Skipworth, G v. Merritt, Abel 1864 529/3

639/10 —

Davis & Evans A

Shreve & Sanders, Jordan

pl

Skipworth, GP R

v

Merritt, Abel A

Lans
March 64
Oct 64

Df was an innkeeper at The Everett Hrs
was delivered pants, vest & coat shirt valued at $53
was supposed to deliver to plaintiff - was not deliv
and still retained until [illegible]

Dismissed

Motion for affirmation of judgment sustained

1 G. J. Skipworth
vs
Abel S. Merritt } Before Esq Cunningham

Plaintiff states that on the eigth day of March 1863 at St Louis the defendant was & still is an inkeeper that on said day one Black Coat of the value of thirty dollars one pair Cassimer pants worth twelve dollars and one silk vest worth eight dollars were delivered to him the defendant as

Petition the property of Plaintiff to be by Defendant as such inkeeper delivered safely to Plaintiff at the time guest in the house of Defendant to wit the Everett House in St Louis. Plaintiff states that Defendant failed to deliver said property and still refuses so to do whereofore Plaintiff asks judgment for the value thereof and the costs

Shreve Sanders and Jordan
Attys for Plff

Saint Louis March 8th 1863

Mr G. J. Skipworth
Bought of Lyons and Levy

	1	Black Cloth Coat	30	00
Exhibit	1	pr Cassimer Pants	12	00
	1	Silk Vest	8	00
	1	White Shirt	3	00
		Recd Payment Lyons and Levy Br Smith	$53	00

2 The State of Missouri.

To any Constable of St Louis Township in St Louis County. Greeting.

We Command you to summon

Abel S. Merritt

to appear before the undersigned one of Justices of the Peace of St Louis Township in St Louis County on the 31st day of March 1863 at nine to two of the clock in the forenoon at his office in the same Township to answer the complaint of G. J. Skipworth on act for $53.00 and Subpoena Defendant as witness for Plaintiff

Summons

~~Subpoena~~

Given under my hand this 14th day of March 1863

John C. Cunningham.

Justice of the Peace

Constables Return

Executed this writ in St Louis Township March 14th 1863 by reading the same to the within named defendant

John L. McBride

Constable

G. J. Skipworth
vs
Abel S. Merritt } Summons on act for $53.00 issued to Const McBride Mar 14/63
Returnable March 31st 1863

Returned. Executed On the return day the parties appeared Cause continued to 7th Apl. Now on the 7th day of April 1863 the parties again appeared and

3 being ready for Trial the case was investigated and submitted to the Justice whereon the Justice considered and adjudged the defendant have Judgment for his costs against the plaintiff Now on the same day the Attorney for Plff appeared and prays an Appeal to the Law Commissioners Court of St Louis County enters with recognizance in the Sum of Fifty dollars with Charles G. Mauro as Security Appeal Granted.

Judgment of Justice

Justice Cunningham $2.35
Const. McBride 1.75

State of Missouri }
County of St Louis } ss I John C H Cunningham Justice of the Peace for the County aforesaid do certify the foregoing to be a true and correct transcript of all the proceedings had in the above case together with all of the original papers with the Constables return therein

Certificate of Justice

Given Under my hand this 8th day of Apl 1863

John C H Cunningham
Justice of the Peace

G. J. Skipworth } plaintiff
vs } Before Justice Cunningham
Abel S. Merritt } Defendant

This Day personally appeared before John C. H. Cunningham a Justice of the Peace in and for the County of

Affidavit for Appeal

4 St Louis in the State of Missouri L. M. Shreve Atty for Plaintiff who being duly sworn upon his oath says that the application for an appeal in the above entitled case is not made for vexation but because he believes the appellant was injured by the judgment of the Justice

Sworn to and subscribed before me this 7th day of April 1863 John C. H. Cunningham J.P.

L. M. Shreve

Appeal Bond.

We the undersigned L. M. Shreve and Chas. G. Mauro acknowledge ourselves indebted to Abel S. Merrit in the sum of Fifty dollars to be void upon this condition Whereas G. J. Skipworth by his Atty has appealed from the judgment of John C. H. Cunningham a Justice of the Peace in an action between G. J. Skipworth as Plff & Abel S. Merritt as Deft. now if on such an appeal the Judgment of the Justice be affirmed or if on the trial anew in the Cir. Commissioners Court of St Louis County Judgment be given against the appellant and he shall satisfy such judgment or if their appeal shall be dismissed and they shall pay the judgment of the Justice together with the costs of appeal the recognizance shall be void.

Approved this 7th day of April 1863 John C. H. Cunningham Justice

L. M. Shreve (seal)
C. G. Mauro (seal)

5 appearance entered — G. J. Skipworth vs Abel. S. Merritt — June 1st 1863 Appearance of appellee's entered.

Cont at Plff's Cost — G. J. Skipworth vs Abel. S. Merritt — June 6th 1863 Continued at plaintiffs Cost.

Do — G. J. Skipworth vs Abel. S. Merritt — August 8th 1863 Continued on affidavit at plaintiffs Cost

G. J. Skipworth vs Abel. S. Merritt — December 15th 1863 On motion ordered to foot of Docket

G. J. Skipworth vs Abel. S. Merritt — January 9th 1864 The parties by attorneys come and also a Jury of three by

Jury — consent viz: John N. Conn Joseph F. Torrey & John W. Fraikes good & lawful men who being duly elected tried and sworn the issues herein joined well & truly to the trial progressed and being concluded the Jurors aforesaid on their oath

verdict — aforesaid return the following verdict, we the Jury find for the plaintiff Fifty Dollars without interest J. F. Torrey foreman It is therefore ordered

6 and adjudged by the Court that the plaintiff recover
Judgment of defendant the sum aforesaid and his costs herein
expended and have execution thereof.

motion for new trial filed — G. J. Skipworth vs Abel S. Merritt — January 11th 1864 Motion for a new trial filed

January 13th 1864

motion for new trial overruled — G. J. Skipworth vs Abel S. Merritt — The Court having heard and duly considered the motion for a new trial herein and being fully advised thereof overrules the same.

January 30th 1864

Execution Recalled — G. J. Skipworth vs Abel S. Merritt — On motion of defendant the Execution issued herein is recalled

Affidavit for appeal

Bill of Exc. filed — Bill of Exceptions and appeal bond filed

Appeal bond do — Appeal to Supreme Court granted.

G. J. Skipworth vs Able S. Merritt — In the Law Commissioners Court St Louis County ss

Be it remembered that on the trial of the above entitled cause the plaintiff

7 introduced Herman Suntz a boy fifteen years old
Witness (but was very small for that age if so old) who sworn
H Suntz that he was in the service of Lyon & Levy from February
1863 to the time of the trial in this cause before the
Justice and that he delivered a package containing
a cloth coat vest and pants and two shirts at the
clerks desk in the Everett House kept by the
defendant on Saturday Evening but does
not know the day of the month the package
was addressed to the plaintiff Skipwith Witness
carried it from Lyon & Levy's store to the Everett
House and delivered it to that man pointing to
Mr Grover one of defendants clerks the clerk
rapped on the counter a boy came and beckoned
the boy to take the package up to that room the
Boy took the package away and then the witness
returned to his employers store.

Upon cross examination the witness stated that he gave testimony upon the trial of the cause before Justice Cunninghan he also said he had been mistaken in relation to the person he had delivered the package to. that on the Sunday morning after he delivered the package at the Everett House he went with Mr Levy to see if he could identify the person to whom he delivered it Mr Levy took him to the Counter and being informed that the clerk Mr Grover

who was on watch on Saturday evening and and might
was in bed he went with Mr Levy to see the Clerk and
saw him in bed he declared he was not the person to whom
he had delivered the package and they then came
down. That on the following Monday morning witness
was standing a few feet from Mr Forestall another Clerk
in the House near to the front entrance to the Everett
House and that Mr Levy pointed to Forestall and asked
witness if that was not the man that he had delivered
the package to and he answered Mr Levy Yes he is the
man. That he did not swear before Justice Cunningham
that he had been to the Planters House Olive Street Hotel
or any other place to look for the package in question.

Witness
M Levy

The plaintiff next introduced on his own part Mr
Morris Levy who testified that Skipworth ordered the clothes
that he went into the office of the Everett House on Sunday
morning about 9 o'clock to enquire for the package of
clothes in question and there ascertained that Mr Grover
one of the Clerks in the House was on watch on the previous
Saturday evening & night. he went with the Boy Swartz
to see Grover who was in bed the boy looked at him and
said he was not the man to whom he had delivered
the goods: he then came down and on Monday morning
following he saw the Clerk Forestall standing near
the entrance of the Everett House and asked the witness
Swartz who was standing with him if Forestall was
not the man to whom he had delivered the goods

9. the Boy answered Yes but he seemed fickle minded. That the Coat Pants & vest were worth Fifty Dollars and the Shirts a dollar & a half a piece. That the goods were sent from his store to Skipworth who paid for them ~~and~~ and directed them to be sent to him at the Everett House. That he himself went to the Planters House and the Olive Street Hotel to look for the package supposing the Boy might have taken it to one of those houses instead of the Everett House that he enquired at both the Planters House & Olive Street Hotel but was told it had not been left there that Swartz did not swear before Justice Cunningham that he had been to those houses to look for the goods.

Witness M. Smith

The plaintiff next introduced Milton Smith who stated that he put up the package and ~~directed~~ & it to the plaintiff and delivered it to the witness Swartz and told him to deliver it at the Everett House. That the Boy went away with the package and was gone but a few moments and returned he was gone but a very little while long enough to deliver the package as directed to the Everett House which was only two doors distant.

Witness Forestall

The Defendant then introduced his Clerk Forestall who sworn and stated that the package in question was never delivered to him or any other person

10 in the Everett House to the best of his knowledge and belief. That after the package was said to have been lost he was standing near the entrance to the Everett House and the witnesses Swartz and Levy were standing a few feet from him on Sunday or Monday morning after the package was said to have been lost when Levy asked Swartz is that the man you delivered the package to? and Swartz said to Levy that is the man I delivered the package to. That Swartz swore before Justice Cunningham that he went to the Planters House & the Olive Street Hotel to look for the package thinking he might have delivered them at the wrong place that Swartz never delivered the package to him

Witness Cunningham

The Defendant next introduced Justice J. C. H. Cunningham who being duly sworn testified on the part of the Defendant as follows. That this cause was tried before him and that the witness Swartz was sworn and testified as a witness before him on the part of the plaintiff and stated as such witness that he went to one or two places besides the Everett House to look for the package thinking he might have left it at the wrong place he seemed not to know where he left it he did not seem to know much about the case when he gave evidence before me.

11 The Defendant next introduced Geo. E. Wales as a
Witness witness on his behalf who being first duly sworn
G.E. Wales said That he knew the plaintiff since the 8th of
March last that he was one of the Clerks at the
Everett House that plaintiff was a Guest there at
that time that the package in question was not
delivered to him or any other person in the Everett
House to the best of his knowledge and belief that
on the afternoon of Saturday plaintiff enquired
for the package he the witness looked on the
Shelf for it and it was not there that he saw
the witness Swartz for the first time at the police
n. office that it was Quinn's watch from 7 o'clk
Saturday night to one o'clock Sunday morning
Mr Gover was then introduced
Witness
Mr Gover on the part of the defendant and swore that he was
on watch at the Office of the Everett House on the
afternoon and night of Saturday on which
day it is said the package in question was
delivered at the Everett House where he had
been Clerk for some time that it was never
delivered to him or to any other person about
the Everett House to the best of his knowledge
and belief. that the witnesses Levy and
Swartz came to his room where he was then
in bed to see if he was not the person to whom
the package was delivered. that Swartz looked
at him while he was in bed and said he was

12 not the man to whom the package was delivered that Swartz afterward saw him in the Cigar room at the Everett House and said he was not the man to whom he had delivered the package. that he was present at Justice Cunningham's upon the trial of this cause there and heard the witness Swartz testify before the justice and that Swartz stated there that he had been to other places besides the Everett House to look for the package thinking he might have carried it to some other place.

This is all the testimony in the case. The court proposed to instruct the Jury as to the law of the case. but counsel on both sides waived instructions and agree that it was not necessary.

Upon which the Jury retired and returned into Court with the following verdict.

G. J. Skipworth
vs
Verdict Able. S. Merritt } We the Jury find for the plaintiff fifty Dollars without interest

J. F. Torrey
Foreman

motion for a new Trial upon which the Defendant filed his motion for a new Trial

13 G. J. Skipworth } In Law Commissioners Court
v
Abl. S. Merritt } December Term A.D. 1863

motion for a new Trial

The defendant by his attorney's Davis and Evans moves the Court for a new trial in the styled cause for the reasons following.

"1st Because the verdict is contrary to the Law
"2nd Because the verdict is against the evidence
"3rd Because the verdict is both contrary to the law & evidence
"4th Because the verdict is not supported by the evidence in the cause
"5th Because the verdict is palpably against the right of the evidence
"6th Because the verdict ought to have been for the Defendant and against the Plaintiff

Davis and Evans
Atty for Plff

The Court overruled defendants motion for a new trial and gave Judgment for plaintiff upon said verdict and the Defendant then and there excepted to the ruling of the Court and prayed that this his bill of Exceptions might be signed sealed and allowed by the Court which is done accordingly

R. E. Rombauer
Judge

14 G. J. Skipworth } In the Saint Louis
vs } Law Commissioners Court
Able S. Merritt } December Term 1863
Saint Louis County

State of Missouri }
County of St Louis } ss

affidavit for appeal

Able S. Merritt the above named Defendant makes oath and says that his application for an appeal in the above entitled is not made for vexation or delay but because affiant believes he was injured by the verdict of the jury and the judgment of the Court

Sworn to and subscribed before me this 30th day of Jany A.D. 1864 } A. S. Merritt

W. C. Huffman
Clk

appeal Bond

Know all Men by these Presents That we Able S. Merritt as principal and Enos Jennings & John B. Evans as securities are indebted to G. J. Skipworth in the sum of One Hundred Dollars for the payment whereof we bind ourselves our heirs executors and administrators jointly and severally firmly

by these presents sealed with our seals and dated at St Louis this 20 day of January one thousand eight hundred and sixty four. The condition of this obligation is such that whereas Abel S. Merritt has appealed from the judgment rendered against him and in favor of G. J. Shipworth in the St Louis Law Commissioners Court for the sum of Fifty Dollars together with costs. Now if said appellant shall prosecute his appeal with due diligence to a decision in the Supreme Court and shall perform such judgment as shall be given by the Supreme Court or such as the Supreme Court may direct the St Louis Law Commissioners Court to give and if the judgment of said Court or any part thereof be affirmed that he will comply with and perform the same so far as it may be affirmed and will pay all damages and costs which may be awarded against him by the Supreme Court then this obligation to be void otherwise to remain in full force.

A. S. Merritt (seal)
Enos Jennings (seal)
John B. Evans (seal)

16 State of Missouri }
County of St Louis } I. W. C. Huffman Clerk of the Law Commissioner Court of Saint Louis County certify the above to be a true full and complete Transcript of the Record pleadings and proceedings in the case of G. J. Shipworth against Ale. S. Merritt as fully as the same remain on file and of record in my office

In Testimony Whereof I hereto set my hand and affix the seal of said Court at office this 4th day of March 1864

W. C. Huffman
Clk

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G. I. Kipworth
defendant in error
vs.
Abel S. Merritt
plaintiff in error

In the Supreme Court of the State of Missouri

The said plaintiff in error by Davis & Evans his Attorneys comes and says that in the record and proceedings ~~[illegible]~~ of the Law Commissioners Court there is manifest error; and for a special assignment of errors the said plaintiff says, the said Law Commissioners Court erred in overruling his motion for a new trial and in giving judgment for said defendant in error, when by the Law of the land judgment ought to have been given for the plaintiff in error and this he is ready to verify.

Davis & Evans
Attys for Plff in error

~~189~~ 47 ~~[illegible]~~ (10) 47

October Term 1864

Law. Com. Court

G. J. Skipworth
Respondent

vs. } Transcript

Abel S. Merrit
M Appellant

Filed March 5. 1864
A. W. Mead
Ex

Appeal to Supreme Court

Davis & Evans for Appellant

Shreve & Sanders for Respondent

10.00 paid by appt
$5.00 paid by J. B. Evans

1864 October 31. Dismissed
Motion for affirmance of judgment
Sustained Dp 282

Thomas Blackburn et al
Administrators of Eden Benson
Respondents
v
James Harrison, Appellant

IN SUPREME COURT,
October TERM, 1864
No. 237,

AND now comes the said James Harrison and says that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellant assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Respondent
2. That said Court rejected proper and legal testimony offered by Appellant
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Appellant
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Respondents when it should have been rendered for the Appellant
10. That said Court overruled the motion for a new trial, made by Appellant

Lockland Chris & Jamison
Attys. for Apt.

And now come the ..... and for joinder in error say, that there is no error in the record and proceedings of said ..... in said cause, as assigned by said .....

No. 237

October Term 1864
Supreme Court

Thomas Blackburn
et al, Administrators
of Eden Benson
Respondents
vs
James Harrison

Assignment of
Errors

Filed Oct 21. 1864
A. W. McEad Jr
Clk

Lockland Clinton & Jamison

G J Skipworth
Respondent
agt.
Abel S Merritt
Applt

Appeal from
Law Com.
Court.

Now again comes the Respondent and moves the Court to affirm the judgment of the St Louis Law Commissioners Court rendered herein
Because no errors have been assigned, although this is the 2d Term of this Hon. Court since said Appeal was taken.

And further moves for such damages on said judgment as the Court may award under the law.

L M Shreve
for Respondent

189

J. G. Kipworth
agst.
Abel S. Merritt
—"—

Mo for affirmance
of Judgment

Filed Oct 22. 1864
A. W. Mead
Clk

Riddles Appellants
v.
Ferguson appellees

IN SUPREME COURT
Oct Term, 18 64

~~No 178~~
No. 259

And now come the said Appellants and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellants assign the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Appellees
2. That said Court rejected proper and legal testimony offered by Appellants
3. That the Court gave ~~to the Jury~~ improper and illegal instructions.
4. That the Court refused to give to ~~the Jury~~ proper and legal instructions offered by Appellants
5. That the ~~verdict~~ judgment was against the evidence.
6. That the ~~verdict~~ judgment was against law.
7. That the ~~verdict~~ judgment was against both law and evidence, and against the law under the evidence.
8. That the ~~verdict~~ judgment was against the weight of evidence.
9. That the judgment was rendered in favor of the Appellees when it should have been rendered for the Appellants
10. That said Court overruled the motion for a new trial, made by Appellants

J. W. Peck
Atty for
Appellants.

And now come the ..... and for joinder in error say, that there is no error in the record and proceedings of said ..... in said cause, as assigned by said .....

No ~~178~~ 259

Biddles

v

Ferguson et al

Assignment of Errors

Filed Oct 24. 1864

A. W. Mead

Clk

The State of Missouri, ss.

The State of Missouri, to the Honorable the Judge of the Law Commissioners Court of St Louis County in said State,---GREETING:

Whereas, *In the record and proceedings in a certain cause lately pending in the* said Law Commissioners Court *wherein* G. J. Shipworth was *plaintiff and* Abel S. Merritt was *defendant in a civil action, manifest error hath intervened, to the great damage of said* Defendant *as by his complaint we are informed.*

NOW, *being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf,* **COMMAND YOU,** *that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of St. Louis, in the County of St. Louis, in said State, on the Third Monday in* March *next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.*

WITNESS, **ANDREW W. MEAD,** *Clerk of our said Supreme Court, at office in the City of St. Louis, the* 14th *day of* November *in the year of our Lord one thousand eight hundred and sixty-*four

A. W. Mead Clerk.

STATE OF MISSOURI, }
County of St Louis } ss.

I, W. C. Huffman

Clerk of the Law Commissioner Court, within and for the County aforesaid, in obedience to the mandate of the within writ, herewith transmit to the Honorable Supreme Court of the State of Missouri, held at St. Louis, a full, true and complete transcript of the record and proceedings in the within entitled cause as fully as the same remain of record and on file in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Court, at office, in the City of St Louis this 14th day of November 1864

W. C. Huffman Clerk.

1 G. J. Skipworth
vs
Abel S. Merritt } Before Esq Cunningham

Petition

Plaintiff states that on the eighth day of March 1863 at St Louis the defendant was & still is an innkeeper that on said day one Black Coat of the value of thirty dollars one pair Cassimer pants worth twelve dollars and one silk vest worth eight dollars were delivered to him the Defendant as the property of Plaintiff to be by Defendant as such innkeeper delivered safely to plaintiff at the time guest in the house of Defendant to wit The Cosmo House in St Louis. Plaintiff states that Defendant failed to deliver said property and still refuses so to do wherefore Plaintiff asks judgment for the value thereof and the costs

Pierce Sanders and Jordan
attys for Plff

Saint Louis March 8th 1863

Mr G. J. Skipworth
Bought of Lyons and Levy

Exhibit

1	Black Cloth Coat	30	00
1	pr Cassimer Pants	12	00
1	Silk Vest	8	00
1	Thin Shirt	3	00
		53	00

Recd Payment
Lyons and Levy
pr Smith

The State of Missouri
To any Constable of St Louis Township in St Louis County
Greeting

Summons

We command you to summon Abel S Merritt to appear before the undersigned one of the Justices of the Peace of St Louis Township in St Louis County on the 31st day of March 1863 at nine to two of the clock in the forenoon at his office in the same Township to answer the complaint of G. J. Shepworth on a/c for $53.00 and Subpoena Defendant as witness for Plaintiff

Given under my hand this 14th day of March 1863
John Cunningham
Justice of the Peace

Constables Return

Executed this writ in St Louis Township March 14th 1863 by reading the same to the within named Defendant
John L McBride
Constable

G. J. Shepworth
vs
Abel S Merritt

Summons on a/c for $53.00 issued to John L McBride March 14 1863 Returnable March 31st 1863

Returned Executed on the return day the parties appeared Cause continued to 7th of April Now on the 7th day of April 1863 the parties again appear and being ready for Trial the case was investigated and submitted to the Justice whereupon the Justice considered and adjudged the defendant have judgment for his costs against the plaintiff. Now on the same the attorney for Pff appeared

Judgment of the Justice

3

and prayed an appeal to the Law Commissioners Court of St Louis County enters with recognizance in the Sum of Fifty dollars with Charles G Mauro as security appeal Granted.

Justice Cunningham $2.35
Const McBride 1.75

State of Missouri
County of St Louis } ss John C H Cunningham

Justice of the Peace for the County aforesaid do certify the foregoing to be a true and correct transcript of all the proceedings had in the above case together with all of the original papers with the Constable return therein

Certificate of Justice

Given under my hand this 8th day of April 1863

John C H Cunningham
Justice of the Peace

G J Skipworth
vs
Abel S Merritt } Before Justice Cunningham

This day personally appeared before John C H Cunningham Justice of the Peace in and for the County of St Louis in the State of Missouri L. M. Shreve atty for Plaintiff who being duly sworn upon his oath says that the application for an appeal in the above intitled case is not made for vexation but because he believes the appellant was injured by the judgment of the Justice.

Affidavit for appeal

L. M. Shreve

Sworn to & Subscribed before me this 7th day of April 1863
John C H Cunningham
J.P.

4

Appeal Bond

We the undersigned L. W. Shreve and Charles G. Mears acknowledge ourselves indebted to Abel S Merritt in the sum of Fifty dollars to be void upon this condition Whereas G J Skipworth by his atty has appealed from the judgment of John C. Cunning from a justice of the Peace in an action between G J Skipworth as Pltff & Abel S Merritt as Deft now if on such an appeal the judgment of the justice be affirmed or if on the trial anew in the Law Commissioners Court of St Louis County judgment be given against the appellant and he shall satisfy such judgment or if their appeal shall be dismissed and they shall pay the judgment of the justice together with the costs of appeal the recognizance shall be void

L. W. Shreve (seal)
C G Mears (seal)

St Louis Law Commissioners Court

appearance entered — G J Skipworth vs Abel S Merritt — June 1st 1863 Appearance of Appellee entered

continued — G J Skipworth vs Abel S Merritt — June 6th 1863 Continued at Plaintiffs cost

Do — G J Skipworth vs Abel S Merritt — August 8th 1863 Continued on affidavit at Plaintiffs cost

5 G. J. Skipworth vs Abel S. Merritt } December 15 1863
On motion ordered to foot of Docket

G. J. Skipworth vs Abel S. Merritt } January 9th 1864
The parties by attorneys come and also a Jury of three by

Jury consent viz John N Conn Joseph F Torrey & John W Fraikes good & lawful men who being duly elected tried and sworn the issues herein joined well & truly to the trial to the trial progressed and being concluded the jurors aforesaid on their oath aforesaid return

Verdict the following verdict we the jury find for the plaintiff Fifty Dollars without interest J F Torrey foreman. It is therefore ordered and adjudged by the Court that the

Judgment plaintiff recover of defendant the sum aforesaid and his costs herein expended and have execution thereof

G. J. Skipworth vs Abel S. Merritt } January 11th 1864
Motion for new Trial Motion for a new trial filed

G. J. Skipworth vs Abel S. Merritt } January 13th 1864
Motion for N.T. overruled The Court having heard and duly considered the motion for a new trial herein and being fully advised thereof overrules the same.

January 30th 1864

Execution Recalled

G J Skipworth vs Abel S. Merritt } On motion of defendant the Execution issued herein is recalled

Bill of Exceptions and appeal bond filed
Appeal Bond to Supreme Court granted

Bill of Exceptions

Bill of Exceptions

G J Skipworth vs Abel S Merritt } In the Law Commissioners Court St Louis County &c

Witness H Swartz

Be it remembered that on the trial of the above entitled cause the plaintiff introduced Herman Swartz a boy fifteen years old (but was very small for that age if so old) who swore that he was in the service of Lyon & Levy from February 1863 to the time of the trial in this cause before the Justice and that he delivered a package containing a Cloth Coat vest and pants and two Shirts at the Clerks desk in the Everett House kept by the defendant on Saturday Evening but does not know the day of the month the package was addressed to the plaintiff Skipworth Witness carried it from Lyon and Levy's store to the Everett House and delivered it to that man pointing to Mr Grover one of the Defendants Clerks the Clerk rapped on the Counter a boy came and he told the boy to take the package up to that room the Boy took the package away and then the witness returned to his employers store

7

X Examination

Upon cross examination the witness stated that he gave testimony upon the trial of the cause before Justice Cunningham he also said he had been mistaken in relation to the person he had delivered the package to that on the Sunday morning after he delivered the package at the Everett House he went with Mr Levy to see if he could identify the person to whom he delivered it Mr Levy took him to the Counter and being informed that the Clerk Mr Grover who was on watch on Saturday evening and night was in bed he went with Mr Levy to see the Clerk and saw him in bed he declared he was not the person to whom he had delivered the package and they then came down. That on the following Monday morning witness was standing a few feet from Mr Forestall another Clerk in the House near to the front entrance to the Everett House and that Mr Levy pointed to Forestall and asked witness if that was not the man that he had delivered the package to and he answered Mr Levy Yes he is the man. That he did not swear before Justice Cunningham that he had been to the Planters House Olive Street Hotel or any place to look for the package in question.

Witness
Mr Levy

The Plaintiff next introduced on his own part Mr Morris Levy who testified that Skipworth ordered the Clothes that he went into the office of the Everett House on Sunday morning about 9 O'Clock to enquire for the package of Clothes in question and there ascertained that Mr Grover one of the Clerks in the House was on watch on the previous Saturday evening & night he went with the Boy Swartz to see Grover who was

in bed the boy looked at him and said he was not the man to whom he had delivered the goods he then came down and on Monday morning following he saw the Clerk Forestall standing near the entrance of the Everett House and asked the witness Swartz who was standing with him if Forestall was not the man to whom he had delivered the goods the Boy answered Yes but he seemed fickle minded That the Coats Pants & Vest were worth Fifty Dollars and the Shirts a dollar & a half apeice That the goods were sent from his store to Shepworth who paid for them and directed them to be sent to him at the Everett House That he himself went to the Planters House and the Olive Street Hotel to look for the package supposing the Boy might have taken it to one of those houses instead of the Everett House that he enquired at both the Planters House and Olive Street Hotel but was told it had not been left there that Swartz did not swear before Justice Cunningham that he had been to those Houses to look for the goods

Witness Milton Smith

The plaintiff next introduced Milton Smith who stated that he put up the package and directed it to the plaintiff and delivered it to the witness Swartz and told him to deliver it at the Everett House. That the Boy went away with the package and was gone but a few moments and returned he was gone but a very little while long enough to deliver the package as directed to the Everett House which was only two doors distant

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Witness Forestall

In Defendant then introduced his Clerk Forestall who was sworn and stated that the package in question was never delivered to him or any other person in the Everett House to the best of his knowledge and belief. That after the package was said to have been lost he was standing near the entrance to the Everett House and the witnesses Swartz and Levy were standing a few feet from him on Sunday or Monday morning after the package was said to have been lost when Levy asked Swartz is that the man you delivered the package to! and Swartz said to Levy that is the man I delivered the package to That Swartz swore before Justice Cunningham that he went to the Planters House & the Olive Street Hotel to look for the package thinking he might have delivered them at the wrong place that Swartz never delivered the package to him

Witness Cunningham

Defendant next introduced Justice John B. H. Cunningham who being duly sworn testified on the part of the Defendant as follows. That this cause was tried before him and that the witness Swartz was sworn and testified as a witness before him on the part of the plaintiff and stated as such witness that he went to one or two places besides the Everett House to look for the package thinking he might have left it at the wrong place he seemed not to know where he left it he did not seem to know much about the case when he gave evidence before me.

Witness Geo. E. Wales

The Defendant next introduced George E. Wales as a witness on his behalf who being first duly sworn said That he knew the plaintiff since the 8th of March last that he was one of the Clerks at the Everett House that plaintiff was a Guest there at that time that the package in question was not delivered to him or any other person in the Everett House to the best of his knowledge and belief that on the afternoon of Saturday plaintiff enquired for the package he the witness looked on the shelf for it and it was not there that he saw the witness Swartz for the first time at the Justices Office that it was Quinlan watch from 7 oclock Saturday night to one oclock Sunday morning.

Witness M. Grover

Mr Grover was then introduced on the part of the Defendant and swore that he was on watch at the Office of the Everett House on the afternoon and night of Saturday on which day it is said the package in question was delivered at the Everett House where he had been Clerk for some time that it was never delivered to him or to any other person about the Everett House to the best of his knowledge and belief that the witnesses Levy and Swartz came to his room where he was then in bed to see if he was not the person to whom the package was delivered that Swartz looked at him while he was in bed and said he was not the man to whom the package was delivered that Swartz afterward saw him in the Cigar Room at the Everett House and said he was not the man to whom he had delivered the package that he was present at Justice Cunninghams upon

the trial of this cause there and heard the witness Swartz testify before the justice and that Swartz stated there that he had been to other places besides the Everett House to look for the package thinking he might have carried it to some other place.

This is all the testimony in the case The Court proposed to instruct the jury as to the law of the case but counsel on both sides waived instructions and agree that it was not necessary.

Upon which the jury retired and returned into Court with the following verdict.

Verdict

S. J. Shipworth vs Abel S. Merritt } We the jury find for the plaintiff Fifty Dollars without interest

J. F. Toney
Foreman

motion for New Trial

Upon which the Defendant filed his motion for a new Trial

S. J. Shipworth vs Abel S. Merritt } In Law Commissioners Court December Term AD 1863

The Defendant by his attorneys Davis and Evans moves the Court for a new trial in the above styled cause for the reasons following

"1st" Because the verdict is contrary to the Law
"2nd" Because the verdict is ~~contrary~~ against the evidence

12 "3rd" Because the verdict is both contrary to law & evidence
"4th" Because the verdict is not supported by the evidence in the cause
"5th" Because the verdict is palpably against the ~~sight~~ weight of the evidence
"6th" Because the verdict ought to have been for the Defendant and against the Plaintiff.

Davis and Evans
Attorneys for Plaintiff

The Court overrulled defendants motion for a new trial and gave judgment for plaintiff upon said verdict and the Defendant then and there excepted to the ruling of the Court and prayed that this his bill of Exceptions might be signed sealed and allowed by the Court which is done accordingly

R. E. Rombauer
Judge

G. J. Skipworth vs Able S. Merritt } In the Saint Louis Law Commission Court December Term 1863 Saint Louis County

Affidavit for appeal State of Missouri County of St Louis } ss Able S. Merritt the above named Defendant makes oath and says that his application for an appeal in the above entitled cause is not made for vexation or delay but because affiant believes he was injured by the verdict of the jury and the judgment of the Court.

Sworn to & Subscribed before me this 30th day of January A.D. 1864
W. C. Huffman
Clk

A S Merritt

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Appeal Bond

Know all Men by these Presents That we Able S. Merritt as principal and Enos Jennings and John B Evans as securities are indebted to G. J. Skipworth in the sum of One Hundred Dollars for the payment whereof we bind ourselves our heirs executors and administrators jointly and severally firmly by these presents sealed with our seals and dated at St Louis this 30th day of January one thousand eight hundred and sixty four. The condition of this obligation is such that whereas Able S Merritt has appealed from the judgment rendered against him and in favor of G. J. Skipworth in the St Louis Law Commissioners Court for the sum of Fifty Dollars together with costs. Now if said appellant shall prosecute his appeal with due diligence to a decision in the Supreme Court and shall perform such judgment as shall be given by the Supreme Court or such as the Supreme Court may direct the St Louis Law Commissioners Court to give and if the judgment of such Court or any part thereof be affirmed that he will comply with and perform the same so far as it may be affirmed and will pay all damages and cost which may be awarded against him by the Supreme Court then this obligation to be void otherwise to remain in full force

A. S. Merritt [seal]
Enos Jennings [seal]
John B. Evans [seal]

14 State of Missouri } I W C Huffman Clerk
County of St Louis } ss of the Law Commissioners Court
of Saint Louis County certify the above to be a true full and complete Transcript of the Record pleadings and proceedings in the case of G. J. Skipworth against Able S Merritt as fully as the same remain on file and of record in my office

In Testimony Whereof I hereunto set my hand and affix the seal of said Court at office this 23rd day of November 1864

W. C. Huffman
Clerk

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G J Skipworth
vs defendant in error
Able S Merritt
plaintiff in error

In the Supreme Court
of the State of Missouri

The said plaintiff in error
by Davis and Evans his Attorneys
comes and says that in the record and proceedings
of the Law Commissioners Court and bill of exceptions there is manifest error
and for a special assignment of errors the said
plaintiff says the said Law Commissioners Court
erred in over ruling his motion for a new trial
and in giving judgment for said defendant
in error when by the law of the land judgment
ought to have been given for the plaintiff in
error and this he is ready to verify.

Davis and Evans
Attys for Pff in error

The Court not being satisfied upon an inspection of the record that there is any error therein an order to stay Execution is refused.

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October Term 1864

Law Com Court

G. G. Shipworth
Respondent

vs } Transcript

Abel S. Merritt
Appellant

$1.75

Appeal to Supreme Court
Filed November 27. 1864
Appeal to
Dwight Evans for Appellant

Shreve Sanders for Respondent

$5.00

1864 Dec 1. Motion for stay of execution overruled & cause dismissed

Dp 288

A. J. Skipworth, Defendant in error,

vs.

Abel S. Merritt, Plaintiff in error,

In the Supreme Court of State of Missouri
October Term 1864.

Statement of the case.

Merritt was an Inn Keeper and Skipworth, who was his guest, caused certain goods to be sent to the Inn, which when called for were not delivered to Skipworth; and he sued before a Justice of the Peace to recover the value of them. The Justice gave judgment for Merritt. Skipworth appealed and the cause was tried in the Saw Commissioners Court, where he recovered a verdict and judgment for fifty dollars. Merritt moved the Court for a new trial, which was overruled; and he sued out his writ of error.

The evidence in the case on the part of the plaintiff proved, that Skipworth purchased some clothes of Lyon & Levy and ordered them to be sent to him at the Everett House. The testimony of a boy of the name of Swarty was the only evidence

in the case tending to show the delivery of the goods to any of Merritt's clerks, in the Everett House, in which the boy said he delivered the goods to one of the clerks, pointing him out and naming him.

The defendants proved by three men, who were clerks in his service, at the time, that the goods were not delivered to them or any one of them; and the clerk pointed out by the boy Swartz, as the person to whom he delivered the goods, swore positively that he did not receive them; and that he did not believe that they were delivered to any body about the house.

And the defendants proved by J. C. Cunningham Esqr., the justice before whom the cause was tried, and Forestall and Grover two of Merritt's clerks, that the witness Swartz, now at the trial of the cause before Justice Cunningham, "that he had been to other places besides the Everett House to look for the package, thinking he might have carried it to some other place". It was attempted to support Swartz by the testimony of the witness Dery who said, that "on Monday morning following he saw the clerk, Forestall standing near the entrance of the Everett House and asked the witness Swartz, who was standing with him, if Forestall was not the man to whom he had

delivered the goods: the boy answered "yes" but he seemed fickle minded". The only error assigned was the refusal of the Court below to grant a new trial. Davis & Evans, Attorneys for the Plaintiff in error, made the following points and cited the following authorities

1st. The Court manifestly erred in overruling the motion for a new trial. Palpable injustice was done by the verdict of the jury; the weight of the evidence in the cause preponderated overwhelmingly in favor of the defendant below and cannot fail to strike any one so "at first blush"
A Court should not hesitate to set aside a verdict, if it appear that injustice was done; or where it is probable that injustice was done by the verdict.
Johnson vs. Strader & Thompson 3 Mo. R. 254
Mathews vs. Hays 5 Mo. Rep. p 63
Howell vs. Pittman 5 Mo. R. 247
Graham on New Trials pp. 47, 48, 49 & 50
Cases in which Court should grant a new trial
Mullikin vs. Greer 5 Mo. R. 489
Oldham vs. Henderson 4 Mo. R. 295
Dooly & Kirkland vs. Jennings 6 Mo. R. 61
Campbell & Maison vs. Hood 6 Mo. R. 211

A. J. Skipwith
Defendant in error
vs.
Abel S. Merritt
Plaintiff in Error

Statement of the case
Points and Authorities

Davis & Evans
for Defendant

G. I. Skipworth defendant in error } In the Supreme
vs } Court of the State
Abel S. Merrill plaintiff in error } of Missouri
October Term 1864.

The plaintiff in error moves the Court for leave to file the record in the above styled case, and prays that the Court may be pleased to make an order for a supersedeas to stay the execution therein &c &c.

Davis & Evans
Counsel for plaintiff in error

Supreme Court
October Term 1864.

G. I. Skipworth
Deft in error
vs
Abel S. Merritt
Pltff in error

Motion for leave to file record
and for supersedeas

Davis & Evans.
for Pltff in error