

No. **12479**

Supreme Court of Illinois

Chicago & Aurora R.R.Co.

vs.

Thompson

71641  7

United States of America }
State of Illinois, Kane County }

Plas before the
Honorable Isaac C. Wilson Judge of the
thirteenth judicial circuit and
presiding Judge of the Kane County
circuit court, in the State of Illinois
at a term of the Kane County circuit
Court began and held at the court house
in Geneva on the third day of November
in the year of our Lord one thousand eight
hundred and fifty six —

Present	The Hon Isaac C. Wilson	Judge
"	Amos B. Leorn	State atty. Gen.
"	Laurence P. Barker	Sheriff.

Attest, Luther Dearborn
Clerk

Be it remembered that whereas
hitherto to wit: on the 5th day of October
A.D. 1854 a precept was filed in the clerk's
office of the said court, which was in the
words and figures following, to wit:—

State of Illinois.

Kane County, and circuit court thereof.
to the November Term A.D. 1854

James Thompson

^v
The Chicago & South Western
Rail Road Company, alias,
The Chicago and Aurora
Rail Road Company

In reply on the case
Damages \$2000.00

The clerk of the
aforesaid Circuit Court will please to issue a
summons in the above entitled cause
returnable as above. Dickey & Wallace
Attys at large.

And whereas on the 5th day of October 1854
a summons was issued by the clerk of said
Court which was in the words & figures following
to wit:—

State of Illinois, The People of the State of
Kane County & Illinois to the Sheriff of
Said county, Greeting:—

We command you that you summon The
Chicago & South Western Rail Road Company,
alias The Chicago & Aurora Rail Road Company,
if they shall be found in your county,
personally, to be and appear before the Circuit
Court of said County, on the first day of
the next term thereof to be holden at the
Court house in Geneva in said County on the
first Monday of November next to answer

unto James Thompson in a plea of Insuper
on the case to the damage of said plaintiff
as he says in the sum of Two thousand
dollars. And have you then and then this
writ, with an endorsement thereon in what
manner you shall have executed the same.

Witness Luthin Dearbon clerk of our said
Supt & court and the sub thenof at Geneva
Court } in said County this 3^d day of October
A.D. 1854

Luthin Dearbon
clerk

Upon the above summons appears the
following endorsement to wit:-

Executed this writ November 3^d 1854 by
delivering a copy of the same to Joseph Orr
McKee station agent for said company at
Batawin Kau to Ills M.D. Spalding
Sheriff of Kau to Ills

And whereas, afterwards to wit, on the 2^d
day of November A.D. 1854, a declaration was
filed in the clerk's office of said court, which
was in the words and figures following to wit:
State of Illinois

Kau County & and circuit Court thenof
to the November Term A.D. 1854

The Chicago and South Western Rail Road
company alias, the Chicago and Aurora Rail
Road company, was summoned to answer

the complaint of of James Thompson in an action of Trespass on the case: and thereupon the said James Thompson by Dickey and Wallace his attorneys complains —

For that whereas the said Rail Road company, before and at the time of the delivery of the goods and chattels to it, (the said Rail Road company) as hereinafter will be mentioned, was, and thence hitherto hath been and still is a common carrier, for goods and chattels for hire, from Aurora in the county of Kane and State of Illinois to Eastville in the county of La Salle, to wit, at the county of Kane aforesaid. And whereas also the said James Thompson, whilst the said Rail Road ^{company} was such common carrier as aforesaid to wit: — on the nineteenth day of January, AD 1854 at Aurora to wit, at the county of Kane aforesaid caused to be delivered to the said Rail Road company and the said Rail Road company there and then accepted and received of and from the said James Thompson, a certain box containing divers goods and chattels to wit: one new suit of broad cloth clothes, one small trunk, three fine shirts, three pairs of woolen stockings, three cravats, seven hundred and fifty dollars in Bank bills, fifty dollars in silver money, and one rifle, of the said

unto James Thompson in a plea of Insuper
on the case to the damage of said plaintiff
as he says in the sum of Two thousand
dollars. And have you then and then this
writ, with an endorsement thereon in what
manner you shall have executed the same.

Witness Luthin Dearbon clerk of our said
Circuit & Court and the said sheriff at Geneva
County in said County this 3rd day of October
A.D. 1854 Luthin Dearbon
clerk

Upon the above summons appears the
following endorsement to wit:-

Executed this writ November 3^d 1854 by
delivering a copy of the same to Joseph Orr
McKee station agent for said company at
Batawin Kau Co Ills M.D. Spalding
Sheriff of Kau Co Ills

And whereas, afterwards to wit, on the 2^d
day of November A.D. 1854, a declaration was
filed in the clerk's office of said court, which
was in the words and figures following to wit:
State of Illinois

Kau County & said circuit Court sheriff
to the November Term A.D. 1854

The Chicago and South Western Rail Road
company alias, the Chicago and Aurora Rail
Road company, was summoned to answer

the complaint of of James Thompson in an action of Surpass on the case: and thereupon the said James Thompson by Dickey and Wallace his attorneys complains —

For that whereas the said Rail Road company, before and at the time of the delivery of the goods and chattels to it, (the said Rail Road company) as hereinafter will be mentioned, was, and thence hitherto hath been and still is a common carrier, for goods and chattels for hire, from Aurora in the county of Kane and State of Illinois to Eastville in the county of La Salle, to wit, at the county of Kane aforesaid. And whereas also the said James Thompson, whilst the said Rail Road ^{company} was such common carrier as aforesaid to wit: — on the nineteenth day of January, AD 1854 at Aurora to wit, at the county of Kane aforesaid caused to be delivered to the said Rail Road company and the said Rail Road company there and there accepted and received of and from the said James Thompson, a certain box containing divers goods and chattels to wit: one new suit of broad cloth clothes, one small trunk, three fine shirts, three pairs of wollen stockings, three cravats, seven hundred and fifty dollars in Bank bills, fifty dollars in silver money, and one rifle, of the said

Jamies Thompson of great value, to wit, of the value of thousand dollars, to be safely and securely carried and conveyed by the said Railroad Company from Aurora aforesaid to Earlville aforesaid, and there, to wit, at Earlville aforesaid, safely and securely to be delivered, for the said Jamies Thompson for certain reasonable reward to the said Rail Road company in that behalf.

Yet the said Rail Road company not regarding its duty as such common carrier as aforesaid, but contriving and fraudulently intending, craftily and subtly to deceive, defraud, and injure the said Jamies Thompson in this behalf, did not nor would safely or securely carry or convey the said Box, and its contents aforesaid from Aurora aforesaid to Earlville aforesaid, nor there, to wit, at Earlville aforesaid, safely or securely deliver the same for him the said Jamies Thompson but on the contrary thereof the said Rail Road company, so being such common carrier as aforesaid so carelessly and negligently behaved and conducted itself, in the premises that by and through the carelessness, negligence and default of the said Rail Road company in the premises the said box was broken open and its contents aforesaid, being of the value aforesaid, became

and are wholly lost, to the said James Thompson, to wit, at the county of Kane aforesaid, to the damage of the said James Thompson of two thousand dollars.

And whereas also, heretofore to wit, on the nineteenth day of January A.D. 1854, at Aurora in the county of Kane aforesaid the said James Thompson caused to be delivered to the said ~~company~~^{Chicago} and South Western Rail Road company alias, the Chicago and Aurora Rail Road company, a certain other box, containing certain other goods and chattels to wit:— one new suit of broadcloth cloths, one small trunk, three fine shirts three pair of woolen stockings, three cravats seven hundred and fifty dollars in bank bills fifty dollars in silver money, and one rifle of him the said James Thompson of great value to wit, of the value of— thousand dollars, to be taken care of and safely and securely carried and conveyed by the said Rail Road company from Aurora aforesaid to Earlville in the county of Stoddard aforesaid, to wit in the county of Kane aforesaid and then to wit at Earlville aforesaid to be safely and securely delivered by the said Rail Road company, for the said James Thompson within a reasonable time, then

next following, for certain hire and
reward to the said Rail Road company,
in that behalf; and although the said Rail
road company then and there accepted and
had and received the said last mentioned
box, and its contents aforesaid, for the
purpose aforesaid, and undertook the
carriage, conveyance and delivery thereof,
as aforesaid, within such reasonable time
as aforesaid. And although a reasonable
time for the carriage, conveyance and
delivery thereof as aforesaid, hath long
since elapsed, yet the said Rail Road
company, not regarding its duty in that
behalf, but contriving and fraudulently
intending, craftily and subtlety to deceive
and defraud the said James Thompson in
this respect, did not nor would, within such
reasonable time as aforesaid or at any time
afterwards, (although often requested so to
do) take care of, or safely or securely, carry
and convey the said last mentioned box
and its contents aforesaid, from Aurora
aforesaid, ^{to Carlisle aforesaid} nor then to wit, at Carlisle aforesaid
safely or securely deliver the same for the said
James Thompson, but hath hitherto wholly
neglected and refused so to do, and by means
of the negligence and improper conduct of the
said Rail Road company, in that behalf.

the said last mentioned box, and its contents
aforesaid have not been delivered to or for
him the said James Thompson at Earl-
ville aforesaid or elsewhere, and are wholly
lost to the said James Thompson, to wit,
at the county of Kane aforesaid, to the damage
of the said James Thompson of two thousand
dollars and therefore he brings this suit.

Dickey & Wallace
attys for Plaintiff.

And whereas afterwards to wit, on the 17th
day of January 1855 a plea was filed with
the clerk of said court, which was in the words
and figures following to wit:
The Chicago and Aurora
Rail Road company } Kane County circuit
 at } court, January Special
James Thompson } Term, A.D. 1855.

And the said defendants
by Plato and Jewett their attorneys come
and defend the wrong and injury aforesaid
and say that they are not guilty of the
said supposed grievances above laid to their
charge or any or either of them or any part
thereof, in manner and form as the said
plaintiff hath above thereof complained
against them. And of this the defendants put
themselves upon the country &c. Plato & Jewett
attys for Def^t

And whereas afterwards to wit, on the 5th day of November AD 1856, the same being one of the days of the November term of the said court, the following among other proceedings were then had and entered of record, to wit:

James Thompson

v

Chicago & Aurora
Rail Road company

Inpass on the case.

This day comes the Plaintiff by Cartesian Wilcox his attorneys and the defendants by Plato their attorney, also come and waive a Jury, and submit this cause to the court for trial. The court not being advised takes time to consider.

And whereas afterwards to wit, on the 13th day of November 1856, the same being one of the days of said November Term, the following among other proceedings were then had and entered of Record to wit:—

James Thompson

v

Chicago & Aurora
Rail Road company

Inpass of the case.

This day comes the Plaintiff by his attorneys and the defendants by Plato their attorney

also come, and after hearing all the evidence and the arguments of counsel the court being fully advised, finds the issue joined in favor of the plaintiff, and awards his damages at seven hundred and thirty dollars. It is therefore considered by the court, that the plaintiff have and receive from the defendants, the sum of seven hundred and thirty dollars damages and his costs in this behalf expended and have execution therefor.

So which ruling of the court the defendants by their counsel excepts, and prays an appeal to the Supreme Court of the State of Illinois which is allowed on condition that defendants file a bond in the sum of Fifteen hundred dollars with W^m H. Hawkins as security, in forty days from this date, and the file of exceptions to be filed during the next term of this court.

And whereas afterwards to wit, on the 3^d day of December A.D. 1856 an appeal bond was filed with the clerk of said court, which was in the words and figures following, to wit:-

Know all men by these presents that we the Chicago, Burlington & Quincy Rail Road company, as principal and William H. Hawkins

as surety are held and firmly bound unto James Thompson in the penal sum of fifteen hundred dollars, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors &c jointly, severally and firmly by these presents. —

The condition of the above obligation is such that whereas the said James Thompson did at the November Term of the Kane County circuit court A.D. 1856 receive a Judgment against the said Rail Road company by the name of the Chicago & Aurora Railroad company for the sum of seven hundred and thirty five dollars and costs from which said Judgment the said Rail Road company has taken an appeal to the Supreme court of the State of Illinois. —

Now if the said Rail Road company shall prosecute their said appeal with effect and shall pay said Judgment with costs interest and damages in case said judgment shall be affirmed, then the above obligation to be void, otherwise to remain in full force and effect.

 In testimony whereof the common seal of said corporation is hereto affixed this 27th day of November A.D. 1856.

Amos J. Hall Secretary
W. H. Hawkins

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And whereas afterwards to wit, on the 9th day of March A.D. 1857, a Bill of Exceptional filed in the clerk's office of said court, which is in the words and figures following to wit:—
James Thompson

v
Chicago & Aurora Road Co } Case.
Be it remem-
bered that on the trial of
this cause the Plaintiff introduced as a
Witness Wm B. Allen who testified that in Jan'y
1854 he lived in Aurora, was in the Warehouse
business, that he knew the defendants, they have
a Rail Road for carrying freight and passengers
between Earlville and Aurora, and had in
Jan'y 1854 and were common carriers of goods
freight &c for hire at that time. I have seen the
Plaintiff once before at our warehouse in the
Winter or Spring of 1854, it might have been
later, he was making enquiries about his goods.
we had some goods in our warehouse marked
Paw Paw Grove (here the Pltff showed witness a
card) witness said I recollect seeing cards ^{like} this
on the Boxes— there were two boxes, one chest. I saw
them when they came to our warehouse— we received
them from the defendants, they came on their
Railroad from Chicago and were in good order
when received and shipped by us. I cannot
describe the size— I afterwards shipped them to
Earl Station, Earlville in good order.—

I saw them put on board a covered car - went
with the Station keeper - they were put on board
defendants cars to go from Aurora to Earlville
about the 12th of January - I took no receipt
from them, they had been in our warehouse
a few days. - Our cross examination witness said
we received them about 7th of January, consigned
to us by Mitchell & Co warehousemen - no one
had them in charge - there were two Boxes, one
shut, they appeared to contain household goods
beds, bedding, clothing &c. I can generally tell
by the looks of boxes - we had no information of
the contents from anyone. - I saw them put into
the house, and afterwards into the car. - The
first time I saw the plaintiff was after I sent
the goods - we had two hired men in our
warehouse at that time. McLeary was the Station
agent - I went with him to see the goods safely in
the cars. Our reexamination witness said if
any boards had been loose or off the boxes I should
have noticed it - I saw no difference in the boxes
when they came to our house, and when sent away.
He paid the charges of 1.50 to Mitchell & Co and the
Railroad charges to Aurora.

Jas. C. Woodbridge testifies,

I have known the Pltff
since the Winter of 1854 - live at Paw Paw near
Pltff. Was at Earl with Pltff in Jan'y or Feb'y

14 1854, we found two boxes and one chest for Pltff, first I saw them in the disto warehouse marked Paw Paw Grove, saw plaintiff take a card from box when opened - think that is the card.

The largest box looked as if it had been opened - it was then nailed up, looked as though nails heads had been drawn through the boards - the box was opened on the sled by the Station house.

I saw it until it was opened - in it was one or two beds and bedding, a small table or stand looking glass, bed cloths, pillows, tin ware two guns, knives, forks, dishes (a rifle & shot gone) no valise or trunk inside - it was the largest box - it was made of pine boards, small joints in each corner - Box 3 or 4 feet square no iron hoops on the box. - I heard nothing said about the length of time it had been in Store house. On cross examination Witup said the box appeared to have been opened because the nail heads seemed to have been drawn through, only one part of the box, one board appeared so, the ends looked as though it had been nailed a second time. - the other boxes in good order - one box made of pine, two or two and a half feet, the large box made of pine, the chest of hard wood rather old. The boxes all appeared to contain household goods - I should naturally suppose so from their appearance - The large

box looked new - the box had been well made,

On re examination - Wits said the breach of the rifle was broken - cost four or five dolls for new one - I know Healloek sold him a load of grain that day, did not see him there when box opened. a good ordinary suit of cloths worth from 15 to 20 dollars - Value 2.50 or 3 dolls shirt 1.00 socks 50^c cravat 1. Plaintiff was a drauger in that county - I heard he had come from P.W.

The plaintiff then gave this card in evidence,

Witup said the first I saw of this card it was in plaintiffs hands, as he took it out of the box. - The plaintiff then read in

evidence the following depositions -

State of Illinois

Kaw County ^{vs.} Kaw County Circuit Court.

May Term A.D. 1856

James Thompson

v

Case.

The Chicago and Aurora

Rail Road company

Interrogatories to be administered to Isaac P.

Healloek a witup to be produced, sworn and examined on behalf of the above named plaintiff James Thompson under and by virtue of a commission to be issued out of the clerks office of the said Kaw County.

circuit court, and under the seal of said court to be directed to Robert A. Matthews Esq. of Council Bluffs in Pottawattamie county in the state of Iowa as commissioner to take the deposition of said witness to be read as evidence in the above entitled cause.

1st Interrogatory — What is your name, age, occupation and where do you reside. —

2^d Interrogatory —

Do you know the parties in the title of these Interrogatories named or either of them — if yes, how long have and where did you know them or either of them. —

3^d Interrogatory —

Have you any knowledge of the said Rail Road company carrying any boxes or packages of goods of any kind from Aurora to Earlville on their road or having any at the latter place in their care for said plaintiff if yes, state all you know about it, and the time when it was, state if you know how the boxes were marked, what condition they were in, and if you did anything to either of the boxes — state what.

4th Interrogatory —

Are you acquainted with R. C. Heune if yes, state whether you saw him at Earlville at any time when the plaintiff was there — What Heune's business was there, and

and what was done if anything to a box of the Plaintiff by you and them or you or either of them when you were all there and when it was.

5th Interrogatory—

If you heard any conversation between Keume and the plaintiff at the time ~~referred~~ referred to, about said Box state it, tell what each said as near as you can recollect.

6th Interrogatory

If you know of any other matter or thing which would be of benefit or advantage to the plaintiff in this suit state it as fully as if particularly interrogated thereunto.

S. Wilcox atty for Plff.

Deposition of Isaac P. Kellock of Polk County in the State of Iowa, a witness aged about fifty years, produced, sworn and examined before Robert A. Matthews a commissioner in and for the county of Polk County and State aforesaid on 27th day of June at the office of W. L. Jones in said County, and State aforesaid by virtue of a commission issued out of the Clerk's office of the Kaw County circuit Court of the State of Illinois, to me directed, for the examination of the said Isaac P. Kellock a witness in a suit depending in the said Kaw County circuit Court in the State of Illinois between James Thompson Plaintiff and the

Chicago & Aurora Rail Road Co Defendants. —

First — To the first interrogatory this deponent says,

My name is Isaac P. Kellogg, my age is fifty one years, my occupation is a farmer. I reside at Omaha city in the Territory of Nebraska and now acting as Justice of the Peace.

Second — To the second Interrogatory this deponent says,

I am acquainted with the plaintiff, I have been acquainted with him for two years, or thereabouts; I have known the Rail Road as a corporation ever since it existed.

Third — To the third Interrogatory this deponent says.

I saw a large box on the platform of the Station house at Earlville belonging to the Plaintiff. It was in my way, as I was shipping some produce, I called in the hands to remove it, on its being removed. I saw that the box was open or a board was loose — one of the hands called Dutch Henry went and got a hammer and nails and nailed it up — I do not know how the box was marked — The box was in good order and very strongly nailed excepting the board that was loose, all I done to the box was to help to move it. This was about two years ago I believe.

Fourth — To the fourth Interrogatory this deponent says,

I am acquainted with A. C. Heume, he was the Station agent for the Rail Road company.

at Earlville, I have been once or twice present when Heume and the plaintiff were both there.

There was nothing done to any box by me or any other person when Heume and the plaintiff were both there, that I recollect of.

Fifth - To the fifth Interrogatory this deponent says.

The plaintiff said he had several hundred dollars in the box and it was shipped in good order at Aurora, and that it had been taken out, either on the way from Aurora to Earlville or at Earlville, and that he claimed of the defendants the Rail Road company, the sum of seven hundred dollars or thereabouts, I think. Whether it was all money or not I am unable to say, he said the money was in a satchel I think, and the satchel was taken out. Mr Heume replied that he knew nothing about it, and that it was a very improper place to carry money, and that it was also very imprudent for him to state in a large crowd ⁱⁿ at Aurora that he had money in that box as he had understood and he should pay him nothing. To use his own words, he call him a damned old fool for putting money in the box, and for reporting that he had money in the box, while the box was at Aurora.

Sixth - To the sixth interrogatory the deponent says.

He knows of nothing further that would

no advantage to the plaintiff or any other
person in this suit.

Isaac P. Kallcock

State of Iowa

County of Polk

I, the commissioner
appointed by the commission
herewith attached, in and for said county, and
State of Iowa, do hereby certify, that the
above deposition was taken by me at the time
and place mentioned in the caption thereof,
that the said witness was first duly sworn, and
that the said deposition was carefully read to
said witness and signed by him.

In witness whereof I have herewith set
my hand and seal this twenty seventh
day of June A.D. 1856.

Robert A. Washburn

State of Illinois

Kane County Jss. Kane County circuit court.

James Thompson

v

Care-suit now pending.

The Chicago and Aurora

Rail Road company

Interrogatories to be
administered to Charles
Sabar - Andrew McElitock - James Jones
and Giba Bennett, witnesses to be produced
sworn and examined on behalf of the above
named plaintiff, James Thompson, under
and by virtue of a commission to be issued
out of the Kane County circuit court to be

directed to Gilbert Burrows Esq of Wilkes
Barre - Luzerne County, State of Pennsylvania
as commissioner to take the depositions of said
witnesses in the above entitled cause.

Interrogations to be administered to said
Charles Datar.

1st Interrogatory - What is your name, age
occupation and when do you reside.

2^d Interrogatory,

Do you know the parties in the title
of this interrogatory named or either of them
if yes how long and where did you know
them or either of them.

3^d Interrogatory - Did you see the plaintiff
in this suit in the fall or winter of AD 1853 at
the time he was leaving Pennsylvania for
the west, if yes, state where you saw him
what place you last saw him at, and
what he was doing there, and if you
assisted him in doing anything state what.

4th Interrogatory -

Do you know of the said
Plaintiffs getting a box made at anytime
or place, if yes, state when and where it was,
its size, manner in and materials with which
it was made - how it was fastened up
and what he did it with.

5th Interrogatory - Did you see anything or

things put into said box, if you, state when
what, and how the same were put and who
put the same into said Box, and after the
same were put into said box, ~~and after the~~
~~same~~ state if you know how if at all it was
fastened up, who fastened it up, what mark
or marks were upon or put upon it, and what
was done with it— state fully and particularly
on these points. —

6th Interrogatory— If in your answer to the
next preceding interrogatory you say you
saw a valise put into said box— state if you
saw the valise open— when you saw it open
what if anything, when open you saw the
plaintiffs do, and if you saw any money
how much, and the kind thereof, and what
was done with the valise. —

7th Interrogatory.

Do you know that the plaintiff
at the time he left Pennsylvania for the West
in 1853 had money, if you state how much
the kind of money, when, when and how
you came to see and know it.

8th Interrogatory— Do you know any other
matter or thing touching the matters in
controversy in this suit, that may tend
to the benefit or advantage of the said plaintiff
if you, declare the same fully, as if you

had been particularly interrogated thereto.

Interrogatories to be administered
to said Witness Andrew McIntock. —

1st Interrogatory —

What is your name, age
occupation and where do you reside. —

2^d Interrogatory —

Do you know James Thompson
the plaintiff in this suit — if yes, how long
and where you have known him

3^d Interrogatory —

Have you any knowledge of any
money being paid to said plaintiff or of
any draft or bill of exchange for money for
money being given to him about the time
of his leaving Pennsylvania for the West, if yes
state what you know on these points, the amount
of the money or draft and when it was

4th Interrogatory — Had the said plaintiff any
money at the time he left Pennsylvania for
the west to your knowledge, if yes how much.

5th Interrogatory — Do you know of any other
matter or thing touching the matters in
controversy in this suit that may tend to the
benefit or advantage of the said plaintiff —
if yes, declare the same fully, as if you

had been particularly interrogated thereto. —

Interrogations to be administered to
said James Jones witness as aforesaid.

1st Interrogatory — What is your name, age
occupation, and where do you reside. —

2^d Interrogatory — are you acquainted with James
Thompson the plaintiff in this suit, if you,
state how long and where you have known
him. —

3^d Interrogatory — State when and where you
last saw the said plaintiff in AD 1853 — and
whether you saw him have any money or
any body pay him any money, if you,
state what you saw and knew on these points
and the amount and kind of money. —

4th Interrogatory — at the time said plaintiff
left Wilkes Barre for the West in the Winter of
1853 did he to your knowledge have any
money, — if you state as near as you can
the amount and kind thereof.

5th Interrogatory — do you know of any other
matter or thing touching the matters in
controversy in this suit that may tend to
the advantage or benefit of the said plaintiff
if you, declare the same fully, as if you
had been particularly interrogated thereto.

Interrogations to be administered to

said Giba Bennett, witness as aforesaid.

1st Interrogatory — What is your name, age, occupation and where do you reside. —

2^d Interrogatory — Are you acquainted with James Thompson the plaintiff in this suit if you state how long and where you have known him.

3^d Interrogatory — Do you know that any one paid to said Plaintiff or that he received any money about the time he left Wilkes Barre for the West if you, state who paid him money, the amount thereof, when it was and the circumstances attending the same.

4th Interrogatory — Do you know any other matter or thing touching the matters in controversy in this suit that may tend to the advantage or benefit of said Plaintiff, if you, declare the same fully, as if you had been particularly interrogated thereto.

Deposition of Charles Labar of Jenkins Twp in Luzerne County State of Pennsylvania, a witness aged about 38 years, produced, sworn and examined before Gilbert Burrows of Wilkes Barre in the county of Luzerne and State aforesaid, on the 24th day of September A.D. 1855 at the office of said Gilbert Burrows in Wilkes Barre in said county and State aforesaid.

by virtue of a commission issued out of the clerk's office of the Kane County circuit court of the State of Illinois to me directed, for the examination of the said Charles Labar a witness in a suit depending in the said Kane County circuit court, in the State of Illinois, between James Thompson Plaintiff and the Chicago and Aurora Rail Road company Defendants - on the part of said Plaintiff.

First - To the first Interrogatory this deponent says,

My name is Charles Labar, I am about 38 years of age, I am a farmer by occupation and I reside in Jenkins Township in Luzerne County State of Pennsylvania.

Second - To the second Interrogatory this deponent says - I know James Thompson the plaintiff in this suit - I have known him for more than twenty five years past - in Pittston Luzerne County, State of Pennsylvania.

Third - to the third Interrogatory this deponent says, I saw the plaintiff in this suit, in the month of December A.D. 1853 at the time he was leaving this county for the West. - He stayed at my house in Jenkins Township in Luzerne County, the night before he left for the west, and I carried him and his baggage in my wagon from my house to Scranton, in this

county, where he took the rail road car for the West - which was the last place I saw him in - at Scranton the Plaintiff was repacking his goods & money, in which I assisted him.

Fourth, To the fourth Interrogatory this deponent says - I know that the Plaintiff got a box made at Scranton, in Luzerne county, on the day that I carried him to that place to take the cars - the said box was made of good substantial pine boards one inch thick, about four and a half feet long, and three & a half feet wide, & about three and a half feet high, as near as I can tell, it had corner posts inside, at each corner from $1\frac{1}{2}$ inches to 2 inches thick & about three inches wide, to the best of my recollection, and was strongly nailed together with 10^d or 12^d nails & the said box was fastened up by being securely nail, & I assisted the Plaintiff to put upon the cover of said box after nailing, a Iron hoop across the centre of the cover of the box, running half way down upon each side of the box & securely fastened on with nails and I assisted the Plaintiff in packing his goods in said box.

Fifth - To the fifth Interrogatory this deponent says, I saw the Plaintiff put his goods into the said box, and assisted him in putting them in - I saw him put in one table, one

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looking glass, two feather beds & bed clothing,
a lot of tin ware, dishes - knives and forks and
one rifle gun with various other articles, and
also one leather valise was put into the box by
me, between the two feather beds, and the
said box was fastened up as I have already
stated in my answer to the fourth interrogatory.
The name of James Thompson was written upon
the said box, and it was directed to him in the State
of Illinois to a place called Paw Paw to the best of
my recollection - but do not recollect whether or
not the name of the County was written upon
the box - The said box was placed in the care
of the agent of the Rail Road at the depot at
Serauton aforesaid, in Luzerne County.

Sixth - To the sixth Interrogatory this
deponent says, I saw the valise, which I have
spoken of in my answer to the 5th Interrogatory
opened and when opened I saw the plaintiff take
out a "comforter" for the neck - and saw him
take out of the valise a small roll of money
which plaintiff said was one hundred dollars
and put that in his pocket. - Plaintiff then
showed me in the valise a large pile of
Bank bills, containing I should say,
from six hundred to eight hundred dollars
which remained in the valise - I also saw
in the said valise a full suit of new Broad
cloth clothes, which had never been worn.

The said money remained in the said valise and was fastened up in the valise, in the said box by the Plaintiff and myself —

Seventh — To the seventh Interrogatory this deponent says — I know that the Plaintiff at the time he left Pennsylvania for the West in 1853 had money, to the best of my knowledge and belief he had from nine hundred to eleven hundred dollars — it was principally in Bank bills or notes. I know that six hundred dollars of the above mentioned sum besides some interest upon it he ^{Plaintiff} received from his father's estate — one hundred dollars Plaintiff rec^d from Ziba Beemuth & he Plt^f rec^d a day or two before he left for the west one hundred dollars from C. G. Thompson & Brothers and the Plaintiff received a few days before he left for the West one hundred dollars in money for farming utensils — stock &c sold at public vendue and he also received other smaller sums of money.

Eighth — To the eighth Interrogatory this deponent says, at the time I took the Plaintiff to Scranton in Luzerne county, as I have stated in my answer to the fourth interrogatory, the Rail Road agent at that place, objected to the quality of the boxes in which the Plaintiff had his goods packed, and said if Plaintiff would go to the shop of this company

+ have a good strong box made, and pack his goods in that, he would receive his goods + the plaintiff + myself went to the shop designated, + procured such a box to be made as I have described in my answer to the 4th Interrogatory - we packed the goods and money in said box, and the agent said it was good and sufficient and received the box with the goods + money packed in it as I have stated -

Charles Lahr.

State of Pennsylvania)

Luzerne County, ss: I Gilbert Burrows (commissioner

to take the deposition of certain witnesses in said suit) of Wilkes Barre in the county + state aforesaid, do hereby certify, that the above deposition was taken by me at the time and place mentioned in the caption thereof, that the said witness was first duly sworn and that the said deposition was carefully read to said witness + signed by him.

In witness whereof I have hereunto set my hand + seal, (having no official seal) this 24th day of September A.D. 1853 -

Gilbert Burrows (Seal)
Commissioner as aforesaid.

Deposition of Andrew J. McIntock of Wilkes Barre Luzerne county, in the State of Pennsylvania, a witness aged about 45 years, produced, sworn

and examined before Gilbert Burrows of Wilkes Barre in the County of Luzerne and State of Pennsylvania on the 24th day of September A.D. 1853 at the office of said Gilbert Burrows in Wilkes Barre in said county and State aforesaid, by virtue of a commission issued out of the Clerk's office of the Kane County Circuit Court of the State of Illinois to me directed for the examination of the said Andrew J. McClinton a witness in a suit depending in the said Kane County Circuit Court, in the State of Illinois between James Thompson plaintiff and the Chicago and Aurora Rail Road Company defendants on the part of said Plaintiff.

First - To the first Interrogatory this deponent says, My name is Andrew J. McClinton - my age is forty five years, I am a Surgeon by profession & occupation and I reside in Wilkes Barre - Luzerne County & State of Pennsylvania.

Second - To the second Interrogatory this deponent saith - I know James Thompson the plaintiff in this suit - I have known him over fifteen years in Luzerne County residing in Wilkes Barre and Thompson in Pittston in this county.

Third - To the third Interrogatory this deponent says, On the 27th day of August 1853 I gave the plaintiff in this

case, James Thompson a draft on the "Pennsyl-
vania Coal Co" New York at one days sight
for one hundred & ninety dollars, and on the
7th day of December AD 1853 I gave the Plt James
Thompson a draft on the Pennsylvania Coal Co
New York, for five hundred dollars.

The last mentioned draft was given to him
a short time before he left this county for the West.

Fourth - to the fourth Interrogatory this
deponent says, I know nothing of the means
of James Thompson about the time he left for
the west, except the drafts mentioned in my
answer to the third interrogatory.

Fifth - to the
fifth interrogatory this deponent says, that
he knows no other matter or thing touching
the matter in controversy in this suit, that
may tend to the benefit or advantage of the
Plaintiff.

State of Pennsylvania

County of Luzerne

Andrew J. McClintock
vs I Gilbert Barron (complainant
to take the deposition of certain witnesses
in said suit) of Wilkes Barre in the county and
State of aforesaid, do hereby certify that the above
deposition was taken by me at the time and
place mentioned in the caption thereof that the
said witness was first duly sworn, and that the
said deposition was carefully read to said

Witness and signed by him. —

In witness whereof I have hereunto set my
hand and seal (having no official seal) this
24th day of September A.D. 1855

Gilbert Burrows 
Commissioner as aforesaid

Deposition of James Jones of Wilkes
Barre in the County of Luzerne and State of
Pennsylvania, a witness aged about 38 years
produced sworn and examined before Gilbert
Burrows of Wilkes Barre in the County of Luzerne
and State aforesaid, on the 24th day of
September A.D. 1855 at the office of said Gilbert
Burrows in Wilkes Barre in said County and
State aforesaid, by virtue of a commission issued
out of the Clerk's office of the New York County Circuit
Court of the State of Illinois to me directed
for the examination of the said James Jones
a witness in a suit depending in the said
New York County Circuit Court in the State of
Illinois, between James Thompson Plaintiff
and The Chicago and Aurora Rail Road
Company Defendants, on the part of said
Plaintiff. —

First — To the first Interrogatory this
deponent says, My name is James Jones — I
am thirty eight years of age — my occupation

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is that of a clerk in the Wyoming Bank at
Wilkesbarre and reside in Wilkesbarre Luzerne
County and State of Pennsylvania.

Second - To
the second interrogatory this deponent says -
I am acquainted with James Thompson, the
Plaintiff in this suit, have known for fifteen
years or more, at Wilkesbarre in Luzerne
County State of Pennsylvania.

Third - To the
third Interrogatory this deponent says, The last
time I saw James Thompson the Plaintiff
in this suit, was in the latter part of the year
A.D. 1853 at the Wyoming Bank at Wilkesbarre
I have no means of fixing the precise date,
but it was a few days before he left this county
for the West - I paid him money, at the counter
of the Wyoming Bank at Wilkesbarre, a
considerable amount, - on referring my
memory, by reference to dates, I can say
that on the 7th day of December A.D. 1853, Andrew
J. McClintock's draft on the Pennsylvania Central
New York for Five hundred dollars was
paid at the counter of our Bank - I mean
the Wyoming Bank, James Thompson at the
same time drew from our Bank a considerable
amount of Gold, the amount I could not
state, I do not remember whether we paid him

in gold or ⁱⁿ bills on the draft referred to above.

Fourth - to the fourth Interrogatory this deponent says - I have no further knowledge as to what money the Plaintiff had, at the time he was about leaving for the West, than what I have stated in my answer to the third Interrogatory. -

Fifth - To the fifth Interrogatory this deponent says - I know nothing further touching the matters in controversy in this suit, than what I have already stated. -

State of Pennsylvania)
County of Luzerne J. S. Gilbert Burrows

(Commissioner to take the deposition of certain witnesses in said suit,) of Wilkes-Barre in the county and State aforesaid do hereby certify that the above deposition was taken by me at the time and place mentioned in the caption thereof, that the said witness was first duly sworn and that the said deposition was carefully read to said witness & signed by him - In witness whereof I have hereunto set my hand & seal this 24th day of Sept A.D. 1855

Gilbert Burrows 
Commissioner as aforesaid

Deposition of Ziba Bennett of Wilkes Barre in
Luzerne County, and State of Pennsylvania
a witness aged about 55 years, produced, sworn
and examined before Gilbert Burrows of Wilkes
Barre in the county of Luzerne and State of
said, on the 24th day of September A.D. 1855 at
the office of said Gilbert Burrows in Wilkes
Barre in said county and State of said, by
virtue of a commission issued out of the clerk
office of the Kane County Circuit Court of the
State of Illinois, to me directed, for the exam-
ination of the said Ziba Bennett, a witness in
a suit depending in the said Kane County
circuit court, in the State of Illinois - between
James Thompson Plaintiff, and the Chicago
and Aurora Rail Road company, defendants -
on the part of said plaintiff.

First - To the first
Interrogatory this deponent says - My name
is Ziba Bennett, my age is about 55 years,
I am a merchant by occupation, and I
reside in Wilkes Barre, Luzerne County, in
the State of Pennsylvania.

Second - To the second
Interrogatory, this deponent says - I am
acquainted with James Thompson the
Plaintiff in this suit, I have known him
about forty years in Wilkes Barre and Pittston

in Luzerne County State of Pennsylvania.

Third - To the third Interrogatory this deponent says, I paid to Isaac Thompson the plaintiff in this case one hundred dollars on the 4th day of December 1853, a short time previous to his leaving this county for the West, on settlement of accounts.

Fourth - To the fourth Interrogatory this deponent says, I do not know any other matter or thing touching the matter in controversy, in this suit that might tend to the advantage or benefit of said Plaintiff.

Gibb Barnitt

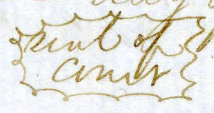
State of Pennsylvania

County of Luzerne

vs. J. Gilbert Burrows

(commissioner to take the deposition of certain witnesses in said suit) of Wilkes-Barre in the County and State of Pennsylvania do certify, that the above deposition was taken by me at the time and place mentioned in the caption thereof, that the said witness was first duly sworn, and that the said deposition was carefully read to said witness and signed by him. In witness whereof I have hereunto set my hand and seal (having no official seal) this 24th day of September A.D. 1855

Gilbert Burrows C.A.B.
Commissioner as of course

State of Pennsylvania
Suzerne County, I. Reuben Downing
Prothonotary of the court
of common Pleas in & for Suzerne County &
State of Pennsylvania, do certify, that Gilbert
Burrows before whom the above depositions were
taken, is & was at the time of taking said
depositions a Justice of the Peace in & for the
^{State & County} ~~State~~ and ~~County~~ of ~~Suzerne~~ and duly
qualified to administer an oath in said
county - and that his signature attached
to said depositions is in his own proper hand
writing. In witness whereof I have hereunto
set my hand and the seal of said court the
24th day of Sept A.D. 1855
 Reuben Downing Prothy.

The Plffs here stated.
The defendants then introduced as a witness,
R. C. Kerue who testified, I was freight agent
at Earl in 1854, and still am - had never
seen the boxes until the time they were
delivered to plffs - had been at Aurora a
week or two days - came to Earl the night
before or on the morning they were delivered
to Plffs - went down on the night train - one
or two o'clock at night. - The first I
knew anything of the goods was that

39 morning, nine or ten o'clock. Warner
had charge of Station while I was absent —
the goods arrived Saturday night — I went
down Sunday night. In the morning Monday
Pliff came and asked for goods — went over
to Storehouse, found them — he paid charges
and I took a receipt for goods in good order. —
after the goods were loaded on the sled Plaintiff
came back and told me one of his boxes
had been broken open. — I went out and looked
at it on the sled. Mr Keallack said a board
was loose when it was taken out of the cane.
I should judge the box was between half and
two thirds full — saw nothing wrong, except
the board being loose — Keallack showed me
where the board was loose and he and the
Dutchman had nailed it on. Pliff told
me he had lost a valise with 900 dollars
in it. I laughed at him — he said nothing
about losing any clothes — the first I heard
of that was here in court — the chest had one
broken leg, which was noted in the way bill.
The Pliff told me he had not enough to fill
the box, and he had put pieces across and
nailed them at the ends to keep the goods in
place. I saw a gun with broken stock. —
The box was marked with black paint.

An cross examination Wits said I have been

in employ of defts since the commencement of
the road - at the time goods received at Earl
I was at Aurora collecting some freight bills.

Justus Harding testified, I live at Paw
Paw Grove, have known plaintiff since Sept
1853, he bought land of me - he paid me
200 dollar Decr 31. 1853, he paid me 300 dollar 13th
of March 1854. he bought yoke of cattle and
paid 105 dollars at same date 13th March 1854.
The plaintiff then asked the witness - "what did
he tell you when he paid you the 300 dollar" to
which question the defendants by their counsel
objected - The court overruled the objection and
allowed the witness to answer the question to
which decision of the court in overruling said
objection and allowing the witness to answer -
the question the defendants by their counsel at the
time excepted - The witness answered - The
Plff said he had been back East after he
had paid the 200 dollars and before he paid
the 300 dollars and this was all he had to
spare. The defts then introduced as evidence
this receipt - "Chicago & Aurora Railroad.

Earl Station January 23 1854

Received of O & A. R.R Co the following goods in
good order - marked - articles -

James Thompson -

2 Bops, 1 Chest.

James Thompson"

Which it is admitted was signed before Pltff had examined the Box —

The defendants here stated. — The Pltff then recalled the wife Woodbridge who further testified, that Pltff stated in her presence that the valise contained 700 dollars and a new suit of clothes — never worn. This was sometime in the afternoon — as first came to Depot about eleven o'clock — it was in afternoon when goods received by Pltff — don't know but Pltff had been to depot before noon — saw no writing made or signed by Anne or any one. — The foregoing is all the evidence given in the case — the court found the issues in favor of the plaintiff, and rendered a judgment for the plaintiff against the defendants for the sum of seven hundred and dollars — to which opinion, decision and judgment of the court the defts by their counsel at the time excepted — and pray that this their bill of exceptions may be signed by the court, which is done

Isaac G. Wilson Esq
Judge

State of Illinois

Kane County I Paul R. Wright clerk of the
Kane County Circuit Court in the State
of said do hereby certify, that the foregoing is
a true and complete copy of the following
papers as filed in the above entitled case
in my office, with the Sheriff's endorsement
thereon, to wit, "Process, Summons, 'Harr'
Plea, appeal bond, & Bill of exceptions. — Also
of the order submitting it to the court, and
the final order of the court therein, as appear
from the records and files of my office.

Witness Paul R. Wright clerk of said
court and the seal thereof at Geneva
this 17th day of March A.D. 1857

P. R. Wright
clerk



State of Illinois }
Supreme Court } Of the April Term A.D. 1857

The Chicago & Aurora
Rail Road Company
Appellant

vs

James Thompson
Appellee

Afterwards, to wit: on the twentyfirst day of April in the same Term, before the Judges of the Supreme Court of the State of Illinois at the Supreme Court Room in Ottawa in said State, comes the said Chicago & Aurora Rail Road Company, by Douglass and Walker its Attorney and says that in the Record and proceedings aforesaid there is manifest error in this to wit: First: That the said Circuit Court erred in overruling the objection of the Counsel for the defendant on the trial of said cause in the Court below, to the following question put to the witness Lester Harding, to wit: "What did he tell you when he paid you the 300 dolls." and in permitting the said witness to give in answer evidence to the jury, the answer of said witness to said question.

2^d That said Court erred in deciding that the plaintiff in the Court below was entitled to recover for the money

contained in said box in said declaration mentioned.

3^d The said Circuit Court erred in deciding on the trial of said cause in the Court below, that the plaintiff was entitled to judgment therein without alleging or proving that the defendant was a common carrier of money or bank bills.

4th The said Circuit Court erred in deciding on the trial of said cause in the Court below that the plaintiff was entitled to judgment therein without proving that the defendant was a common carrier of money or bank bills.

5th That by the Record aforesaid it appears that the judgment aforesaid ^{was given} for the said appellee and against the said appellant.

Whereas by the law of the land judgment ought to have been given for the said appellant and against the said appellee.

And the said Appellant prays that the judgment aforesaid, ~~and other~~ ^{per the} errors in the Record and proceedings aforesaid, may be reversed, annulled and for naught held, and that the said appellant may be restored to all things which he has lost by occasion of said errors and of the judgment aforesaid.

Douglas and Walker
Attys. for Appellant

State of Illinois }
Supreme Court.
James Thompson
vs

April Term A.D. 1857

The Chicago & Aurora Rail Road Company }

} appeal

And now (April 23^d). comes
the said appellee James Thompson by S. Milox
his attorney and says that in the record and
proceedings aforesaid wherein the said appellant
alleges above there is manifest error - there is
no error and prays that the judgment of
the Court below may be affirmed &c.

S. Milox
att'y for appellee

¹⁴⁵
Hawley Cir. Court

James Thompson

v

C. & A. R. R. Co.

Transcript

Filed April 22, 1889

Leland
Clerk

Sedgewick & H. T. W.
for appellants

Answer, 

22

THE CHICAGO AND AURORA RAILROAD COMPANY, Appellant,)

VS.

JAMES THOMPSON, Appellee,)

POINTS OF APPELLEE.

This is an action on the case brought by the Appellee against the Appellant, to recover the value of a suit of clothes, shirts, stockings, valise, gun, and \$700 to \$800 in money, which were abstracted from a box while in transit from Aurora to Earlville, by the Appellant as a common carrier.

The evidence establishes very clearly, that the Appellant was a common carrier by Railroad, from Aurora to Earlville; that in January, 1854, as a common carrier, the Appellant received on its cars at Aurora, to be transported to Earlville, 2 boxes and one chest, marked James Thompson, Paw Paw Grove; that the boxes were in good order when so received; that on their arrival at Earlville, one of the boxes was open, that it had been opened one of the boards was loose; that this box in December previous, was by the Appellee placed on board of the cars at Scranton, Pa., to be forwarded as above; that it contained then, in addition to the things found in it at Earlville, a valise, in which were said articles of wearing apparel and money, that it was a new, strong, well-made and nailed box, and hooped with iron; that it came to and was shipped from Aurora in good order, with no board loose; that after its arrival at Earlville, the servants of the Appellant nailed up the box; that when it was being delivered to the Appellee, noticing that it had been opened, he in presence of the servants of the Appellant, caused the contents of the box to be examined; that the gun was there but broken, that the table and bed clothes, dishes, &c. were there, but that the valise with the wearing apparel and money were gone—abstracted.

That the box which came to Earlville open, was the identical box shipped at Scranton, containing the valise, with the money and apparel, is abundantly proved by the coincidence as to size, construction, materials, contents, and direction, sworn to by the witnesses, Labar and Woodbridge.

That its contents were the same when received by the Appellant, as when shipped at Scranton is sufficiently proven by the circumstances, that when shipped at Scranton, the box was strong, new, and firmly nailed, and when it arrived and was shipped at Aurora, the box was in good order, with no board loose.

1 Gre. Evid. P. 48, §41.

That the judgment of the Circuit Court, as to the facts in the case, is conformable to and fully sustained by the evidence, I think there can be no doubt, but if there were some doubt, or if the evidence were such as would have inclined this Court to have found for the Appellant, still the judgment cannot be said to be so palpably against the weight of evidence, as to warrant its reversal on that account.

Webster et al vs. Vickers, 2 Scam. 295.

Eldridge et al vs. Huntington, 2 Scam. 538.

Harmon et al vs. Thornton, 2 Scam. 351.

Dawson vs. Robbins, 5 Gil. 72.

Sullivan vs. Dollins, 13 Ills. 85.

The Court did not err in permitting the witness Harding to state what the Appellee said at the time Appellee paid him the \$300, for two reasons:

1st. Because it appeared there was conversation at same time about land and oxen, and Appellants had called out a part of the conversation, this gave Appellee the right to the whole of it.

1 Gre. Evid. P. 241 and 2, §201 and 2.

2nd. Because it was a declaration accompanying an act, and so connected, as to be a part of the Res Gestae. Ib. §108—9.

Again, the ruling of the Court on that question, could not have prejudiced the Appellant's defence, it being palpable, that the finding of the Court on the facts would have been the same without the answer to the question objected to as with it, and hence the judgment ought not to be disturbed on that account.

Graham's Practice, 325.

It is believed, that the law arising upon the facts, was correctly determined by the Court below, and that the judgment ought not to be reversed.

The proof showed the Appellant to be a common carrier, that as such, it received the box, and undertook to carry it from Aurora to Earlville, and there deliver it with its contents, and that it did not so deliver it.

This I insist renders the Appellant liable for the value of the box, (no matter what the value of its contents was,) unless the Appellant has shown the loss to have been occasioned by the act of God or a public enemy, which it is not pretended is shown.

Woods vs. Devine, 13 Ills. 746—748—9

Riley vs. Horn, 5 Bing. 217, (15 Eng. C. L. 549.)

2 Kent 603. 3 Watts & Seg't. 25.

Angel on car. Page 287, §282.

The question of notice does not arise in the case, it not being pretended by the Appellant that it ever gave any restricting its liability, or confining its business to the carriage of any particular kind of goods.

No information as to the contents or value of the box was asked by the Appellant at the time of its receipt, and nothing was said in reference to it by the Appellee.

No marks were on the box misrepresenting its contents.

Under the circumstances then, can the Appellant be relieved from liability wholly or partially, on account of the contents of the Box?

I think not. It waived all objections to the contents and value, by receiving the box without asking to know the same. It might have known the value if it desired, and refused to receive the box without knowing, but taking it in charge voluntarily, without demanding any information, estops it now from making complaint of its contents and value, and renders it liable.

Riley vs. Horne, 5 Bing. 217, (15 Eng. C. L. 549.)

Phillips vs. Earle, 8 Pick. 182.

Relf vs. Rapp, 3 Watts & Ser'gt 25.

Camden and Amboy Railroad Co., vs. Baldauf, 16 Pens. 78.

Angel on car. §264. 2 Kent 602—3.

Story on Bailments, Page 563, §567.

Walker vs. Jackson, 10 Meeson & Wel. 161 (169.)

Edwards on Bail 479-481

It cannot justly be contended by the appellant, that there was any fraud or concealment practiced by the appellee with reference to the box or its contents.

The box was an ordinary wooden one, with no marks indicating and no device or artifice used disguising its contents, and marked simply James Thompson, Paw Paw, Ills. The appellee made no misrepresentations, and used no artifice

to deceive the appellant in reference to the value of the box, and consequently was guilty of no fraud, and if appellant was deceived, it is a self deception, of which it cannot complain.

1 Parsons on Contracts, Page 461. Story on Bailments, §566 and 567.

There was no concealment of the value of the box on the part of the appellee as the word is used in the Law. In one sense, the contents might be regarded as concealed, because it is by boards nailed together, put out of sight. In this sense every species of goods in a tight box is concealed, and if the appellant, as a carrier, is exempt from liability on that account, it would not only be a new doctrine, but one which would almost entirely discharge it from all liability for loss of goods. In contemplation of law, concealment signifies an omission to disclose some fact which a party is bound to communicate. The appellee was not bound to communicate any knowledge of the contents or value of the box, and hence, by being silent, cannot be charged with concealment.

4 B. and Ald. 19, (29,) 5 Bing. 217. 8 Pick. 182.

3 W. and S. 25. 16 Pens. 78. 2 Kent, 603.

Story on Bail. S. 567. 10 M. and W. 161.

Edwards on Bail 479-481

Where the carrier has given notice that he will not be liable for parcels of value over a certain sum, unless informed of the value, and freight paid accordingly, and a party aware of the notice, delivers a parcel to him and states its value at \$10 when it is \$1,000, and the parcel is lost, the carrier would not be liable, because of the concealment of the value, and it is in this sense the word is used. See English cases above cited.

The objection that the appellant was not a carrier of Bank Bills, is it is conceived without force. The company being shown to be a common carrier, are presumed to carry all goods and chattels which it had room to carry, and that it had room to carry this box is certain, from the fact that it did.

1 Parsons on Contracts, 648-9.

5 Bing. 217.

Story on Bailment, S. 529.

23 W 186

The charter makes the company as much a common carrier of Bank Bills as of lace, ribbons, silks, cashmire shawls, &c., and it certainly cannot say it is not a carrier of these, and liable for the loss of the same. The value of the article does not determine whether it is a thing which a common carrier has undertaken to convey, is liable for its loss.

4 B. and Ald. 19, (opinion of Best.)

Bank Bills are goods, at any rate, they are embraced in the words, goods and chattels.

Sewall vs. Allen, 2 Wend. 327.

" " 6 " 335.

(Chancellor Walworth's opinion, by far the ablest.)

Handy vs. Dobbin, 12 Johns. 220.

Chane vs. Freese, 1 Harr. 305.

Dolby vs. Millins, 3 Humph. 437.

11 Missouri, 229.

The appellant relies upon the case of Sewall vs. Allen, 6 Wend. 335, as showing that Bank Bills are not "goods." The case fairly considered, does not so determine, the decision is mainly upon the ground, that the money was delivered to the Captain of the boat as a personal trust, and not to the company, and so of the case in 16 Missouri.

But the reasoning of the Supreme Court in Sewall vs. Allen, 2 Wend. 327, and of Chancellor Walworth in same case, in 6 Wend. 335, sustaining the position, that Bank Bills are goods, is unanswerable and much stronger than the special pleading of the Senators.

Again, the appellant is liable upon the general principle, that it has been guilty of negligence in not carrying and delivering the box safely, or showing the manner of the loss of the contents, it must have been stolen by its servants.

16 Pena. 78. 5 Bing. 217. Angel on car. S. 202.

10 Cushing 506 -

S. WILCOX, Attorney for Appellee.

The Chicago & Aurora
Rail Road Company
vs
James Thompson
Plaintiff of Appellee

Filed May 7. 1888
L. Leland
Clerk

E. WILCOX, Attorney for Appellee.

10 Cent. R. & Ding. 317. Angel on car. 8. 303.

manner of the loss of the contents, it must have been stolen by its servants.

Again, the appellant is liable upon the general principle, that it has been special pleading of the defendant.

That Bank Bills are goods, is unanswerable and much stronger than the and of Chancellor Walworth in same case, in *Q. W. Eng. 336*, sustaining the position of the defendant of the Supreme Court in *Gewell vs. Allen, 3 W. Eng. 337*.

ed to the Captain of the boat as a personal trust, and not to the company, and determine, the decision is mainly upon the ground, that the money was delivered to the Bank Bills are not "goods." The case fairly considered, does not so.

The appellant relies upon the case of *Gewell vs. Allen, 3 W. Eng. 336*, as showing

11. *W. Eng. 336*.

10. *W. Eng. 336*.

9. *W. Eng. 336*.

8. *W. Eng. 336*.

7. *W. Eng. 336*.

State of Illinois -

Supreme Court -

April Term AD 1857

The Chicago & Aurora
Rail Road Company -

145-

vs

James Thompson

} appeal from Kane

It is hereby agreed

that the above case may be continued
until the next term of said Court -

Chicago April 31st 1857 -

Sedgwick Walker
catty for appellant

Swann Milnor
appellee atty -

64 A. R. R. Co
as 53
Lar. Thompson

Agreement for continuation

Filed May 5, 1887
S. Leland
Clerk

THE CHICAGO AND AURORA RAILROAD COMPANY, Appellant, }
 VS. }
 JAMES THOMPSON, Appellee,
 POINTS OF APPELLEE.

This is an action on the case brought by the Appellee against the Appellant, to recover the value of a suit of clothes, shirts, stockings, valise, gun, and \$700 to \$800 in money, which were abstracted from a box while in transit from Aurora to Earlville, by the Appellant as a common carrier.

The evidence establishes very clearly, that the Appellant was a common carrier by Railroad, from Aurora to Earlville; that in January, 1854, as a common carrier, the Appellant received on its cars at Aurora, to be transported to Earlville, 2 boxes and one chest, marked James Thompson, Paw Paw Grove; that the boxes were in good order when so received; that on their arrival at Earlville, one of the boxes was open, that it had been opened one of the boards was loose; that this box in December previous, was by the Appellee placed on board of the cars at Scranton, Pa., to be forwarded as above; that it contained then, in addition to the things found in it at Earlville, a valise, in which were said articles of wearing apparel and money, that it was a new, strong, well-made and nailed box, and hooped with iron; that it came to and was shipped from Aurora in good order, with no board loose; that after its arrival at Earlville, the servants of the Appellant nailed up the box; that when it was being delivered to the Appellee, noticing that it had been opened, he in presence of the servants of the Appellant, caused the contents of the box to be examined; that the gun was there but broken, that the table and bed clothes, dishes, &c. were there, but that the valise with the wearing apparel and money were gone—abstracted.

That the box which came to Earlville open, was the identical box shipped at Scranton, containing the valise, with the money and apparel, is abundantly proved by the coincidence as to size, construction, materials, contents, and direction, sworn to by the witnesses, Labar and Woodbridge.

That its contents were the same when received by the Appellant, as when shipped at Scranton is sufficiently proven by the circumstances, that when shipped at Scranton, the box was strong, new, and firmly nailed, and when it arrived and was shipped at Aurora, the box was in good order, with no board loose.

1 Gre. Evid. P. 48, §41.

That the judgment of the Circuit Court, as to the facts in the case, is conformable to and fully sustained by the evidence, I think there can be no doubt, but if there were some doubt, or if the evidence were such as would have inclined this Court to have found for the Appellant, still the judgment cannot be said to be so palpably against the weight of evidence, as to warrant its reversal on that account.

Webster et al *vs.* Vickers, 2 Scam. 295.

Eldridge et al *vs.* Huntington, 2 Scam. 538.

Harmon et al *vs.* Thornton, 2 Scam. 351.

Dawson *vs.* Robbins, 5 Gil. 72.

Sullivan *vs.* Dollins, 13 Ills. 85.

The Court did not err in permitting the witness Harding to state what the Appellee said at the time Appellee paid him the \$300, for two reasons:

1st. Because it appeared there was conversation at same time about land and oxen, and Appellants had called out a part of the conversation, this gave Appellee the right to the whole of it.

1 Gre. Evid. P. 241 and 2, §201 and 2.

2nd. Because it was a declaration accompanying an act, and so connected; as to be a part of the *Res Gestae*: *Ib.* §108—9.

Again, the ruling of the Court on that question, could not have prejudiced the Appellant's defence, it being palpable, that the finding of the Court on the facts would have been the same without the answer to the question objected to as with it, and hence the judgment ought not to be disturbed on that account.

Graham's Practice, 325.

It is believed, that the law arising upon the facts, was correctly determined by the Court below, and that the judgment ought not to be reversed.

The proof showed the Appellant to be a common carrier, that as such, it received the box, and undertook to carry it from Aurora to Earlville, and there deliver it with its contents, and that it did not so deliver it.

This I insist renders the Appellant liable for the value of the box, (no matter what the value of its contents was,) unless the Appellant has shown the loss to have been occasioned by the act of God or a public enemy, which it is not pretended is shown.

Woods vs. Devine, 13 Ills. 746—748—9

Riley vs. Horn, 5 Bing. 217, (15 Eng. C. L. 549.)

2 Kent 603. 3 Watts & Seg't. 25.

Angel on car. Page 287, §282.

The question of notice does not arise in the case, it not being pretended by the Appellant that it ever gave any restricting its liability, or confining its business to the carriage of any particular kind of goods.

No information as to the contents or value of the box was asked by the Appellant at the time of its receipt, and nothing was said in reference to it by the Appellee.

No marks were on the box misrepresenting its contents.

Under the circumstances then, can the Appellant be relieved from liability wholly or partially, on account of the contents of the Box?

I think not. It waived all objections to the contents and value, by receiving the box without asking to know the same. It might have known the value if it desired, and refused to receive the box without knowing, but taking it in charge voluntarily, without demanding any information, estops it now from making complaint of its contents and value, and renders it liable.

Riley vs. Horne, 5 Bing. 217, (13 Eng. C. L. 549.)

Phillips vs. Earle, 8 Pick. 182.

Relf vs. Rapp, 3 Watts & Ser'gt 25.

Camden and Amboy Railroad Co., vs. Baldauf, 16 Pens. 78.

Angel on car. §264. 2 Kent 602—3.

Story on Bailments, Page 563, §567.

Walker vs. Jackson, 10 Meeson & Wel. 161 (169.)

Edwards on Bail 479—481

It cannot justly be contended by the appellant, that there was any fraud or concealment practiced by the appellee with reference to the box or its contents.

The box was an ordinary wooden one, with no marks indicating and no device or artifice used disguising its contents, and marked simply James Thompson, Paw Paw, Ills. The appellee made no misrepresentations, and used no artifice

Was there no artifice
in putting value on
Lumber Co., Was it
not escape higher
charges on valuable?

to deceive the appellant in reference to the value of the box, and consequently was guilty of no fraud, and if appellant was deceived, it is a self deception, of which it cannot complain.

1 Parsons on Contracts, Page 461. Story on Bailments, §566 and 567.

There was no concealment of the value of the box on the part of the appellee as the word is used in the Law. In one sense, the contents might be regarded as concealed, because it is by boards nailed together, put out of sight. In this sense every species of goods in a tight box is concealed, and if the appellant, as a carrier, is exempt from liability on that account, it would not only be a new doctrine, but one which would almost entirely discharge it from all liability for loss of goods. In contemplation of law, concealment signifies an omission to disclose some fact which a party is bound to communicate. The appellee was not bound to communicate any knowledge of the contents or value of the box, and hence, by being silent, cannot be charged with concealment.

4 B. and Ald. 19, (29,) 5 Bing. 217. 8 Pick. 182.

3 W. and S. 25. 16 Pens. 78. 2 Kent, 603.

Story on Bail. S. 567. 10 M. and W. 161.

Edwards on Bail 479-481

Where the carrier has given notice that he will not be liable for parcels of value over a certain sum, unless informed of the value, and freight paid accordingly, and a party aware of the notice, delivers a parcel to him and states its value at \$10 when it is \$1,000, and the parcel is lost, the carrier would not be liable, because of the concealment of the value, and it is in this sense the word is used. See English cases above cited.

The objection that the appellant was not a carrier of Bank Bills, is it is conceived without force. The company being shown to be a common carrier, are presumed to carry all goods and chattels which it had room to carry, and that it had room to carry this box is certain, from the fact that it did.

1 Parsons on Contracts, 648-9.

5 Bing. 217.

Story on Bailment, S. 529.

23 94 186

The charter makes the company as much a common carrier of Bank Bills as of lace, ribbons, silks, cashmire shawls, &c., and it certainly cannot say it is not a carrier of these, and liable for the loss of the same. The value of the article does not determine whether it is a thing which a common carrier has undertaken to convey, is liable for its loss.

4 B. and Ald. 19, (opinion of Best.)

Bank Bills are goods, at any rate, they are embraced in the words, goods and chattels.

Sewall vs. Allen, 2 Wend. 327.

" " 6 " 335. 354

(Chancellor Walworth's opinion, by far the ablest.)

Handy vs. Dobbin, 12 Johns. 220.

Chane vs. Freese, 1 Harr. 305.

Dolby vs. Millins, 3 Humph. 437.

11 Missouri, 229.

The appellant relies upon the case of Sewall vs. Allen, 6 Wend. 335, as showing that Bank Bills are not "goods." The case fairly considered, does not so determine, the decision is mainly upon the ground, that the money was delivered to the Captain of the boat as a personal trust, and not to the company, and so of the case in 16 Missouri.

But the reasoning of the Supreme Court in Sewall vs. Allen, 2 Wend. 327, and of Chancellor Walworth in same case, in 6 Wend. 335, sustaining the position, that Bank Bills are goods, is unanswerable and much stronger than the special pleading of the Senators.

Again, the appellant is liable upon the general principle, that it has been guilty of negligence in not carrying and delivering the box safely, or showing the manner of the loss of the contents, it must have been stolen by its servants.

16 Pena. 78. 5 Bing. 217. Angel on car. S. 202.

10 Cushing 506 -

S. WILCOX, Attorney for Appellee.

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C. & A. R. R. Co.-

vs

James Thompson

Plaintiff Appellee

Filed May 7, 1858
L. Leland
Clerk

E. WILCOX, Attorney for Appellee.

10 May 18 2 Ind. 217. Verdict on car. E. 205.

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11 Mississippi, 250.

People vs. Miller, 3 Mass. 431.

People vs. Lacey, 1 How. 369.

People vs. Dutton, 15 Johns 250.

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The Chicago &
Aurora R.R. Co.
vs
James Thompson

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