No. 14739

Supreme Court of Illinois

Western Trans.Co.

---

vs.

Reynolds et al

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 54

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

vs

1863

Record

West Franklin

1862

The Western Transportation Company
vs
James L Reynolds et al

Supreme Court
of Illinois
April Term
A.D. 1863

Error to Superior Court of Chicago

It is hereby stipulated that the above cause be heard and determined on printed arguments heretofore filed in said cause

Geo. C. Gayson
Counsel for Defendants in Error

Pate & Towsley
Counsel for Plff. Error

~~159~~ 54 40

Supreme Court
of Illinois
April Term AD 1863

Western Transportation
company

James L. Reynolds et al

Stipulation to submit
case on printed argument

Filed this 13 day
of May AD 1863

L Leland Clk

Supreme Court of Illinois,
Third Grand Division.

The Western Transportation Co,
Plff in Error
vs
Lewis L. Reynolds,
Deftn Error.

It is stipulated that the above entitled cause be submitted to the Court forthwith on printed Briefs, without oral argument.

April 18, 1864

George Lawson
Atty for Appellees

Bates Tonsley,
Atty for Appellants

Supreme Court of Illinois
Third Grand Division

54 40

The Wabash Transportation Co
Appellee

— vs —

James L. Reynolds et al
Appellants

Stipulation

Filed April 22 1864
C. Leland Clk

Printed at the Office of the Evening Journal, 50 Dearborn St., Chicago.

SUPREME COURT OF ILLINOIS.

Third Grand Division,
APRIL TERM, A. D. 1863.

THE WESTERN TRANSPORTATION COMPANY, *Plaintiffs in Error.* vs. JAMES L. REYNOLDS, DAVID ELY, and ZEBULON ELY, *Defendants in Error.*	Error to the Superior Court of Chicago.

ABSTRACT OF RECORD.

This was an action of **Replevin,** brought by the defendants in error against the plaintiff in error, to the November term, 1861, for the unlawful detention, by the said Western Transportation Company, of fifty half barrels of mackerel.

The Declaration was filed the first day of the November term, 1861, and contains one count.

XII. **The only Count** in the declaration is in substance as follows: That the defendants, on the 18th day of September, 1861, in Chicago, detained unjustly the goods and chattels of the plaintiffs, to wit: fifty half barrels of mackerel, of the value of five hundred dollars.

XII. ## Pleas.

1. General issue. *Non detinet.*

2. That the said defendants say "action non," because they say that the said goods and chattels in the declaration mentioned at the time when, &c., were not the property of the plaintiffs, but were the special property of the New York Central Railroad Company, as common carriers, who had the special property therein by reason of the transportation and carrying thereof from New York City to Chicago, as common carriers and bailees for hire, for the carriage and transportation thereof from New York City to Chicago, wherefore they pray, &c.

Replication to Second Plea.

XIII. The plaintiffs say "precludi non," because they say that the goods and chattels in said plea mentioned were the property of the plaintiffs, and of this they put themselves upon the country, &c., and the defendants do the like.

XIV. Trial by the court on agreed state of facts, and verdict for plaintiffs.

XX. Motion for new trial overruled and excepted to by defendants, and final judgment on finding by the court for the plaintiffs.

XVIII.
XVI.

Bill of Exceptions.

XIV. **The Bill of Exceptions** show a trial without a jury before the court at the November term, 1862, and that on said trial the following agreed facts were submitted to the court.

JAMES L. REYNOLDS, *et al.*,
vs.
THE WESTERN TRANSPORTATION COMPANY. } *Superior Court of Chicago.*

REPLEVIN for fifty half barrels of Mackerel.

IT is hereby stipulated and agreed between the parties to said suit as follows:

FIRST. That said plaintiffs were the owners of the property specified in the declaration.

SECOND. That it was shipped in the City of New York by the New York Central Railroad Company to be transported to Chicago, pursuant to the bill of lading hereto attached, and marked Exhibit A.

THIRD. That said goods were so transported, according to said bill of lading, to Chicago.

FOURTH. That said plaintiffs, on the arrival in Chicago of said goods, produced and exhibited the said bill of lading, and thereby tendered the freight and charges on said goods and demanded the delivery thereof, pursuant to said bill of lading.

FIFTH. That on the production of said bill of lading and the tender of said freight and charges, defendants declined and refused to deliver said goods unless plaintiffs would surrender up said bill of lading,

in order that the same might be cancelled and retained by the defendants.

PAYSON & REYNOLDS,
Plaintiffs' Attorneys.
MATHER, BATES & TAFT,
Attorneys for Defendants.

Exhibit A.

New York Central Railroad Express Freight Line.

John H. More, Express Freight Agent, 239 Broadway, New York; S. Drullard, General Freight Agent, Albany; George G. Smith, Laspner Bridge; A. A. Wemple, Freight Agent, Albany; James Smith, Boston, Mass.; E. Clerk, Jr., Buffalo; J. D. Merton, Detroit; H. Johnson, Cleveland, O.; A. Chesebrough, Toledo, O.; E. A. Buck, Green Bay, Wis.; Richmond & Co., Chicago, Ill.; Luke W. Osborn, Sandusky, O.; J. I. Tallmadge, Milwaukee, Wis.

Mark packages N. Y. C. R. R. and send to H. R. R. R., 72 Warren street, 9 Broadway, 142 Chambers street, 62 Hudson street, or Twelfth street Station, or People's Line Steamers, foot of Courtland street, or Swiftsure Line of Propellors, pier 5, East river, foot of Broad street.

NEW YORK, *Sept. 7th*, 1861.

Received from Lewis & Brown the following packages (contents and value unknown) in apparent good order, viz:

Fifty (50) ½ bbls. of Mackerel.

L. & R.

CONTRACTS OF PACKAGES UNKNOWN.
☞ No liability will be assumed for wrong carriage or wrong delivery, or goods that are marked with initials, numbered or imperfectly marked.
WEIGHTS AND CLASSIFICATION SUBJECT TO CORRECTION.
Goods not marked "Paid," will be shipped by "Steam."
[O]
Steam. Chicago, Illinois. Charges advanced in New York $. Receipted from New York to Chicago Depot.

All articles entered on this Bill of Lading shall be subject to and governed by the classification, as published by railroads, and to the rates properly belonging to such classification; and the rates, as written in below, shall only apply to such goods as are included in the class opposite or against which the rates are so written in.

Articles enumerated in classification as subject to once and a half or twice first class rates, shall be subject to once and a half or twice, as the case may be, the first class rate written herein.

1st class goods cts. ℔ 100 lbs
2d " " "
3d " " "
4th " " "
Special " " "
Carriages, boxed, all first class rate.
Old furniture, 1st cl's rate.
New " "
Wagons, single "
Baskets, double first class rate, cts. per 100 lbs.
Cradles, double first class rate, cts. per 100 lbs.
Sleighs, bxd, dbl 1st class rate, cts. per 100 lbs.
Toys, bxd, 1½ dbl 1st class rate, cts. per 100 lbs.
Wagons, toy, dbl 1st class rate, cts. per 100 lbs.
For classification see other side.

Supposed to be marked and numbered as per margin, to be transported by the New York Central Railroad Company to Buffalo, and there delivered to the agents of connecting or railroad companies, and by them to be delivered to the next connecting railroad company, and in like manner to be delivered to each connecting railroad company, until said goods and merchandise shall have reached the point named in this receipt. It is hereby stipulated, in consideration, that each railroad company which is to transport said property, have reduced the price of such transportation below their local rates. That the shipper or owner does hereby release the New York Central Railroad Company, the railroads with which they connect and which receive said property, from liability of a leakage of all kinds of liquids, breakage of all kinds of glass, carboys of acids, or articles packed in glass, stoves and stove furniture, castings, machinery, carriages, furniture, musical instruments of all kinds, packages of eggs; or for loss or damage on hay, hemp, cotton, or any article the bulk of which renders it necessary to be shipped in open cars, or for damages to perishable property of all kinds, occasioned from any cause or change of weather, or for damage and loss while in the company's depots; also, for loss or damage on the lakes or rivers.

It is further stipulated and agreed, that in case of any loss, damage or detriment done to or sustained by any of the property herein receipted for during such transportation, whereby any legal liability or responsibility shall or may be incurred, that company shall alone be held answerable therefor in whose actual custody the same may be at the time of the happening of such loss, detriment or damage.

In case of loss or damage, for which the New York Central Railroad Company may be liable, it is expressly stipulated that the New York Central Railroad Company shall have the benefit of any insurance effected by or for account of the owner or shipper of said goods. No liability will be assumed by the New York Central Railroad Company for the wrong carriage or the wrong delivery of goods that are marked with the initials, numbered or imperfectly marked.

It is further understood and agreed between the parties hereto, that the New York Central Railroad Company shall not be liable for any damages by fire or collision on the rivers or lakes.

All goods or property shipped on this receipt will be subject to necessary cooperage, and will be delivered at the depots of the company; it being also agreed between the parties hereto, that the said New York Central Railroad and the railroads with which they connect shall not be held accountable for any deficiency in packages, if receipted at Chicago in good order.

In Witness Whereof, the agent hath affixed to two receipts all of this tenor and date, one of which being accomplished the others to stand void.

(Signed) JOHN H. MORE,
Agent for the above receipting parties, severally, but not jointly.

XX. **Verdict** of the court for plaintiffs.

VIII. Motion for new trial for the following reasons, namely:

FIRST. That the finding of the court on the facts submitted was clearly contrary to the evidence adduced.

SECOND. Because the rulings of the court were clearly contrary to law.

Order of Court.

Overruling of new trial excepted to by defendants.

IX.

Errors Assigned.

FIRST. That the court below erred in finding against the defendants upon the agreed state of facts, because there was no evidence

whatever in said state of facts tending to show that the defendants ever had in their possession, or detained the goods described in plaintiff's declaration.

SECOND. For that the court below erred in deciding that the defendants were not entitled by law to retain the said goods and chattels mentioned in said bill of lading, and set forth and described in said plaintiffs declaration, until the said bill of lading, marked Exhibit A., and appended to the agreed state of facts, was produced and delivered up to the defendants for cancellation, and also a tender made of the payment of freight on the said goods described therein.

That the court below erred in overruling the motion of the defendants for a new trial.

BATES & TOWSLEE,

Attorneys for Plaintiffs in Error.

157

Supreme Court of Illinois

Third Grand Division

The Western Transportation Company

Plff in Error

vs

James L. Reynolds, David Eby & Sebridan Eby

Deft in Error

Abstract of Record

Filed Apl 23, 1863
S Sclamo
Clk

Bates & Torsleer

Attys for Plff in Error

TRIBUNE BOOK AND JOB OFFICE, 51 Clark Street, Chicago.

IN THE

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1863.

THE WESTERN TRANSPORTATION COMPANY, *Plaintiff in Error,*
versus
JAMES L. REYNOLDS, DAVID J. ELY, and ZEBULON S. ELY, *Defendants in Error.*
} *Error to the Superior Court of Chicago.*

AMENDED RECORD.

RECORD PAGE.

3 The replevin writ is entitled *Reynolds et al.* v. *The Western Transportation Company.* It requires the sheriff to replevy the goods, and to
4 summon the defendants.

5 The return states that he has replevied the property, and served the summons on G. W. Tuttle, Agent of the Western Transportation Company.

DEFENDANTS' BRIEF.

This was an action of replevin in the *detinet*. Defendants below filed a plea of *non-detinet*, and a special plea of property in the New York Central Railroad Company, denying property in the plaintiffs.

By the written stipulation it was agreed that the plaintiffs were the owners of the property. The only questions in the case, therefore, arise under the plea of *non-detinet*. Those questions are two—one of fact, the other of law. First, Did defendants detain the property? Second, If defendants did detain the property, was the excuse assigned for such detention a sufficient justification?

I.

Did defendants detain the property?

The written stipulation was intended by both parties to exclude all questions of fact, and at the time it was drawn up was supposed to have that effect. This being the case, the defendants in error cannot help expressing their surprise that the plaintiffs should now seek to take advantage of the mere wording of the stipulation.

The *fourth* and *fifth* clauses of the stipulation, p. 3, recite "that said plaintiffs, on the arrival in Chicago of said goods, produced and exhibited said bill of lading, and thereupon tendered the freight and charges on said goods, and demanded the delivery thereof, pursuant to said bill of lading. That on the production of said bill of lading, and tender of said freight and charges, *defendants* declined and refused to deliver said goods, unless plaintiffs would surrender up said bill of lading, in order that the same might be canceled and retained by defendants."

The question now is: Does it appear sufficiently from this stipulation that the *defendants* had the goods? Not conclusively, but sufficiently to make out a *prima facie* case?

The court below has found that it does, but this court is now asked by the plaintiffs in error to pronounce a different decision.

If the stipulation simply recited the fact of the defendants' refusal to deliver the goods, we admit there might be some doubt on this question

of detention; but when it goes on to give a reason for this refusal, and a reason plainly implying that defendants *could* have delivered the goods if they *would*, and were all ready to deliver them, provided plaintiffs would give up the bill of lading, there can be no longer any doubt that the defendants had the goods in their possession. If they had not the goods in their possession, why make such an excuse for refusing to surrender? And what had defendants to do with canceling and retaining the bill of lading, unless they had the goods?

Again, the writ of replevin and the sheriff's return thereto, clearly imply that the goods were taken by him out of the possession of the defendants. The sheriff is presumed to do his duty, and certainly a writ issued against the defendants would not justify his taking the property from any one else. The court below took this view of the case.

The fact that the goods were shipped at New York by the New York Central Railroad has nothing to do with the question of possession in Chicago. The goods were certainly not transported by that road all the way from New York to Chicago. They were of necessity delivered to connecting lines of transportation; and the bill of lading shows that these goods came by "steam," that is, by water, that being the meaning of the word in the bill of lading, as will be seen by referring to the record, p. 9. The printed abstract is incorrect, reading "marked paid," instead of "marked rail."

* Tuttle was the agent of the Western Transportation Company, as well as of the New York Central.

* This is shown by the sheriff's return, and the defendants pleading to the action, and not in abatement. Rimmel Point R. R. Co. v Keep 22 Ill. 16.

II.

But, secondly, it being admitted that defendants in fact detained the goods, was the excuse they assigned a sufficient justification in law? In other words, has a common carrier the right to demand the surrender of the consignee's bill of lading before delivering the goods?

This is really the only question in the case, and is admitted to be a question of great interest to the mercantile community. It is also, we believe, a case of the first impression, since, after careful examination, we have been unable to find a single authority on the precise point; the only writer who even approaches it, being Chancellor Kent, who says in his Commentaries, Vol. III. p. 214, that "the cargo is to be delivered to the consignee, on *production* of the bill of lading and payment of freight."

The use of the word "production" by so correct a writer as Judge Kent, and his saying nothing about a *surrender* of the bill of lading, are necessarily of great weight, but cannot be considered decisive; we are compelled, therefore, to look further.

The plaintiffs in error think they have discovered other authorities in support of their doctrine, but there is not one of these authorities that has any direct bearing upon the question. They decide, merely, what no one denies, that bills of lading are *quasi* negotiable, and that the title to the property can, under certain circumstances, be transferred by their indorsement. This is undoubtedly the law, but the conclusion by no means follows that the consignee must surrender his bill of lading before he is entitled to possession of the goods.

The plaintiffs, indeed, argue that if the bill is not surrendered, the consignee may indorse it over to some third party, after having got the goods himself, and that thereby the carrier may be compelled to deliver the goods a second time, or account for their value.

We deny that this is true in fact, but if it were true, the same difficulty would exist if the bill were surrendered. Bills of lading are usually made in three parts, sometimes in four, five or six, and the consignee could just as easily indorse one of the other bills as the one he is required to surrender; and, if he did, the same consequences would follow.

It may be said that, in this latter case, the carrier would be protected by the possession of the bill of lading; but one bill is as good as another, and he would be just as effectually protected by taking a receipt on the bill which is retained by him. If he could obtain *all* the bills, it might be a stronger protection; but this is more than is claimed by the plaintiffs in error, and more than would generally be possible in practice. But unless he does have them all, it is clear that he gains nothing by enforcing the surrender of a part. The same inconvenience arises whether the consignee's bill of lading is given up or not; in either case, the carrier must be prepared to prove that he delivered the goods to the right person, and he can do this as easily with his own bill, properly receipted, as with the consignee's. The two bills being exactly alike, in fact, there would be nothing to show which of them it might be.

But, on the other hand, if there were only one bill of lading, the hardship to the consignee, in being compelled to surrender it, would be very great. By giving up his bill of lading, he loses the evidence of his contract with the carrier, and that, too, before he knows whether that con-

tract has been faithfully performed. The goods may have been seriously damaged, and yet, to all appearance, be uninjured; it is not until they are unpacked that the injury is discovered. Then, when the shipper demands his damages, he is met with the reply, "Where is your proof?"

Or, suppose the goods do not all arrive at one time, must the consignee surrender his bill of lading in order to get possession of the first lot, or must he wait till all have arrived? This is not an imaginary case, but an actual occurrence, and one that took place between these same parties; and the plaintiffs below were compelled, in that case also, to replevy their goods from these same defendants, or else surrender their bill of lading before half their goods had arrived. This is certainly a greater hardship than any to which the carrier can be exposed.

But the plaintiffs insist much upon a supposed analogy between bills of lading and bills of exchange; but there are many and important distinctions. Bills of exchange are absolutely, and not merely *quasi*, negotiable. The assignee may not only sue on the *contract* itself, in his own name, but is really, in most cases, in a better position than the payee; whereas, the assignment of a bill of lading conveys no right to sue on the contract, but only a right to the property.

Again, the drawee of a bill of exchange has no copy of the bill, and even if he had, he could not safely pay the money without taking up the draft. If he should do so, he would be liable over again to any *bona fide* holder for value to whom the bill might be indorsed; but there is no such sacredness about a bill of lading. The carrier, having once delivered the goods to the holder of a bill of lading, in the absence of any suspicious circumstances, is protected from all subsequent demands, whether he takes a receipt or not. The want of a receipt might make his proof more difficult, but could not affect his liability.

A similar distinction may be made between the *holder* of a bill of exchange and the *holder* of a bill of lading. The holder of a bill of lading needs to retain it for his own protection, but the holder of a bill of exchange is differently situated; if he gets his money he can ask for nothing more.

Nor is the analogy any closer between bills of lading and railroad checks. Those checks are not issued to the passenger in duplicate—they are not even *quasi* negotiable—they cannot transfer property—they have themselves a positive, intrinsic value, aside from the baggage which they

cover; they are intended to be used, and are used over and over again. The holder may perhaps sue for loss of property, but could not recover if shown not to have been a passenger.

A railroad check, then, is a bill of lading with a difference. This term may serve for an illustration, but is not accurate enough for a definition. And it is enough simply to suggest the inconvenience that would follow if passengers were allowed to retain their checks after delivery of their baggage, to show that very different rules apply to such checks from those that apply to bills of lading.

Finally, this whole question is mainly a question of usage, and by the usage it must be determined; and, fortunately, this usage is so well settled, that courts may easily take judicial notice of it, without proof. The usage is, for the consignee to retain his bill of lading. This is probably the first time his right to do so was ever called in question. The defendants in error have had, at different times, in their possession, thousands of bills of lading; and no one of the various carriers by whom they were issued ever thought of demanding their surrender. The court will undoubtedly find their own experience to agree with this. Why, then, should we consent to change a rule which is now so well settled, and which, like most of those rules which have grown out of the necessities of commerce, will be found, on examination, alike distinguished for its justice and convenience?

All of which is respectfully submitted.

GEORGE PAYSON,

Counsel for Defendants in Error.

159 54 40

Supreme Court
of Illinois
April 1863

The Western Transportation Company

v

James L. Reynolds
et al

Brief of
Defendants in Error

Filed April 23-1863—
L Leland
Clerk

George Payson
Counsel for Defts in Error

Printed at the Office of the Evening Journal, 50 Dearborn St., Chicago.

SUPREME COURT OF ILLINOIS.

Third Grand Division,
APRIL TERM, A. D. 1863.

THE WESTERN TRANSPORTATION COMPANY, *Plaintiffs in Error.* vs. JAMES L. REYNOLDS, DAVID ELY, and ZEBULON ELY, *Defendants in Error.*	ERROR TO THE SUPERIOR COURT OF CHICAGO.

BRIEF OF PLAINTIFFS IN ERROR.

I. THERE is no evidence whatever in the case that the Western Transportation ever had anything to do with the goods replevied; the bill of lading of them was given by the New York Central Railway Company, and they sent them to Chicago, to the Agent

here, from whom they were demanded and replevied. The Western Transportation Company never had the goods at all, nor did they have anything to do with them, and so the evidence proves; therefore, the finding of the court was manifestly contrary to evidence.

II. But the court below also erred in deciding that the defendants were not entitled, by law, to retain and to refuse to deliver up the goods set forth in the bill of lading, marked Exhibit A, until the SAID BILL OF LADING WAS PRODUCED AND DELIVERED UP TO THE CARRIER FOR CANCELLATION. A bill of lading is negotiable like a promissory note, or bill of exchange, or bank check, and the only safety of the carrier is its production and delivery to him when he delivers the goods, so that it may be cancelled, and not transferred or endorsed to another. In 2 Kent, 291, "It is said that on the arrival of the ship the cargo is to be delivered to the consignee, or TO HIS ORDER, ON PRODUCTION OF THE BILL OF LADING AND PAYMENT OF FREIGHT."

Now, why must the bill of lading be produced? It must be delivered up and cancelled, as a railway baggage check is surrendered, when one's trunk is demanded and received.

"A railway check is but a bill of lading, and the holder of such check (bill of lading) is entitled to demand the article covered by the check."

Redfield on Railways, page 242.

"The HOLDER of a railway check may sue for and recover for loss of the property covered by it."

21 Illinois, 631; 22 Illinois, 280; 24 Illinois, 336.

In Dill *vs.* Railway Co, 7 Rich., 158, the court says: "A railroad check stands in the place of a bill of lading." Now, would any man demand of a railroad company his baggage, or property,

covered by a check, (bill of lading), and still keep that check? And does not the mere delivery of a railway check from one man to another transfer the right to demand the property covered by that check? Most clearly so. Again, the bill of lading should be produced and delivered up to the carrier on demanding the goods, because it is *negotiable by endorsement, like a bill of exchange or promissory note*, and unless cancelled the carrier may be made liable upon it again.

"A bill of lading is EXACTLY LIKE A BILL OF EXCHANGE, AND THE PROPERTY IT REFERS PASSES BY ENDORSEMENT OF IT, but not by delivery without endorsement."

Jenkins *vs.* Osborne, 49 English Common Law, 700.

"By the well settled principles of the Commercial Law, the consignee is the authorised agent of the owner, wherever he may be, to receive the goods, and by his endorsement of the bill of lading to a *bona fide* purchaser for a valuable consideration, without notice of any adverse interest, the latter becomes as against all the world the owner of the goods. This is the result of the principle THAT BILLS OF LADING ARE TRANSFERABLE BY ENDORSEMENT, AND THUS MAY PASS THE PROPERTY."

Conrad *vs.* The Atlantic Insurance Company; 1 Peters' Rep.; U. S. Rep., 445.

"A bill of lading is by the custom of merchants transferable by endorsement, so as to vest in the assignee the title to the goods which the assignee had in them."

20 Wendle Salters *vs.* Everett, 272.

"When the shipper of goods fills up the bill of lading with the name of a particular person or BEARER, the mere delivery of the

bill of lading by the shipper for value, passes the property, against any person, except a previous assignee of the bill of lading."

12 Pickering, 297 ; Allen *vs.* Williams.

"A bill of lading endorsed to the plaintiffs without doubt vested the legal interest in them."

8 Pickering Law *vs.* De Wolf, 107.

Now then, it is manifest from these authorities that the endorsement of a bill of lading transfers the property described therein, "in the same manner as the endorsement of a check on a bank, or bill of exchange, or promissory note; and precisely the same reasons exist why the bill of lading should be delivered up to be cancelled, when the goods are taken, as that a bill of exchange, promissory note, or check on a bank, should be delivered up to be cancelled when the money is paid.

BATES & TOWSLEE,
Attorneys for Plaintiffs in Error.

Supreme Court of Illinois

Third Grand Division

No 159

The Western Transportation Company

— v — Plff in error

James L. Reynolds et al

Defts in error

Brief of Appellants

Filed April 20th 1863.
G. Leland
Clerk

Bates and Fowler

I

United States of America
State of Illinois Cook County ss

Held before the
Honorable the Judges of the Superior Court
of Chicago within and for the County of Cook
and State of Illinois, at a regular Term of the
said Superior Court of Chicago begun and
holden at the Court House in the City of Chicago
in said County and State on the first Monday
being the third day of November in the year
of our Lord Eighteen Hundred and Sixty two
and of the Independence of the United States
of America the Eighty Seventh,

Present The Honorable Buckner S. Morris, Presiding Chief
Justice Of the Superior Court of Chicago
Wm. A. Higgins and Grant Goodrich Judges
Joseph Knox Prosecuting Attorney
Attest Anthony Hesing Sheriff of Cook County
Thomas Hoyne Clerk,

Be it remembered that heretofore to wit on the day of in the year of our Lord Eighteen hundred and sixty two was filed with the Office of the Clerk of the Superior Court of Chicago, an agreed case entitled, James L Reynolds et al versus The Western Transportation Company, in words and figures following to wit,

Be it remembered that heretofore to wit on the Eighteenth day of September in the year of our Lord Eighteen hundred and fifty one was issued out of the office of the Clerk of said Superior Court of Chicago. the Replevin Writ in the cause entitled Reynolds Ely & Co versus The Western Transportation Company, Which Writ with the Indorsement thereon is 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,

Whereas Daniel D Reynolds David J Ely & Jeroloman S Ely Plaintiffs complain that The Western Transportation Company Defendant unlawfully and wrongfully detain the following described goods and Chattels to wit,

Fifty Half Barrels of Mackerel

of the value of One Hundred & fifty dollars

Therefore We Command you That if the said Plaintiffs shall give you bond with good and sufficient security in double the value of the said goods and Chattels as required by law to prosecute the writ in this

behalf to effect an immediate delay, and to make return of the said goods and chattels if return thereof shall be awarded, and to warrant and keep you harmless in replevying said goods and chattels, you cause the said goods and chattels to be replevied and delivered to the said Plaintiff without delay; and also that you summon the said defendants to be and appear before the Superior Court of Chicago for said County on the first day of the next term thereof to be holden at the city of Chicago in said County on the first Monday of October next to answer said Plaintiff in the premises. And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same together with the bond which you shall have taken from the said Plaintiff as above commanded before presenting this writ.

Witness Walter Kimball Clerk of our said Court and the seal thereof at Chicago in said County this 18th day of September A.D. 1861

Walter Kimball Clerk

Upon which above mentioned writ of Replevin appears the following endorsement returned by the Sheriff of Cook County to wit: The same

was thereon directed in words following Namely

Received Chicago Sept 19th 61 of Anthony & Hesing the within described property
Reynolds Ely & Co.

Plaintiffs having given Bond as thereto required
Dean replevied the within described property
and delivered the same to Plaintiffs as per
receipt hereon and served the within Writ
by reading and delivering a Copy thereof
to G W Tuttle Agent of the Western Transportation
Company this 19th day of September 1861
Anthony & Hesing Sheriff
By A Breming Deputy
Fee $2,75
Paid by Plaintiffs,

And the Bond replevied as aforesaid & said
Replevin Writ, in words & figures following Namely

Know all Men by these Presents That We
Daniel D Reynolds David J Ely and Gideon S
Ely are held and firmly bound unto A
Hesing Sheriff of the County of Cook in the
State of Illinois and to his Successors in
Office Executors Administrators and Assigns
in the penal sum of three hundred dollars
lawful Money of the United States for the

payments of which sum we do hereby jointly and severally bind ourselves our heirs executors and administrators

The Condition of this obligation is such that Whereas on the Eighteenth day of September in the year of our Lord One thousand eight hundred and sixty one the said Reynolds Ely & Ely sued out of the Superior Court of Chicago in said County a writ of Replevin against the Western Transportation Company defendant for the recovery of the following described goods and chattels property to wit,

Fifty half barrels of Mackerel marked ⓞ Chicago Ills Steam,

Now if the said Reynolds Ely & Ely Plaintiffs shall prosecute their suit to effect, and without delay and make return of the said property if return thereof shall be awarded and pay and keep harmless the said Sheriff in replevying the said property then this obligation to be void otherwise to remain in full force and effect,

Witness our hands and seals this 18th day of September A.D. 1861,

Witness,

Daniel L Reynolds (Seal)
By Wm C Reynolds atty in fact
D J Ely (Seal)
G S Ely per D J Ely (Seal)
atty in fact

Superior Court
Of Chicago.

#11. James L Reynolds Hal
vs
The Western Transportation Co.

Replevin for Fifty Half Barrels of Mackel
Agreed Case.

It is hereby stipulated and agreed between the parties to said suit as follows:
First That said Plaintiffs were the owners of the property specified in the declaration:
Second That it was shipped in the City of New York by the New York Central Rail Road Co. to be transported to Chicago pursuant to the bill of lading hereto attached and marked Exhibit "A"
Third That said goods were so transported according to said bill of lading to Chicago.
Fourth That said Plaintiffs on the arrival in Chicago of said goods produced and exhibited the said bill of lading and duly tendered the freight and charges on said goods and demanded the delivery thereof pursuant to said bill of lading:
Fifth That on the production of said bill of lading and the tender of said freight and charges defendants declined and refused to deliver up

IIII paid goods unless Plaintiffs would surrender up said bill of lading in order that the same might be cancelled and retained by defendants

Bryson & Reynolds
Plaintiffs Attorneys
Mather Yates & Yaple,
Attys for Defts.

Exhibit A

New York Central Rail Road
Express Freight Line

John H Moe Express Freight Agent 239 Broadway New York,
S Dullard Genl Freight Agt Albany, Geo G Smith Suspension Bridge
A A Temple Freight Agent Albany, Daniel Smith Boston Mass,
E Clarke Jr Buffalo, D D Morton, Detroit,
P Johnson Cleveland O. A Chesebrough Toledo O
E O Buck, Green Bay Wis, Richmond & Co Chicago Ill
Luke P Osborn Sandusky O. J J Tallmadge Milwaukie Wis

Mark Packages N Y C & R R and read to N Y & H R R
72 Warren St, 9 Broadway, 142 Chambers St, 62 Hudson St
or 12th St Station, Or Peoples Line Steamers foot of Courtlandt
St or Swiftsures Line of Propellers Pier 5 East River foot of Broad Street

Mail to Courtland St R R Co

IV

Contents of Packages Unknown

☞ No Liability will be assumed for wrong carriage or wrong delivery of Goods Unless marked with Initials Numbered or Imperfectly Marked

Weights and Classification subject to correction

Goods not marked "Rail" will be shipped by "Steam"

To Chicago Steam, Ills

Charges advanced in New York, N. Y.

Accepted from New York to Chicago Depot.

☞ All Articles entered on this Bill of Lading shall be subject to and governed by the Classification as published by Railroads and to the rates Properly belonging to such Classification and the rates as written in below shall only apply to such

New York Sept 7th 1861

Received from David T Brown the following Packages (Contents and value unknown) in apparent good order, viz;

Fifty (50) 1/2 Bbls MCKL,

HR,

Supposed to be marked and numbered as per Margin to be transported by the New York Central Rail Road Company to Buffalo and there delivered to the Agents of Connecting or Rail Road Companies and by them to be delivered to the next Connecting Rail Road, Company; and in a like Manner to be delivered to Each Connecting Rail Road Company until said goods or Merchandize shall have reached the point named in this receipt;

And hereby Stipulated is in consideration that Each Rail Road Company which is to transports said property shall have reduced the price of such transportation below their Local rates, that the Shippers or owner does hereby release the New York Central Rail Road and the Rail Roads with which they connect and, which receive said property from liability for Leakage of all Kinds of Liquids breakage of all Kinds of Glass, Carboys of Acid or articles packed in glass, Stoves and Stove furniture, Castings, Machinery, Carriages, Furniture, Musical Instruments of all Kinds, Packages of Eggs, or for loss or damage on Hay Hemp Cotton or any Articles the bulk of which

V

Goods as are included in the class opposite or against which the rate is so written in.

☞ Articles enumerated in classification, as subject to once and a half or twice first class rates shall be subject to once and a half or twice as the case may be, the first class rate written herein.

1st class Goods	cts per 100 lbs
2d class Goods	cts per 100 lbs
3d class Goods	cts per 100 lbs
4th class Goods	cts per 100 lbs
Special Goods	cts per 100 lbs
Carriages boxed dbl	first class rate
Old Furniture	do do
New Furniture	do do
Wagons Single	do do
Buckets dbl	1st class rate cts per 100 lbs
Cradles "	" " cts per 100 lbs
Sleighs boxed dbl	" cts per 100 lbs
Sleighs boxed 1½	" cts per 100 lbs
Wagons Sleighs double	" cts per 100 lbs

For classification see other side

Rates which necessary to be shipped in open cars; or for damage to perishable property of all kinds occasioned by delays from any cause or change of weather, or for damage, or loss while in the Companys depots; also from loss and damage on the Lakes or Rivers;

It is further stipulated and agreed that in case of any loss, detriment or damage done to or sustained by any of the property herein receipted for during such transportation, whereby any legal liability or responsibility shall or may be incurred that Company shall alone be held answerable therefor, in whose actual custody the same may be at the time of the happening of such loss, detriment or damage;

In case of loss or damage for which the New York Central Rail Road Company may be liable it is expressly stipulated that the New York Central Rail Road Company shall share the benefit of any insurance effected by or for account of the owner or shipper of said goods.

☞ No liability will be assumed by the New York Central Rail Road Company for the wrong Carriage or wrong delivery of Goods that are marked with initials Numbered or imperfectly marked.

It is further understood and agreed between the parties hereto that the New York Central Rail Road Company shall not be liable for any

VII damages by fire or collision on the Rivers and Lakes;

All the goods or property shipped on this receipt will be subject to necessary Cooperage, and will be delivered at the depots of the Company; it being also agreed between the parties hereto that the said New York Central Rail Road and the Rail Roads with which they Connect shall not be held accountable for any deficiency in Packages if receipted at Chi in good order.

In Witness whereof the Agent hath affirmed to 2 Receipts all of this tenor and date one of which being accomplished the others to stand void;

John H Moore
Agent for the above
receipting parties severally
but not jointly

JHC

VII

And afterwards to wit, On the Seventh day of October A.D Eighteen hundred and sixty two said day being one of the days of the October Term A.D 1862 of said Superior Court of Chicago the following proceedings were had and taken in said Cause to wit,

Lucretia Reynolds
Said J Eby and Jebadiah S Eby
7961 vs Replevin
The Western Transportation Company

This Cause being this day called for trial comes said Plaintiffs by Payson and Reynolds their attorneys and said Defendant by Walker Bates & Capt its attorneys also come and upon Agreement of the parties Made now here in open Court this Cause is Hereby Submitted to the Court for trial upon the Issues joined herein without intervention of a jury and the Court now here after hearing the Evidence and Arguments of Counsel and being fully advised in the premises finds said Defendant guilty and the right of property in said Plaintiffs and assesses Plaintiffs damages herein against said Defendant for detention of property replevied in said Cause at one cent,

And thereupon said Defendant Submits its motion herein for a new trial in said Cause,

VIII And afterwards to wit on the Eighth day of October in the year A.D. Eighteen hundred and sixty two said defendant by Bates & Fowler its attorneys filed motion for new trial and to set aside judgement. Which motion is in the words and figures following, Wit:

Superior Court of Chicago

Western Transportation Company
adv
James L Reynolds Sal

And now come the said Plaintiffs by Bates & Fowler Attorneys of said Plaintiffs and move the court that the finding of the court in said Cause, and the judgement entered thereon be set aside, and a new trial granted for the following Reasons viz;
1st That the finding of the court on the facts submitted, were clearly contrary to the evidence adduced;
2nd Because the rulings of the court were clearly contrary to law,
Oct 8 1862

Bates & Fowler
attys for Plffs,

IX And afterwards to wit on the twenty fifth day of November in the year of our Lord Eighteen Hundred and sixty two said day being an open day of the November Term of said Superior Court of Chicago the following among other proceedings were had and entered of record in said Court to wit,

Isaac N. Reynolds
David J. Ely and Jehaloon S. Ely
vs
The Western Transportation Company

Motion for new trial in Ref Term
1961

This day again comes said Plaintiffs by Payson & Reynolds their attorneys and said defendant by Mather Bates & Lapp its attorneys also come and this cause coming on now to be heard upon the motion of said defendant heretofore submitted herein at the October Term of this Court A.D. 1862 for a new trial in said cause, and Counsel being heard thereon, and the Court being fully advised in the premises it is considered by the Court that said motion of said defendant be and is hereby overruled, and that a new trial be refused; to which ruling of the Court in overruling its said motion for a new trial said defendant then and there excepted, and it is ordered that said defendant be allowed sixty days time from this day in which to file bill of exceptions;

Whereupon said Plaintiffs ought to have

X judgement entered for their damages upon the finding of the Court herein aforesaid.

Therefore it is considered that said Plaintiff do have and retain the property replevied in said cause, and also recover of said defendant their damages of One cent, as by the aforesaid by the Court, herein found and assessed and also their costs and charges in this behalf expended and have execution therefor.

XII

And afterwards to wit on the twenty fourth day of January in the year of our Lord Eighteen Hundred and Sixty Three said day being one of the days of the January Term of said Superior Court of Chicago. The said Defendants in this cause by their Counsel Mather Bates & Raph, filed their certain Bill of Exceptions which bill of Exceptions is in the words and figures following to wit.

State of Illinois
Cook County } ss. Be It remembered that on the Term of November A.D 1861 came Lanert Reynolds David J Ely and Gebalon S Ely partners in trade doing business under their firm name of Reynolds Ely & Co by Payson & Reynolds their Attornies in the Superior Court of the City of Chicago Cook County and State of Illinois Before the Judges thereof and impleaded The Western Transportation Company a Corporation duly organized under & by virtue of the laws of the State of New York. in a certain action of Replevin for the unjustly detaining of fifty half barrels Mackeral, the goods and Chattels of the said Lanert Reynolds David J Ely and Gebalon S Ely, on which said Lanert Reynolds David J Ely and Gebalon S Ely declared against said, The Western Transportation Company as follows;

XII

State of Illinois
Cook County ss Superior Court of Chicago November
Term 1861,

The Western Transportation Company a Corporation duly
incorporated under the laws of the State of New York
defendants in this suit were summoned to answer
Samuel L Reynolds and J Ely and Gebalon A Ely partners
in trade in Chicago in said Cook County under the name
of Reynolds Ely & Co plaintiffs in this suit wherefore they
detained the goods and chattels of said plaintiffs
against sureties and pledges stated &c; and
thereupon said plaintiffs by Payson & Reynolds their
Attorneys complain, for that said defendants on
the eighteenth day of September AD 1861 in said Chicago
detained unjustly the goods and chattels of said
plaintiffs to wit, fifty half barrels of Mackerel
of great value to wit, of the value of Five Hundred
dollars against sureties and pledges stated &c; Wherefore
said plaintiffs say they are injured and have
sustained damage to the amount of Five Hundred
dollars and therefore bring their suit &c

Payson & Reynolds Plffs Attys

To which said declaration the said The Western
Transportation Company pleaded as follows,

Cook County ss And the said Western Transportation
Company by Mather Bates & Kapp their Attorneys come
and defend the wrong and injury when &c and say
that they did not and do not unjustly wrongfully

XLIII

" detain the goods & chattels of Samuel L Reynolds David
" J Ely and Zebulon S Ely partners in trade under the name
" style and firm of Reynolds Ely & Co as in the said declaration
" mentioned and set forth or any of them or any part thereof
" in manner and form as the said Plaintiffs hath above
" thereof complained against them and thereof they
" put themselves upon the Country &c

" And the said defendants for further plea in this behalf by
" them secondly above pleaded by leave of the Court for that
" purpose first had & obtained say Plaintiffs "action &c"
" because they say that the said goods & chattels in the said
" declaration mentioned at the time when &c were not the
" property of the said Plaintiffs but were the special
" property of the New York Central Rail Road Company as
" Common Carriers, who had the special property therein
" by reason of the transportation and carrying thereof as
" Common Carriers and bailees for hire for the carriage and
" transportation thereof from New York City to Chicago and
" this they are ready to verify, Wherefore they pray a return
" of the said property and their costs & charges in this
" behalf most wrongfully expended"

" To which said plea of said defendants said Plaintiffs
" replied as follows,

" And said Plaintiffs as to said second plea of said
" defendants by them above pleaded say precludi non &c because they say that the
" goods & chattels in said plea mentioned at the time when &c
" were the property of the Plaintiffs &c and of them put themselves
" on the Country &c

XIV And as to said defendants first plea by thereof said
" defendants hand put themselves on the Country said Plaintiffs
" do the like,

And thereupon issue was joined between the said James
D Reynolds David J Eby & Zebulon S Eby Plaintiffs and the
said The Western Transportation Company Defendants,

And afterwards to wit at a term of the Superior
Court of the City of Chicago in the County of Cook aforesaid
held at the Court House in the City of Chicago in
aforesaid County on the twenty fifth day November
A D 1862 of the November Term of said Court before
the Honorable John D Wilson Wm H Higgins Isaac Goodrich
Judges of said Superior Court appointed to hold the
said Superior Court according to the form of the Statute
in such case made and provided the aforesaid issue
joined between the said parties as aforesaid came
on to be tried before the Judges of said Court by
Consent of the said parties a jury being then and
there expressly waived, upon an agreed Statement of
facts then and there entered into between the parties
Plaintiffs and Defendants and made the whole
facts therein in said suit, & the same was submitted
to said Superior Court for their determination and
judgment which said agreed facts & Statement
of the case is as follows,

XV

Exhibit A

New York Central Rail Road Express Freight Line,

John H More Express Freight Agent 239 Broadway New York,

I Dullard Genl Freight Agt Albany
A A Wemple Freight Agt Albany,
E Clark Jr Buffalo,
H Johnson Cleveland O.
E A Buck Green Bay Wis,
Luke H Osborn Sandusky O,

Geo G Smith Suspension Bridge
Lucas Smith Boston Mass
D Morton Detroit,
A Chesebrough Toledo O
Richmond & Co Chicago Ill
D Tallmadge Milwaukie Wis

Mark Packages N Y C & R R and route to H R R R 72 Warren st 9 Broadway 142 Chambers st 62 Hudson st or 12th st station or Peoples Line Steamers foot of Courtland st or Swiftsure Line of Propellors Pier 5 East River foot of Broad Street;

Contents of Packages Unknown

57 No liability will be assumed for wrong carriage or wrong delivery of goods that are Marked with Initials Numbers or Improperly Marked

Weights & Classification Subject to Correction

Goods not marked "Rail" will be shipped by "Steam"

10 Chicago Steamer Ill

Charges advanced by New York Received from New York to Chicago Depot,

New York Sept 7th 1861

Received from Lewis & Brown the following Packages (Contents & Value Unknown) in apparent good order viz,

Fifty Cs 72 Bbls Mdse

N Y R

All Articles entered on this bill of lading shall be subject to & governed by the classification as published by Rail Roads, and to the rates properly applicable to such classification

And the rates as written in below shall only apply to such goods as are included in the class opposite or against which the rates is as written in;

Articles Enumerated in classification as subject to once and a half or twice first class rates shall be subject to once and a half or twice as the case may be the first class rate written herein

1st Class goods cts per 100 lbs,
2nd class goods cts per 100 lbs
3rd class goods cts per 100 lbs
4th class goods cts per 100 lbs
Special goods cts per 100 lbs
Carriages boxed dbl first class rate
Old furniture " " "
New furniture " " "
Pianos empty " " "
Baskets dbl 1st class rate cts per 100 lbs,
Cradles " " " " cts per 100 lbs
Sleighs boxed, dbl " cts per 100 lbs,
Toys boxed 1½ dbl " cts per 100 lbs.
Pianos & Toys dbl cts per 100 lbs,

For classification see other side.

supposed to be marked and numbered as per margin) to be transported by the New York Central Rail Road Company to Buffalo and there delivered to the Agents of Connecting or Rail Road Companys and by them to be delivered to the next Connecting Rail Road Company, and in like manner to be delivered to each Connecting Rail Road Company until said goods and Merchandize shall have reached the point named in this receipt, It is hereby stipulated in consideration that each Rail Road Company which is to transport said property have reduced the prices of such transportation below their local rates, that the Shipper or owner does hereby release the New York Central Rail Road Company the Rail roads with which they connect and which receive said property from liability for Leakage of all kinds of liquids breakage of All kinds of glass, Carboys of acids or articles packed in glass, Stoves or iron furniture, Castings Machinery, Carriages furniture, Musical Instruments of all kinds, Breakages of Eggs, or for loss or damage on hay, hemp, Cotton, or any articles the bulk of which renders it necessary to be shipped in open Cars or for damages to perishable property of all kinds occasioned from any cause or change of weather or for damage or loss while in the Company depots; also for loss or damage on the Lakes or Rivers; It is further stipulated & agreed that

XVII

in case of any loss detriment or damage done to or sustained by any of the property herein receipted for during such transportation, whereby any legal liability or responsibility shall or may be incurred that Company shall alone be held and responsible therefor in whose actual custody the same may be at the time of the happening of such loss, detriment or damage In case of loss or damage for which the New York Central Rail Road Company may be liable it is expressly stipulated that the New York Central Rail Road Company shall have the benefit of any insurance effected by or for account of the owner or shipper of said goods; No liability will be assumed by the New York Central Rail Road Company for the wrong Carriage or the wrong delivery of goods that are Marked with initials, numbered or imperfectly Marked; It is further understood and agreed between the parties hereto that the New York Central Rail Road Company shall not be liable for any damages by fire or collision on the rivers or lakes

All goods or property shipped on this receipt will be subject to necessary Cooperage and will be delivered at the Depots of the Company; it being also agreed between the parties hereto that the said New York Central Rail Road and other Rail Roads with which they Connect, shall not be held accountable for any deficiency in packages if receipted as Chi in good order;

In Witness Whereof the Agent has affixed

XVIIIth to 2 Receipts all of this tenor and date one of which being accomplished the others to stand void.

(Signed) John W Adams

Agent for the above

receipting parties severally

but not jointly.

James R Reynolds et al

v

Ill Western Transportation Co } Superior Court of Chicago

Replevin for fifty half barrels of Mackerel

It is hereby stipulated and agreed between the parties to said suit as follows,

First that said Plaintiffs were the owners of the property described in the declaration.

Second that it was shipped in the City of New York by the New York Central Rail Road, Co to be transported to Chicago pursuant to the bill of lading hereto attached and marked Exhibit A.

Third that said goods were so transported according to said bill of lading to Chicago.

Fourth that said Plaintiffs on the arrival in Chicago of said goods produced and exhibited the said bill of lading and duly tendered the freight and charges on said goods and demanded the delivery thereof pursuant to said bill of lading

XIX Fifth That on the production of said bill of lading and the tender of said freight and charges defendants declined and refused to deliver up said goods unless plaintiffs would surrender up said bill of lading in order that the same might be cancelled and retained by defendants.

Rayson & Reynolds
Plaintiffs Attorneys
Mather Bates & Lapsh
Attys for Defts

Whereupon the said Counsel for the said defendants did then and there insist before the said Judges of said Superior Court that the several matters so produced and given in Evidence in said agreed case aforesaid were sufficient and ought to be admitted as defence evidence to entitle the said defendants to a verdict and Judgement for the return of said goods & Chattels mentioned in said declaration of said plaintiffs.

And the said Counsel for said defendants did further insist that the facts agreed to & submitted to said Court were sufficient & defence to entitle said defendants to a Judgement & return of said goods.

1st Further that the defendants by the laws of the land were entitled to retain said goods & Chattels mentioned in said bill of lading & set forth and described in said

XX

Plaintiffs declaration with the said Bill of
Lading delivered by the New York Central & Rail Road
Company to said Plaintiffs as evidence for the Plaintiffs
of the receipt of said goods, & to ship or transport them
to Chicago by said defendants for said Plaintiffs /
was delivered up to said defendants by said Plaintiffs
and the said Judges of said Superior Court aforesaid
did then and there declare and deliver their opinion
that it was not the duty of said Plaintiffs nor
was it necessary for said Plaintiffs to deliver
said defendants said bill of lading before or at
the time of the right of said Plaintiffs to commence
their action for said goods against said defendants
& thereupon said Superior Court entered up a
Judgement for said Plaintiffs against said
defendants for the damages for the wrongful
detention of said goods & chattels by said defendants
and for Plaintiffs costs.
To which said opinion of the said Superior Court
aforesaid & to the Judgement by them so entered the
said defendants by their Counsel did then & there except

And now on Motion of the said several Matters
so produced & seen in Evidence on the part of
the said defendants and the points of law insisted
upon by the Counsel for said defendants do not
appear of record other than the verdict and judgement
aforesaid, the said Counsel for the said defendants
did then and there propose their aforesaid

XXII

exceptions to the opinion of the Judges of the said Superior Court and requested them to put their seal to this bill of exceptions containing the several matters so produced and given in evidence & the opinion of said Court, on the part of the defendants aforesaid according to the form of the Statute in such case made & provided and thereupon the said Justices of said Superior Court at the request of the counsel for said defendants did put their seals to this bill of exceptions pursuant to the Statute aforesaid on the ___ day of

Wm H Higgins
Judge, Seal

State of Illinois Cook County ss

I Thomas B Carter Clerk of the Superior Court of Chicago in said County of Cook do hereby certify that the within and foregoing Transcript is a full true and correct transcript of the agreed case lately pending in said court with the orders and judgement of the court thereon

In testimony whereof I have hereunto set my hand and affixed the seal of said Superior Court of Chicago at Chicago this 14th day of March A.D. 1863, Thomas B Carter Clerk

Error Assigned

First

That the Court below erred in finding against the Defendants upon the agreed State of facts, because there was no evidence whatever in said State of facts tending to show that the defendants ever had in their possession, or detained the goods described in plaintiff's declaration.

Second

For that the Court below erred in deciding that the defendants were not entitled by law to retain the said goods and chattels mentioned in said bill of lading and set forth and described in said plaintiff's declaration, until the said bill of lading, marked Exhibit A, and appended to the agreed State of facts was produced and delivered up to the defendants for cancellation, and also a tender made of the payment of freight on said goods, described therein.

That the Court below erred in overruling the motion of the defendants for a new trial.

Watts & Fowsle,

Attorneys for Plaintiffs in Error.

James L
vs
The Western

Reynolds et al
ads
Transportation Co

Supreme Court of Illinois
April Term AD 1863
In Error

And himself upon afterward to wit at the said Term of said court the said defendants by Geo Payson their attorney come here into court and say that there is no error in said proceedings and judgment and pray that the same may be affirmed &c

Geo Payson
Atty for Defendants in Error

159

In the Supreme Court of Illinois
Of the November Term AD 1862

James L Reynolds
Def
Appellant case
Appellees
vs
The Western Transportation
Co Complainant

Transcript certified
by the Supreme Court
Filed April 20th 1863
A. Calvert
Clerk

Fees $ 5.00
Cert seal .50
$5.50

Messrs Butts & Fowler
Appellees Attys