

No. 14578

Supreme Court of Illinois

Haggerty

vs.

Fisher

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No

125

J. P. Middleton & Co., Stationers, 196 Lake St.

X
Haggerty
L. W. L.

Tucker

14528

Lacon, Ill., April 2, 1864.

J. B. Rice, Esq.

Dear sir:

Please issue writ of error
and scire facias to Marshall - plaintiff in error
Davenport Fisher, (deft. below,) and defendant in error
Dennis Haggerty. You may send the papers to me,
at this place. I inclose \$11.50 for fees.

Yours,

James St. Clair Boul.

125
Fisher
as
Haggerty.

Filed April 4 1884
L. Leland
Clerk

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Marshall County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Marshall County, before the Judge thereof, between Dennis Haggerty

plaintiff, and Davenport Fisher

defendant, it is said that manifest error hath intervened, to the injury of the said defendant

as we are informed by his complainant the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same; in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Dennis Haggerty

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April A.D. 1864 next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Dennis Haggerty

notice, together with this writ.

Proctored by J. C. Walker

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this fourth day of April in the year of our Lord One Thousand Eight Hundred and Sixty-four

L. Deland

Clerk of the Supreme Court.
J. B. Rice Deputy

125-

Davenport Fisher

No. 125 vs.

Dennis Haggerty

SCIRE FACIAS.

FILED.. Apr. 19... A. D. 1864.

L. Seland Clerk.

I have served this writ
by reading the same to
the within named
Dennis Haggerty on this
6th day of April A.D. 1864
J. A. Daggart
Sheriff
Marshall Co
Sheriff fees
65 cents

Illg

Supreme Court of Illinois

3^d Grand division

Apr term AD 1864

Devanport Fisher plaintiff in error

Dennis Hagerly deft in error

Error to Marshall Co

The question raised in this case for the decision of this Court and the only one of importance is whether the Court below erred in refusing a new trial for the reason assigned that the verdict was contrary to the evidence & the instructions.

The jury found from the evidence that the plaintiff by his contract with the defendant in error rendered himself personally liable to pay the wages earned by defendant.

The suit is for wages of defendant Hagerly for drayage of Beef & Pork. He recovered one Dollar & sixty five cents below; & plaintiff being error and contends that defendant was at work for Fisher & sons instead of himself.

This was a matter fairly submitted to the jury & they found for defendant in error.

John Ryan testified that he and defendant were hauling beef & pork and at about six o'clock ^{P.M.} quit and started home. That plaintiff wanted them to go on hauling but they would not unless they got extra pay.

That when they got off a short distance O C Martland (in the employ of Fisher & sons as the evidence shows) came up with them & told them to go back that Devonport the plaintiff would pay them extra. That they went back & Hagerly hauled eleven loads. He testified that before that time they were hauling for Fisher & sons.

The witness Martland testified substantially to the same employment by plaintiff.

The evidence tended to show that plaintiff in error was acting as agent in this business for Fisher & sons.

But it does not certainly appear that Hagerly the defendant knew it or knew he was at work for Fisher & sons. The language used in making the contract for extra wages would imply that plaintiff made

the contract in his own name
as his name only was used.

The jury had a right to infer
that the plaintiff agreed to pay for
the extra work individually and
they so found. A jury has twice
found these facts the same way in
the lower courts, and they should
not be troubled again with such
a small matter.

John Burns
per Deft in
Error

no 128
Devonport Fisher
vs

Dennis Haggerty
Error to Marshall
points made by depts
Atty

Yours April 28. 1864
Dennis M

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

DAVENPORT FISHER }
 vs. } *Error to Marshall.*
DENNIS HAGGERTY. }

ABSTRACT OF RECORD.

- 1 *Placita coram, &c.*
 appellant
- 2 Summons against defendant below, from Ira Norris, J. P.
 Returned, served.

 Transcript on change of venue to B. T. Baldwin, J. P., shows
 that the suit was brought on an account for labor; amount of
 demand not stated.

 Account filed before Baldwin, J. P. "Davenport Fisher, to
 Dennis Haggerty, Dr. 1863, June 6: To hauling 11 loads of
 pork after working hours, 25 cents load, \$2.75."
- 3 Transcript from Baldwin, J. P., shows trial, verdict for plain-
 tiff below for \$2.20, and appeal taken.
- 4 Appeal bond.
- 5 Trial in circuit court; verdict for plaintiff below for \$1.65;
 motion for new trial.
- 6 Motion for new trial overruled; judgment.

BILL OF EXCEPTIONS.

Evidence for plaintiff below.

John Ryan.—Some time last summer Haggerty and I were each hauling beef and pork from the packing-house to the landing, where they were loading a boat. When we quit, about six in the evening, Davenport Fisher wanted us to go on hauling, but we wouldn't do it, ^{unless} we should get extra pay for work done after hours. He wouldn't give what we asked, and we came off.—When we got up town, Martland came after us, and told us to come down and go to work; that Davenport said he would pay the extra. We went back, and Haggerty hauled eleven loads of barrels of beef and pork from the packing-house to the landing, with his horse and dray. I hauled the same kind and number of loads, from and to the same places, at the same time. It was worth fifteen cents a load.

8 *Cross-examined:* Haggerty and I had been working at the same kind of work all the same afternoon, with our horses and drays. We were hauling pork and beef from the packing-house of Fisher & Sons, to the landing. We were working for Fisher & Sons at \$3 a day. The hauling and shipping were superintended by Davenport Fisher. We quit at six, and he wanted us to go on, as the boat was not quite loaded. We wanted extra wages for work after six, but he wouldn't give what we asked, and we drove off. Just as we got up town, Martland came after us, and said: "Davenport wants you to come back, and says he will pay you the extra." We then went back, and did the work testified to. It was not quite dark when we got through. We hauled from the same place to the same place, and the same kind of stuff, as before six. We went into the office of Fisher & Sons, and were paid for the work done before six by Charles H. Madely, a clerk of Fisher & Sons.—The sign of that firm was over the door of the office. We went into the same office to get our pay when we got through the work done after six. He refused to pay what we asked, fifteen cents a load, and offered us forty-five cents each for the work done after six. We said if he did not pay the price we asked, we should sue for twenty-five cents a load. This was Saturday

evening. The next Monday morning we began suits. The hauling and shipping after six were superintended by Davenport Fisher, the same as before.

Re-examined.—Davenport Fisher usually staid in and about the office mentioned, made it his head-quarters, and kept some of his stuff there.

9 *John Piper.*—I am engaged in business; have frequently had hauling done. It is worth, by the load, ten cents to haul from Fisher & Sons' packing-house to the landing, and it is worth one-half more after six in the evening.

Evidence for Defendant, below.

O. Martland.—I remember the occurrence testified to by Ryan. He and Haggerty were working that day for Fisher & Sons, hauling from their packing-house to the landing. We were loading a boat. Davenport Fisher superintended the hauling and shipping. He was an agent of that firm, and attended to all their affairs here. Ryan and Haggerty quit work about six, and shortly afterwards I went up town and told them Davenport wanted them to come back, and would pay them the extra price. I was also in the employ of Fisher & Sons, and acted for them as their agent in this matter. Haggerty and Ryan came back, and each hauled eleven loads. This work was done for Fisher & Sons. The hauling done after six was of the same kind, and from and to the same places, as before six, and was superintended by Davenport Fisher as before. Haggerty had frequently before done hauling of the same kind for Fisher & Sons.

10 *Charles H. Madeley.*—I remember the difficulty with Haggerty about pay for hauling. I paid him and Ryan for the work done before six, in the office of Fisher & Sons. Their sign is over the door. I was then in the employ of Fisher & Sons, and acted for them in making that payment. The firm of Fisher & Sons then consisted of Jabez Fisher, James T. Fisher, George J. Fisher and Nathaniel G. Chapin. Davenport Fisher was then in the employ of the firm, as their clerk and agent, and general su-

perintendent of their business and property here, working for a salary. Ryan and Haggerty came into the same office again that evening to get their pay for the work done after six.—Davenport and I were in the office. He offered to pay them, but not as much as they demanded, and they went off. I had frequently before, as the agent of Fisher & Sons, paid Haggerty for hauling done for them, and for work in their packing-house.

Ira Norris.—I was an acting J. P. last summer. Ryan and Haggerty came to me and began suits for claims for hauling. I remember the bills or accounts filed in those cases. Don't exactly know what became of them, but they were changed. I think perhaps I last saw the accounts in the hands of Mr. Boal, but my impression is that Mr. Cummins took them, and that they were thrown away or torn up. Don't remember whether this was before or after the summons was served.

James G. Cummins.—I was attorney for plaintiff in this case and in Ryan *vs.* Fisher. The accounts originally filed in the suits were, I think, torn up by me, and the present ones substituted.

Ira Norris, recalled.—The accounts filed in these cases were against Fisher & Sons. I made them out from the statements of the plaintiff. The summonses were against Davenport Fisher.—Afterwards the accounts were changed, to agree with the summonses.

James St. C. Boal.—I was retained by the defendant in this case, and in Ryan *vs.* Fisher, before Ira Norris, Esq. After I had been informed that summonses had been served, I went to Mr. Norris' office, and looked at the papers in the cases. The account on which this suit was brought was about as follows:

“Jabez Fisher, James Fisher, George Fisher, and Nathaniel G. Chapin, by Davenport Fisher,
To Dennis Haggerty, Dr.
To hauling, &c.”

The words “by Davenport Fisher” occurred in the account either just after the names of the members of the firm, or at the bottom of the account. The accounts were, I think, alike in

12 both cases, with the exception of the plaintiffs' names. I took a change of venue in both cases, and the papers were sent to Justice Baldwin. When the papers came before him, I found that the accounts I had seen in the papers had disappeared, and new ones had been substituted. The new ones were against Davenport Fisher, to agree with the summonses. This change was made without my knowledge or consent.

This was all the evidence in the case.

Instruction.

13 refused *after verdict - no for new trial*
 Errors assigned, that the verdict is against the evidence, and that the court refused a new trial.

POINTS MADE BY PLAINTIFF IN ERROR.

1. The evidence shows that the plaintiff in error was merely an agent in the hiring, and that the defendant well knew that fact, and the verdict is therefore clearly and palpably wrong.

2. Where it is *clear* that wrong has been done by a verdict, and the evidence leaves no doubt that it should have been the other way, the court ought to give the aggrieved party a new trial.

JAMES ST. CLAIR BOAL,
Attorney for Plaintiff in Error.

125

C. D. Fisher

vs

C. D. Waggety

Abstract

Filed Apr 25, 1864

J. S. Leonard

Supreme Court, Third Grand Division,
April Term, 1864.

Davenport Fisher,
plaintiff in error,
vs.
Dennis Haggerty,
defendant in error.

Error to Marshall.

Argument for Plaintiff in Error.

Haggerty, the plaintiff below, was hauling beef and pork for Fisher & Sons to load a boat. At six in the evening he objected to going on with the work without additional pay for labour after working hours, and quit. The defendant below, an agent of Fisher & Sons, who superintended the shipping, sent Martland, another agent of that firm, after Haggerty, and he came back and continued the same job he had been engaged upon. In this transaction, it can not be denied, and is not denied, that Fisher, the defendant below, was in fact only the agent of Fisher & Sons, and the sole question remaining is whether Haggerty knew that fact.

The truth is, and it is apparent from the evidence, that Haggerty intended to see

* Fisher remiss - that the proof does not even show - that defendant sent Martland - it merely shows that Martland told plaintiff so -

Fisher & Sons when he brought this action, but through the blundering ignorance of the justice to whom he told his tale, the summons was issued against Havensport Fisher. The difficulty about the pay occurred Saturday evening, and on Monday morning Haggerty stated his claim to the justice, giving him the names of the members of the firm in a manner substantially correct, but the justice issued the summons against the wrong man. After Haggerty had got an attorney, the latter saw this would not do, so the account filed was surreptitiously destroyed, and a new one substituted.

When we add to this the fact that Haggerty, as his own witness testifies, was working for Fisher & Sons until six; that the work done after six was only a continuation of the same job; that for both pieces of work he went into the office of Fisher & Sons, whose sign was over the door, to get his pay; that he had frequently before been paid in the same office by the clerk of the firm for the same kind of work; that the defendant below superintended the shipping as well before six as after; and ^{that he} was the general agent of the firm: we must conclude

that Haggerty well knew that the work was all done for the firm, and it is evident that his suing Slawson & Fisher was the result of a blunder.

It is said upon the other side that this matter has been twice passed upon, and found against the plaintiff in error, and that another jury ought not again to be troubled with a case involving so small an amount. It is true the jury found against the plaintiff in error, but that jury could only get one idea into their heads, and that was, that Haggerty ought to be paid for his work, and they were not very particular who paid him; and to the utter amazement of everybody who heard the trial, they found for the plaintiff below. It is true also that the amount involved is small, but right is right, whether the sum in question is large or small, and the law ought not to be twisted because the sum of money in controversy is small. This plaintiff in error would never have brought this case here for the amount of money there is in it, but for him and for all others in similar positions there is an important principle involved in this case. Aside from

that sense of wrong which a man naturally feels when an unjust claim, enforced in a suit begun in a blunder, is successfully prosecuted against him, it is all-important for him to know what are his rights and duties in his situation. The evidence discloses that he is the clerk and general agent of a firm doing business and employing men - a firm that ~~does business~~ ^{besides the plaintiff,} has an office, and other agents, and does business openly under the sign of the firm. Is he to be required, every time he hires a man for his employers, or talks to a man about working for his employers, to repeat over to that man the names of the members of that firm, and say expressly that he is only an agent, and that he hires the man for Fisher & Sons, a firm composed of such and such men? This certainly can not be so.

For this plaintiff in error there is much more involved in this suit than the mere amount of the judgment. If this verdict is sustained, he may immediately be sued, upon the same kind of evidence, for a multitude of claims, amounting in the aggregate to hundreds of dollars, and he can have no redress in this court because the amount in each case is

125. 91

Davenport Fisher

vs.

Minnie Huggerty

Argument

for plaintiff in error.

Filed Apr. 29. 1864.
S. Island
Clk.

James St. Clair Roal,
for plaintiff in error.

Filed
1863

Plas before the Circuit Court of Marshall County in the State of Illinois, at a term thereof begun and holden at the Court House in the City of Vaco in said County of Marshall. On Monday the Twenty fifth day of January in the year of Our Lord One thousand Eight Hundred and sixty four, Present the Hon Samuel V. Richmond Judge of the 23rd Judicial Circuit of the State of Illinois presiding, James St. C. Boal States Attorney for said Judicial Circuit, Joseph R. Taggart Sheriff of said Marshall County & Sheldon Arnold Clerk of said Circuit Court,

Be it Remembered that On the 30th day of December AD 1863, Certain papers were filed in said Court, which papers are numbered, One, two, three, four, five, and which said papers are in the words and figures following "to wit"

No 1

Summons

State of Illinois
Marshall County }

The People of the State of Illinois
To any Constable of said County - Greeting

You are commanded to summon Davenport Fisher to appear before me at my Office in Laco on the 13th day of June 1863 at 9 o'clock A.M. to answer the complaint of Dennis Haggerty for a failure to pay him a certain demand not exceeding one hundred dollars; and hereof make due return as the law directs

Given under my hand and seal at Laco, this 8th day of June A D 1863

Ira Norris J P Seal

On which said Summons is the following endorsement

June the 9 - 63
Served by reading the within to Defendant
Serving .25
Meledy 5

Re Black

No 2

Transcript from Ira Norris J. P. Docket

Dennis Haggerty
Vs
Davenport Fisher

Suit brought on an account for labor

Docketing 20
Ent. Settlement 10
Sums 25
55

1863 June 8. Summons issued returnable on the 13th of June 1863 at 9 O'clock A.M. given Constable Black

1863 June 9 Summons returned served by reading
1863 June 13 Defendant by attorney files affidavit asking for a change of venue, whereupon the papers in the case are ordered sent to B.T. Baldwin the nearest Justice of the Peace

Affidavit 25
Transcript 25
Pl. by Deft 50

Constable Black
Summons 30

A True Copy from my docket

Witness my hand this 13th of June 1863

Ira Norris J. P.

No 3

Account

Davenport Fisher

To Dennis Haggerty Dr
1863 June 6 To hauling 11 loads of pork ^{after} working
horns 25^{cts} per load \$ 2.75

No 4

Transcript from J P Baldwin

State of Illinois }
 Marshall County } In Justice's Court
 Dennis Haggerty }
 Vs } Suit Brought on an a/c
 Davenport Fisher }

1863 June 13th Transcript & papers received
 J P Morris fees 55 from Ira Morris Esq in the above entitled
 Court Black 30 case, The parties appear & on application of Deft
 the cause is continued to the 16th inst at 10 o'clock A.M.
 Affi^c 25 1863 June 16th Parties appear & on application of
 Transc^t 25 Plff Verine issued and put into the hands of
 Paid by Deft 50 Const Black, Verine served to Henry Anski,
 Docketing 20 Jeremiah Trone, Joseph M. Taylor, John Chase
 Continuance 15 James B. Martin & Daniel M. Robinson were
 Sworn as Jurors 30 sworn as Jurors, After hearing the testimony
 " Vt 40 of all the witnesses, the jury brought in the
 Verine 25 following verdict, to wit: We the jury find for
 Ent. Verdict 12 the Plff, and assess the damages at two dollars
 " Judgment 25 & twenty Cents, signed by J B Martin
 " Satisfactor 10 foreman, Therefore it is considered that the
 J P fees } 1.77 said Dennis Haggerty do have and recover of
 Baldwin } the said Davenport Fisher his debt aforesaid
 Const Black 75 of two dollars and twenty Cents, and his costs
 Jury fees } 1.50 of suit, which costs are herein taxed at four
 Paid by Plff } dollars and eighty seven Cents
 1863 June 16th 1863 June 29th Plff to the Circuit Court with
 Judgment against Wm. Fisher Security
 Debt - Debt 2 20 A True Copy taken from my docket.
 Cost 4 87 In Witness whereof I have hereunto set my hand
 J 7 87 & seal this 16th day of December A D 1863
 Appeal 25 B T Baldwin J P Seal
 Transcript 25 Total Amount of
 50 Costs \$ 5.87

Appeal Bond

Know All men by these presents that we Davenport Fisher and William Fisher of the County of Marshall in the State of Illinois, are held and firmly bound unto Dennis Haggerty of the County and State aforesaid in the penal sum of twenty dollars lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs executors and administrators, jointly, severally, and firmly by these presents. Witness our hands and seals this twenty ninth day of June A. D. 1863

The Condition of the above Obligation is such, That whereas the said Dennis Haggerty did on the seventeenth day of June A D 1863 before B T Baldwin Esq, a Justice of the Peace for the said County of Marshall recover a judgment against the above bounden Davenport Fisher for the sum of two dollars and twenty Cents and costs of suit, from which judgment the said Davenport Fisher has taken appeal to the Circuit Court of the County of Marshall aforesaid and State of Illinois, So if the said Davenport Fisher shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void; Otherwise to remain in full force and effect

Approved by me at my office
this 29th day of June A D
1863

B. T. Baldwin
Justice of the Peace

Davenport Fisher Seal
Wm. Fisher Seal

Afterwards "to wit" February 4.th AD 1864, the same being one of the days of said term of said Court, Of said January term AD 1864, an Order was Entered of Record in said Court, which is in the words and figures following "to wit"

Gennio Haggerty } Appeal,
vs. } On this day Comes the Plaintiff by
Gavenport Fisher } Burns & Cummins his Attorneys, and as
well the said Defendant by Boal his
Attorney, and issue being Joined herein, between the parties
Whereupon it is Ordered by the Court that a Jury be called
to try the issues in this Cause, and thereupon a Jury
being Called Come "to wit" R. H. Richards, Ernst Krigeisen
John Rathbun, William Search, Samuel Hop Rinsen, E. H. Tappert
Andrew Broadbush, James Brasfield, Franklin Schaffer, John
D. Hall, Jacob Wocum & E. R. Eckley, twelve good and
lawful men, who were duly Empannelled and sworn to
well and truly try the issues in this Cause, and a true
Verdict render according to the Evidence, And the Jury
Having heard the Evidence, the arguments of the Counsel, and
the instructions of the Court, retire to Consider of their Verdict
and upon Coming into Court the Jury for a Verdict say, we the
Jury find the issues herein, for the Plaintiff, and assess his
damages to the sum of One Dollar and sixty five Cents, and
thereupon Comes the Defendant and Enters a motion for a
New trial herein,

Afterwards to wit February 5.th AD 1864, the same being
One of the days of said term of said Court Of said
January term AD 1864, an Order was Entered of
Record in said Court, which is in the words and
figures following "to wit"

6.
Cennis Haggerty Appeal
vs.
Barnes & Cummings } On this day again Comes the Plaintiff
Barnes & Cummings } by Barnes & Cummings his attorneys, and
as well the said Defendant by Boal
his attorney, and this Cause Come on to be heard upon
the motion of the Defendant heretofore made at this term
for a new trial herein, and was argued by Counsel, and
the Court having considered said motion and being
fully advised in the premises, doth Order that said
motion be Overruled, And thereupon Comes the
Defendant and Enters a motion to apportion the
Costs in this Cause, And the Court having considered
said motion, and being fully advised in the premises
doth Order that said motion be sustained, and
that the Costs be apportioned herein as follows "to wit,"
that the Plaintiff pay two Dollars of the Costs which
have accrued in this Cause, and that the Defendant
pay the ballance of said Costs, It is therefore
Considered by the Court, that the Plaintiff have
and recovers off the said Defendant, the said sum
of One Dollar and sixty five Cents his damages
so assessed by the Jury as aforesaid, also his
Costs and Charges in this behalf Expended,
"Except the two Dollars Costs, by the Court aforesaid
adjudged against the said Plaintiff" and that
said Plaintiff have Execution therefor;

Afterwards "to wit" February 8.th AD 1864, the same
being one of the days of said term of said Court of
said January term AD 1864, Comes the Defendant
by James St. C Boal his attorney, and files his Bill
of Exceptions herein, which is in the words and
figures following to wit,

In the Marshall Circuit Court

January Term A.D. 1864

Dennis Haggerty

vs

Davenport Fisher

Appeal

John Ryan

Be it remembered that on the trial of this cause, the plaintiff, to sustain the issues on his part, called John Ryan who testified as follows

Some time last summer Haggerty and I were each hauling beef and pork from the packing house to the landing, where they were loading a boat

When we quit, about six in the evening, Davenport Fisher wanted us to go on hauling, but we wouldn't do it unless we should get extra pay for work done after hours. He wouldn't give what we asked, and we came off. When we got up town, C. C. Martland came after us and told us to come down and go to work that Davenport said he would pay the extra. We went back and Haggerty hauled seven loads of barrels of beef and pork from the packing house to the landing with his horse and dray. I hauled the same kind and number of loads from and to the same places, at the same time. It was worth fifteen cents a load

Upon cross-examination the witness further testified as follows

Haggerty and I had been working at the same kind of work all the same afternoon with our horses and drays. We were hauling pork and beef from the packing house of Fisher and Sons to the landing. We were working for Fisher & Sons, at three dollars a day. The hauling and shipping were superintended

8.
by Davenport Fisher, We quit at six o'clock, and he wanted us to go on, as the boat was not quite loaded, We wanted extra ~~estages~~ for work after six, but he wouldn't give what we asked, and we drove off, Just as we got up town O. C. Martland came after us and said to us "Davenport wants you to come back, and says he will pay you the extra" We then went back and the work testified to, It was not quite dark when we got through, We hauled from the same place to the same place, and the same kind of stuff, as before six, we went into the Office of Fisher & Sons, and were paid for the work done up to that time by Charles Madeley clerk of Fisher & Sons, The sign of that firm was over the door of the Office. We went into the same Office to get our pay, when we got through the work done after six, He refused to pay what we asked, fifteen cents a load and offered us forty five cents each for the work done after six. We said if he did not pay the price we asked, we should sue for twenty-five cents a load, This was Saturday evening, The next morning we began suits. The hauling and shipping after six were superintended by Davenport Fisher, the same as before

In answer to questions by the plaintiffs counsel the witness said

Davenport Fisher usually staid in and about the office mentioned; made it his head quarters, and kept some of his stuff there

The Plaintiff then called John Piper, who being sworn testified as follows

John Piper

I am engaged in business, Have frequently had hauling done, It is worth, by the load, ten cents

to haul from the packing house of Fisher & Sons to the landing, and is with one half more after six o'clock in the evening.

Here the Plaintiff rested

The Defendant then called as a witness O. C. Montland who being sworn testified as follows

O. C. Montland

I remember the occurrence testified to by Ryan. He and Haggerty were working that day for Fisher & Sons, hauling from their packing-house to the landing. We were loading a boat, Davenport Fisher superintended the hauling and shipping. He was an agent of that firm and attended to all their affairs here. Ryan and Haggerty quit work about six, and shortly afterwards I went up town and told them Davenport wanted them to come back, and would pay them the extra price. I was also in the employ of Fisher & Sons, and acted for them as street agent in this matter. Haggerty and Ryan came back, and each hauled eleven loads. This work was done for Fisher & Sons. The hauling done after six was of the same kind and from and to the same places as before six, and was superintended by Davenport Fisher as before. Haggerty had frequently before done hauling of the same kind for Fisher & Sons.

The defendant then called Charles Madley, who being sworn testified as follows

Chas Madley

I remember the difficulty with Haggerty about pay for hauling. I paid him and Ryan for the work done before six, in the office of

10
Fisher & Sons, Their sign is over the door, I was then in the employ of Fisher & Sons, and acted for them in making that payment, The firm of Fisher & Sons then consisted of Jacob Fisher, James T. Fisher George J. Fisher and Nathaniel B. Chapin, Davenport Fisher was then in the employ of the firm, as their clerk and agent, and general superintendent of their business and property here, working for a salary, Ryan and Haggerty came into the same office again that evening, to get their pay for the work done after six, Davenport and I were in the office He offered to pay them, but not as much as they demanded, and they went off, I had frequently before, as the agent of Fisher & Sons paid Haggerty for hauling done by him for them, and for work in their packing house

The defendant then called Ira Norris who being sworn testified as follows

Ira Norris

I was an acting Justice of the Peace last summer, Ryan and Haggerty came to me and began suits for claims for ^{hauling}, I remember the bills or accounts filed in those cases, Don't exactly know what became of them, but they were changed

The defendant then offered to prove by this witness the contents of those bills or accounts, but the plaintiff objected; and therefore, on further examination, the witness testified as follows

I think perhaps I last saw the bills or accounts in the hands of Mr Boal, but my impression is that Mr Lemmings took them, and that they were thrown away or torn up, Don't remember whether this was before or after the summons was served

The defendant then called James G. Cummins who being sworn testified as follows

J. G. Cummins

I was attorney for plaintiff in this case and in Ryan vs Fisher; The bills or accounts originally filed in the suits were, I think, torn up by me, and the present ones substituted

The Witness Morris was then recalled and testified as follows

Ira Morris

The bills or accounts filed in those cases were against Fisher & Sons, I made out the bills from the statements of the plaintiffs, The summonses were against Davenport Fisher afterwards the bills were changed to agree with the summonses

The defendant then called James St Clair Boal who being sworn testified as follows

J. St. C. Boal

I was retained by the defendant in this case and in Ryan vs Fisher, before Ira Morris Esq., after I had been informed that summonses had been served I went to Mr Morris Office and looked at the papers in the cases, The bill or account on which this suit was brought was about as follows

Jabez Fisher, James Fisher, George Fisher and
Nathaniel Chapin by Davenport Fisher

To Dennis Haggerty Dr

To Hauling &c

The words "by Davenport Fisher" occurred in the account either just after the names of the members of the firm or at the bottom of the account, The accounts were I think alike in both cases, with the exception of the plaintiffs names, I took a change of venue in both cases, and the papers were sent to Justice Baldwin, When the papers came before him,

I found the accounts I had seen in the papers had disappeared, and new ones had been substituted. The new ones were against Davenport Fisher to agree with the summonses. This change was made without my knowledge or consent.

This was all the evidence in the case.

Instructions
of Court

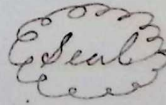
The Court then instructed the jury as follows: If a person contract as the agent of another, he is personally liable unless at the time he makes the contract he discloses to the other party the fact that he is agent or unless the other party knew at the time he contracted, from other sources, that such person was contracting as agent, and in determining whether plff. had such knowledge, the jury may take into consideration all facts and circumstances in evidence (if any there be) throwing any light on that subject.

Verdict of
Jury

The jury found for the plaintiff, and assessed his damages at one dollar and sixty five cents.

Thereupon the defendant moved the Court to set aside the verdict, and grant a new trial of this case, for the reasons that the verdict was against the evidence, and against the law and the instructions of the Court. The Court overruled the said motion, and refused to set aside the verdict and grant a new trial.

To which ruling and decision of the Court in denying the said motion the defendant, by his counsel then and there excepted, and prayed that this his bill of exceptions might be signed and sealed by the Court which is done.

S. L. Richmond 
Judge

State of Illinois } ss. I Sheldon Arnold Clerk of the
Marshall County } Circuit Court in and for said County
of Marshall in said State do hereby certify
that the foregoing is a true, correct, and complete transcript
or copy of the matters and things therein contained in
said Cause mentioned therein as the same appears of
Record in my Office

In testimony whereof I have hereunto set
my hand and affixed the seal of said
Court at Vaion this Ninth day of April
A.D. 1864

Sheldon Arnold
Clerk,



In the Supreme Court, Third Grand Division,
Of the April Term, A.D. 1864.

Davenport Fisher }
vs. } Error to Marshall.
Sennis Haggerty.

And now comes the said Davenport
Fisher, plaintiff in error, by James St. Clair Boal,
his attorney, and says that in the record and
proceedings aforesaid there is manifest error,
in this, that the verdict in the court below was
for the said defendant in error, whereas by the
law of the land the said verdict should have
been for the said plaintiff in error, and that
the said court below refused to set aside the
said verdict, and grant a new trial of the
said cause; wherefore the said plaintiff in error
prays judgment, and that the judgment of

the said court below be reversed, set aside, and
wholly for naught held.

James S. Blair Bond,
Atty. for plaintiff in error.

And the said Dennis Haggerty, appellee
now comes & says that there is no error
either in the record or proceedings aforesaid
or in giving the judgment aforesaid
in manner & form as above specified
wherefore he prays that the said judgment
be affirmed & that his costs may be
adjudged to him or

Bonus & Commens
for appellee

125
Dennis Haggerty

vs.

Cavensport Fishes

Copy of Record

Filed Apr. 19. 1864.
L. Ireland Ckr.