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No. _____

Supreme Court of Illinois

Morrison et al

vs.

Chicago & Northwestern

Ind.R.R.Co.

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 30.

Morrison
vs

Chas D

1861

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1861.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

HOWARD PRIESTLEY *et al.*,
Plaintiffs in Error,

vs.

THE NORTHERN INDIANA & CHICAGO
RAILROAD COMPANY,
Defendant in Error.

2 Declaration in case was in six counts.

The fifth count states, that on the 20th February, 1854, defendants being common carriers for hire of goods, etc., and plaintiffs being at that time engaged in the business of manufacture of sash, scroll-work, etc., plaintiffs delivered to defendants, at Toledo, three boxes of machines, to be used in said manufacture, viz.: machines for morticing, tenoning, planing, scroll-saws, etc., of the value of \$2,000, which the defendants accepted, to be carried to Chicago, to be delivered to plaintiffs in a reasonable time thereafter, for hire.

187
That the goods arrived at Chicago, on the 28th March, 1854, at defendants' depot, of which defendants had notice; yet defendants, in violation of their duty, did not deliver said goods to plaintiffs within a reasonable time thereafter, nor notify them that the goods had come for three months after they had come, whereby plaintiffs incurred loss and damages, made several journeys to Toledo, Cleveland, Buffalo

and Boston, etc., in looking for said goods, spending \$500 ; \$1,000 for the loss of said machines in their business ; \$1,000 for stoppage of business caused by non-delivery of said machines ; \$2,000 loss of time of twenty-five workmen kept idle three months.

18
The sixth count was similar, and alleged the damages as follows : That by the said non-delivery of said goods, beside the expense of journeying as above, they lost the use of said machines in their business ; the use and profit of their capital employed in their business, etc., viz. : \$5,000 for three months ; were thereby prevented from carrying on said business for that time, from making profits therefrom, viz. : \$5,000. Loss of workmen's time and wages as in fifth count.

The other counts were substantially the same, only varying in some respects the statement of the damages.

24 1/2
25-
Mc Williams testified, that he first knew plaintiffs in fall of 1853 ; was in their employ in spring of '54 ; was their foreman for three months. They built a factory in winter of '54, for the making of window blinds, sash, door and scroll-work ; had taken several contracts for building and finishing houses ; they were waiting for their machinery to come when I began to work for them in April, '54. Plaintiffs went East to buy the machinery in question. It filled three large boxes ; witness enumerated the articles mentioned in the narr., adding that the boxes contained all the apparatus of a factory of that kind. The articles were for carrying on the factory business, making doors, windows, etc. In the latter part of May I went to Mitchell's warehouse to get the boxes ; they were marked. "T. G. Gray, Sherman House,"—plaintiffs' deceased partner.

I often went with plaintiffs to the freight office in the depot, to inquire for this machinery. We first went in the latter part of March, and from time to time till the machinery came, in the latter part of May. We used to go every morning ; inquired of the clerks if the machinery had come ; asked for boxes marked T. G. Gray. Plaintiffs went East to look

up the machinery. Plaintiffs had taken the contracts of seven houses to finish.

Edward Gleason. The machinery arrived here by the defendants' road in the latter part of March. They were received from the warehouse in the latter part of May. He described the machinery in the same way as McWilliams. Knew plaintiffs from the latter end of 1853. We used to go to the depot to inquire for this machinery; we asked if machinery had come, directed to Gray. One time we were directed by the clerk to go to Mitchell's. Gray went and got the boxes. They had been in store two months. Were expected from first to fifteenth of March. First inquired for them 15th March. Kept doing so all along. No notice was received by plaintiffs that the boxes had come.

26. Cross-examined. Witness said he built the factory for plaintiffs. It was finished for the machinery by middle of March. I agreed to carry on the building business in connection with plaintiffs. This agreement was made on Gray's return from the East, whither he had gone to buy machinery. I was as a builder to have charge of that branch of the business, they to furnish machinery.

29. *R. M. Mitchell* testified, that the boxes were sent from the depot of the Michigan Southern Company to his warehouse, marked T. R. Gray & Co. Priestley got them May 20. Witness had an arrangement with that Company for storing goods. I understood that the road from here to the State line was a part of the Southern Michigan and Northern Indiana Railroad line.

Admitted, on both sides, that the warehousemen were responsible men.

27. *Edward Gleason*, recalled, stated, that they, *i. e.* he and plaintiffs, under their agreement, took several contracts for building, as a firm, in April and May, which were all abandoned in consequence of the non-arrival of the machinery

31. *N. B. Judd*, called for plaintiffs, stated, that the defendants' company formed, under the statute in 1849 or '50, to build a road from here to the State line. The road from Chicago to the State line was built by the Southern Michigan and Northern Indiana Company. Construction accounts were kept by the latter company. I bought the land; the Northern Indiana Company built the road; and I kept my accounts for the purchase-money with that company. I conveyed the right of way to the Northern Indiana and Chicago Company, defendants.

The defendants never ran the road; the other companies ran their rolling stock over it. The defendants' company never did any business. They became a corporation. The companies forming the line were consolidated. I had notice in 1855.

33. The defendants admitted their corporate existence, and ownership of a line of railroad from the State line.

William McWilliams, recalled, said: I was employed by plaintiffs to superintend the erection of buildings. I used to be in their office every morning. Their factory was one for using machinery like that in question. The same kind of work might possibly have been done by hand. But the factory itself would necessarily have to stand still without the machinery mentioned in the narr.

- 34.
- 35.
1. Plaintiffs' counsel asked witness, how long the factory stood idle for want of the machinery in question?
 2. What was his estimate of the value of the building?
 3. What was the value of the machinery in the building?
 4. How many hands plaintiffs had in their employ at the time the machinery was expected?
 5. How many factories of that kind there were in Chicago at that time?
 6. Whether at that time there was much building going on in Chicago?
 7. What were the plaintiffs' pecuniary means?

34 8. They also asked witness to state the facts as to the real loss and damage sustained by plaintiffs by the non-delivery of said machinery on its arrival.

9. To state whether or not, and if so, what loss plaintiffs sustained by reason of the non-delivery.

10. To state any fact to satisfy the jury that plaintiffs sustained loss from non-delivery of machinery.

11. To state whether or not, and to what extent, plaintiffs sustained loss from extra lot of hands thrown out of employ by reason of the non-delivery of the machinery.

12. Whether plaintiffs lost contracts for building in consequence, etc.

13. Whether, in consequence, etc., plaintiffs were deprived of the benefit and use of the factory.

14. Whether plaintiffs lost employment while waiting for the machinery.

15. Whether they lost the wages of their workmen, etc.

17. What was the use of the machinery in question from the time it arrived to the time it was delivered.

18. What was the value of the use of the machinery from March 28 to the time it was delivered.

37 All of which questions were overruled by the court.
Exception as to each question.

38 *Edward Gleason* recalled. Plaintiffs proposed to question this witness as to the damages of plaintiffs, same as last witness.

Disallowed by the court.

Exception by plaintiffs.

39 They also proposed to ask him, what, if any, journeys plaintiffs took in search of the machinery—their expenses, if any.

This the court also overruled, and the plaintiffs excepted.

This was all the evidence.

In addition to instructions given, plaintiffs asked the court to give the following instructions, which the court refused to give:

50
A. That if the jury found for plaintiffs, to assess and award such damages as reasonably appeared from the evidence they had sustained from defendants' breach of duty.

B. That if the jury should find defendants guilty, and also, that after defendants had sent the machinery into store plaintiffs called for it, and defendants denied all knowledge of it, and did not for a length of time notify plaintiffs of its arrival, or inform them where it was, that, in the absence of proof to the contrary, these facts were evidence to be considered by the jury in determining whether or not defendants were guilty of gross negligence and breach of duty; and plaintiffs were entitled to whatever damages they sustained from defendants' conduct in the premises.

51
C. That if they found defendants guilty of a violation of duty in the premises, plaintiffs were entitled to recover whatever damages they sustained in consequence of defendants' default.

52
D. That if they found for plaintiffs, the jury, in assessing the damages, might properly take into consideration, as a guide in exercising their discretion in this case, plaintiffs' circumstances at the time, the nature and state of plaintiffs' own business in Chicago at that time, loss of time, traveling expenses in searching after the machinery after its arrival and before its delivery, loss of contracts, time and wages of workmen, and other losses actually suffered in consequence, etc.

53
E. That if the jury believed, from the evidence, that defendants violated their duty, plaintiffs are entitled to maintain this action without proof of actual specific damages; and that it was the duty of the jury, in that event, to give a verdict for such damages as upon the whole evidence they were satisfied plaintiffs had sustained in consequence of defendants' wrongful conduct. That the damages are not to be confined to the market value of the machinery; nor to its cost; nor to plaintiffs' expenses in searching for it while it may have been in defendants' depot; or to plaintiffs' loss in respect of particular contracts caused by non-delivery, etc.; and that the jury would be justified in making such inferences

The court gave, of its own motion, the following instruction, marked 3 :

418,
“ If the jury find for plaintiffs, the true and only measure of damages is the difference in the market value of the machinery in question, in Chicago, at the time it arrived, and the time when it should have arrived ; and if the jury shall find that no evidence on this subject has been given from which any judgment can be formed, the plaintiffs are entitled to nominal damages only.”

Exception by plaintiffs to the giving of this instruction.

53, as to plaintiffs' losses in business, time and money, as they might think warranted by the whole evidence, and in giving substantial damages to compensate such losses.

F. That if the jury should find, from the evidence, that the conduct of the company's employees towards plaintiffs, when they went to the depot to inquire for their machinery, was improper and insolent, and that they showed no disposition to assist plaintiffs in finding it, but neglected to give them proper assistance and information to enable them to find it, that in assessing the damages the jury might take such conduct and behavior into consideration, either in mitigation or aggravation of damages, as the jury should judge proper in the exercise of a just and sound discretion.

Plaintiffs excepted to refusal of the court to give these instructions.

54, Of the instructions asked by defense, five in number, all, except the fourth, went to the right of plaintiffs to maintain their action. The fourth, being the one chiefly objectionable to plaintiffs, is the only one of much importance here; it is, in substance, as follows, viz.:

55, "That even if the jury should find the defendants guilty of a breach of duty, no competent evidence of damages having been offered by plaintiffs, the jury could only give a verdict for nominal damages."

To which plaintiffs excepted.

Verdict for plaintiffs, damages one dollar.

56, Motion for new trial.

Overruled. Exception.

Plaintiffs assign as errors:

57, 1. That the court erred in overruling the motion for a new trial.

2. In not permitting the witnesses McWilliams and Gleason to answer the questions put to them, and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18.

3. In not permitting Gleason to testify in relation to plaintiffs' loss, and expense in journeys to look up the machinery.

SS,

4. In giving the instruction number three, as to the measure of damages.

5. In refusing to give the instructions marked A, B, C, D, E, F, asked for by plaintiffs.

6. In giving instructions asked for by defendants.

Walter W. Turner,

Arthur W. Mudgett
for Plffs. Turner,

In the Supreme Court of the State of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1860.

HOWARD PRIESTLY ET AL. }

vs. }

NORTHERN INDIANA AND
CHICAGO RAILROAD CO. }

BRIEF OF POINTS AND AUTHORITIES.

I. The court should have allowed the plaintiffs to give the testimony which was excluded.

1. Their expenses and journeys in search of the machinery then lying in defendant's warehouse, was proper matter of proof, and recoverable as special damages.

Parmalee v. Fischer, 22 Ill. 214.

2. The value of the use of the articles as machinery in the plaintiffs' factory, for the time they lost their use by de-

fendant's neglect, was proper for the jury in considering and estimating damages.

Butler v. Mehring, 15 Ill. 488.

Green v. Mann, 11 *ibid.* 616.

Waters v. Tower, 8 Excheq. 401; also, 20 Edg. L. & Eq. R. 410.

Davis v. Talcott, 14 Barbour, 611.

Singer v. Farnsworth, 2 Ind. 597.

Hughes v. Cannon, 1 Sneed. 622.

1 Blatchford, 211; 2 Parsons' Con. 471; 18 Vermont, 620.

3. The evidence sought to be given as to the nature and extent of plaintiffs' business; the state of that business in Chicago at that time; the number of workmen kept idle; the wages spent; loss of time; suspension of plaintiffs' business in consequence of the non-delivery by defendant of the machinery; together with all the facts and circumstances connected with, or growing out of, that non-delivery, showing the degree of defendant's culpability in the matter as evidence of gross or malicious neglect and misconduct, was proper for the consideration of the jury, to enable them to appreciate the extent of plaintiffs' losses, and the degree in which those losses were owing to defendant's misconduct.

Lincoln v. Saratoga and S. Railroad Co., 23 Wend. 425.

Gillard v. Brittan, 8 M. and W. 575.

Whipple v. French, 10 N. H. Rep. 130.

Sedgwick on Damages, pp. 26, 27, 28, 33, 34, 66, 67, 81, 96, 193, 200, 213.

Bell v. Cunningham, 3 Pet. 69—86.

Brockett v. McNair, 14 Johns. 170.

White v. Moseley, 8 Pick. 356.

Tarleton v. McGawley, Peake N. P. 205.

Scott v. Bay, 3 Md. 431.

Lacour v. Mayor, 2 Duer, 406.

Sewell's Falls Bridge v. Fisk, 3 Foster (N. H.) 171.

Dickinson v. Boyle, 17 Pick. 78.

Ingram v. Lawson, 6 Bing. (N. C.) 212.

Donnel v. Jones, 17 Ala. 689.

McNeil v. Reid, 9 Bing. 68.

II. The instructions which the plaintiffs asked should have been given to the jury.

1. In actions for torts, juries are not restricted in assessing damages in the same way as in actions upon contracts; but where there is evidence showing, or tending to show, gross, neglect, or malicious or willful misconduct, they may give discretionary damages.

Fish et al. v. Roseberry, 22 Ill. 298—300.

Whipple v. French, 10 N. H. 130.

Gillard v. Brittan, 8 M. and W. 575.

Peters v. McKeon, 4 Denio, 549, (arg. C. O'Connor.)

Crouch v. Great Nor. Railway, 34 Eng. L. & Eq. 388.

Waters v. Tower, 20 Eng. L. and Eq. 410.

2 Wils. 295; 9 Bing. 68; 6 Bing. (N. C.) 212.

5 Day, 144; 3 Day, 447; Sedgwick on Damages, 659.

17 Ala. 689; 1 N. J. 183; 2 Parsons on Cont. 451.

10 Mass. 462; Harper S. C. Rep. 87; 15 M. & W. 117.

1 Wash. 152; 8 Iredell, 236; 5 Mass. 437.

Sedgwick, 94; 3 Johns. 56—68.

6 Cowen, 254; 2 N. and M. 267; Coxe, 67, 79.

3 Miss. 318, 323.

2. The object or purpose to be accomplished by the subject matter of contract and proof may be shown in order to affect the damages.

Crabtree v. Kile, 21 Ill. 185.

3. Gross neglect or willful misconduct is equivalent to fraud or malice, and when facts are shown which authorize the jury to find such neglect or misconduct, the jury may properly give greater damages than the actual damages shown.

Whipple v. French, 10 N. H. 130, 131.

III. The rule as to damages adopted by the court in its instruction given for defendant, was not the correct rule in this case.

Butler v. Mehring, 15 Ill. 488.

Green v. Mann, 11 Ill. 616.

Davis v. Talcott, 14 Barbour, 611.

Singer v. Farnsworth, 2 Ind. 597.

Hughes v. Cannon, 1 Sneed. 622.

Waters v. Tower, 20 Eng. L. and Eq. 410.

Lincoln v. Saratoga Railroad, 23 Wend. 425.

1 Blatchford, 211; 2 Parsons on Contract, 471.

18 Vermont, 620.

ARTHUR W. WINDETT,
Of Counsel with Plaintiff in Error.

25-30-11

Morrison & Others

vs

The Northern Indiana
Rail Road Company

Abstracts Points
of Plff.

Filed May 2-1860

G. Leland

Clerk

United States of America } Pleas, before the Honorable George Manierre
STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof
begun and held at the Court House in the City of Chicago, in said County, on the

Thirteenth Monday, (being the fifteenth day) of
November in the year of our Lord one thousand eight hundred and
fifty eight and of the Independence of the said United States the
Eighty Third

Present, Honorable George Manierre Judge of the 7th Judicial }
Circuit of the State of Illinois. }

Carlos H. Harn States Attorney.

John E. Wilson Sheriff of Cook County.

Attest;

Amos Church Clerk.

Be it remembered that heretofore, to wit, on the 30th
day of May in the year of our Lord one thousand eight
hundred and fifty four there was issued out of the office
of the Clerk of the Court aforesaid and under the seal
thereof the People's writ of summons directed to the Sheriff
of said County to execute and clothe in the words
and figures following, to wit,

State of Illinois }
Cook County } ss

The People of the State of Illinois, to the
Sheriff of said County, Greeting;

We command you that you summon The North-
ern Indiana and Chicago Rail Road Company,
if it shall be found in your county, personally to be
and appear before the Circuit Court of said county, on
the first day of the next Term thereof to be holden at the
Court House in Chicago in said county, on the fourth
Monday in October next, to answer unto Thomas G.
Gray, Robert D. Morrison & Howard Priestly in a
plea of trespass on the case to the damage of the said
plaintiffs as they say, in the sum of Five thousand
Dollars.

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

Witness, Louis D. Hoard Clerk of our said Court,
and the seal thereof at Chicago aforesaid, this
thirtieth day of May A.D. 1854

L. D. Hoard Clerk

Seal

Officer Return

And afterwards, to wit, on the 30th day of October in the year last aforesaid, said writ was returned into the Court aforesaid by said Sheriff enclosed as follows, to wit, Served this writ by reading to Norman B. Judd & delivering him a copy thereof this 2nd day of June 1854 he acting as attorney for said Rail Road Company the President or Secretary of said Road not found in my County, 1 service, 50 - 1 copy, 50 - 1 mile " 5 - 1 Return, 10 - 115

Cyrus P. Bradley Sheriff
by Michael Regan Deputy

And afterwards, to wit, on the third day of November A.D. 1854 the said Plaintiffs by A. W. Windett Esq. their attorney, filed in the office of the Clerk of the Court aforesaid their certain declaration which is in the words and figures following, to wit,

State of Illinois } In the Cook County Circuit Court
Cook County } of the November Term A.D. 1854

Robert D. Morrison and Howard Priestly sole surviving partners of Thomas G. Gray lately deceased, whose death has been suggested upon the record and who, together with the said Morrison and Priestly constituted the copartnership firm of Gray, Morrison and Company Manufacturers of sash doors, blinds and sash work, plaintiffs in this suit by Arthur W. Windett, their attorney, complain of the Northern Indiana and Chicago Rail Road Company, who have been summoned to answer

of a plea of trespass on the case.

3rd For that whereas the said defendants before and at the time of the delivery of the goods and chattels as hereinafter mentioned, were and from thence forth continued to be and still are, an incorporated Company and Common Carriers of goods for hire to and from certain places, to wit, from Toledo in the State of Ohio to Chicago in the said County in the State of Illinois.

And whereas the said plaintiffs and the said Thomas G. Gray in his life time, whilst the said defendants were such Common Carriers as aforesaid to wit, on the twentieth day of February A. D. one thousand eight hundred and fifty five to wit, at Toledo, to wit, in the County aforesaid, caused to be delivered to the said defendants, and the said defendants then and there accepted and received of and from the said plaintiffs and of the said Gray, divers, to wit, Two certain cases or boxes of Machinery such as are used and necessary for carrying on the said business of Manufacturing to wit, one mortising Machine, one planing Machine, two sticking Machines, one cut off saw, one scroll saw & plane, one matching machine and one turning machine together with a certain spring of great value to wit, of ten hundred dollars, the property of the plaintiffs and of said Gray to be by the said defendants from Toledo

Declaration

Declaration

aforesaid to Chicago aforesaid safely and securely
 carried and conveyed and there to wit, at Chicago aforesaid
 safely, rightly and in a reasonable time to be delivered
 to the said plaintiffs and the said Gray for certain
 reasonable reward to the said defendants in that
 behalf. Whereupon it then became and was the
 duty of the said defendants as such Common Car-
 riers safely and securely to carry and convey the
 said cases and machines and said spring to the
 said City of Chicago and there, to wit, at Chicago, afo-
 said safely, rightly and in a reasonable time to
 deliver the same to the said plaintiffs and the said
 Gray. Yet the said defendants not regarding their
 duty in that behalf as such Common Carriers, but
 contriving and intending to deceive and injure
 the said plaintiffs and the said Gray in his lifetime
 in that behalf, did not nor would safely or securely
 carry or convey the said cases and machines from
 Toledo aforesaid to Chicago aforesaid, nor there
 to wit, at Chicago aforesaid safely, rightly ^{or in} ~~and~~ a
 reasonable time deliver the said cases and ma-
 chines to the said Plaintiffs and the said Gray
 or either of them or to any one in their behalf, al-
 though they the said Plaintiffs and the said
 Gray were ready to wit, at Chicago aforesaid to
 receive the same and although a reasonable
 time for such carriage, conveyance and delivery
 after the acceptance and receipt by said defend

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ants of the same for that purpose had long elapsed but on the contrary thereof the said defendants being such Common Carriers as aforesaid so carelessly and negligently behaved and conducted themselves in the premises that by and through their carelessness negligence and default the said cases and machines did not arrive nor were delivered by said defendants nor in any wise came to the possession of the said plaintiffs or of the said Thomas G. Gray or of any one else on his or their behalf, at Chicago aforesaid for a long space of time, to wit, for the space of three months.

Declarations
by means whereof the said plaintiffs and the said Gray were put to and did necessarily incur great costs and charges, to wit, the sum of five hundred dollars in sending and journeying to divers places to wit, to Toledo aforesaid in the State of Ohio, to Buffalo in the State of New York and to Boston in the State of Massachusetts and to divers other places in searching after and endeavoring to find said machines; and the said plaintiffs and the said Gray lost the means of using the said machines in their said business and lost the use of their capital to wit, ten thousand dollars therein invested for a long space of time, to wit, three months in so beneficial and profitable a manner as they otherwise would have done and thereby also were pre-

Declaration

vented during all that time from carrying on their business of manufacturing as aforesaid which they would otherwise have carried on with and by means of said machines, and from making divers large profits and gains amounting to a large sum to wit, to five thousand dollars which they would otherwise have made from their said business, and by means of the premises divers, to wit, twenty five skilled workmen and artisans employed in the service of the said plaintiffs and of said Gray, were during all that time useless and unproductive to the said plaintiffs and said Gray and the plaintiffs and said Gray were compelled during all that time at their own costs and charges amounting, to wit, to one thousand dollars, to pay the said workmen and artisans their wages and to maintain them, without receiving any adequate return for such maintenance & wages, and by and through the negligence, misconduct and default of the said defendants the said plaintiffs and the said Gray have been and were otherwise greatly damaged in all amounting to a large sum of money to wit, the sum of four thousand dollars to wit, at the County aforesaid.

2nd And also for that whereas heretofore to wit, on the twentieth day of February A. D. one thousand eight hundred and fifty four at

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Toledo, to wit, at the County aforesaid the said defendants being there and there an incorporation Company and Common Carriers for hire, of goods and Merchandise the said plaintiffs and the said Thomas G. Gray who has since deceased being their Copartners in business as Manufacturers, the said plaintiffs and the said Gray in his life time at the special instance and request of the said defendants caused to be delivered to the said defendants ^{their} certain other cases or boxes containing machines together with a certain spring of the like description number, quality and value as those in the said first count mentioned, of the said plaintiffs and of the said Thomas G. Gray to be taken care of and to be safely and securely carried and conveyed by the said defendants to Chicago in the County aforesaid, and there, to wit, at Chicago to be safely, securely and rightly delivered by the said defendants to the said plaintiffs and the said Thomas G. Gray, for certain reasonable reward to the said defendants in that behalf; yet the said defendants not regarding their duty as such Common Carriers as aforesaid but designing and contriving to injure and wrongfully oppress the said plaintiffs and said Gray in that behalf did not nor would safely or securely ^{carry or} convey the said cases or boxes of machines and the said spring from Toledo aforesaid to Chicago aforesaid, nor there to wit at Chicago

Declaration

aforesaid safely, securely or rightly deliver the same
 to the said plaintiffs or the said Gray, but on the
 contrary thereof, the said defendants so being such
 Common Carriers as aforesaid so carelessly and neg-
 ligently behaved and conducted themselves in the
 premises, that by and through their carelessness, neg-
 ligence and default in the premises the said last
 mentioned cases or boxes of machines together
 with said spring being of the value aforesaid
 afterwards, to wit, on the day and year aforesaid
 became and were wholly lost to the said Plain-
 tiffs & the said Thomas G. Gray aforesaid in his
 life time; by means whereof the said Plaintiffs
 and the said Gray in his life time were for a
 long space of time, to wit, for three months wholly
 disabled and prevented from prosecuting, car-
 rying on and conducting their said business and
 from making divers profits, to wit, five thousand
 dollars which they would otherwise have made
 from their said business, and were put to and
 necessarily incur great expenditures and out-
 lays of money amounting to, to wit, to one
 thousand dollars in journeying and sending
 to Toledo in the State of Ohio, to Buffalo in the
 State of New York and to Boston in the State of
 Massachusetts to look for and find the said
 machines and by reason of the premises also
 divers to wit, twenty five hired workmen and

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 artisans in the employ and service of Plaintiffs & said Gray to whom the said plaintiffs and Gray were obliged to pay their wages amounting to a large sum, to wit, to one thousand dollars without receiving therefor any adequate return were rendered useless, unprofitable and unproductive to the said Plaintiffs and said Gray; and sustained divers other losses in all one thousand dollars and by means of the said negligence and default of the said defendants in that behalf, the said plaintiffs and the said Grays have sustained great damages & losses in all amounting to one thousand dollars, to wit, at the County aforesaid,

3rd And whereas also, heretofore, to wit, on the twentieth day of February A. D. one thousand eight hundred and fifty four, at the County aforesaid, the said defendants being then and there an incorporated Company, and Common Carriers of goods for hire, and the proprietors of a certain Rail Road called the Northern Indiana and Chicago Rail Road running from a point above the State line between this State and Indiana is intersected by the western division of the Buffalo and Mississippi Rail Road Company to the City of Chicago aforesaid, the said Plaintiffs and the said Gray in his life-time, to wit, at Toledo to wit, at the said point of intersection of the said State line by the said Rail Road in the County aforesaid, caused to be offered and delivered to the said

Declaration

Declaration

defendants as common Carriers for hire, and the said
 defendants as such common carriers then and there
 accepted and received of and from the said plaintiffs
 and the said Gray two certain other cases or boxes of
 machines of the like quality, description and value
 as those first above mentioned and also a certain
 other spring of the said plaintiffs and of the said Gray
 to be safely and securely carried and conveyed for the
 said plaintiffs and said Gray from the place of in-
 tersection of said State line by the said Western division
 of said Buffalo and Mississippi Rail Road aforesaid
 to Chicago aforesaid and there to wit, at Chicago afo-
 said to be rightly delivered to the said Plaintiffs and
 said Gray within a reasonable time thereafter for
 certain reasonable hire and reward to the said de-
 fendants in that behalf; and thereupon it then and
 there became and was the duty of the said defend-
 ants to carry and convey the said goods and chat-
 tels to Chicago aforesaid and there, to wit, at Chi-
 cago aforesaid within a certain reasonable time
 thereafter to deliver the same to the said plaintiffs
 and the said Gray; and although a reasonable
 time for the carriage, conveyance and delivery
 of the said goods and chattels last mentioned
 hath long since elapsed, yet the said defendants
 not regarding their duty in that behalf did not
 nor would within such reasonable time as afo-
 said carry or convey the said goods and chattels

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Declaration

to Chicago aforesaid, nor there, to wit, at Chicago aforesaid rightly deliver the same to the said plaintiffs and the said Gray or either of them, but have hitherto wholly neglected and refused to do, and by reason of the non delivery of the said goods and chattels within such reasonable time as aforesaid the said plaintiffs and the said Gray in his lifetime were put to and did necessarily incur great costs and charges, to wit, five hundred dollars in sending and journeying to divers places, to wit, to Toledo in the State of Ohio, to Buffalo in the State of New York and to Boston in the State of Massachusetts, in searching after and endeavoring to find the said machines, and the said Plaintiffs and the said Gray in his life time lost the use of the said machines in their said business and were thereby wholly disabled and hindered from carrying on their said business and lost the use of their capital, to wit, one thousand dollars there in invested, and of their buildings and steam engines and machinery erected & put up for the purpose of their business for a long space of time, to wit, for three months in no beneficial and profitable a manner as they would otherwise have done and from making divers large profits and gains amounting to a large sum to wit, to five thousand dollars which they would otherwise have made in the course of their business, and by means of the premises, divers

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to wit, twenty five workmen in the employ of said Plaintiffs and of said Gray were rendered useless and unproductive to the said Plaintiffs and said Gray for a long time, to wit, for three months, and the said plaintiffs and said Gray were compelled to pay them as wages divers large sums of money to wit, one thousand dollars without receiving any adequate return therefor, and by and through the misconduct and default of the said defendants the said plaintiffs and the said Gray in his life time have been and were otherwise greatly damaged in a large sum of money amounting in all, to wit, to the sum of one thousand dollars, to wit, at the County aforesaid.

J. W. Winsett
for Plff.

4th And also for that whereas the said defendants, before and at the time of the delivery of the goods and chattels hereinafter mentioned, were and from thenceforward continued to be, and now still are an Incorporated Company and body politic as such Common Carriers for hire of goods & chattels at and from certain places in the State of Ohio and also in the State of Indiana, namely at & from Toledo in the State of Ohio and the State line between the State of Illinois and the State of Indiana to Chicago

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Illinois in the County aforesaid; and whereas said Plaintiffs & said Gray in his life time to wit, on or about the twentieth day of February in the year of our Lord one thousand eight hundred and fifty four to wit, at Toledo in the State of Ohio aforesaid, caused to be delivered to said defendants & they then & there accepted & received as such Common Carriers of & from the said Plaintiffs & said Gray divers other goods & chattels of said plaintiffs & Gray, to wit, three certain other cases or boxes containing a large quantity of machinery to wit, of the value of one thousand dollars of such as was necessarily used in operating plaintiffs & Gray's said factory & conducting their said business, said machinery being then new & scarce in the West and comprising one planing machine, one turning machine, one morking machine one scroll saw, and frame, one flooring machine, one pick boring machine, two sticking machines, one cut off saw, and one frame of scroll saw; To be by said defendants carried & conveyed safely to Chicago & there within a reasonable time after their arrival at Chicago to be rightly delivered to said plaintiffs & Gray for reasonable reward in that behalf.

Yet said defendants disregarding their duty in the premises, although said goods & chattels in this count mentioned arrived at Chicago

afterwards, to wit, on or about the twentieth day of
 November the said year A. D. 1854. did not within a
 reasonable time after their said arrival there, to wit, on
 the said twentieth day of March as aforesaid, to wit,
 at Chicago aforesaid, safely or rightly deliver said goods
 & chattels to the said plaintiffs & said Gray or any other
 person on their behalf, although said plaintiffs & Gray
 were then & there ready & willing to receive the same
 on the contrary thereof, well knowing the premises
 & facts as above set forth neglected & refused so to do for
 a long span of time, to wit, for the space of sixty days
 thereafter to wit, at Chicago in the County aforesaid,
 Whereby said plaintiffs & said Gray were put to &
 necessarily incurred great losses, damages and
 charges in consequence of said defendants wrongful
 conduct as above stated, to wit, five hundred dollars
 in sending & journeying to Toledo aforesaid, to
 Cleveland in Ohio, to Buffalo in New York, to Bos-
 ton Massachusetts, and divers other places in
 searching for said goods & chattels; and said plain-
 tiffs & Gray were during all that time deprived of
 the use of said machinery in their said business,
 lost the use of their capital, to wit, three thousand
 dollars therein invested for the space of two months
 and were during all that time thereby prevented
 from carrying on their said business and Man-
 ufactury which otherwise they would have carried
 on with said Machinery, and from making

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divers large profits from their said business, to wit, five thousand dollars, and by means of the premises divers, to wit, twenty five skilled workmen all that time in the plaintiffs & Gray's employ & on wages were rendered useless to said Plaintiffs & Gray, who in consequence wholly lost the wages of said workmen in all amounting to a large sum, namely, one thousand dollars, and by and through the said defendants default & wrongful breach & neglect of duty as aforesaid were otherwise greatly injured and damaged in all amounting to a large sum of money, to wit, five thousand dollars, to wit, at Chicago, to wit, at the County aforesaid

3rd And whereas also, heretofore, to wit, on the twentieth day of February in the year of our Lord one thousand eight hundred and fifty four, to wit, at Toledo, to wit, the County aforesaid, the said defendants being then and there Common Carriers for hire of goods, wares & merchandise and chattels, the said Plaintiffs and said Gray being then Copartners in the trade & business of Manufacture of window sash, scroll and door blinds to wit at Chicago aforesaid said plaintiffs and Gray caused to be delivered to said defendants and said defendants then and there accepted divers other goods and chattels namely, three certain other boxes of Machines to be used in the business and Manufacture aforesaid and

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among others containing two turning machines two morticing machines, two planing machines two cut off saws, scroll saw & frame, two sticking machines, two making machines, two flooring machines, two pick boring machines, the property of said plaintiffs & Gray and of great value to them namely two thousand dollars, and the said defendants then and there accepted and received the same of and from plaintiffs and Gray to be well and safely carried and conveyed to Chicago and there within a reasonable time thereafter to be rightly delivered to plaintiff & Gray for reasonable reward therefor. And said plaintiffs aver that said defendants disregarded and neglected and refused to perform their duty in the premises as Common Carriers and although the goods and chattels in this Count mentioned did afterwards, to wit, on or about the twenty eighth day of March then and following safely arrive at & were carried & conveyed by said defendants to Chicago aforesaid and were then and there had & received by said defendants as such Common Carriers aforesaid, to wit, at their Rail Road freight Depot in Chicago and although said defendants then and there well knew the same yet they, said defendants in violation, neglect & disregard of their said duty as aforesaid did not within a reasonable

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time thereafter deliver the said goods & chattels or any part thereof to said plaintiffs and said Gray or either of them or to any other person on their part or belief or notify them or either of them arrived & to receive the same and take them away, but for a long space of time to wit, for three months therefrom neglected and refused so to do: Whereby great damages and losses accrued to and were necessarily incurred by said plaintiffs and Gray, to wit, five hundred dollars for money spent and time lost in ~~sending~~ making divers journeys to Toledo, Cleveland, Buffalo, Boston and other places in searching for said goods and chattels; one thousand dollars for the loss of their said machines in their said business during that length of time; one thousand dollars for the stoppage of their business caused by the delay & neglect aforesaid to deliver said machines by said defendants, two thousand dollars for the loss of time and wages of twenty five workmen during all that time in plaintiffs & Gray's employ, and whereas they, all that time, were thereby prevented from keeping at work in said manufacture and thereby lost their time maintenance and wages amounting to the sum last mentioned, during all that time, and by and through the negligence, misconduct & breach of duty of said defendants in the premises as aforesaid, the said plaintiffs and

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Gray were otherwise greatly damaged in all amount, ing to five thousand dollars.

6th. And also for that whereas the said defendants being Common Carriers for hire as aforesaid namely from Toledo Ohio to Chicago Illinois the said Plaintiffs and Gray delivered to said defendants to wit, on the twentieth day of February in the year eighteen hundred and fifty four to wit, at Toledo to wit, at the County aforesaid and they then and there received as such Common Carriers certain other goods of Plaintiffs & Gray, to wit, one planing machine, one Morkie machine, one Turning machine, two spiking machines, one cut off saw, one scroll saw & frame, one matching machine the same being contained in certain cases or boxes, together with a spring used in welding machinery, the property of said plain tiffs and Gray, and of great value to wit, one thousand dollars, which said articles of ma- chinery were such as to be used in operating a sash door window & blind factory, to be carried by said defendants to Chicago as such Common Carriers and there to be safely & rightly delivered by said defendants to said plaintiffs and Gray within a reasonable time in that behalf for reasonable reward to defendants, Yet the said defendants neglecting their duty as such common Carriers did not safely or securely

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carry or convey the said goods and chattels to Chicago aforesaid, nor safely or securely deliver the same there to the Plaintiffs and Gray although a reasonable time for so doing had elapsed before the commencement of this suit, to wit, the space of sixty days by means whereof the said plaintiffs and Gray were put to and did necessarily incur divers other great costs and damages and losses to wit, five hundred dollars in making divers journeys to Boston, Cleveland Buffalo and Toledo searching for said goods and chattels, and they thereby lost the means of using said machines in the said business and also lost the use and profit of their capital invested in their said business to wit, five thousand dollars for the space of three months and thereby also were prevented from carrying on their said business & manufacture during all that time, and from making divers large profits & gains from the said trades & business during the Spring season of that year to wit, five thousand dollars, and by means of the premises divers, to wit, twenty five skilled laborers & workmen in the employ & service of said plaintiffs & Gray during all that time were useless & unproductive to said plaintiffs & Gray, also in consequence of the premises lost their wages & maintenance in

all amounting to two thousand dollars without receiving any adequate return therefor, and by and through means of the premises the said plaintiffs & Gray were otherwise greatly damaged and aggrieved amounting to a large sum of money to wit, one thousand dollars to wit, at the County aforesaid to the damage of the said plaintiffs of five thousand dollars and therefore they bring their suit &c.

Arthur W. Windett
Plffs. Atty.

And afterwards, to wit, on the 20th day of November in the year last aforesaid the said defendant by N. B. Judd its attorney filed in the office of the Clerk of the Court aforesaid its certain Plea which is in the words and figures following, to wit,

Northern Indiana &
Chicago Rail Road Co

ads

Morrisson et al

And now comes the said Defendant by Judd its attorney and says it is not guilty in manner and form as alleged in that behalf by Plaintiffs and of this it puts itself upon the Country &c.

And Plaintiffs do the like
by A. W. Windett.

Judd - Atty. for Deft.

New & Replication

And afterwards, to wit, at the November Term of said Court first aforesaid, to wit, on the 15th day of November in the year first aforesaid the following proceedings, among others, were had and entered of Record therein, to wit,

Robert D. Morrison and
Howard Priestly survivors of
Thomas Gray deceased

vs.

The Northern Indiana and
Chicago Rail Road Company

Case.

This day comes the said plaintiffs by Blackwell and Windett their attorneys, and the said Defendant by R. B. Judd its attorney also comes, and issue being joined herein it is ordered that a jury come. Whereupon come the jurors of a jury of good and lawful men, to wit, John Mauritzon, J. C. Wilder, Benjamin Watton, A. Spitzer, Stephen Lamb, Robert Vial, A. Miller, Charles Gaskell, John Camack, Irving A. Porter, David Langley, Francis Baer, who being duly elected, tried and sworn, well and truly to try the issue joined aforesaid, and after hearing a part of the evidence adduced the hour for adjourning Court having arrived, said jury is allowed to separate until to-morrow morning at nine o'clock.

And afterwards, to wit, at the same Term of said Court last aforesaid, to wit, on the 16th day of the month & year last aforesaid the following proceedings, among others, were had and entered of record therein to wit,

Robert D. Morrison and
Howard Priestly survivors
of Thomas Gray, deceased

vs

The Northern Indiana and
Chicago Rail Road Company

This day come the parties by their attorney aforesaid and the jurors of the jury aforesaid also come, and the said jury having heard the evidence, the argument of Counsel and Instructions of the Court, retire and consider of their Verdict, under the charge of a sworn officer of this Court, with directions from the Court to seal up their verdict when agreed upon and afterwards separate, to meet again at the opening of this Court to-morrow morning.

And afterwards to wit, at the same Term of said Court last aforesaid, to wit, on the 17th day of the month and year aforesaid, the following proceedings among others were had and entered of Record therein to wit,

Order

Robert D. Morrison and
Howard Priestly survivors
of Thomas Gray, deceased
vs.

23. The Northern Indiana and
Chicago Rail Road Company

This day come again
the said parties by their Attorneys aforesaid and
the Jurors of the Jury aforesaid having agreed upon
their Verdict, come into Court and say, "We the Jury
find the Defendant guilty and assess the Plain-
tiffs damages at the sum of one Dollar."

Whereupon the plaintiffs by their
Counsel move the Court for a new trial herein
and the Court being fully advised in the prem-
ises overrules said Motion, to the overruling of
which said Motion the plaintiffs by their
counsel excepts.

Therefore it is considered that said
plaintiffs do have and recover of the said
defendant their damages of one dollar in
form as aforesaid by the Jury herein assessed
together with their costs and charges by them
about their suit in this behalf expended and
have execution therefor.

Wherefore on Motion leave is given the
said Plaintiffs, until the 15th day of December
next to file their Bill of Exceptions herein.

Judgment

And afterwards, to wit, on the 26th day of November in the year last aforesaid the said Plaintiffs by their said Attorney filed in the office of the Clerk of said Court, their certain Bill of Exceptions which is in the words and figures following, to wit,

In the Cook County Circuit Court
November Term A. D. 1858

Robert D. Morrison
Howard Priestly surviving
partners of Thomas G. Gray
vs.

Chicago and Northern Indiana
Rail Road Company

action on the case

Be it remembered

that now, on this fifteenth day of November of the term aforesaid, the above entitled cause came on to be tried - and a jury having been duly impannelled, the Plaintiffs called as witnesses, on their part William McWilliams who being first duly sworn deposed and stated - That he had known Plaintiffs since the early part of the year 1854 - That he knew the Southern Michigan and Northern Indiana Rail Road Companies. But I think I do not know any such Company as the Northern Indiana and Chicago Rail Road Company. I first knew plaintiffs ⁱⁿ Fall of 1853 was in their employ in Spring of 1854, entered

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their employ latter part of the month of April of that year and remained in their employ three months, was their foreman. In the winter of '54 they had built a factory building for the purpose of carrying on the business and manufacture of making window blinds and sash, doors, scroll work, they had taken several contracts for building and finishing off houses. When I began to work for them they had the building for the factory built, and were waiting for their machinery to come.

I know that the Plaintiffs went East to buy machinery of the kind in question. Machinery came on here I saw it. It came in boxes. There were three large boxes. The machinery consisted of a cutting machine, two turning machines, one saw ditto, two mortising machines, a Planing machine, a scroll saw, two sticking machines, a cut off saw, and a spring to work the mortising machine with. The boxes also contained bits, bolts and all the apparatus belonging to a manufactory of that kind. There was also a scroll saw and plane, a matching machine and planing machine are all one. This machinery was for carrying on the factory business, making doors, windows &c. &c. In the latter part of May I went to Mitchell's warehouse in this City, and helped to get some of them out. Can remember no charge. The boxes were marked to J. G. Gray, Sherman House.

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the deceased partner of the Plffs. I frequently went with some one of the Plaintiffs to the Michigan Southern & Northern Indiana Company's office in their Depot in this City to enquire if the Machinery had come. He began these enquiries in the latter part of March ^{or} first of April 1854, and from that time till the time when the Machinery was received in the latter part of May. It may have been later. The enquiries were made at the office in the Depot at the upper end of Clark St. the sign was Michigan Southern & Northern Indiana of the Book keeper and Persons - Clerks in charge and about the office and Depot. The answers made were that there was no machinery there. Went up there most every morning, we were very anxious to get the Machinery. Plffs. went East to look up the Machinery.

#

Witness Cross examined by Judge, said - That Plaintiffs' firm was Gray, Morrison & Co. was in their employ from latter part of April to middle of July. Went a dozen or fifteen times to the Depot. Morrison and Rusty some times went along, and asked for the Machinery. It was not my business to ask. They asked for boxes marked Gray. Don't recollect that they asked for boxes marked any other way. Think they did not ask for boxes marked Gray, Morrison & Co. The goods which came were marked J. G. Gray Sherman House. Plaintiff that Spring were engaged in building as contractors

They had seven buildings on their hands. They were not carpenters by trade, merely contractors. There was a sign over the Depot "The Michigan Southern Freight office." Don't recollect any other sign. Went with the intention of going to Michigan Southern Freight office. Always went to that Depot.

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Edward Gleason testified as follows. "I know plaintiff The Depot of the Michigan Southern & Northern Indiana Rail Road Company is in Clark St. have known it since it was built here. Have known Plffs since Fall of 1853. Gray went East and bought Machinery in question. It was shipped via Michigan Southern & Northern Indiana Rail Road. It arrived here in March. There was a turning machine, mortising machine, matching machine. Some of them came in boxes, and some outside. Matching machine, planing machine, they were in three or four boxes. I think they were received from the warehouse in the latter part of May. I know we called at the Depot of the Southern Michigan and Northern Indiana Road several times for the goods. The boxes that came in May we got out of Mitchell's warehouse in Chicago. The Clerk at the Depot once told Mr. Gray to call down at Mitchell's warehouse and see if the boxes were there. We asked if any goods had been received directed to Gray, he said there were none there but to go as stated. Gray left me to go

Mitchell's warehouse. I saw the boxes taken from the warehouse. I saw the bill of charge for the goods. My recollection is that they had been in store there two months. They were expected to arrive in Chicago from first to fifteenth of March. First enquiry for them was made fifth of March, and they continued to be made all along till middle of May. I don't know of any notice having been given that the goods were here, and requiring plaintiffs to come & take them away.

Cross examined, said — I built the factory for plaintiffs. It was finished and ready to receive the machinery by the 15th of March. A Paper was here shown to witness by Judd — witness says that his name signed thereto is his signature, that the other signatures were the Plaintiffs. Instrument was a trust deed of the premises to Scoville as trustee for Swift to recover a loan of money borrowed of him by Plaintiffs, witness signed it to accommodate the plaintiffs. The direct examination resumed, witness stated that he was not a copartner of Gray Morrison & Co. with reference to the purchase of the machinery & carrying on the business.

On further cross examination, he stated, That he had lived in Chicago since 1847. ^{Know Gray first in fall 1853} When I first saw Gray & Morrison they told me they were going to build a factory. I built it for them.

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Took the Job - Contract in writing - have not it in my possession. They agreed to all necessary machinery for a sash & blind factory. I agreed with them that if they did that, to carry on the building business in connection with them. Gray got back from Boston in February. This agreement was made then - I began to act as partner after the agreement was made. I was to put in my labor & services, they to put in machinery as part of capital. Don't know where the articles of partnership are. There was no other firm of Gray Morrison & Co. than the one I was in after the articles were made. I am not interested in this case. The partnership did not go into effect because they did not get the machinery.

R. R. Mitchell on part of plaintiffs testifies, That he had known Plaintiffs three or four years - in '54 warehouse was in South Water St. Several boxes were sent to our warehouse from Michigan Southern and Northern Indiana Rail Road Company, marked F. R. Gray & Co. Priestly got them from there, on the 20th May, two boxes & a spring - they were received from Depot 28 March. They sent the goods not delivered from the freight Depot to our warehouse, an arrangement by the Co. with our firm for that purpose had existed for a year. I collected of Plaintiffs, Rail Road Company's freight charges on the boxes, and also the warehouse

charges. I always understood the road to be formed of the Michigan Southern and Northern Indiana Rail Road Company. I have understood that the road from here to the Indiana State line was a part of the Southern Michigan & Northern Indiana Rail Road Line. I ~~was~~ supposed it was all one Company.

X Mitchell Cross examined by Judd said That these boxes were marked on our books as bills to F. R. Gray & Co. (Don't know what was in the boxes Took a receipt for them when delivered. We acted as forwarders. Our arrangement with the Rail Road Company was that we should receive and store all goods they should send us from the Depot. We always give notice of goods received by us from the Depot, generally the next day. Our books show by a private mark that such a notice to F. R. Gray & Co. was put in the Post office, some time within a few days after receipt of the goods. We intended to give notice the day we received the goods and always did so within the week. On direct examination resumed In directing the notice, we always intended to be accurate. We generally followed the direction upon the lid of goods. It was admitted by both parties that the firm of R. R. Mitchell & Co. were responsible warehousemen.

Edward Gleason recalled, testified that he was to

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to have a general supervision of the whole thing. We made regular articles of Copartnership and took several contracts as a firm, but the partnership was abandoned towards the latter end of April or early in May on account of the non arrival of machinery.

Plaintiffs next called N. B. Judd who stated that articles of association under the Statute were filed in the office of Secretary of State in 1849 or 1850 to build the road from here to the State line. Can't tell about the arrangements between the Defendants and the Southern Michigan and Northern Indiana line of Rail Road were. At one time I held the title to the whole road from the State line to the Rock Island road about nine miles. I did not build the road to the State line. It was built by the Southern Michigan & Northern Indiana Rail Road Company, accounts of constitution were kept by the latter Company.

* The Southern Michigan road terminates at there is another road runs to Toledo about fifteen persons here & others in New York prepared the articles of association and five or six at the East. The articles were prepared under the general law and filed in the office of Secretary of State as before stated. I bought the right of way in 1850 I always kept my accounts for the purchase money for the land with the

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Northern Indiana Company and they built it I conveyed the right of way to the Northern Indiana and Chicago Rail Road Company. The road was complete. it's down. The Southern Mich. & N. Ind. Cars were running over the road to Chicago. The Defendants never had any Defendants never ran the road at all, never had any depot in Chicago and the road was not built to Chicago only round the State line to the junction with Rock Island Road. The other companies ran their rolling stock over the track and they have always done it. The articles of association were dated Sept. 9, 1850 and filed that fall. I believe the Chicago and Northern Indiana Rail Road Company became a corporation. I don't think I have received any formal notice that these three roads were consolidated and are doing business as such. I had notice from the President that these roads were consolidated in the year 1856 or 1855 - this was long after track had been bought. I do not know that previously these roads kept separate accounts with each other, the only accounts kept were those of the Southern Michigan and Northern Indiana Rail Road Company, but the accounts were kept for constructing the road in this State with the Northern Indiana Company. Don't believe the Northern Indiana Chicago Company ever any account at all about any

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thing except little accounts I had with it. The Northern Indiana and Southern Michigan Companies had each rolling stock - they own freight station in Chicago, employed & carried on business. The defts company never had any thing to do with carrying on business. I conveyed the right of way to the Northern Indiana & Chicago Rail Road Company - and I regarded them as a Corporation. Here the defendants by their counsel admit that the Chicago and Northern Indiana Rail Road Company are a corporation existing in this State and that it had in its Corporate name a line of road from the State line to the Junction six miles South ^{from} of Chicago.

Mr Williams recalled, said - That he was employed by Plaintiffs as Superintendent for the erection of buildings. The means of knowledge I had whether Plaintiffs ever received any notice of the arrival of the machinery. They had an office in the City and I was in it every day. I used to be there mostly in the morning. I don't know how plaintiffs got notice of the arrival of the machinery. The plaintiffs factory was one for running & using machinery like that in question. They might have had the same kind of work done by hand. But the factory itself would necessarily have to stand idle without the machinery mentioned in the

declaration.

The Plaintiffs here proposed to said witness —
 1st How long did the factory stand idle for want
 of the machinery in question? To which question
 the Defendants by their counsel, objected —

1st Because it is not proper measure of damages, and

2nd Because it does not appear Deft. ever agreed to carry
 and the Court sanctioned the objection, and refused
 to let witness answer the question. To which
 ruling of the Court the Plaintiffs by their Counsel,
 then and there excepted. The witness was allowed

to state That the plaintiffs said factory was situated
 at the corner of North & Clark Streets in Chicago
 about 800 feet from the river, it was erected on a
 piece of ground 60 by 200 feet. Plaintiffs, by their
 Counsel, asked the witness what was his estimate
 of the value of the building erected on the lot.

2 Which question the Court refused to allow the
 witness to answer, for the like reasons as the first
 To which ruling of the Court, the plaintiffs counsel
 then & there excepted,

They then asked the witness, What was the
 value of the machinery in that building prior
 to the time the articles of machinery in question
 were expected to arrive?

Which question, upon the Defendants' objection,
 the Court refused to allow the witness to answer
 for the like reasons, And the Plaintiffs excepted

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then & there to the ruling & opinion of the Court in that behalf

4th They then asked the witness, How many hands were in the employ of the defendants about the time the machinery was expected to arrive?

Which question the Court refused to allow the witness to answer, for the like reasons, and overruled. To which opinion and ruling of the Court the plaintiffs then & there excepted.

5th They then asked the witness. How many factories of a similar kind to that of the Plaintiffs there were in Chicago at the time they were waiting for the arrival of the machinery in question. This question was also, for the like objections, overruled, and the Plaintiffs then & there excepted.

6th They then asked the witness - Whether at the time the machinery was expected to arrive in Chicago, there was not a large amount of building going on in Chicago? Which question the Court overruled, for the like objections, and plaintiffs excepted.

7th They also asked of the witness - What were the pecuniary means of Plaintiffs at the time the machinery was expected to arrive? Which question the Court overruled, for the like objections and plaintiffs excepted.

8th They also asked the witness to state the facts

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in relation to the real loss and damage the plaintiffs sustained by the non delivery of the Machinery in question upon their arrival in Chicago? The Court overruled the question, for the like objections & also because it was too general, and the Plaintiffs then & there excepted.

They then asked the witness —

9th Will you state whether or not, & if so what loss the Plaintiffs sustained by means of the non delivery of the Machinery in question? Which question the Court overruled, for the like objections and also as too general, and the plaintiffs then and there excepted.

10th They further asked — Will you state any fact to satisfy the Jury that the plaintiffs sustained a loss by reason of the non delivery of the Machinery in question? Which question the Court overruled, for the like objections and also as too general, and plaintiffs excepted.

11th They further asked — Will you state, whether or not plaintiffs sustained any loss, and if so, to what extent on account or by reason of the employment of an extra lot of hands requisite in the rigging and management of the machinery in question that was expected to arrive? The Court overruled the question, for the like objections, and plaintiffs excepted.

12th They asked the witness — Will you state

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whether the Plaintiffs lost the benefit of any and if so what contracts for the supply of customers by reason of the non-delivery of the machinery in question. The Court overruled the question, for the like objections and the plaintiffs excepted.

13th They asked him to state, Whether or not the Plaintiffs were deprived of the use of the factory and the land upon which it stood, by reason of the non-delivery of the machinery in question. This question the Court overruled, for the like objections and the plaintiffs excepted.

14th They also asked him to state - Whether or not plaintiffs or any of them were deprived of other employment while awaiting the arrival of the machinery in question. This question was also overruled for the like objections, and the plaintiffs excepted.

15th They further asked him to state, Whether or not witnesses wages were running on during the time the plaintiffs were awaiting the arrival of this machinery, this question was in like manner overruled by the Court, for the like objections and the plaintiffs excepted.

16th They then asked him Do you know, and if so, state, what was the value of the machinery in question. Witness answered. I have made an estimate and find it to be about \$9500.

17th They then asked him - Will you state if you know - What was the use of the machinery in

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in question between the day when it was expected to arrive in Chicago and the time it was received by the plaintiffs through Mitchell & Co. The Court overruled the question for the like objections, and plaintiffs excepted.

184 They further asked - Will you state, if you know what was the value of the use of the machinery in question between the 28th day of March 1854, and the time it actually was received by plaintiffs through Mitchell & Co. This question was overruled for the like objections and the plaintiffs excepted.

An further cross examination witness was shown the following deed of trust and

This Indenture, made and entered into this seventeenth day of March in the year of our Lord eighteen hundred and fifty four - Between Thomas G. Gray, Robert D. Morrison, Howard Priestly & Edward Gleason, composing the firm of Gray Morrison & Co. of Chicago, in the State of Illinois parties of the first part and Grant Goodrich & George Scoville of the City of Chicago, County of Cook and State of Illinois parties of the second part, Witnesseth, That whereas the said parties of the first part are justly indebted unto Richard B. Swift of the City of Chicago, County of Cook and State of Illinois in the sum of Three Hundred dollars, according to the tenor and effect of a certain promissory note bearing even date herewith & due sixty

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days after date, with interest at ten per cent per annum for money borrowed.

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And whereas the said party of the first part, may from time to time within two years from the date hereof, become indebted or liable as maker, endorser, security, acceptor, or otherwise, by reason of some legal liability to the said Richard R. Swift in other sums and amounts, than that first above specified; now therefore these presents witness that the said parties of the first part, in order to secure to the said Richard R. Swift and to his assigns, the prompt and punctual payment of the indebtedness first above specified, as well also of any other legal indebtedness of whatever kind or nature whatsoever either as principal or surety, and in consideration thereof, and the further consideration of one dollar to the said parties of the first part, ^{paid} by the said parties of the second part, the receipt whereof is hereby confessed, do hereby grant, bargain, sell alien, release, convey and confirm, unto the said parties of the second part, and to the survivor of them, his or their heirs, executors and administrators and assigns forever, the following described property & estate, lying, being, and situated in the City of Chicago in the County of Cook and State of Illinois, to wit, The Factory building, together with the machinery therein & appurtenant thereto, belonging to said Gray

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Morrison & Co. and situated at the South west corner
 of Clark & North Streets, ^{said building being forty feet on Clark,} & sixty feet ^{from} North Street.

Provided that said parties of the first part shall at all
 times during said two years have & retain the
 possession of said property, & use & enjoy the same.
 But if default shall be made in payment of any
 indebtedness to said Swift, his executors or assigns
 as herein provided for, or if said Swift, or said
 parties of the second part shall at any time con-
 sider the possession of said property or any part
 thereof, in said parties of the first part to be unsafe,
 or that there is danger of the same being removed,
 then said parties of the second part may forthwith
 take possession of the same & keep & sell the same
 under this deed together with all and singular
 the tenements, hereditaments and appurtenances
 therunto belonging, or in any wise appertaining,
 and the reversions, remainders, rents, issues and
 profits thereof. Also all the estate, right, title, interest
 property, possession, claim, and demand, whatsoever
 as well in law as in equity of the said parties of
 the first part, of in and to the same, and any and
 every part thereof with the appurtenances. In Trust
 nevertheless, for the following purposes, to wit, In
 trust in case default shall be made by the said
 Gray Morrison & Co. their heirs, executors, admin-
 istrators ^{or} assigns, said sum of money to pay
 to the said Richard R. Swift, his heirs, executors,

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administrators and assigns, said sum of money first above mentioned, or in case default shall be made as aforesaid, in the payment of any other sum or sums of money due and owing by the said Gray Morrison & Co. to the said Richard R. Swift, or his assigns, either as principal or surety, upon any note, bond, check, or by reason of any legal liability whatever, within three days after the maturity thereof and the same shall become due and payable, or if default shall be made either in the whole or in part, in the performance of any of the covenants, stipulations and agreements herein contained, then the said parties of the second part, or either of them, or the survivor of them, on application of the said Richard R. Swift, his executors, or his assigns, (or the holder or holders of all or any of the notes, obligations, or legal liabilities above expressed, or so intended to be, of the said Gray Morrison & Co. after having first given ten days notice, in some public newspaper printed in the City of Chicago, may and shall proceed to sell and dispose of all and singular, the property aforesaid, granted or intended so to be; at public sale at the north door of the Court House in the City of Chicago, the whole or any part thereof, with all the right, benefit and equity of redemption of the said parties of the first part, in and to the same or any part thereof, as the said parties of the second part, either of them, or the survivor of them

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his or their legal representatives, or his or their attorney may deem meet and proper, and to adjourn said sale from time to time, as said parties of the second part, either of them or the survivor of them, may deem proper - and as Attorneys of the said parties of the first part, herein for such purpose duly appointed and constituted irrevocably, or in the names of the said parties of the second part, or the survivor of them, or in such manner as said parties of the second part, or the survivor of them, his or their legal representatives or Attorneys may think proper, to make, execute and deliver, to the purchaser or purchasers of the aforesaid premises, or any part or parcel thereof, a good and sufficient deed or deeds of conveyance or bill of sale of the same.

And out of the moneys arising from the proceeds of such sale or sales, after first paying all costs, charges, fees or other expenses, growing out of the management, sale and execution of this Trust, including all traveling expenses, and time spent in going to and from said sale, and all taxes, assessments, and liens thereon, to pay to the said Richard R. Swift, his heirs, legal representatives or assigns, or to the legal holder or holders of any and every kind of the indebtedness aforesaid, described or intended so to be - the amount or amounts which may then be due and unpaid of the sum first above mentioned, or upon any

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43.

account of any other indebtedness or legal liability aforesaid, of whatever kind or nature soever both principal and interest - rendering the overplus of money arising from the proceeds of such sale or sales, if any there shall be, to the said parties of the first part, or their legal representatives or assigns on demand - which sale or sales so made as aforesaid shall forever be a perpetual bar both in law and equity against the said parties of the first part, their heirs and assigns and all other persons claiming or to claim the property aforesaid, or any part thereof, by, from, through, or under them or any of them - and it shall not be the duty of the purchaser or purchasers of said estate aforesaid described, to see to the application of the purchase money. And it is further stipulated and agreed that in case of the death, removal from the City of Chicago, County of Cook, and the State of Illinois or for or on account of the mental incapacity or for any other reason - the said parties of the second part may become unable, or delay be occasioned in the full and perfect execution of the Trusts above specified - the estate hereby vested in the said parties of the second part, and the power herein conferred upon them, shall become divested and revoked, and the same shall become vested in, and conferred upon such person or persons, as the said Richard R. Swift, his executors

or his assigns or the legal holder or holders of the indebtedness aforesaid or their legal representatives shall by instrument under his or their hands and seals, name and appoint for the purpose of carrying out and performing the trusts herein mentioned. And the said parties of the first part for themselves, their heirs, executors, and administrators, do hereby covenant, bargain and agree to and with the said parties of the second part, the survivor of them and their heirs and assigns that at the time of the enrolling and delivery of these presents they are well seized of the property above conveyed, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner aforesaid, and that the same are free and clear of all encumbrances of what kind and nature soever, and against all and every person lawfully claiming, or to claim the whole or any part thereof, they will forever warrant and defend. If at any time said parties of the first part shall cease to be indebted as herein expressed & shall thereupon request a reconveyance of said property, the said parties of the second part are to make such reconveyance, but without expense to them or said Swift.

And that they will during the continuance of these presents before the said property shall be advertised for sale, for or on account thereof,

and before any costs or charges shall accrue thereon
 pay all taxes ordinary and extraordinary, assess-
 ments and impositions levied, assessed or imposed
 on the above described property or any part thereof,
 45, and also pay all rents and liens due thereon what-
 soever.

In Witness whereof, the said parties of the first
 part have hereunto set their hands and seals the
 day and year first above written.

Signed sealed and delivered } J. G. Gray (seal)
 in presence of } Robt. D. Morrison (seal)
 Howard Priestly (seal)
 Edward Gleason (seal)

State of Illinois }
 Cook County } ss

I, Henry L. Rucker acting as a
 Justice of the Peace in and for said County, do
 hereby certify, That Thomas G. Gray, Robt D. Morrison
 Howard Priestly & Edward Gleason the same per-
 sons whose names are subscribed to the above Mort-
 gage or Deed, appeared before me this day in per-
 son and acknowledged that they signed, sealed
 and delivered the said instrument of writing as
 their free and voluntary act, and for the uses and
 purposes therein set forth. And the said instru-
 ment is entered on my clock.

Given under my hand and seal, this day of
 A. D. 1855 H. L. Rucker - J. P.

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On the back of said Trust Deed were the following
endorsements, to wit, No. 52,525. Filed for record
in the Recorder's office of Cook County, July 8th
A. D. 1854 and recorded in Book 77 of Deeds page 637
L. D. Flood - Clk.

In consideration of one dollar & for other good
& valuable considerations to me in hand paid by
Sylvester Sexton of Chicago, Ill. I do hereby sell,
assign, transfer, and set over unto said Sexton
the within mortgage & the indebtedness secured
thereby for which indebtedness a judgment has been
entered in the Cook County Court of Common Pleas
against Morrison & Priestly which judgment is as-
signed to said Sexton by me this day
Chicago Sept. 7th 1854 R. R. Swift (seal)

and testified that he had seen the Plaintiffs write
and also Edward Gleason write, was acquainted
with their hand writing and that the signatures
were the hand writing of the persons named.

The said instrument was then given in evi-
dence - and thereupon Defendants moved to
exclude the testimony of said Gleason, which
motion was overruled by the Court and De-
fendants excepted thereto.

Edward Gleason was recalled by the Plaintiffs
and it was proposed by the Plaintiffs counsel to
repeat and put the same questions to him which

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are above related to have been put to Mr Williams
and which were overruled by the Court, and the
Court refused to allow the witness to answer them
or any of them - and the plaintiffs then and there
excepted to the ruling of the Court in that behalf
They then asked this witness the following questions
(Do you know whether or not the Plaintiffs or either
of them after the Machinery in question was expect-
ed to arrive in Chicago, went Eastward on the
Northern Indiana & Chicago Rail Road, the North-
ern Indiana Rail Road, and the Southern Mich-
igan Rail Road, or any of them, in search of
the Machinery in question? If yes, state, which
of them went, when they went, and what expenses
they or either of them incurred in their journey?

This question the Court overruled, and the Plain-
tiffs excepted. And this was all the evidence
in the case. And the Plaintiffs rested their case.
And the Defendants did the same. Whereupon
the Plaintiffs asked the Court to give the follow-
ing Instructions to the Jury, viz. ^{excepting 1014,}
~~1014~~ If the Jury shall believe from the evidence
that the Defendants as Common Carriers received
the Plaintiffs' Machinery mentioned in the de-
claration to be by them carried to and delivered
to the Plaintiffs in Chicago, and that said Machin-
ery was actually brought by them to their depot in Chi-
cago - it was the duty of the defendants to deliver

Bill of Exceptions

the same to the plaintiffs within a reasonable time. thereafter either by making an actual delivery thereof to the plaintiffs or by giving them notice; and if the jury further believe that the defendants failed to make such delivery or give such notice within such reasonable time, then the law is in favor of the plaintiffs and the jury must find for the Plaintiffs.

2.nd If the jury believe from the evidence that the defendants were at the time of the carriage of the goods in question in Copartnership with the Michigan Southern & Northern Indiana Railroad Company under the firm name of the Northern Indiana and Chicago Railroad Co. and that said firm undertook to safely carry and deliver the machinery in question at Chicago to the said plaintiffs and that they failed to do so, according to their undertaking, the jury will find for the Plaintiffs and assess his damages.

3.rd If the jury find for the Plaintiffs then they are instructed that the true and only measure of damages in this case, is the difference in the market value of the machinery in question at the time it arrived in Chicago and its value in the market at the time it should have arrived. — And if the jury shall find that no evidence has been given upon this subject from which any judgment can be formed then the plaintiffs are entitled to nominal damages only.

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By the Court

damages only. (The above instruction is in the hand writing of the Judge of the Court, & was given by the Court without being asked for by plaintiff & is the giving of words to the jury the offering of propositions)
 If the jury shall believe from the evidence, that the Defendants as Common Carriers received the Plaintiffs Machinery mentioned in the Declaration to be by them carried to Chicago and delivered to the Plaintiffs. And that said Machinery was actually brought by them to their Depot in Chicago. It was the duty of the defendants to deliver the same to the Plaintiffs within a reasonable time thereafter, either by making an actual delivery thereof to the Plaintiffs, or by giving them notice. And if the jury further believe from the evidence that the Defendants failed to make such delivery and also failed to give such notice within such reasonable time, then the Law is in favor of the plaintiffs, and the jury must find a verdict in their favor.

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If the Jury believe from the evidence that the Defendants were to deliver the plaintiffs Machinery to them within a reasonable time after its arrival at the Defendants Depot in Chicago, but that the Defendants neither delivered the same until after six or more weeks nor notified them thereof to the plaintiffs, until after six or more weeks after its arrival, that such notice or delivery was not a compliance with their duty as Common Carriers in these premises and that for such non compliance the defendants are legally liable in this Action.

which are given —

The Plffs' also asked the Court to give to the Jury the Instructions marked "A." "B." "C." "D." & "E." and upon the margin "Refused" viz.

a That if the Jury find for the Plaintiffs in assessing his damages they may award such damages as it reasonably appears from the evidence they have actually sustained by reason of the alleged breach of contract in question.

b. If the Jury shall be satisfied by the evidence that the Defendants made the contract alleged in the Declaration and were in duty bound as Common Carriers to transport the plaintiffs' Machinery to Chicago and to deliver the same to them within a reasonable time after its arrival and that said Machinery arrived there on the twenty second day of March 1854, and that by making reasonable exertion Defendants could have found the Plaintiffs or that they knew them and also their address or place of business, and notwithstanding such knowledge the Defendants neither delivered the Machinery within such reasonable time after its arrival at the Depot in Chicago. nor notified the Plaintiffs ^{by} that shortly after the arrival of the Machinery they sent it into store where it remained for several weeks without notice to the Plaintiffs and when inquired of by the Plaintiffs about the arrival of the Machinery of the Defendants

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denied all knowledge of it, that in the absence of proof to the contrary these facts if found by the jury from the evidence are evidence to be considered by the jury in determining whether the Defendants were guilty of gross negligence and breach of duty or not, and that the Defendants are liable to the Plaintiffs in this action for whatever damages they sustained by reason of the Defendants' conduct in the premises.

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C. That if the jury shall believe from the evidence that the Defendants knew the Plaintiffs or their address, or place of business in Chicago, or could by reasonable endeavors have ascertained the same, it was the duty of the Defendants upon the arrival of the Machinery at their Depot, duly to notify the Plaintiffs of its arrival and take it away within a reasonable time thereafter or to make an actual delivery of the same to them, and if they are satisfied from the proof in the case the Defendants neither gave notice nor made delivery of the Machinery within a reasonable time after its arrival, to the Plaintiffs they are liable in this action for whatever damages they have sustained in consequence of the Defendants' default.

D. If the jury shall find for the Plaintiffs they may in assessing the damages properly take into consideration as a guide to the exercise of

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the discretion which the law vests in them in this case the circumstances of the plaintiffs at that time, the state and nature of their kind of business in Chicago then, the extent and character of the Plaintiffs' own business at that time, the loss of time and traveling expenses if any, occasioned by search after the Machinery after its actual arrival in Chicago, and before its delivery, whether by losing contracts which otherwise they could have made or by being thereby disabled from performing or completing contracts, which they had made which otherwise they could have performed and completed, or by loss of time and wages of the workmen, who by reason of the delay aforesaid were kept out of employment together with whatever other damages the Plaintiffs sustained by reason of the defendants misconduct and negligence.

If the Jury believe from the evidence that the Defendants violated their duty in the premises to the Plaintiffs, the Plaintiffs are entitled to maintain this action even without proof of actual or specified damages, and if the Jury shall find a verdict for the Plaintiffs it will be their duty to give such damages as upon the whole evidence they shall be satisfied the Plaintiffs have sustained in consequence of the defendants wrongful conduct. That the damages are not to be confined to the market value of the Machinery, then

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or now, or to what it may have cost the Plaintiffs to purchase it, or to their expenses and loss of time and money spent in searching for it while it was in the Company's Depot or warehouse, or to the Plaintiffs' loss in respect of particular contracts caused by non delivery of the Machinery during that time and the Jury will be justified in making such inferences as to the Plaintiffs' losses of business, time and money as they may think warranted by the whole evidence in the case, and may give substantial damages to compensate such losses.

That if the Jury shall find for the Plaintiffs and believe from the evidence in the case that the conduct of the Company's Agents and employees towards the Plaintiffs when they went to the Depot to enquire for their Machinery was improper and insolent and that they showed no disposition to assist the Plaintiffs in finding the Machinery, but neglected to give them proper assistance or information to enable them to find it, that in assessing the damages the Jury may take such conduct and behavior into their consideration either in mitigation or in aggravation of damages as they shall judge proper in the exercise of a just and sound legal opinion.

Which the Court refused to give and the Plffs. by their Counsel excepted to the opinion

Bill of Exceptions

of the Court in refusing to give the same,

And the Court upon the part of the Defendants gave to the Jury the following Instructions, viz,

1 If the Jury believe from the evidence that the Defendants at the time of the making of the alleged contract was a corporation which at one time owned a small link of Rail Road in this State over which the Michigan Southern and Northern Indiana R.R. Co. ran their cars in order to reach the City of Chicago - that the Defendants had no cars or rolling stock and had no connection with or any interest in the business of said Companies as Copartners and had no Agents and exercised none of the franchises of a Corporation then you will find for the defendants.

2 Even if the Jury believe from the evidence that the Machinery of Plffs. were received by Defs. as Common Carriers to be conveyed from Toledo to Chicago - Yet if you further believe that the Machinery was brought by the Defendants in due time to Chicago and the Plaintiffs not being at the Depot to receive it - it was sent to the warehouse of Mitchell & Co and the Plffs. notified thereof - the liability of Defs. thereby ceased and you will find for Defs.

3 Unless the Plaintiffs have shown by evidence

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that the Defendant received the Plaintiffs' goods and undertook some duty in regard to them either as Common Carriers or Warehousemen and failed or neglected to perform that duty then you will find for the Defendant.

4 Even if the Jury believe from the evidence that the Defendant has committed a breach of duty in respect to the property of the Plffs. in this case - no competent evidence of damages having been offered by the Plaintiffs - You can only give your verdict for nominal damages.

5 If the Jury believe from the evidence that the delay in receiving the Machinery complained of by the Plaintiffs in this case was the result of the Boxes having been wrongly marked so that the Agents of the Company could not notify the Plaintiffs of their arrival and that the said Agents used due diligence in ascertaining and notifying the owners of the arrival of said goods, then you will find for the Defendant.

To the giving of which said Instructions on the part of Defendants, each and all, the said Plaintiffs by their Counsel then and there excepted - Whereupon the Jury retired to consider of their verdict, and found a verdict in favor of the Plaintiffs and assessed his damages at one dollar. Whereupon the said

Bill of Exceptions

Plaintiffs entered a Motion for a new trial. Which was overruled by the Court and the Court rendered Judgment on the verdict for Defts. And Plaintiffs by their Counsel then & there excepted to the ruling of the Court in denying their Motion for a new trial, and prayed an appeal to the Supreme Court and that the Court allow, sign and seal this their Bill of Exceptions, which is accordingly done

George Manierre (seal)
Judge of 7th Judicial Circuit
Illinois

State of Illinois, }
COUNTY OF COOK. } S. S.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of their Declaration, Plea, Replication, Answer, Judgment & Bill of Exceptions in a certain cause now pending in said Court on the Common Law side thereof, wherein Robert R. Morrison et al. known as were Plaintiffs vs and Chicago & Nor. Indiana R. R. Co were defendants.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this 27th day of January A. D. 1859

Wm L. Church
Clerk.

In the Supreme Court of the State of
Illinois. Third Grand Division.
April Term A.D. 1859.

57.

Howard Priestley
Robert D. Morrison

Plaintiffs in Error.

The Northern Indiana and
Chicago Railroad Co.
Def. in Error.

And now comes the said Plaintiffs in Error
by Arthur H. Windett their attorney and
counsel. That in the record of proceedings
and judgment of the Court below in the
cause above entitled, there are great
and manifest Errors, viz:

First.

The Court erred in overruling the Plaintiffs
Motion for a new trial.

Second.

In not permitting the Witness M. Williams
and Gleason to answer the interrogatories
adduced to them by Plffs. Counsel, and marked
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 17. 18.

Third

In not permitting the witness Gleason to
answer the interrogatories relative to
Plffs. loss and expense in working dinner pro-
-cesses in search of the Machinery.

~~Fifth~~ 18

~~Fourth~~ In giving the Partitions No. 3. as the
Measure of Damages.

~~Fifth~~ In refusing to give the Partitions asked
~~first~~ for by Plaintiffs marked 'A' 'B' 'C' 'D' 'E' 'F'.

~~Sixth~~ In giving the instructions asked for by
defendants.

For them, and for dies, other errors,
in the said record of proceedings,
and judgment, the said Plaintiffs
in Error pray that the said judge-
ment may be in all things re-
versed, and a new trial awarded.

Arthur W. Windett
Atty for Plffs. in Error.

Howard. Priestly et al
Plaintiffs in Error

^{vs}
The Northern Indiana
& Chicago Railroad Co
Defendants in Error

Supreme Court of Illinois.
April Term A.D. 1860.
Third Grand Division

And now comes
the said defendant in Error and says by
its attorneys Mead & Winston that there is no
error assigned by said Plaintiffs in Error
in said Record and proceedings of said
Court before whom said Cause was heard
and determined

Chicago March 15th 1860

Mead & Winston
Atty. for Dft in Error

30 ~~45~~
In the Sub. Court.
Tomb G. D.
Ap. T. Hoo.

Edward P. Hooty
and

The Chicago and Northern
Indiana R.R. Co.

Printer in Error.

Filed April 19, 1860
L. Deland
Clk.

Judd & Winstan.

~~25~~ 30
Circuit Court of Cook County

Robert W. Morrison et al
Survivors

(vs)

Chicago & North Western R.R. Co.

Record &

Assignment of
Errors

Filed March 6, 1860
L. Leland
Clerk

A. W. Windette