

14323

No. _____

Supreme Court of Illinois

Loy

vs.

Steamboat F. X. Aubrey

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 114

14323

*Loyd
ambury*

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. T. 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 ~~many~~ ^{various} other persons of whom affiant has made enquiries. For said Illinois Company, affiant engaged 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
address of said Company. Affiant
further states ^{hoping to bring notice to the owners of said bond of the hundred} that he mailed a copy
of the paper containing the notice of
publication, duly marked so as to
attract notice, to the President
of said Company said 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 ^{and aff}

~~Subscribed & sworn to before me~~ E. F. Bull
~~this 23rd 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 information

~~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 23rd day of April 1862

L. Leland Clark
U. S. Marshal Deputy

Thomas Long
vs:

St. Bot. F. K. Aubrey

Affidavit of the
making of notices.

Filed Apr. 24, 1862
S. Ireland
Ch.

~~Proof sufficient~~
order of publication
~~made~~
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 Ill 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 Feb 5th 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 to say aught 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

vs
Steamboat E. A. Aubrey

Sequestions against
motion

Filed Apr. 24. 1862
L. Seland
Clk.

State of Illinois }
Supreme Court } Third Grand Division
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
clk. of said Court

Will you please issue writ of error & scire facias as above to Shff.^s 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 ~~the~~ 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. 6th 1862

Had Log Pff in error
D.S.

St. St. F. X. Aubry Dept. in error

Receipt

Filed Feby. 5. 1862
L. 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 }
T. X. Aubrey. }

Suggestion by Plaintiff in error in support of sufficiency of proof of publication of notice -
1st 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 previous laws is not an amendment to the Attachment law against boats and vessels, but to Chapter 102 of Revised Stat.

2nd The affidavits on file show that greater 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 -

3rd 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 plaintiffs is without remedy -

4th The owners of the Deft. were not parties to the suit and could not be under the Statute hence there was no ~~power~~ ^{right} to issue summonses or to serve the same on them, ~~but the~~

5th 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 Deft. 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. L. Long

The Steam Boat
F. X. Aubrey

Suggestions in support
of sufficiency of Proof
of Publication of notice

Filed Apr 24. 1862
L. Island
C. H.

E. F. Bull
Ref. atty

State of Illinois 230 Third Grand Division, April
Supreme Court 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 6th day of February 1862

E. F. Bull

Wm M. Witt

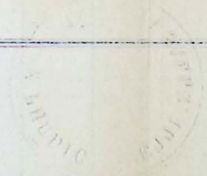
Notary Public
for city of LaSalle

114

Thos. Loy. Off in error
vs.

St. Br. F. X. Aubrey deft in error

Affid. for notice of
Publication



Filed Feb. 5th 1862
L. Leland Clerk

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

Thomas Loy vs
The Steam Boat F. X. Aubrey
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 or-
der in this behalf.

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

Attest: L. LELAND, Clerk.
E. F. BULL, Att'y for Pl'ff in Error. 49

J. P. 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 15th day of August
for six successive weeks in said paper, the
first publication being on Saturday the 15th day
of February, and more than sixty days before the
22nd day of April A.D. 1862. ~~and the~~
La Salle Ills. Apt. 22nd 1862

J. P. C. Webster
Publisher LaSalle County Press

State of Illinois } ss

LaSalle County } }

on this 23rd day of April A.D.

1862, personally appeared before me the undersigned a Notary Public in and for the County of LaSalle 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

John Long

205

St-1861-7. 7. Aubrey

Prof Publication

Filed Apr. 24. 1862

L. Leland
Clk

State of Illinois)
 La Salle County)
 Now before the Honorable
 Madison E. Hollister Judge
 of the ninth Judicial District of the State of Illi-
 -nas 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
 Lord 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.

It is remembered that on the 21st day of April 1859
 a precept 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 and
 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 20th 1859.

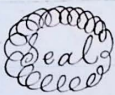
Strain & Bull
Plff's attys. "

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

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

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 Say; 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 then 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 21st 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 Bonds herewith filed, dated this 23rd day of April a. d. 1859.

Serwore	100
15 miles	75
Expense	100
Paid	\$ 275

J. W. Warden Sheriff.
by C. F. P. Buck's Depty.





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, Know all men by these La Salle County's 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 hereby 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. Selby, 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

at the Court house in ^{Ma}Maui 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 & machinery 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 23rd day of April. } Illinois River Packet Co. 
 A. D. 1859. } By Geo. V. Stackpole 
 Witness Daniel Cozgrove. } Geo. V. Stackpole 
 R. Cody 

On the 21st day of April 1859 there was filed with the clerk of said Court an affidavit & Bill of Particulars in the words and figures following to wit;

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

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

1859 April 9th

Exhibit A

Do damage done him by assault and battery committed on 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 8th 1859. \$ 3000.-

La Salle April 9th 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 above named Steam Boat F. X. Aubrey, (then and from thence, without 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 Alluvion 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 thousand, and that
the foregoing annexed bill of particulars
marked "A." is a true bill of particulars
of his demand against said Steam Boat
in the premises.

Thomas Loy.

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

Witness my hand and Seal

John Fornstal, Esq.

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

On the Third (3^d) day of June A. D. 1859, 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 ^(as per order hereafter to follow) amended, and filed as amended on the 22^d day of June 1859, and is in the words and figures following, to wit;

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

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

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 committing 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

1st 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, drew 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 things 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.

2nd

And also for that afterwards to wit; on the Eighth day of April A. D. 1857. 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 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 people State of Illinois, and to the damage of the plaintiff of three thousand dollars

3^{do}
4

And also for that afterwards to wit, on the 8th 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, sore 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 persecuted

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.

4th

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 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.

5th.

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 Officer in charge of said Steam Boat) 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 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, -

6th/₇

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 there 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
 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 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 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.

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 plain-
 tiff, 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 in-
 jured 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 become
 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
thousands dollars.

8th
" "

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, fust, 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 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 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.

9th And, ^{also for} 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 Tom" 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 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

wrong 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.

10th

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 "Siverpool 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 ~~lame~~, sick, sore, lame and disordered, and so continued for a long time; to wit, from then & 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.

11th
11

And also for that, afterwards, to wit; on the 4th 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 scullied 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 lame 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 & 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 said Plaintiff three thousand dollars, and therefore he sues &c

Strain & Bull

Plaintiff's attorneys

On the 13th 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 Loy }
 146 vs } Trespass.
 The Steam Boat }
 F. V. Aubrey } -
 On motion of the plain-
 tiff 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 the 14th day of June 1859, there was filed in said cause an affidavit in the words and figures following, to wit;

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

State of Illinois }
 La Salle County } David L. Wough 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 pec-
 -uniary responsibility; & is so unsettled as to en-

-danged the Officers of the Court with respect to their legal demands.

David S. Kough

Subscribed & Sworn to before
me this 14th day of June
A.D. 1859. J. F. Nash Clerk " "

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

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

On motion of the defendant by D. S. Kough 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 17th 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 } In said County Circuit Court
Steamboat F. X. Aubrey } 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
Deft's atty. "

On Tuesday June 21st 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 Lox }
 146. vs } Tresspass.
 The Steam Boat }
 J. H. Aubrey }
 His attorney and the defendant by D. L. Hough

After attorney and after hearing the arguments of counsel the court sustain the defendant's demurrer 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 20th 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 Loy }
 vs }
 Steam Boat T. P. Aubrey } Trespass.

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 occur 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.

of the days of the same 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
 The Steam Boat F. X. Aubrey vs
 Trustess.

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 28th day of June 1859, defendant's attorney files a demurrer in this cause in the words and figures following, to wit;

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

And Now Again Comes the said defendant by D. S. Hough, his attorney, and defends the wrong & injury whereof, & 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 defendant & that the said defendant is not bound by law to answer the same, wherefore the said defendant prays judgment &c

And for Special Cause of demurrer the said defendant shows the following, -

1st. In neither count in said amended declaration, does said plaintiff show any Cause of action against said defendant,

On the 8th 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 of Circuit Court, November
Dea Salee County Term three A. D. 1859.

Thomas Loif

vs
The Steam Boat F. C. Aubrey.

James Connisky
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 &
A.D. 1859.

Sworn this eighth day of November }
P. Lindley Co. clk. } Thomas McEntire
James ^{Junr} ~~Junr~~ Camisky. "

Here follow depositions of Thos. McEntire & Jas Camisky filed in said Cause Nov. 12th 1859. 23;

State of Illinois }
La Salle County } ss

The Depositions of Thomas McEntire 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 } 25th November Term ad 1859

Thomas Loy

vs

The Steam Boat "S. 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 ^{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 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 McIntire
 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
 25th day of October 1859

attly for Deft

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 7th day of November } Nathan G. Rounds
 A.D. 1859-

E. Hollett Bull
 Not Pub.

(Signature)

The deposition of Thomas Mc Intire

Int 1st 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 Armbay
 Lee County Illinois - my occupation is a
 Laborer

Int 2nd 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 7th & 8th of April in the year 1859

Q¹ 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 7th & 8th of April last

Q² 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

Q³ 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"

Q⁴ State if you know, in what capacity the plaintiff was on board of said boat at the time of which you speak?

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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^{yth}

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

Ans

On the 8th 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^{nt} 8th State if you know ^{where} whether 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^{nt} 9th 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^{nt} 10th 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 11th 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 12th 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 13th 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 14th 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 15th State what the man was doing on the boat

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

Ans Hee was tossing the deck hands and receiving and discharging freights,

Q. 16th 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 8th day of November A.D. 1859

P. Lindley Secy clk

The Deposition of James Comiskey

Q. 1st What is your name - age - place of residence, and occupation?

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

Q^{nt} 2nd 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 goods 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 J. H. Aubrey from St. Louis, Missouri to Kay Salle Illinois in the 7th and 8th of April in the year 1859

Q^{nt} 3rd 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 J. H. Aubrey on that trip as a passenger.

Q^{nt} 4th 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 real name but he was called "Liverpool Tom" on the Boat.

Q^{nt} 5th 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 Cth

If you know anything 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 Plaintiffs leg and found that his thigh was broken above the knee, I bound up his leg with my

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

Q^{nt} 7th 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

Q^{nt} 8th 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,

Q^{nt} 9th 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 8th day of November A.D. 1859

P. Lindley Leg. Clk

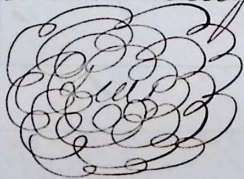
James A. Leansky
his
mark

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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, I proceeded to take the depo-
sitions 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 answers ther-
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 8th day of November A.D. 1857



P. Lindley Clk.

Clk's fees \$4.50 /⁰⁰ by Reff

... 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 there during 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 James this eighth day of November A.D. 1859.
J. Bradley Co Clerk

James McCarter,
his Counselor
made

On Monday November 14th 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
F. N. Aubrey
Plaintiff
vs
T. J. Spade.
Defendant.
This day the Plaintiff comes by Strain & Bull his attorneys and the defendant by Hough & Wallace its attorney and after hearing the arguments of counsel the Court overrule the defendant's demurrer to plaintiff's amended declaration.
Thompson defendant's counsel take leave

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 Trespass.
vs
The Steam Boat F. H. Aubrey
This day the defendant moves the Court to suppress the depositions of James Curmisky + Thomas M^cIntyre. "

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 Curmisky & M^cIntyre, & are em-
-bodied in the Bill of Exceptions which will
close the records - closed }
Referred

"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 Caminsky, purporting to have been taken before Philo Lindley, Clerk of the County Court of La Salle County & State of Illinois, on the 8th 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;

- 1st 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^d 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^d 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 afore-
 - Said 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 interroga-
 - tories propounded to said witnesses were wholly
 or in part dictated by James Strain one of
 the attorneys of said plaintiff. —

4th

The interrogatories in said depositions and
 answers thereto, are leading, irregular & other-
 - wise informal & insufficient.

David L. Hough
 Defts Attorney.

State of Illinois
 La Salle County, 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 objection
 was served, & that on the day in which
 said depositions were taken he was a qual-
 - ified elector in & for said County of La Salle
 & legally authorized to vote in said County
 at the election held on said day.

Said 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 6th day of December
1859.

J. F. Nash Clerk.

(Noted & cert.) the foregoing was sworn to as per date - but filed Nov. 14/59

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

"*in y*
State of Illinois Circuit Court
La Salle County Ill. November Term 1859.

Thomas Loy vs *Jessup*

The Steamboat *F. H. 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 *Phil Lindley* Clerk

of the La Salle County Court, That affiant is not a deputy clerk. That on the 8th 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 McEntire to be used on the trial of said cause. That said Cumisky and McEntire 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 McEntire, 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 & Sworn to before me this 7th day of
December 1859.

P. Lindley Co. clk. "

On Wednesday December 7th 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 7th day of December 1859, a bill of ex-
-ception was filed in said cause by the plaintiff
in the words and figures following, to wit;

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

Thomas Loy }
vs } Trespas
The Steam Boat }
F. H. Aubrey }
Be it remembered
that on the 14th 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
Cumrisky & Thomas M^cIntyre, which had been
taken by & on behalf of the plaintiff - to be read
in evidence in the trial of said cause, and in
support of said motion introduced the following
affidavit.

"Thomas Loy } State of Illinois
vs }
Steamboat F. H. Aubrey }
Sawall 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^cIntyre & James

Cumisky, purporting to have been taken before
 Philo Lindley, clerk of the County Court of
 La Salle County & State of Illinois, on the
 8th 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;—

1st 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^d 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^d 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 plainiff.

14th

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 Ill.

David L. Hough being duly sworn, on oath deposes & says that he is the identical individual upon whom the notices 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 & of 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
the 6th day of December AD 1859
S. 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 }
 The Depositions of Thomas
 Mc Intyre and James Capinick,
 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. V. Aubrey" is defendant on
 the part of the plaintiff, in pursuance
 of a notice hereto attached.~~

"State of Illinois }
 La Salle County }
 Thomas Loy }
 The Steamboat "F. V. Aubrey" }
 Circuit Court, do
 November Term A. D. 1859.
 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 ten
 O'clock P. M. of Said day, and before Said
 Clerk of Said County Court or other compe-
 tent authority we will proceed to take
 the testimony of Thomas M^cEntyre and James
 Gannisky and James Cummins to be
 read in evidence on the part of Said plain-
 tiff 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 28th day of October 1859 _____
 atty for deft.

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

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

Nathan G. Russell,

Subscribed + Sworn to before
me this 7th day of November
AD 1859 — E. Follett Bull

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. Antine and James Cumiskey
filed amongst the papers in said cause
on the 8th 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. Antine

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 McIntire
James ^{his} _{mouth} Cumiskey.

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

P. Lindley Co. Clerk.

affid of Crawford
"I also the affiant of Frank J. Crawford -
State of Illinois } Circuit Court Term
La Salle County } - 1859.

Thomas Loy }
vs } trespass.
The Steam Boat }
D. W. 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 8th day of November AD 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

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after the same were reduced to writing
 That said Cumisky & McIntire 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 7th
 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.

M. E. Hollister

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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 Loy

vs } Trespass.
Steam Boat F. V. Aubrey }

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 10th day
of February AD 1860 John F. Nash clerk
C. W. Cook deputy

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

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

Thomas Loaf }
 as } Trespass.
Steam Boat }
F. W. Aubrey }

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 can not 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 plaintiffs 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 W^c Antine on the 28th
of January, in which said W^c Antine
stated that he was sick - and affiant
States that he is acquainted with said
W^c Antine 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 W^c Antine 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 8th day of November

1859. until he received the aforesaid letter from him on the 28th 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 application 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
11th day of February A.D. 1860.

~~John D. Nash~~ clk

~~C. H. Hook~~ Deputy

J. J. Nash clerk. "

On the 14th 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 plainiff'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 14th day of February 1860, the following
"additional pleas" were filed in this cause, to
wit;

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

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

And as to the residuum of the trespass afove-
-said; above supposed to be committed, the said
defendant says, that the said plainiff 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 Town 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-
-penced 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 30th 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
Lawrence County } County June Term 1860
Thomas Loy }
Steam Boat ^{vs} F. K. Aubrey } E. F. Bull being

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65 Just duly sworn according to law on oath
says that he is informed and believes that
Thomas M^c 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^c Intyre
is not a resident of said County of La Salle.

E. F. Ball

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

Arthur W. 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 12th day of June 1860, plaintiff's attorney
filed a replication to defendant's pleas ~~was~~
~~filed away among the papers~~ in said cause
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
Steam Boat F. H. Aubrey
Trespass.

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, ^{ought} 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.

On Wednesday June 13th 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
vs
Steam Boat F. H. Aubrey } Trespas.

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 9th - 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 13th 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.

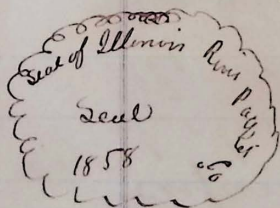
Thomas Loy }
as } Trespass,
The Steam Boat }
F. M. Aubrey }
Be it remembered
that on the 12th day of
June A. D. 1860 the same
being one of the days of the June Term of said
Court this cause came on for trial whereupon
the defendant, after the plaintiff had rested
his case to maintain the issues on his 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 com-
mitted 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 plain-
tiff by his counsel objected to the admission
of the testimony of said Thompson; and that
the Defendant by his counsel ^{then} asked
the said Thompson, who was the owner of
said defendant on the 8th 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 Com-
pany 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. H. 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 7th day of June A. D. 1860.

Daniel J. Hancock
President of Illinois Packet Co.



No proof was offered by defendant showing

or tending to show that "The Illinois River Packet Company was an organized or incorporated Company, That the Seal attached 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 plaintiff by his counsel then & there objected, which objection was by the Court overruled and said Thompson was permitted 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 permitted 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 exceptions 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. 11

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

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 "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 11th - the same being one of the days of the June Term of said Court for the year 1860, as 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 25th 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 }
vs } Tresspass.
The Steam Boat }
F. H. Aubrey } 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^c 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 }
vs } Take notice that on
The Steam Boat } Monday the twenty first day
F. H. Aubrey }

75
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 Mc 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 28th 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 on
oath deposes and says that he served a true
copy of the within notice upon David S.
Hough attorney for the within named defendant
on the thirtieth day of April 1860

Subscribed & sworn to before me this 12th
day of May 1860.

E. F. Bull "

Willis Mc. 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 first duly sworn according to law deposeth and saith in answer to interrogatory as follows, to wit:

Interrogatory 1st

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

Answer to Inter 1st

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

Inter 2nd

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.

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Answer to 2nd 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 7th & 8 days of April in the year 1859

Inter 3^d State what you may know if anything about the Plaintiff being on board the defendant at that time.

Answer to Inter 3^d.

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

Inter 4th State if you know in what river the Steam Boat F. N. Aubrey was running at that time and what kind of a Boat she was?

Answer to 4th Inter

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

Inter 5th State if you know the name of the Captain or of the first and second mates of said boat at that time?

Answer to 5th Inter.

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

Inter 6th 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 6th 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 7th.

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

Answer to 7th Inter.

On the 8th 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 boilers 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 8th

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

Answer to 8th Inter.

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

Inter 9th

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 9th Inter.

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

Inter 10th - 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 10th Inter.

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

Inter. 11th

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

Answer to 11th Inter.

He was conveyed from the boat to Daniel Olives Boarding House in La Salle.

Inter 12th

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.

Answer to 12th Inter

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

Inter 13th.

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

81 Spoken, State how long he was disabled.
Answer to 13th Inter.

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

Inter 14th
State what kind of temper the Said mate manifested at the time he ordered the plaintiff off the freight and Picked him.

Answer to 14th Inter.
He appeared to be very angry.

Inter 15th
State what kind of work the man was doing on the boat who you say was called "Dewspool Tom", and who you say was second mate of the Boat.

Answer to 15th Inter.
He was ^{lopping} ~~to~~ the deck hands and receiving and discharging freight.

Inter 16th.
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 16th 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^cIntire.

State of Illinois }
Jackson County }⁵⁵ B. 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^cIntire 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
there^{and}, 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 ocl No. and 4 ocl P. M. of said
day.

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

B. D. N. Hamilton N. P.



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Notary Public's Fees

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

Be it further remembered that the plaintiff further 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 8th 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, ^{that the plff} 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 while 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 8th 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 la-
borer's wages were from \$14 to \$15 per month
and board, that plff was incapaci-
tated for work by reason of his broken thigh
for at least four months, that he went on
cruises 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

85 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 until he saw plff lying on the deck - and that he knew "Liverpool Tom" second mate of defendant & pointed him out in the Canteen room - Be it further remembered that the plff. further to maintain the issue on his part called on to the - Daniel Blinn who being sworn testified in substance that a man called "Liverpool Tom"

was second mate of St. Boat F. H. Aubrey
in April 1859, and pointed him out in
the Court room, that he knew Jelf 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 Jelf 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
Jelf, 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 Jelf was not able to do
a full days work up to the first of Nov-
ember, that the next time he saw Jelf
was in February last, that he was about
as well then as he is now, that labor
wages on the rail road at La Salle
at that time were from 90 cts to \$1.00 per
day and that Jelf 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 9th 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. voted his cause -

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 Curiskey 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 8th of April 1859, he was second mate of Steam Boat F. N. 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 etc 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 supposes 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 7th Interrogatory of M^cIntire 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 avers
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. W. 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 Steam Boat F. W. Aubrey and was on the 8th 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 preparing

~~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 mate's 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 when 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 noticed the tobacco in the pockets as they were, taking it apart me, said nothing about it at the time, no examination of the pocket was made more than what I have stated, I was in the employ of the Illinois River Packet Company 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. E. Inbr
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;

(The Deposition of Thomas McIntire.)

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Q^{1st} 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.

Q^{2nd} 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. H. Aubrey, I have known the Plaintiff about eighteen months, I was on the Steamboat F. H. Aubrey on the 7th & 8th of April in the year 1859.

Q^{3rd} 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 F. H. Aubrey on the 7th & 8th of April last.

Ans 2th 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 3th 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 4th 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 a board of her at St Louis and came on her to La Salle, Illinois.

Ans 5th State if you know what kind of treatment the Plaintiff received whilst he was aboard of said boat as such passenger?

Ans - On the 8th 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

Q. 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 9th 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 10th 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 11th What became of the plaintiff after the boat arrived at La Salle?

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

Sub 12th If you know, State what is the plaintiffs occupation, what are his habits in 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 13th 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 14th 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 15th State what the man was doing on the boat
who you say was called "Liverpool Bow" and
who you say was second mate of the Boat

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

Int 16th 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. M. Irvine

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

J. Lindley Co clk "

Now the Defendant rested his cause.

Be it further remembered, that the plain-
-tiff further to maintain the issues on his
part recalled the witness James Connick,
who testified in substance that the
Plff did not have any overcoat at
the time he was injured (i.e; April 8th 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;

- 1st 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

4th
11

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 -

Green

5th
11

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 -

Green

Green

6th
11

The Jury are further instructed that, if

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Given
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 ^{proven};

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

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

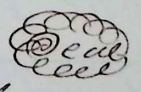
Qualification of Plaintiff 5th Instruction
Given
The jury in determining the proper compensation spoken of in said instruction should be governed by the evidence in the case as to the injury he has sustained,

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

And the jury having retired to consider

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, defendant 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.

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State of Illinois
La Salle County *A. 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 *A. B. Moore* Clerk
of Said Court & the Seal thereof
at Ottawa this 8th day of April
A. D. 1861.

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

7

ASSIGNMENT OF ERRORS

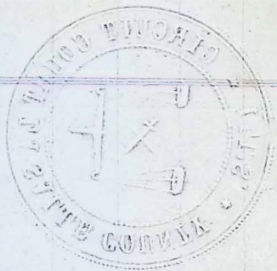
And now comes said Plaintiff in error and assigns the following errors in the foregoing record:

- 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, Plf's Att'y.

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

Edward, Cook & Sampbell
D. of North
for deft in end



Thomas Droy
vs:
The St. Boat
F. X. Aubrey

Error to Duball Co.

Filed Feby. 5. 1862
L. Deland
C.M.

Found in error filed
April 25. 1862
L. Deland C.M.

\$ 18.00

E. F. Bull
for plff.