures following, to wit;

" Thomas Loy vs  
 146 vs Trustess.

The Steam Boat

F. N. Aubrey

On motion of plaintiff by Strain & Bull his attorneys the defendant is ruled to plead to plaintiffs amended declaration on or before Tuesday morning next, "

On the 28<sup>th</sup> day of June 1859, defendants attorney files a demurrer in this cause in the words and figures following, to wit;

" Thomas Loy vs Steam Boat F. N. Aubrey  
 Lo Salle County Circuit Court June Term 1859.

And Now Again Comes the said defendant by D. L. Hough, his attorney, and defends the wrong & injury where, & says that the said several counts of the said plaintiffs amended declaration & the matters & things therein contained, in manner & form as the same are therein pleaded & set forth, are not sufficient

in law, nor are either of said counts in said amended declaration sufficient in law for the said plaintiff to have & maintain his aforesaid action against the said defendants & that the said defendant is not bound by law to answer the same; wherefore the said defendant prays judgment &c

D. L. Hough Defts atty  
And for Special Cause of demurrer the said defendant shows the following, -

1<sup>st</sup>. In neither count in said amended declaration, does said plaintiff show any Cause of action against said defendants,

On the 8<sup>th</sup> day of November 1859, an affidavit was filed with the clerk of said Court, in the words and figures following, to wit;

"State of Illinois } Circuit Court, November  
La Salle County } Term thereof A. D. 1859.

Thomas Loij

vs  
The Steam Boat F. B. Aubrey.

James Comiskey  
and Thomas McEntire being duly sworn  
on oath each for himself says that he is about to depart

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from the said State of Illinois and to go to the State of Mississippi for the purpose of remaining through the coming winter and that he expects to depart from said State of Illinois within a day or two of this eighth day of November A. D. 1859.

Subscribed & sworn this eighth day of November A. D. 1859.

P. Lindley Co. clk.

Thomas Mc Intire  
James <sup>sq</sup> Camisky. "

Here follow depositions of Thos. Mc Intire & Jas Camisky filed in said Cause Nov. 12<sup>th</sup> 1859. viz;

State of Illinois }  
La Salle County } ss

The Depositions of Thomas Mc Intire and James Camisky two witnesses of lawful age produced and sworn and examined upon their respective corporal oaths on the eighth day of November in the year of our Lord one thousand eight hundred and fifty nine at the office of the clerk of the County Court of said County and State at the Court House in Ottawa in said County by me Philo Lindley clerk of said County Court to be read in evidence in a certain suit now pending and undetermined in the Circuit Court of said County of La Salle wherein Thomas Loy is Plaintiff and the Steamboat F. H. Aubrey is defendant on the part of the plaintiff in pursuance of a notice hereto attached

State of Illinois } Circuit Court To,  
 La Salle County }<sup>25</sup> November Term A.D. 1859

Thomas Loy

vs

The Steam Boat "J. H. Aubrey"

To the above named  
 Defendant or to David L. Hough its Attorney  
 You are hereby notified that on the eighth day  
 of November A.D. 1859 at the Office <sup>of the Clerk</sup> of the County  
 Court of said County and State in the Court  
 House in Ottawa Between the Hours of eight  
 O'clock A.M. and Ten O'clock P.M. of said  
 day - and before said Clerk of said County  
 Court or other competent authority we will  
 proceed to take the Testimony of Thomas McEntire  
 and James Cammisky and James Cammisky  
 to be read in evidence on the part of said  
 Plaintiff on the trial of said Cause and that  
 the same will be continued from day to day  
 at the same place and between the same  
 hours untill completed when and where  
 you can attend and cross examine if you  
 see fit

Strain & Bull attys for Plffs

I acknowledge service of the above notice this  
 25<sup>th</sup> day of October 1859

attys for Defts

State of Illinois }  
 LaSalle Town & } ss Nathan G. Rounds being first  
 LaSalle County } duly sworn according to Law  
 on oath says that he served a true copy of  
 the within notice on David L. Hough by leaving  
 the same with him on the twenty eighth day  
 of October A.D. 1859

subscribed and sworn to before  
 me this 7<sup>th</sup> day of November } Nathan G. Rounds  
 A.D. 1859-

E. Hollett Bell

Not Pub.

The deposition of Thomas Mc Intire

Int 1<sup>st</sup> What is your name, age, place of residence,  
 and occupation?

ans- Thomas Mc Intire is my name, my age is  
 twenty two years my residence is Arroy  
 Lee County Illinois - my occupation is a  
 laborer

Int 2<sup>nd</sup> Are you acquainted with the parties  
 to this suit or either of them, if you have  
 long have you known them or either of them?

ans. I am acquainted with Thomas Loy the plain-  
 tiff I am acquainted with and was on the

Steamboat, H H Aubrey I have known the Plaintiff, about Eighteen Months I was on the Steamboat H H Aubrey on the 7<sup>th</sup> & 8<sup>th</sup> of April in the year 1859

Sub 3<sup>rd</sup> State what you may know if anything about the plaintiff being on board of the defendant at that time?

Ans The Plaintiff was on board of the Steamboat H H Aubrey on the 7<sup>th</sup> & 8<sup>th</sup> of April last

Sub 4<sup>th</sup> State if you know, on what river the Steamboat Aubrey was running at that time and state what kind of a boat she was?

Ans She was running at that time on the Illinois river. She was a side wheel Steamboat

Sub 5<sup>th</sup> State if you know the name of the captain or of the first and second mates of said boat at that time?

Ans I do not know the name of the captain or of the first mate, but the second mate was called "Liverpool Tom"

Sub 6<sup>th</sup> State if you know, in what capacity the plaintiff was on board of said Boat at the time of which you speak?

33  
ans

The Plaintiff was a deck passenger on the boat and came aboard of her at St Louis, and came on her to La Salle Illinois,

Ans 7<sup>th</sup>

State if you know what kind of treatment the Plaintiff received whilst he was aboard of said boat as such passenger?

Ans

On the 8<sup>th</sup> of April last it was a tolerably cold day, I and the Plaintiff were lying on a pile of freight about twelve feet high on the lower deck on which were the boilers the hands of but were gathered around the stove, so that there was no room at the stove for any more; and the Plaintiff and I climbed up on the freight to sleep and keep warm, whilst we were lying on the freight the Second mate came up and gave me a kick and told me to get down from there and the Second mate gave Thomas Loy the Plaintiff a kick and pushed him off the freight on to the deck; it was about twelve feet from the top of the freight to the deck I had got down on to the deck before the mate pushed the Plaintiff off the freight, I saw Loy fall on the deck, the Second mate came down from the freight and said to the Plaintiff "Get up you son of a bitch

there's nothing ails you" The Plaintiff could not get up, because his thigh was broken above the knee by the fall from the freight to the deck of the boat

Q<sup>nt</sup> 8<sup>th</sup> State if you know ~~whether~~ <sup>where</sup> the said boat was at the time of the occurrence of which you have given a statement?

Ans The boat was at that time five or six miles below Beardstown on the Illinois River.

Q<sup>nt</sup> 9<sup>th</sup> State if you know, whether the Plaintiff after he was ordered by the second mate to get down from the freight had time to get down before the mate pushed him off the freight?

Ans He had not time to get down before he was pushed down

Q<sup>nt</sup> 10<sup>th</sup> State whether the place where the Plaintiff was on the freight, at the time of which you have spoken, was or not the usual or proper place for deck passengers on said boat to be?

Ans I think it was a proper place for deck passengers to be

Int 11<sup>th</sup> What became of the Plaintiff after the boat arrived at La Salle?

Ans He was carried from the boat into Daniel Clines boarding house in La Salle.

Int 12<sup>th</sup> If you know, State what is the Plaintiff's occupation, what are his habits: regards to sobriety and industry, and what are his pecuniary circumstances.

Ans. The Plaintiff is a Laborer - He is sober steady and industrious. He is poor

Int 13<sup>th</sup> If the Plaintiff was disabled from work by the injuries of which you have spoken State if you know how long he was so disabled?

Ans He was unable to work any from the time he was injured to about the first of August last

Int 14<sup>th</sup> State what kind of Temper said's Mate manifested at the time he ordered the Plaintiff off the freight and kicked him?

Ans - - - - - He appeared to be very angry

Int 15<sup>th</sup> State what the man was doing on the boat

who you say was called 'Liverpool Dock' and who you say was second Mate of the boat,

Ans He was bossing the deck hands and receiving and discharging freights,

Int. 16<sup>th</sup> State if you know whether The Plaintiff upon being ordered down from The freight pile by the Mate did or did not refuse to obey the order?

Ans The Plaintiff did not refuse to get down from the freight,

Subscribed and sworn to before me this  
8<sup>th</sup> day of November A.D.  
1859

P. Lindley Co clk

### The Deposition of James Coniskey

Int. 1<sup>st</sup> What is your name - age - place of residence, and occupation?

Ans My name is James Coniskey, My age is Twenty Nine years, My residence is East Grove Beauseau County, Illinois My occupation is Laborer,

Q<sup>nt</sup> 2<sup>nd</sup> Are you acquainted with the parties to this suit or either of them? If yes how long have you known them or either of them?

Ans I am acquainted with the Plaintiff, Thomas Loy. I saw him a good many times during the past two years I spent last winter with him in Louisiana, and have been well acquainted with him since that time. I came on the Steam Boat A. H. Aubrey from St. Louis, Missouri to La Salle Illinois in the 7<sup>th</sup> and 8<sup>th</sup> of April in the year 1857

Q<sup>nt</sup> 3<sup>rd</sup> State what you may know if any thing about the Plaintiff being on board of the defendant at that time?

Ans The Plaintiff was on board the Steam Boat A. H. Aubrey on that trip as a passenger.

Q<sup>nt</sup> 4<sup>th</sup> State if you know who was the second mate of the Boat, at that time on that trip.

Ans I do not know the second mate's real name but he was called "Liverpool Tom" on the Boat.

Q<sup>nt</sup> 5<sup>th</sup> State if you know what kind of a Passenger the Plaintiff was on the boat at times.

Ans

The Plaintiff was a deck passenger on said boat at that time,

Ans 6<sup>th</sup>

If you know any thing about the Plaintiff having received maltreatment on that trip on said boat from any of the officers of said boat, State the same fully and at Large,

Ans

The Plaintiff was on a pile of freight about twelve feet high on the deck where the boilers are I was sitting on a little box about ten feet from the pile of freight on which the Plaintiff was, I heard a quarrel I heard the mate cursing and swearing on the pile of freight I then heard a fall on the deck I turned right around and saw the Plaintiff lying on the deck, and saw the second mate standing beside him, the mate said, to him "get up you son of a bitch or I'll kick the head off you" there is nothing the matter with you", The mate then struck the Plaintiff on the thigh with his boot, I then interfeared and prevented the mate from kicking him any more, I then picked the Plaintiff up and carried him to the Stove and laid him down by the Stove, I felt the Plaintiff's leg and found that his thigh was broken above the knee, I bound up his leg with my

handkerchiefs; I held his toes all night so that his leg might stay in its place, I took his shoe off,

Ans 7<sup>th</sup>

If the Second Mate gave the plaintiff any assistance, or rendered him service of any kind, or used any expressions of commiseration for him, state the same fully,

Ans

The Second mate did not come near the Plaintiff after he had received the injuries I have before stated

Ans 8<sup>th</sup>

State if you know what are Plaintiff's habits, as to sobriety and industry - and what are his pecuniary circumstances?

Ans

He is sober and industrious, and is a poor boy that has nothing but his days labor to depend on for his living,

Ans 9<sup>th</sup>

State if you know whether the plaintiff was disabled by the injuries which you have before stated, so that he could not work, and if you know how long was he so disabled?

Ans

He was so disabled, and could not work from the time he was so injured until about the first of August last, He is lame yet

subscribed and sworn to before me this 8<sup>th</sup> day of November A.D. 1859

P. Lindley Cor. CLK

James H. Leansky  
marks

40  
State of Illinois  
La Salle County ss

I Philo Lindley clerk of the County Court of  
said County and State do hereby certify that  
in pursuance of the notice hereto attached, at  
the time and place, and between the hours  
therein mentioned, proceeded to take the deposi-  
tions of Thomas Mc Intire and James Lemistky wit-  
nesses whose names are severally subscribed to the fore-  
going depositions that previous to their examina-  
tion by me, the said witnesses were by me severally  
sworn, to testify the truth, the whole truth and  
nothing but the truth, in the cause in the capti-  
on of these depositions mentioned, and that  
after said depositions were taken by me as  
aforesaid the interrogatories and answer there-  
to as written down were read over to the said  
witnesses respectively, and that thereupon the same  
were signed and sworn to by the said witnesses  
respectively before me at the place and on the  
day and year last aforesaid,

In Testimony whereof I have hereunto  
set my hand and affixed the seal of said  
La Salle County Court at Ottawa aforesaid  
this 8<sup>th</sup> day of November A.D. 1859



P. Lindley Clk.

Clk's fees \$4.50 p<sup>o</sup> by R. E. F.

as each for himself says that he is about to depart from the said State of Illinois and to go to the State of Mississippi for the purpose of remaining through the coming winter and that he expects to depart from said State of Illinois within a day or two of this eighth day of November A.D. 1859.

Subscribed by me this eighth day  
of November A.D. 1859.  
J. H. Bradley Co. Clerk

Thomas McQuinn,  
Clerk of the Court

On Monday November 14<sup>th</sup> 1859, the same being one of the days of the November Term of said Court for said year, an order was entered of record in said cause in the words and figures following, to wit;

" Thomas Loy vs. The Steam Boat Ft. V. Aubrey  
Trespas. This day the Plaintiff comes by Strain & Bull his attorneys and the defendant by Cough & Wallace its attorney and after hearing the arguments of counsel the Court overrules the defendant's demurrer to plaintiff's amended declaration. Thompson defendant's counsel take leave

of the Court to plead herein in or before to-  
morrow morning. Defendants counsel  
further move the Court to suppress the depo-  
sition of Thomas McEntyre and James  
Carnisky. "

On the 14<sup>th</sup> day of Nov. 1859 the following plea  
was filed in said cause by defts atty. viz;

Thomas Loy } La Salle County Circuit  
vs } Court November Term  
Steamboat F. P. Aubrey } A. D. 1859.

And the said  
defendant by D. L. Hough its attorney comes  
& defends &c & says it is not guilty in manner  
& form as the said plaintiff has declared  
against said defendant & of this the said  
defendant puts itself upon the Country &c

David L. Hough  
Defts attorney

And the plaintiff doth the like  
by Strain & Bull his attorneys. "

On Saturday Dec. 3. 1859, an order was entered  
of record in said cause, as follows, to wit

" vs  
Thomas Loy  
The Steam Boat F. P. Aubrey      Trespass

On motion of the defendant by D. L. Hough her attorney it is ordered by the Court that he have leave to file Special pleas for the defendant. "

On the sixth day of December 1859, the same being one of the days of the November Term of Said Court for said year, an order was entered of record in said cause in the words and figures following, to wit;

" Thomas Loy vs Thomas Loy  
Trespass.  
The Steam Boat F. H. Aubrey  
This day the defendant moves the Court to suppress the depositions of James Carnisky + Thomas McEntyre. "

Here follows a recapitulation of the above motion with statements in support of the motion, together with the affidavit of D. L. Hough, which are of the files in said cause and in the words and figures following to wit;

on several preceding pages & that of Mr Justice  
 The depositions of Carnisky & McEntyre are em-  
 bodied in the Bill of Exceptions which will  
 close the records - Court }

"Thomas Loy vs Steam Boat F. C. Aubrey." State of Illinois  
La Salle County Circuit Court, November Term A. D. 1859.

And now comes the said defendant by D. L. Hough, its attorney, & moves the Court, to suppress the depositions of Thomas W. Intyre & James Camiskey, purporting to have been taken before Philo Lindley, Clerk of the County Court of La Salle County & State of Illinois, on the 8<sup>th</sup> day of November A. D. 1859, & filed by plaintiffs as evidence in said suit & each answer in each of said depositions, for the reasons following, to wit;

- 1<sup>st</sup> Said depositions were taken on one of the days of the present November Term A. D. 1859, of said La Salle County Circuit Court, and David L. Hough, upon whom alone the notice of the taking of the said depositions was served is an attorney of said Court.
- 2<sup>d</sup> Said depositions were taken on the day appointed by law for holding a general election to elect certain county Officers, for said County of La Salle.
- 3<sup>d</sup> Said depositions were taken in a manner irregular & illegal, & are informal & insufficient in this - During a portion of the time in

which said depositions were taken the aforesaid Phil Lindley was absent from the place of taking said depositions, & the examination of said witnesses was continued during such absence of said Lindley, and interrogatories & answers thereto were written down by one Frank Crawford, & the answers to interrogatories propounded to said witnesses were wholly or in part dictated by James Strain one of the attorneys of said plaintiff. —

4<sup>th</sup> The interrogatories in said depositions and answers thereto, are leading, irregular & otherwise informal & insufficient.

David L. Hough  
Deft's Attorney.

State of Illinois  
La Salle County. David L. Hough  
being duly sworn, on oath  
deposes & says that he is the identical individual upon whom the notice to take the deposition referred to in the foregoing objections was served, & that on the day on which said depositions were taken he was a qualified elector in & for said County of La Salle & legally authorized to vote in said County at the election held on said day,

And affiant further Says that he is informed & believes such information to be true, that the Statements made in the foregoing objections numbered 1, 2 & 3. are true in substance & in fact.

Subscribed & Sworn to David L. Hough,  
before me this 6<sup>th</sup> day of December  
AD 1859.

J. F. Nash Clerk.

Noted  
Clerk. the foregoing was sworn to as per date - but filed Nov. 14/59

On the 7<sup>th</sup> day of December 1859. the defendant filed with the Clerk of Said Court a certain affidavit in the words & figures following to wit;

State of Illinois Circuit Court  
La Salle County Ill. November Term 1859.

Thomas Loy vs Trespass.  
The Steamboat F. N. Aubrey.

Frank J. Crawford  
being duly sworn according to law deposes and Says, that he is now, and has been during the year last past acting as an assistant Clerk in the office of Philo Lindley Clerk

of the La Salle County Court, That affiant is not a deputy clerk. That on the 8<sup>th</sup> day of November A. D. 1859, James Strain appeared at the office of said Lindley for the purpose of taking the depositions of James Cumisky and Thomas McEntee to be used on the trial of said cause. That said Cumisky and McEntee were then & there present and were each sworn by Philo Lindley previous to any interrogatories being propounded to them. That this affiant reduced the answers of said witnesses severally to writing. That said Lindley was not present all the time during the taking of the depositions of said Cumisky and McEntee, but was present and absent alternately during that time.

That this affiant considered that he was reducing said deposition to writing by and under the direction of said Lindley.

That Lindley was present and heard the said depositions read over to said witnesses or at least to one of them, and that the other stated to said Lindley that his deposition had been read over to him - and each of said witnesses stated to said Lindley that said depositions were true. That this affiant read over said depositions to said witnesses

after the same were reduced to writing.

That said Camisky & Mc Intire Subscribed & Swore to said depositions severally before said Lindley after the same were so read by affiant.

That said James Strain appeared to be careful to avoid dictating to or leading said witnesses in their said answers in taking said depositions and further affiant saith not.

Frank J. Crawford  
Subscribed & Swore to before me this 7<sup>th</sup> day of  
December 1859.

P. Lindley Co. clk. "

On Wednesday December 7<sup>th</sup> 1859, the same being one of the days of the November Term of said Court for said year, an order was entered of record in said cause in the words and figures following, to wit;

Thomas Loy	} Trespas	It is ordered by the	
" "			Court that the defendants
The Steam Boat			
J. V. Aubrey	be sustained, to which decision of the Court		
		Plaintiffs counsel except."	

On the 7<sup>th</sup> day of December 1859, a bill of exceptions was filed in said cause by the plaintiff in the words and figures following, to wit;

"State of Illinois } Circuit Court November Term  
Sawbelle County } thereof A. D. 1859.

Thomas Loy

vs

The Steam Boat  
F. W. Aubrey

Trespass

Be it remembered that on the 14<sup>th</sup> day of November A. D. 1859, being one of the days of said November term of said Court, the said Defendant by D. L. Hough its attorney moved the Court, to Suppress the depositions of James Cummins & Thomas M<sup>c</sup>Intyre, which had been taken by & on behalf of the plaintiff - to be read in evidence on the trial of said cause, and in support of said motion introduced the following affidavit.

Thomas Loy

vs

Steamboat F. W. Aubrey

State of Illinois  
Sawbelle County Circuit  
Court November Term  
A. D. 1859.

And now comes the said defendant by D. L. Hough, its attorney & moves the Court to Suppress the depositions of Thomas M<sup>c</sup>Intyre & James

Cumisky, purporting to have been taken before  
 Philo Lindley, clerk of the County Court of  
 La Salle County & State of Illinois, on the  
 8<sup>th</sup> day of November A. D. 1859, & filed by plaintiff  
 as Evidence in said Suit; & each answer in  
 each of said depositions, for the reasons  
 following, to wit; -

1<sup>st</sup> Said depositions were taken on one of the days  
 of the present November Term A. D. 1859, of said  
 La Salle County Circuit Court, and David L.  
 Hough upon whom alone the notice of the  
 taking of the said depositions was served is  
 an attorney of said Court. -

2<sup>d</sup> Said depositions were taken on the day ap-  
 pointed by law for holding a general Election  
 to elect certain County officers for said County  
 of La Salle

3<sup>d</sup> Said depositions were taken in a manner  
 irregular & illegal, & are informal & insufficient  
 in this - During a portion of the time in which  
 said depositions were taken the aforesaid Philo  
 Lindley was absent from the place of taking  
 said depositions, & the examination of said  
 witnesses was continued during such absence  
 of said Lindley, and interrogatories & answers  
 thereto were written down by one Frank Crawford  
 & the answers to interrogatories propounded

to said witnesses were wholly or in part dictated  
by James Strain one of the attorneys of said plain-  
tiff.

14<sup>th</sup>

The interrogatories in said deposition and  
answers thereto are leading, irregular & otherwise  
informal & insufficient.

David L. Hough  
Deft's Attorney

State of Illinois  
La Salle County Ss.

David L. Hough  
being duly sworn, on oath  
deposes & says that he is the identical in-  
dividual upon whom the notice to take  
the depositions referred to in the foregoing  
objections was served, & that on the day  
on which said depositions were taken  
he was a qualified elector in & for said  
County of La Salle, & legally authorized  
to vote in said County at the election held  
on said day.

And affiant further says that he  
is informed & believes such information  
to be true, that the statements made in the  
foregoing objections numbered 1, 2, & 3 are true  
in substance & in fact.

Subscribed & sworn to before me  
this 6<sup>th</sup> day of December AD 1859  
J. F. Nash clerk

David L. Hough  
"

And it also appearing to the Court that said depositions were taken on the eighth day of November A. D. 1859. it being a general election day in pursuance of the following notice -

~~"State of Illinois }  
La Salle County }<sup>24</sup> The Depositions of Thomas  
McIntyre and James Capwell,  
two witnesses of lawful age produced and sworn  
and examined upon their respective oaths  
on the Eighth day of November in the  
year of our Lord One thousand Eight hundred  
and fifty nine at the office of the Clerk of  
the County Court of Said County and State  
at the Court House in Ottawa in said County  
by me Philo Lindley Clerk of Said County  
Court to be read in evidence in a certain  
suit now pending and undetermined in the  
Circuit Court of Said County of La Salle  
wherein Thomas Loy is plaintiff and the  
Steamboat "F. V. Aubrey" is defendant on  
the part of the plaintiff, in pursuance  
of a notice hereto attached.~~

"~~State of Illinois }  
La Salle County }<sup>25</sup> Circuit Court, to  
November Term A. D. 1859.  
Thomas Loy }  
The Steamboat "F. V. Aubrey" } To the above named~~



defendant or to Davide L. Hough its attorney -  
 You are hereby notified that on the eighth day of November A. D. 1859, at the Office of the Clerk of the County Court of Said County and State in the Court House in Ottawa between the hours of Eight O'clock. A. M. and two O'clock P. M. of Said day, and before Said Clerk of Said County Court or other competent authority we will proceed to take the testimony of Thomas M. Entyng and James Carrisky and James Cummins to be read in evidence on the part of Said plaintiff on the trial of Said cause, and that the same will be continued from day to day at the same place and between the same hours until completed when and where you can attend and cross examine if you see fit  
 Strain & Bull atty for self

I acknowledge service of the above notice this 28<sup>th</sup> day of October 1859

attly for deft.

State of Illinois }  
 La Salle Term }  
 La Salle County }  
 Nathan G. Rounds being sworn  
 duly sworn according to law  
 on oath says that he served  
 a true copy of the within notice on Said

David L. Hough by leaving the same  
with him on the twenty eighth day of October  
A. D. 1859.

Nathan G. Currier.

Subscribed + Sworn to before  
me this 7<sup>th</sup> day of November  
A. D. 1859 — E. Tollett Ball

Not Pub. "



To the granting of which motion the plain-  
-tiff by his counsel then and there objected  
and in support of said objection produced  
to the Court the affidavit of said witnesses  
Thomas M. Entine and James Cumiskey  
filed amongst the papers in said cause  
on the 8<sup>th</sup> day of November 1859. That they  
were about to depart from the said State  
and which is in the words and figures  
following to wit;

"State of Illinois } Circuit Court  
La Salle County } November Term thereof  
A. D. 1859.

Thomas Loy }  
vs }  
The Steam Boat } James Cumiskey and  
"A. B. Aubrey" } Thomas M. Entine

being duly sworn on oath each for himself says that he is about to depart from the said State of Illinois and to go to the State of Mississippi, for the purpose of remaining through the coming winter, and that he expects to depart from said State of Illinois within a day or two of this eighth day of November A. D. 1859.

Thomas McEntire  
James <sup>his</sup> ~~brother~~ <sub>brother</sub> Curmiskys.

Subscribed and sworn this eighth day of November A. D. 1859.

P. Lindley Co. Clk.

*aff'd of Crawford*  
"I take the affidavit of Frank J. Crawford -  
State of Illinois } Circuit Court Term  
La Salle County } 1st Term 1859.

Thomas Loy }  
vs }  
The Steam Boat }  
D. B. Aubrey }  
Trespass.

Frank J. Crawford  
being duly sworn according to law deposes and says that he is now, and has been during the year last past acting as an assistant clerk in the office of Philo Lindley clerk of the La Salle County Court, That affiant is not a deputy clerk

That on the 8<sup>th</sup> day of November A.D. 1859, James Strain appeared at the office of Said Lindley for the purpose of taking the depositions of James Cumisky and Thomas Mc Intire to be used on the trial of said cause.

That Said Cumisky and Mc Intire were then & then present and were each sworn by Philo Lindley previous to any interrogatories being propounded to them.

That this affiant reduced the answers of Said witnesses severally to writing; That Said Lindley was not present all the time during the taking of the depositions of said Cumisky and Mc Intire but was present and absent alternately during that time.

That this affiant considered that he was reducing said deposition to writing by and under the direction of Said Lindley. - That Lindley was present and heard the said depositions read over to Said witnesses or at least to one of them, and that the other stated to Said Lindley that his deposition had been read over to him, and each of said witnesses stated to Said Lindley that said depositions were true. That this affiant read over said depositions to Said witnesses

after the same were reduced to writing  
 That Said Cumisky & Mc Intire sub-  
 scribed & sworn to Said depositions severally  
 before said Lindley after the same were so  
 read by affiant. That said James  
 Strain appeared to be careful to avoid  
 dictating to or leading said witnesses  
 in their said answers in taking said  
 depositions, and further affiant saith  
 not.

Frank J. Crawford  
 Subscribed & sworn to before me this 7<sup>th</sup>  
 day of December 1859.  
 P. Lindley Co. Clerk

which motion of said defendant was by  
 the Court afterwards, to wit; on the Seventh  
 day of December being one of the days of  
 said November term of said Court, sustained  
 and said depositions were suppressed;  
 to the sustaining of which motion and  
 the suppressing of said depositions the  
 Plaintiff by his counsel then and there  
 excepted, and prays that this his bill of  
 exceptions may be signed and sealed which  
 is done accordingly.  
 W. E. Hollister

57  
The affidavit of James Strain for a  
continuance of this cause filed Feb'y 10.  
1860. - viz:

"State of Illinois vs Circuit Court  
La Salle County, February Term. AD 1860.

Thomas Long }  
vs }  
Steam Boat F. P. Aubrey }  
} Trustees.

James Strain one  
of the attorneys for the plaintiff being duly  
sworn on oath says that he expects to be  
able to procure by tomorrow morning an  
affidavit either from the plaintiff or his  
friend and agent Daniel Cline the latter  
of whom resides at La Salle which affidavit  
he believes will be sufficient to procure a  
continuance of this cause for the plaintiff.

James Strain  
Subscribed and Sworn to this 10<sup>th</sup> day  
of February AD 1860  
John F. Nash clerk  
C. W. Cook deputy

On the 11<sup>th</sup> day of February 1860, the affida-  
vit of Daniel Cline was filed in said  
Cause in words & figures following, to wit;

59  
"State of Illinois, Circuit Court February  
La Salle County" Term A. D. 1860.

Thomas Loy }  
vs }  
Steam Boat }  
F. W. Aubrey } Trespass.

Daniel Child being duly sworn, on oath says that he is the agent of the plaintiff in the above entitled cause - that he verily believes the plaintiff cannot safely proceed to the trial of the above entitled cause on account of the absence of Thomas McEntire - who is a material witness for the plaintiff on the trial of said cause. Affiant states that he verily believes the plaintiff can prove the same facts by said witness that are contained in the deposition of said witness, now on file amongst the papers in the above entitled cause, and which deposition was suppressed at the November Term of this Court, and to which affiant refers and asks that the same may be taken as a part of this affidavit as containing the facts that affiant believes can be proved on the part of the plaintiff by said witness. Affiant states that he believes the plaintiff can more clearly prove the cause of action

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set forth in the plaintiff's declaration, by  
said witness than by any other witness.

Affiant States that he has seen  
a letter purporting to have been written by  
the plaintiff to James Strain one of the  
plaintiff's attorneys in this cause, dated  
at Amboy in the County of Lee where the  
plaintiff at present resides, bearing date  
on the first day of February A. D. 1860,  
and which affiant verily believes to have  
been written by the plaintiff, in which the  
plaintiff States that he had received a letter  
from said witness McEntire on the 28<sup>th</sup>  
of January, in which said McEntire  
stated that he was sick - and affiant  
States that he is acquainted with said  
McEntire and he believes said statement  
to be true.

Affiant further States, that he had a  
conversation a few days ago with the plaintiff  
at La Salle, in which the plaintiff told af-  
fiant that he had not been able to hear any  
thing from said McEntire or learn where  
he was, although he has made diligent  
inquiry to find him, since about the time  
when his deposition was taken in this  
Cause at Ottawa on the 8<sup>th</sup> day of November

1859. until he received the aforesaid letter from  
 him on the 28<sup>th</sup> day of January 1860, and that  
 he then learned for the first time that said  
 witness was at Vandalia Illinois, since which  
 time there has not been sufficient time to procure  
 the deposition of said witness, affiant further  
 states that both the plaintiff and said witness  
 are poor men and that he verily believes  
 the plaintiff has not had the pecuniary aid  
 means with which to procure the personal  
 attendance of said witness on this Court since  
 the time he heard of his location at Vandalia  
 as aforesaid.

Affiant states that the plaintiff is  
 dependent on his own labor for a subsistence  
 and that since the time of receiving the  
 injury described in the deposition aforesaid  
 he has not been able to do much hard labor  
 so as to procure the means of carrying  
 on his suit against said defendant.

Affiant further states that he believes  
 the plaintiff will be able to procure  
 the deposition of said witness, or his  
 personal attendance in Court by the next  
 term of this Court, and that this applica-  
 -tion is not made for the purpose of delay  
 merely but for the purpose of Justice.

Affiant further states that he has been informed by the plaintiff and believes the same to be true that before said witness left this region of country, he told the plaintiff he did not know to what point he would go - but that as soon as he found employment he would inform the plaintiff where he was so as to enable him to procure his deposition

Daniel Cline  
Daniel Cline

Subscribed and sworn to this  
11<sup>th</sup> day of February A.D. 1860.

~~John D. Nash~~ clk

~~C. H. Hooker~~ Deputy

J. J. Nash clerk. "

On the 14<sup>th</sup> day of February 1860, the same being one of the days of the February Term of said Court for said Year, an order was entered of Record in said cause in the words and figures following; to wit;

"  
Thomas Loy vs Trespass  
The Steam Boat F. H. Aubrey  
On motion of the plaintiff by Strain & Bull his attorneys

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it is ordered by the Court that this suit be con-  
tinued at the plaintiff's costs to be taxed, and  
now on motion of D. L. Hough of counsel for the  
defendant it is ordered that he have leave to  
file additional pleas herein.

On the 14<sup>th</sup> day of February 1860, the following  
"additional pleas" were filed in this cause, to  
wit;

Thomas Day } Sadler County Circuit  
                  } Court February Term 1860.  
vs  
Steamboat F. H. Aubrey }

And the defendant by leave  
of the Court again comes & defends & c & says  
that as to the force & arms & whatever is against  
the peace it is not guilty thereof, in manner  
& form as the said plaintiff has above complained  
against it - and of this it puts itself upon the  
Country & c

And as to the residuum of the trespass afore-  
said; above supposed to be committed, the said  
defendant says, that the said plaintiff ought  
not to have his aforesaid action against the said  
defendant, because said defendant says that  
at the time & place when & where the said  
trespass is above supposed to have been committed

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to wit - viz, at &c, he the said plaintiff  
with force & arms was feloniously stealing, taking  
& carrying away the personal property, goods  
& chattels upon the said defendant, & the said  
Liverpool Tom in said plaintiff's declaration  
mentioned, prevented the said plaintiff from  
so feloniously stealing, taking & carrying away  
which is the residue of the trespass whereof  
the said plaintiff complains as aforesaid,

And so the said defendant says, that  
the damage or injury, if any then & there hap-  
-pened to the said plaintiff, was in preventing  
the said plaintiff from so feloniously stealing,  
taking & carrying away as aforesaid - and  
that the defendant is ready to verify whereupon  
he prays judgment &c.

D. L. Hough  
Plff's atty. "

On the 30<sup>th</sup> day of April 1860, an affidavit  
was filed in said cause in the words &  
figures following, to wit;

" State of Illinois } Circuit Court for said  
La Salle County } County Term Term 1860  
Thomas Loy }  
Steam Boat F. K. Aubrey } E. F. Bull being

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Just duly sworn according to law on oath  
 Says that he is informed and believes that  
 Thomas M<sup>c</sup> Intyre is a material witness  
 for said plaintiff on the trial of said plain-  
 tiff cause, : affiant further States that  
 he is also informed and believes the same  
 to be true that said Thomas M<sup>c</sup> Intyre  
 is not a resident of said County of La Salle.

E. F. Ball

Subscribed + sworn to before me this 30<sup>th</sup>  
 day of April A. D. 1860.

Arthur M. Gorr  
 Justice of the Peace,

(Note - The notice to take & the deposition  
 are set out at length in the final bill  
 of exceptions at the close of the record = cl 16)

On the 12<sup>th</sup> day of June 1860, plaintiff's attorney  
 filed a replication to defendant's pleas ~~was~~  
~~filed away among the papers~~ in said case  
 in the words and figures following, to wit;

"State of Illinois } Circuit Court for said  
 La Salle County } County June Term 1860

66  
Thomas Loy  
vs  
Trespass.  
Steam Boat F. H. Aubrey

And the Said Plaintiff, as to the said plea of said defendant by him secondly above pleaded as to the said several trespasses in the introductory part of that plea mentioned and therein attempted to be justified says, that the said Plaintiff by reason of any thing by the said defendant in that plea alleged, <sup>ought</sup> not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he says, that the said defendant at the said time when &c, of his own wrong, and without the cause by him in his said second plea alleged, committed the said several trespasses in the introductory part of that plea mentioned, in manner and form as the said Plaintiff hath above, in his said declaration complained against the said defendant.

And this the said Plaintiff prays may be inquired of by the Country &c  
E. F. Bull Plff. atty.

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On Tuesday June 12. 1860, the same being  
one of the days of the June Term of said  
Court for the year 1860, an order was entered  
of record in said Cause in the words and  
figures following, to wit;

Thomas Loy }  
29 vs } Trespass  
Steam Boat } This day comes  
F. H. Aubrey } the Plaintiff by C. F. Bull  
his attorney and the de-  
fendant by D. L. Hough its attorney and  
thereupon come the following Jurors of a  
Jury, to wit; N. S. McIntyre, W. W. Fassett  
C. M. Wright, S. T. Stilson, William  
Sherlock, Isaac P. Schermerhorn, James  
Wirick, George F. Warren, Daniel M.  
Snell, Eben C. Butler, John S. Lothrop,  
and Joseph Potter who are duly elected  
tried and sworn, to well and truly try  
the issues herein according to the evidence  
and after hearing a part of the testimony  
the further hearing of this cause is  
postponed until the coming in of the  
Court to morrow morning. "

On Wednesday June 13<sup>th</sup> 1860, the same being one of the days of the June Term of said Court for the year 1860 an order was entered of record in said Cause in the words and figures following to wit;

	Thomas Long	} Trespas.
29	vs	
27	Steam Boat F. W. Aubrey	

This day again came the parties hereto by their attorneys together with the jury sworn herein, and after hearing the balance of the evidence and arguments of counsel, the jury retire to consider of their verdict; and after due deliberation thereon had return into court with the following verdict to wit; "We the jury find the issues herein in favor of the plaintiff and assess his damages at two thousand dollars."

The defendants counsel now move the Court for a new trial. "

~~On Monday July 9<sup>th</sup> - the same being one of the days of the June Term of said Court for the year 1860, an order was entered of record in said cause in the words and figures following, to wit;~~

The plaintiff by his attorney, filed a certain bill of exceptions in this cause, on the 13<sup>th</sup> day of June 1860, in the words and figures following to wit;

"State of Illinois } Circuit Court for Said  
La Salle County } County, June Term thereof  
A. D. 1860.

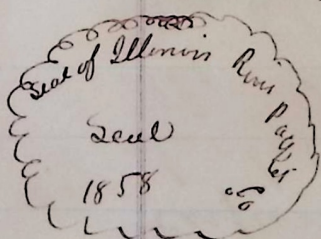
Thomas Loy }  
vs } Trespass,  
The Steam Boat }  
F. M. Aubrey }  
Be it remembered that on the 12<sup>th</sup> day of June A. D. 1860 the same being one of the days of the June Term of said Court this cause came on for trial whereupon the defendant, after the plaintiff had rested his case to maintain the issues on his part produced one Thomas Thompson, as a witness whereupon the plaintiff offered to prove by witnesses other than said Thompson, that he said Thompson was the same person who was known as "Liverpool Tom" and the same person claimed and alleged by plaintiff to have committed the trespass complained of, and the defendant by his counsel then & there admitted that said Thompson was the second mate of said defendant and the same person

referred to in the plaintiffs declaration as "Liverpool Town," and who the plaintiff alleged committed the trespass by him, the plaintiff complained of, whereupon the plaintiff by his counsel objected to the admission of the testimony of said Thompson; and that the Defendant by his counsel <sup>& then</sup> asked the said Thompson, who was the owner of said defendant on the 8<sup>th</sup> of April 1859, to which question the plaintiff then & there objected, which objection was by the Court overruled, the Court stating that the testimony was preliminary and to the court, and informing the jury that they were not to regard it as evidence in the case - And said Thompson was permitted to answer said question, to which ruling of the Court the plaintiff then & there excepted - Be it further remembered that said Thompson then and there in answer to said question stated that "The Illinois River Packet Company was the owner of said defendant." Whereupon the defendant then & there offered to said witness a release in the words & figures following to, wit; Know all men by these presents that the Illinois River Packet Company which said company is the owner of the Steam Boat F. X. Aubrey in consideration

of the sum of One dollar, in hand paid to Said Company by Thomas Thompson the receipt of which by Said Company is hereby acknowledged has released & discharged & by these presents does hereby release & forever discharge said Thompson from all claim which said Company may have in any manner against said Thompson for damages on account of any injury or damage, which one Thomas Loy claims to have suffered & sustained on board said Steamboat & to Obtain compensation for which said supposed injury or damage said Thomas Loy has instituted a suit against said Steamboat F. M. Aubrey, which said suit is now pending and undetermined in the Circuit Court for the County of La Salle & State of Illinois.

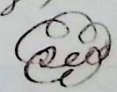
In Witness whereof Daniel J. Hancock the President of said Company has hereunto set his hand & the corporate Seal of said Company this 7<sup>th</sup> day of June A. D. 1860.

Daniel J. Hancock  
President of All River Packet Co.



No proof was offered by defendant showing

or tending to show that "The Illinois River  
Packet Company was an organized or in-  
-corporated Company, That the Seal at-  
-tached to the release was their Seal, or that  
the President of said Company, if such  
existed, had authority to execute any  
release. The question was then asked  
said Thompson by the Court, If Daniel  
J. Hancock was the President of said  
Company? To which question the plain-  
-tiff by his counsel then & there objected, which objection  
was by the Court overruled and said Thompson was per-  
-mitted to answer said question & did answer that he was,  
to which ruling of the Court the plaintiff by his counsel  
then & there excepted - Be it further remembered that the  
plaintiff then & there objected to the sufficiency of said release  
and still objected to the admission of the testimony of said  
Thompson as evidence in said cause, which objection  
was by the Court overruled and said Thompson was per-  
-mitted by the Court to testify as a witness in said  
cause in the part of deft, to which ruling of the Court  
in overruling said objection & in permitting said Thompson  
to testify in said cause said plaintiff by his counsel  
then & there excepted and prays that this his bill of ex-  
-ceptions may be signed sealed and made a part of the  
words of said Court in said cause which is accordingly done.

M. E. Hollister, Judge of the ninth   
Judicial Circuit of Ill.

# On Monday July 9<sup>th</sup> - the same being one of the days of the June Term of said Court for the year 1860, an order was entered of record in said Cause in the words and figures following, to wit.

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"<sup>#</sup> Thomas Loy  
29 vs  
Steam Boat  
F. H. Aubrey

Trespass

After due deliberation thereon had it is ordered by the Court that the defendants motion for a new trial herein be overruled. Defendants counsel now move the court in arrest of Judgment which motion is sustained by the Court. It is therefore considered by the Court that judgment be entered herein against the plaintiff on the motion in arrest of judgment, and that the defendant have and recover of the plaintiff her costs and charges by her herein expended and that she have execution therefor. "

On Tuesday July 11<sup>th</sup> - the same being one of the days of the June Term of said Court for the year 1860, a further and final Order was entered of record in said Cause in the words & figures following, to wit;

"Thomas Loy  
vs  
Steam Boat F. H. Aubrey

Trespass.

On motion of plaintiff by E. F. Bull his attorney it is ordered by the Court that she have thirty days from this date to prepare, tender and file a bill of exceptions - the same to be filed when so presented 'nunc pro tunc' "

On the 25<sup>th</sup> day of July 1860 a bill of Exceptions, was filed with the clerk of Said Court in the words and figures following to wit;

"State of Illinois } Circuit Court for said  
La Salle County } County June Term thereof A.D. 1860

Thomas Loy

Trespass.

<sup>vs</sup>  
The Steam Boat

F. H. Aubrey

Be it remembered

That on the — day of June A. D. 1860 the same being one of the days of the June term of said Court this cause came on for trial whereupon a jury being called the plaintiff to maintain the issues on his part introduced in evidence the deposition of Thomas M<sup>c</sup> Intire with the certificate &c which are in the words and following to wit;

"State of Illinois

La Salle County.

Circuit Court for said County June Term thereof 1860.

Thomas Loy

<sup>vs</sup>  
The Steam Boat  
F. H. Aubrey

Take notice that on Monday the twenty first day

of May A. D. 1860, at the office of Andrew W. Rogers, in Carbondale in the County of Jackson in the State of Illinois and before D. N. Hamilton, Police Magistrate for said city of Carbondale, in said County of Jackson, or before some other person authorized by law to take depositions between the hours of eight o'clock in the forenoon and eight o'clock in the afternoon of said day and continuing from day to day if necessary, I shall proceed to take the depositions of Thomas M<sup>c</sup> Intire and \_\_\_\_\_ to be read in evidence on the trial of said cause on the part of the Plaintiff. When and where you can attend cross examine if you see fit.

La Salle April 28<sup>th</sup> 1860.

Thomas Loy  
By E. F. Bull  
his attorney

State of Illinois }  
La Salle County } E. F. Bull being first duly sworn according to law and oath deposes and says that he served a true copy of the within notice upon David L. Hough attorney for the within named defendant on the thirtieth day of April 1860

Subscribed & sworn to before me this 12<sup>th</sup> day of May 1860. E. F. Bull  
Willis M. Hill  
Notary Public.

Thomas Loy }  
 vs } In the La Salle County Circuit  
 The Steam Boat } Court June Term 1860.  
 J. M. Aubrey }

The deposition of Thomas Mc Intire a witness produced Sworn and examined before D. N. Hamilton a Notary Public within and for the County of Jackson and State of Illinois to be read in evidence in the above styled cause, in pursuance of a notice hereto attached.

Thomas Mc Intire being just duly sworn according to law deposes and saith in answer to interrogatory as follows, to wit:

Interrogatory 1<sup>st</sup>

What is your name, age, place of residence and occupation -

Answer to Inter 1<sup>st</sup>

Thomas Mc Intire, age Twenty two, residence Amboy Lee County Illinois when at home, and occupation Labourer,

Inter 2<sup>nd</sup>

Are you acquainted with the parties, Plff and Defs to this Suit, or either of them and if yea how long have you known them respectively.

Answer to 2<sup>nd</sup> Inter.

I am acquainted with Thomas Loy the Plaintiff, I am acquainted with and was on the Steam Boat F. N. Aubrey. I have known the Plaintiff for over two years, I was on the Steam Boat F. N. Aubrey on the 7<sup>th</sup> & 8 days of April in the year 1859

Inter 3<sup>d</sup>

State what you may know if anything about the Plaintiff being on board the defendant at that time.

Answer to Inter 3<sup>d</sup>.

The Plaintiff was on board of the Steam Boat F. N. Aubrey on the 7<sup>th</sup> & 8<sup>th</sup> of April 1859.

Inter 4<sup>th</sup>

State if you know or what river the Steam Boat F. N. Aubrey was running at that time and what kind of a Boat she was?

Ans to 4<sup>th</sup> Inter

She was running on the Illinois river in the State of Illinois, she was a side wheel Steam Boat

Inter 5<sup>th</sup>

State if you know the name of the Captain or of the first and second mates of said boat at that time?

Answer to 5<sup>th</sup> Inter.

I do not know the name of the Captain or first mate, the second mate was called "Liverpool Tom."

Inter 6<sup>th</sup> State if you know in what capacity the plaintiff was on board of the said Boat at the time of which you speak?

Ans to 6<sup>th</sup> Inter.

The Plaintiff was a deck passenger on the boat and came aboard of her at St. Louis and came on to La Salle, Illinois

Inter 7<sup>th</sup>.

State if you know what kind of treatment the plaintiff received while he was aboard of said boat as such passenger.

Answer to 7<sup>th</sup> Inter.

On the 8<sup>th</sup> day of April 1859. It was a tolerable cold day, I and the plaintiff were lying on a pile of freight about twelve feet high on the lower deck where the bodies were the hands of the boat were gathered around the stove so that there was no room for any more at the stove, the plaintiff and I climbed up on the freight to sleep and keep warm while we were lying on the freight the second mate came up and gave me a kick and told me to get down from there, and the second mate gave me a kick and told me to get down from there, and the second mate gave Thomas Loy the plaintiff a kick and pushed him off the freight on the deck. — It was about

twelve feet from the top of the freight to the deck, I had got down on to the deck before the mate pushed the plaintiff off the freight.

I saw Loy fall on the Deck, The Second mate came down from the freight and said to the plaintiff "get up some of a bitch there nothing ails you". The Plaintiff could not get up because his thigh was broken above the knee by the fall from the freight to the deck of the Boat.

Inter 8<sup>th</sup>

State if you know where the boat was at the time of the occurrence of which you have given a Statement.

Answer to 8<sup>th</sup> Inter.

The Boat was at the time 5 or 6 miles below Beardstown on the Illinois river.

Inter 9<sup>th</sup>

State if you know whether the plaintiff after he was ordered by the second mate to get down from the freight had time to get down before the said mate pushed him off the freight?

Answer to 9<sup>th</sup> Inter.

We had not time to get down before he was pushed off the freight by the second mate.

Inter 10<sup>th</sup> - State whether the place where the Plaintiff was on the freight, at the time of which you have spoken, was or was not the usual place or proper place for deck passengers to be on said boat.

Answer to 10<sup>th</sup> Inter.

I think it was a proper place for deck passengers to be. It was the usual place where deck passengers stayed.

Inter. 11<sup>th</sup>

What became of the Plaintiff after the said Boat arrived at La Salle

Answer to 11<sup>th</sup> Inter.

He was conveyed from the Boat to Daniel Clines Boarding House in La Salle.

Inter 12<sup>th</sup>

If you know state what is the Plaintiff occupation, what are his habits in regard to sobriety and industry and what are his pecuniary circumstances.

Answer to 12<sup>th</sup> Inter

The Plaintiff is a laborer. He is sober, steady, and industrious, he is a poor man

Inter 13<sup>th</sup>.

If the Plaintiff was disabled from work by the injuries of which you have

81 Spoken, State how long he was disabled.  
Answer to 13<sup>th</sup> Inter.

He was unable to work any from the time he was injured until about the first of August last.

Inter 14<sup>th</sup>

State what kind of temper the Said mate manifested at the time he ordered the plaintiff off the freight and kicked him.

Answer to 14<sup>th</sup> Inter.

He appeared to be very angry.

Inter 15<sup>th</sup>

State what kind of work the man was doing on the boat who you say was called "Swerpool Tom," and who you say was Second mate of the Boat.

Answer to 15<sup>th</sup> Inter.

He was <sup>boying</sup> ~~to~~ the deck hands and receiving and discharging freight.

Inter 16<sup>th</sup>.

State if you know whether the plaintiff upon being ordered down from the freight pile by the Second mate did or did not refuse to obey the order.

Answer to 16<sup>th</sup> inter.

The plaintiff did not refuse

to get down from the freight pile but was  
in the act of obeying when the second mate  
kicked him and pushed him off.

Thomas M<sup>c</sup>Intire.

State of Illinois }  
Jackson County }<sup>55</sup> J. D. N. Hamilton  
a Notary Public in and  
for the County of Jackson, and State of  
Illinois do hereby certify that the above  
named Thomas M<sup>c</sup>Intire was by me  
duly sworn in the above named cause  
to testify the truth the whole truth and  
nothing but the truth so far as interrogated  
therein, <sup>and</sup> that the foregoing deposition by  
him subscribed was reduced to writing in his pres-  
ence by me at my office in the Town  
of Carbondale in the County of Jackson  
and State of Illinois on the twenty first day  
of May in the year A. D. 1860, between the  
hours of 12 o'cl M. and 4 o'cl P. M. of said  
day.

In testimony whereof I have hereunto  
set my name and affixed my  
real Notarial at Carbondale this  
21<sup>st</sup> day of May A. D. 1860

D. N. Hamilton N. P.



Notary Public's Fees

2100 Words at 12 1/2 per 100.	\$ 2.50
1 Spn to returns	.25
Certificate postage &c	.50
Paid by Plaintiff	\$ 3.25

Be it further remembered that the plaintiff farther to main the issues on his part introduced upon the stand as a witness one James Connisky who being duly sworn according to law testified in substance as follows to wit; That he was acquainted with the plaintiff and knew the Steam Boat F. W. Aubrey, had known the plaintiff about two years, perhaps more, and the defendant since the 8<sup>th</sup> day of April A.D. 1859. That the plaintiff was a deck passenger on board of the defendant from St. Louis Missouri to La Salle Illinois, that a few miles below Beardstown, and in the State of Illinois he heard a fracas and a fall, he came up to see what the matter was and found the plaintiff lying on the deck with his leg broke, the second mate of the defendant called "Liverpool Tom", came up to the plaintiff who was lying on the deck

of debt. That while the plff. was lying on the deck groaning with his broken thigh the second mate came up to him and kicked him and said "get up you God damned son of a bitch or I will kick the head off you," <sup>that the plff.</sup> could not get up as his thigh was broken, that none of the officers of the boat took any care of the plff, but left him to take care of himself, that witness took care of plff, that whilst the second mate was kicking plff, witness came up and said dont hurt him, his leg is broken, that second mate asked in reply "what business is it of yours?" that he supposed plff fell off the freight - that this assault on plff was made on the 8<sup>th</sup> day of April A. D. 1860, that he knew plff to be an honest, sober and industrious man, that he was a laborer and poor, that laborer's wages were from \$14 to \$15 per month and board, that plff was incapacitated for work by reason of his broken thigh for at least four months, that he went on crutches a good portion of that time -

That he and plff when they first went on board of the defendant went up to the clerks office for the purpose of laying

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tickets that he heard the plff. ask for a ticket to La Salle, that he was directed to go below and the clerk said that a man would be around shortly and collect the fare, that witness and plff went below and that shortly after he saw the second clerk of defendant around collecting fare of the deck passengers, that witness paid his fare to the second clerk, saw the second clerk collect fare of the other deck passengers, that witness should think the place on the freight where plff. was, a proper place for deck passengers to be - that the deck hands were around the stove so that plff and witness could not get there and that plff, had crawled up on the freight to keep warm and to lie down and sleep. On his cross examination Cornisky stated substantially as above, and that he saw nothing of the process till he saw plff lying on the deck - and that he knew "Liverpool Tom" second mate of defendant & pointed him out in the Court room - Be it further remembered that the plff. further to maintain the issues on his part called on to the - Daniel Cline who being sworn testified in substance that a man called "Liverpool Tom"

was Secundo mate of St. Boat F. H. Aubrey  
in April 1859, and pointed him out in  
the Court room, that he knew self and  
had known him since April 1859, that  
he keeps boarding house in La Salle  
and did at that time, that on the 9th  
April 1859 self was brought to his boarding  
house at La Salle off the Steam Boat  
F. H. Aubrey, with his thigh bone broken,  
that he nursed him some seven weeks  
before he was able to be around and that  
when he left he walked with great diffi-  
culty on crutches, that his charge against  
self, for the services he rendered him  
during his sickness was \$95, and that  
the services he rendered him were well  
worth that and that they were necessa-  
ry services and such as his then condition  
required, That self was not able to do  
a full days work up to the first of Nov-  
ember, that the next time he saw self  
was in February last, that he was about  
as well then as he is now, that laborers  
wages on the rail road at La Salle  
at that time were from 90 cts to \$1.00 per  
day and that self was a laboring man.

Be it further remembered that the

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Plaintiff further to maintain the issue  
on his part introduced on the Stand Wm  
D. Briggs who being duly sworn accord-  
ing to law testified that he was a prac-  
ticing Surgeon, that he resided at LaSalle,  
that on the 9<sup>th</sup> of April 1859, he was called  
to attend the plff, who was at Daniel  
Gleim at LaSalle that his thigh bone  
was broken, that he attended on him  
for such fracture a number of days  
that his services were such as the plff  
needed in his then condition, that they  
were well worth \$50. - That plffs leg  
(the one that was broken) was some  
shorter than the other, that such a  
fracture as that of the plff, had ~~some~~  
always made the leg so broken some  
shorter than it formerly was sometimes  
more sometimes less.

Now the plff. rested his case -

It is further remembered that the defend-  
ant to maintain the issue on his part  
called as a witness one Thomas Thompson  
being the same person pointed out by  
witnesses Gleim and Cornisky as "Liverpool  
Tom" and acknowledged by defendant to

be the same person referred to by those witnesses as the second mate of the defendant at the time of the injury complained of, and being first duly sworn did testify in substance as follows,

That on the 8<sup>th</sup> of April 1859, he was second mate of Steam Boat F. H. Aubrey, that he recollects that when the boat was a few miles below Beardstown and in the State of Illinois, he ordered the hands to get out the freight for Beardstown, that his attention had been called to the fact that a barrell of smoking tobacco part of the freight had been broken open, also a box of raisins, that he was told by one of the deck hands that there was a man stowed away on the freight, that he crawled up on the freight which was some eight or ten feet high and passed all over it for the purpose of finding him, but was unable to do so, and that he saw no one, that he looked again and thought he saw a bale of cotton weighing 25 or 50 pounds, that he went back and moved the bale and found a man stowed away in the freight in a hole that was formed by setting four hogs heads of sugar

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Together it left a space between the boards, that a Sugar hoghead was about five feet high and that boxes of dry goods groceries were piled on top of the Sugar in such a manner as to leave a hole in the freight clear from the top of the freight to the deck below, that when he moved the bale of cotton he saw a man down in the hole, that he was surprised to see a man there, that he asked him what he was doing there, that he got down on the freight and put his leg in the hole and kicked the man, that he does not know where he kicked him but suppose he must have kicked him about the head and shoulder, that he then got up and let the man get out of the hole, that he got off the freight on the side next the stove which was aft of where the man was i.e. a midships, that the freight was lower on that side, that the man that was in the hole in the freight got out of the hole and crept off the freight on the other side, that in getting down he fell and broke his leg, that he did not kick him at all after he fell on the deck and did not tell him to get up you God damn son of a bitch, that he does not know the

man that was in the hole, never saw him before  
would not know him now, dont know,  
that the plaintiff was the man, that this  
hole in the freight where the man was,  
was in the forward part of the Ship the  
Store was amidships, and the barrell of  
tobacco that had been broken open, was  
some fifteen feet astern of the Store - that  
there was a box of raisins some four or five  
feet from the top of the whole that had been  
broken open, dont know that the plaintiff  
had anything to do with either raisins  
or tobacco - That at the time the man  
that was in the hole got off the freight  
I was on one side and he on the other  
That he was the person called "Liverpool  
Tom" when the man fell off the freight  
he said his leg was broken, I didnt think  
it was - Dfts counsel has read the answer  
to the 7<sup>th</sup> Interrogatory of M<sup>c</sup>Intire depo-  
sition and was asked if that answer  
was true, to which question plaintiff  
objected which objection was by the court  
overruled and the plaintiff excepted to the  
ruling of the court. The witness answered  
that the answer was not true in any  
particular - and that he struck and

91 Kicked no one except the man that was in the hole, and that whilst he was there  
The place where this man was is not a suitable place for deck passengers to be, there are berths prepared expressly for them, the berths are kind of boxes around the stove without any bedding or furniture, the passengers furnish their own —

On his cross examination the witness stated that he left the employ of the Illinois River Packet Company last Thursday and expected to go back into their employ as soon as he returned —

That that Company own the Steam boat F. M. Aubrey —

Be it further remembered that the defendant further to maintain the issues on his part called a witness who being first duly sworn said that he was a deck hand on board of said St Boat F. M. Aubrey and was on the 8<sup>th</sup> of April 1859, that he called the mates attention to the fact that there was a man stowed away in the freight, that the mate went on the freight and found some one lying down on top of the freight, he ordered him to get down, that the mate was ~~proving~~

to get down and the man got down -  
that the mate was preparing  
to get off the freight when he told  
him to go back there was some  
one there yet, he saw a bale of  
cotton batten moving, and called  
the mates attention to it, - The  
mate moved the bale and found  
the man under it, Stowed away  
in a hole in the freight, pretending  
to be asleep - Did not see "Limp  
Tom" kick or strike him, when he  
fell off the freight the second mate  
was eight feet from him. He came  
around where he was, told him  
to get up that he was not hurt  
did not kick him, The freight  
was about eleven feet high,  
I was standing at the forward  
part of the freight so I could  
see the man when he came  
off the freight, I could also  
see the second mate, the second  
mate was not there when the  
man got off the freight, came  
directly after, This was not a  
proper place for deck passengers

to be. The freight on the side  
where the second mate got off  
was only some four or five feet  
high. - The second mate did not  
strike or kick the man after  
he got off the freight - a carpet  
sack and overcoat were taken  
out of the hole where this man was,  
don't know what was in the carpet  
sack. The pockets of the overcoat  
were crowded as full as they could  
stick of tobacco, that looked like the  
tobacco that was in the barrell -  
was the same kind of tobacco -  
On his cross examination  
this witness stated that he did  
not take the overcoat to examine,  
merely saw the overcoat and no-  
ticed the tobacco in the pockets  
as they were, taking it past me,  
said nothing about it at the time,  
no examination of the pockets was  
made more than what I have  
stated, I was in the employ  
of the Illinois River Packet Com-  
pany the Owners of the Steam  
Boat F. W. Aubrey up to last

Thursday, I was then paid off  
expect to go into their employ  
again when I return. —

Be it further remembered that the  
defendant further to maintain  
the issues on his part read in  
evidence to the jury the deposi-  
-tion of the witness W<sup>c</sup> Inbiv  
which was suppressed at the  
November Term A. D. 1859, of  
this Court for the purpose of  
testing the credibility of the state-  
-ments made by said witness  
in his deposition read on the  
trial of this cause at this term  
of said court which deposi-  
-tion is in the words and fig-  
-ures, following, to wit: —

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(The Deposition of Thomas McIntire.)

Sub 1<sup>st</sup> What is your name, age, place of residence, and occupation?

Ans Thomas McIntire is my name, my age is twenty two years, my residence is Amboy Lee County, Illinois - my occupation is a Laborer,

Sub 2<sup>nd</sup> Are you acquainted with the parties to this suit or either of them? if yes how long have you known them or either of them?

Ans I am acquainted with Thomas Loy the Plaintiff - I am acquainted with and was on the Steam Boat F. C. Aubrey, I have known the Plaintiff about eighteen months, I was on the Steamboat F. C. Aubrey on the 7<sup>th</sup> & 8<sup>th</sup> of April in the year 1859.

Sub 3<sup>rd</sup> State what you may know if anything about the Plaintiff being on board of the defendants at that time?

Ans - The Plaintiff was on board of the Steamboat F. C. Aubrey on the 7<sup>th</sup> & 8<sup>th</sup> of April last.

Ans 2<sup>th</sup> State if you know, on what river the Steamboat Aubrey was running at that time, and state what kind of a boat she was?

Ans She was running at that time on the Illinois River, she was a side wheel Steam Boat,

Ans 3<sup>th</sup> State if you know the name of the Captain or of the first and second mates of said boat at that time?

Ans - I do not know the name of the Captain or of the first mate, but the second mate was called "Liverpool Tom";

Ans 4<sup>th</sup> State if you know in what capacity the Plaintiff was on board of said boat, at the time of which you speak?

Ans - The Plaintiff was a deck passenger on the boat and came aboard of her at St Louis and came on her to La Salle, Illinois,

Ans 5<sup>th</sup> State if you know what kind of treatment the plaintiff received whilst he was aboard of said boat as such passenger?

Ans - On the 8<sup>th</sup> of April last it was a tolerably cold

day, I and the plaintiff were lying on a pile of freight about twelve feet high on the lower deck on which were the boilers, the hands of boat were gathered around the stove so that there was no room at the stove for any more; and the plaintiff and I climbed up on the freight to sleep and keep warm whilst we were lying on the freight, the second mate came up and gave me a kick and told me to get down from there and the second mate, gave Thomas Loy the plaintiff a kick and pushed him off the freight on to the deck, it was about twelve feet from the top of the freight to the deck I had got down on to the deck before the mate pushed the plaintiff off the freight. I saw Loy fall on the deck, the second mate came down from the freight and said to the plaintiff, "Get up you son of a bitch, there's nothing ails you," the Plaintiff could not get up because his thigh was broken above the knee, by the fall from the freight to the deck of the boat

Prob 8<sup>th</sup> State if you know where the said boat was at the time of the occurrence of which you have given a statement?

Ans The boat was at that time five or six miles below Beardstown on the Illinois River

Sub 9<sup>th</sup> State if, you know, whether the Plaintiff, after he was ordered by the second mate to get down from the freight had time to get down before the mate pushed him off the freight

Ans - He had not time to get down before he was pushed down

Sub 10<sup>th</sup> State whether the place where the Plaintiff was on the freight, at the time of which you have spoken, was or not the usual or proper place for deck passengers on said boat to be?

Ans - I think it was a proper place for deck passengers to be;

Sub 11<sup>th</sup> What became of the Plaintiff after the boat arrived at La Salle?

Ans - He was carried from the Boat into Daniel Collins boarding house in La Salle,

Sub 12<sup>th</sup> If you know, State what is the Plaintiff's occupation, what are his habits in regard to sobriety and industry, and what are his pecuniary circumstances

Ans The Plaintiff is a laborer - He is sober steady  
and industrious. He is poor

Int 13<sup>th</sup> If the Plaintiff was disabled from work by  
the injuries of which you have spoken. State  
if you know how long he was so disabled

Ans He was unable to work any from the time  
he was injured to about the first of August  
last

Int 14<sup>th</sup> State what kind of temper said mate  
manifested, at the time he ordered the  
Plaintiff off the freight and kicked him?

Ans He appeared to be very angry.

Int 15<sup>th</sup> State what the man was doing on the boat  
who you say was called "Liverpool Tom" and  
who you say was second mate of the boat

Ans He was boxing the deck hands and receiving  
and discharging freight

Int 16<sup>th</sup> State if you know whether the Plaintiff, upon  
being ordered down from the freight pile by  
the Mate did or did not refuse to obey the  
order

Ans The Plaintiff did not refuse to get down from the  
freight.  
Thomas Mc Intire

Subscribed and sworn to before me this  
8<sup>th</sup> day of November A.D. 1859

J. Lindley Co. Clk.

Now the Defendant rested his cause.

He it further remembered, that the plain-  
-tiff further to maintain the issues on his  
part recalled the witness James Comisky  
who testified in substance that the  
Plff did not have any overcoat at  
the time he was injured (i.e. April 8<sup>th</sup> 1859)  
on board of the defendant - He had  
a Carpet Sack - dont know where  
it was at the time he was hurt,  
the night before it was under his  
head. The Plff does not use tobacco  
of in any form whatever.

On his cross examination he stated  
that he used tobacco and that he  
expected to get his pay as a witness  
whether plaintiff won or not.

Now both parties rested and no further  
or other testimony was offered - or produced  
by either party - The above being all

the testimony in the case —

The court has given the following instructions on the part of the plaintiff — to wit;

1<sup>st</sup> If the jury believe from the evidence that the plaintiff was a passenger on board of the defendant, from St. Louis to La Salle Illinois, that whilst he was such passenger and so on board of said defendant and within this State the mate of said defendant, without a just or lawful cause assaulted and beat or otherwise injured the person of the plaintiff, they should find a verdict in his (the plaintiff's) favor, and should assess as his damages, whatever damages he may have proved to the jury, that he has sustained by the loss of time, on account of such injury, the costs of all necessary and proper surgical and medicinal treatment; and for all necessary and proper nursing on account of such injury; and they may also assess damages for all such future damages as the evidence renders reasonably certain would necessarily and inevitably result from the original injury.

Given

4<sup>th</sup>

The Jury are further instructed that they are the sole judges of the credibility of witnesses and that if they believe, that the witness Thompson has sworn wilfully false in any one material particular, they have the right to disregard his whole testimony, and in determining the credibility of witnesses they have the right to take into consideration all of the circumstances surrounding them, such as their manner of testifying, their appearance on the Stand, the probability of their testimony and of their relation to or connection with the parties to the Suit or either of them - as well as of the matter in controversy.

Manner

Witness

5<sup>th</sup>

If the jury find the issues in favor of the Plaintiff, in assessing his, the plaintiffs damages, they have the right to take into consideration the facts if proven that the plaintiffs leg that was injured by the trespass is shorter than the other, and that he is thereby rendered a cripple, and they the jury are the proper judges of the proper compensation to be allowed the plaintiff therefor.

Witness

Qualified

6<sup>th</sup>

The Jury are further instructed that, if

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Grew  
they find the issues joined in favor of the plaintiff, in assessing his damages they have the right to take into consideration the bodily pain and suffering that may have been experienced by the plaintiff as the direct consequence of the trespass <sup>of Grew</sup>.

to the giving of which the deft by its counsel then & there excepted & they were read to the jury — & also the following instructions on the part of deft.

1st  
Grew  
The burden of proof is upon the plaintiff Loy & unless said plaintiff has made out his case by a preponderance of evidence the jury should find for the defendants.

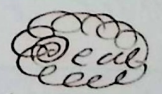
Grew  
Qualification of Plaintiff's 5<sup>th</sup> Instruction  
The jury in determining the proper compensation spoken of in said instruction should be governed by the evidence in the case as to the injury he has sustained,

which were then & there objected to by plff & objections overruled & excepted to by plff

And the jury having retired to consider

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their verdict founds the issues joined in favor  
of the plaintiff and assessed his damages at  
\$2000 - Whereupon the Defendant entered  
a motion for a new trial which was  
by the Court on the day of A. D. 1860, one of  
the days of the Said Term of Said  
Court overruled - to the decision of the Court  
in overruling said motion, doth then & there  
excepted -

Be it further remembered that the defend-  
ant then made a motion in arrest of  
judgment which motion was by the Court  
sustained and judgment ordered to - entered  
against the plaintiff on motion in arrest  
of judgment to which decision of the  
Court in sustaining said motion in arrest  
of judgment and in ordering judgment  
to be rendered against the plaintiff  
on motion in arrest of judgment the  
plaintiff by his counsel then and there  
excepted and prays that this his bill of  
Exceptions may be signed, sealed and  
made a part of said court in said  
cause which is accordingly done.

W. E. Hollister   
Judge of the Ninth  
Judicial District Illinois.

105  
State of Illinois  
La Salle County *vs.* Abraham B. Moore  
Clerk of the Circuit Court  
in and for said County, do hereby certify that  
the foregoing is a true, full and complete record  
of the proceedings had in said Court, together  
with correct copies of the files pertaining to  
the above entitled cause, as appear from  
papers on file and the Records of my  
Office.

Witness Abraham B. Moore Clerk  
of said Court & the Seal thereof  
at Ottawa this 8<sup>th</sup> day of April  
A. D. 1861.

A. B. Moore Clerk  
C. W. Cook Deputy.

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ASSIGNMENT OF ERRORS.

*And now comes said Plaintiff in error and assigns the following errors in the judgment here rendered:*

- 1st. The Court erred in permitting the witness Thompson to testify, he being the party committing the trespass.
- 2d. The Court erred in suppressing the depositions of McIntire and Comisky, taken in Nov., 1859.
- 3d. The Court erred in sustaining the motion in arrest of judgment.
- 4th. The Court erred in refusing to award execution on the judgment obtained by plaintiff.

E. F. BULL, Plff's Att'y.

And now, come the King's defence  
is end of say that it no end in the  
following reading, & the judgment therein  
contained

I loved, Cook & Campbell of  
D. of Bough for def'n end



14  
Thomas Doy  
vs:  
The St. Boat  
A. X. Aubrey  

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Error to Lusk Co.

Filed Feb. 5. 1862  
L. Leland  
CLK

Order in error filed  
April 25. 1862  
L. Leland CLK

\$ 18.00

E. H. Bull  
for plff