

No. 12555

# Supreme Court of Illinois

Day

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vs.  
Michigan Southern R.R.Co.

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71641  7

183

Cook County Co Court

Justice Day June

Rich. L. H. H. R. C.

James H. H. H. H.

68

Filed June 1, 1858

L. L. L. L.

Clerk

1858

105

12555



State of Illinois }  
Cook County } ss.

Plas before the  
Honorable Buckner

S. Morris Judge of the seventh Judicial Cir-  
cuit Court of the State of Illinois and presiding  
Judge of the Circuit Court of the County of  
Cook in the State of Illinois, at a Term there  
of begun and held at Chicago in said County  
of Cook on the third Monday being the twen-  
tith day of November in the year of our Lord  
one thousand eight hundred and fifty  
four and of the Independence of the  
United States the Twenty ninth

Present the Honorable Buckner S. Morris

Judge of said Court  
Daniel McIlroy

States Attorney  
James Andrew  
Sheriff of said County

Attest

Louis D. Hoard

Clerk of the Circuit Court of Cook County

Be it remembered that heretofore to wit,  
on the 28th. day of July in the year of our Lord  
one thousand eight hundred and fifty four  
there was filed in the office of the Clerk of the  
Circuit Court in and for the County of Cook



in the State of Illinois a certain bond (security for costs) which is in the words and figures following, to wit,

|                                                                              |                                |
|------------------------------------------------------------------------------|--------------------------------|
| Justin Day jr. who sues<br>for the use of Cornelius A. Burr<br>& John Fowler | } Cook County<br>Circuit Court |
| vs.<br>Michigan Southern Rail Road<br>Company                                |                                |

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court, in pursuance of the laws of this State. (Dated this fifth day of July A. D. 1854)

W<sup>m</sup> Whitney

Afterwards, and on the day and year last aforesaid (to wit, July 28th. A. D. 1854) there was issued from the office of the Clerk of the Court aforesaid the People's writ of summons clothed in the words and figures following to wit,



State of Illinois } ss.  
Cook County }

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

We command you that you summon  
Michigan Southern Rail Road Company  
if they shall be found in your County, person-  
ally to be and appear before the Circuit Court  
of said County, on the first day of the next  
Term thereof, to be holden at the Court House  
in Chicago in said County, on the Fourth  
Monday of October next, to answer unto Justin  
Day Jr. who sues for the use of Cornelius A.  
Burr & John Fowler in a plea of assumption  
to the damage of the said plaintiff as he  
says in the sum of two thousand Dollars.

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



Witness, Louis D. Hoard  
Clerk of our said court and  
the seal thereof at Chicago  
aforesaid, this twenty eighth  
day of July A. D. 1854  
L. D. Hoard Clerk

Said Summons was afterwards re-  
turned into the office of the Clerk aforesaid



4  
with an endorsement thereon by the Sheriff  
which is in the words & figures following  
to wit,

Served this writ by reading to George  
M. Gray agent for the Michigan Southern Rail  
Road Company and to Norman B. Judd  
Attorney for said Road, and delivering each  
of them a Copy thereof this 29th. day of July  
1854. the president or secretary of said road not  
found in my County

2 services 1,00

2 copys 1,00

2 miles 10

1 return 10

2,20

Cyrus P. Bradley Sheriff  
By M. Regan Deputy

Afterwards to wit, on the twenty ninth  
day of September in the year last aforesaid  
comes the said plaintiff by his attorney &  
files in this cause his certain declaration  
which is in the words and figures follow-  
ing to wit,

State of Illinois } Cook County Cir-  
Cook County ss. uit Court October  
Term A. D. 1854



Justin Day jr. who sues for the use of  
Cornelius A. Burr & John Fowler by H. B.  
Hurd their Attorney complains of the Michigan  
Southern Rail Road Company being  
summoned of a plea of Trespass on the  
case upon promises

For that whereas the said de-  
fendant before and at the time of making  
of said Company's (defendants) said promise  
and undertaking hereinafter next mention-  
ed was a common carrier of goods and chattels  
for hire by Rail way from a certain place  
to wit, from Adrian in the State of Michi-  
gan to a certain other place to wit, to Chica-  
go to wit, at the County of Cook aforesaid  
And the said defendant being such com-  
mon carrier as aforesaid the said plaintiff  
heretofore to wit, on the twenty ninth day  
of October A. D. 1852 at Adrian to wit, at  
the county of Cook aforesaid at the special  
instance and request of the said defend-  
ant caused to be delivered to the said de-  
fendant so being such carrier as aforesaid  
at Adrian aforesaid to wit, at the County  
of Cook aforesaid "one box" which the  
said plaintiff alleges contained certain  
goods and chattels to wit, One Hundred  
and ninety coats Twenty <sup>seven</sup> pairs of pantaloons



Eleven boy's coats, thirty six pairs of boy's pantaloons, Sixty seven silk vests, two short jackets One hundred and twenty three pairs of drawers, Three stocks, ninety five neck ties Thirty-eight silk cravats, ninety seven cravats, ninety seven pocket handkerchiefs, Eighty one cotton handkerchiefs, Forty three pairs of gloves, Twenty nine cravats and fifty three other articles of each of the above mentioned kind of articles of great value to wit, of the value of Three Thousand dollars to be taken care of and safely and securely carried and conveyed by the said Michigan Southern Rail Road Company (defendant) as such carrier as aforesaid from Adrian aforesaid to Chicago without further liability of <sup>after</sup> the safe shipment or loss by fire and there to wit, at Chicago to be safely and securely delivered by the said defendant for the said Plaintiff and in consideration thereof and of certain reward to the said defendants in that behalf to be paid on the delivery of said goods at Chicago aforesaid the said defendant being mile carrier as aforesaid then and there to wit, at Adrian to wit, at the County of Cook aforesaid undertook and faithfully promised the said plaintiff to take care of said goods



and chattels and safely and securely to carry  
and convey the same in and by the said  
Michigan Southern Rail Road and the  
Northern Indiana Rail Road from Adri-  
an aforesaid to Chicago aforesaid to wit, at  
the county of Cook aforesaid and there to wit,  
at Chicago aforesaid to deliver the same for  
the said plaintiff without further liability  
after Lake shipment or loss by fire and  
although the said defendant as such car-  
rier as aforesaid then and there had and  
received the goods and chattels for the  
purpose aforesaid, yet the said defendant  
not regarding its duty as such common carrier  
nor its said promise and undertaking so  
made as aforesaid but contriving and fraud-  
ulently intending craftily and subtly to de-  
ceive the said plaintiff in this behalf hath  
not taken care of the said goods and chattels  
or safely or securely carried or conveyed the  
same from Adrian aforesaid to Chicago  
aforesaid nor hath there to wit, at Chicago  
aforesaid safely or securely delivered the  
same for the said plaintiff, but on the  
contrary thereof the defendant being such  
carrier as aforesaid so carelessly and negli-  
gently behaved and conducted itself with  
respect to the said goods and chattels afore



said that by and through the mere carelessness, negligence and improper conduct of the said defendant and its servants in this behalf the said goods and chattels being of the value aforesaid to wit the day and year aforesaid at the County of Cook aforesaid became and were wholly lost to the said plaintiff to wit, at the County of Cook aforesaid.

And whereas also the said defendant before and at the time of the making of its said promise and undertaking hereinafter next mentioned was a common carrier of goods and chattels for hire in and by Rail Road from a certain place to wit from Adrian in the State of Michigan to a certain other place to wit, to Chicago in the county of Cook. And the said defendant being such carrier as aforesaid the said plaintiff heretofore to wit on the twenty ninth day of October A. D. 1852 at Adrian to wit, at the County of Cook aforesaid at the special instance and request of the said defendant caused to be delivered to the said defendant so being such carrier as aforesaid at Adrian to wit, at the County of Cook aforesaid certain goods and chattels to wit, one box containing the following



articles to wit, one Hundred and ninety  
coats, Twenty seven pairs of Pantaloon,  
Eleven boy's coats, Thirty six pairs of Boy's  
Pantaloon, sixty seven silk vests, Two short  
jackets, One hundred and twenty three  
pairs of drawers, Three stocks, ninety five  
neck ties, Thirty eight silk cravats, ninety  
seven cravats, ninety seven pocket hand-  
kerchiefs, Eighty one cotton handkerchiefs,  
Forty three pairs of Gloves & Twenty nine  
cravats of great value to wit, of the value  
of Three Thousand dollars to be taken care  
of and safely and securely carried and con-  
veyed by the said defendant as such car-  
rier as aforesaid from Adrian aforesaid  
to Chicago and there to wit, at Chicago  
aforesaid to be safely and securely deliv-  
ered by the said defendant for the said  
plaintiff within three days from the date  
of the receipt thereof to wit, from the twenty  
ninth day of October A. D. 1852 without  
further liability after Lake shipment or  
loss by fire, and in consideration there-  
of and of certain reward to the said de-  
fendant in that behalf the said defend-  
ant being such carrier as aforesaid there  
and there to wit, at Adrian, to wit, at the  
County of Cook aforesaid undertook and



faithfully promised the said plaintiff to take care of said goods and chattels and safely and securely to carry and convey the same from Adrian aforesaid to Chicago aforesaid to wit, at the County of Cook and there to wit, at Chicago aforesaid safely and securely to deliver the same for the said plaintiff (without further liability after Lake shipment or loss by fire) within three days from the receipt thereof to wit, from the twenty ninth day of October A. D. 1852 and although the said defendant as such carrier as aforesaid then and there had & received the goods and chattels for the purpose aforesaid yet the said defendant notwithstanding its duty as such carrier or its said promise and undertaking so made as aforesaid but contriving and fraudulently intending craftily and subtly to deceive and injure the said plaintiff in this behalf hath not taken care of the said goods and chattels or safely or securely carried or conveyed the same from Adrian aforesaid to Chicago aforesaid nor hath there to wit, at Chicago safely or securely delivered the same for the said plaintiff within three days from the time of the



receipt of the said goods and chattels to wit  
from the twenty ninth day of October  
A. D. 1852 but on the contrary thereof the  
said defendant being such carrier as  
aforesaid so carelessly and negligently behaved  
and conducted itself with respect to the said  
goods and chattels aforesaid that by and  
through the mere carelessness, negligence  
and improper conduct in this behalf, the  
said goods and chattels being of the value  
aforesaid at the County of Cook aforesaid  
was not delivered within the time aforesaid  
nor untill a long time thereafter to wit, un-  
til the nineteenth day of November next  
following and by reason of the                      The said  
goods and chattels being of the value afore-  
said were depreciated in value and be-  
came and were of little or no use or value  
to the plaintiff and he lost the means and  
opportunity of selling the same and was  
deprived of divers great gains and profits  
which otherwise might and would have  
accrued to him and incurred a great  
expense to wit, Eight hundred dollars  
in endeavoring to obtain the said goods  
and was in otherwise injured.

And whereas also The said defend-  
ant before and at the time of the making



of the promise hereinafter mentioned was a common carrier of goods and chattels from a certain place to wit, from Adrian in the State of Michigan to a certain other place to wit, to Chicago and the defendant being such carrier as aforesaid the plaintiff heretofore to wit, on the twenty ninth day of October A. D. 1852 at the request of the defendant caused to be delivered to it as such carrier certain goods and chattels to wit, one box containing the following articles to wit, one hundred and ninety coats, Twenty seven pairs of pantaloons, Eleven boy's coats, Thirty six pairs boy's pantaloons sixty seven silk vests, two short jackets, One hundred and twenty three pairs of drawers, Three stocks, ninety five neck ties, Thirty eight silk cravats, ninety seven cravats, ninety seven pocket handkerchiefs, Eighty one cotton handkerchiefs, Forty three pairs of gloves, Twenty nine cravats of the plaintiff of great value to wit, of the value of Three thousand dollars, to be taken care of and safely and securely carried and conveyed by the said defendant to wit, from Adrian aforesaid to Chicago aforesaid and there to be delivered by the defendant for the said plaintiff within a reasonable time



in that behalf for reward to the defendant  
and in consideration of the premises the  
defendant then to wit, on the day & year  
aforesaid undertook and promised the  
plaintiff to take and use due and proper  
care and diligence in and about the carry-  
ing and conveying the said goods and  
chattels from Adrian aforesaid to Chicago  
aforesaid and there delivering the same  
for the said plaintiff in a reasonable  
time there following for the carriage  
conveyance and delivery of the said goods  
and chattels as aforesaid without further  
liability after Lake shipment or loss by fire  
and although such reasonable time elapsed  
long before the commencement of this suit  
yet the defendant not regarding his said  
promise and undertaking did not  
nor would take or use due or proper or dil-  
igence in and about the carrying or con-  
veying the said goods and chattels as aforesaid  
within a reasonable time as aforesaid  
but wholly neglected and refused so  
to do and by reason of the carelessness,  
negligence and improper conduct of the  
defendant and its servants in that behalf  
the said goods and chattels were not de-  
livered to for or received for or by said



plaintiff until the expiration of a long and  
 unreasonable time after the defendant  
 received the same as aforesaid and after  
 the time when the same should have  
 been delivered for said plaintiff to wit,  
 one month after such last mentioned  
 time and by reason of the premises the  
 said goods and chattels being of the value  
 aforesaid were depreciated in value and  
 became and were and are of little or no  
 use or value to the plaintiff and he lost  
 the means and opportunity of selling the  
 same and was ~~deprived~~ deprived of divers  
 great gains and profits which otherwise  
 might and would have accrued to him  
 and incurred a great expense to wit,  
 Eight hundred dollars in endeavoring  
 to obtain the said goods and was and  
 is otherwise injured to the damage of the  
 said plaintiff in the sum of Two thousand  
 dollars, therefore he brings his suit

H. B. Hurd

(Plffs atty.)

Copy of Bill of lading or ticket given  
 for said goods

8538

Michigan Southern <sup>Road</sup> Rail  
 Adrian Oct. 29, 1852



Rec'd of Baulding for account of H. L.  
Kingsberry One Box to be forwarded to  
Chicago without further liability after Lake  
shipment or loss by fire

Signed J. H. Kennedy  
Per C. Crane

Copy of account sent upon  
Michigan Southern Rail Road Company

To Justin Day jr. Dr.  
To loss and damage fr. detention of one box  
of goods \$3,000

|       |                                          |        |
|-------|------------------------------------------|--------|
| " " " | One hundred & ninety cravats             | 500    |
| " " " | Twenty seven pers. Pantaloon             | 500    |
| " " " | Eleven boy's coats                       | 500    |
| " " " | Thirty six pers. boy's pants             | 500    |
| " " " | Sixty seven silk vests                   | 500    |
| " " " | Two short jackets                        | 500    |
| " " " | One hundred & ninety three pers. drawers | 500    |
| " " " | Three Stocks                             | 1000   |
| " " " | Ninety five neck ties                    | 500. ~ |
| " " " | Thirty eight silk cravats                | 500. ~ |
| " " " | Ninety seven cravats                     | 500. ~ |
| " " " | Ninety seven pocket Handks.              | 100. ~ |
| " " " | Eighty one cotton "                      | 50. ~  |
| " " " | Forty three pers. of Glove               | 500. ~ |
| " " " | Twenty nine cravats                      | 500. ~ |
| " " " | Fifty pieces of the above articles       | 500. ~ |



|                                                           |       |
|-----------------------------------------------------------|-------|
| Expenses in endeavors to recover above<br>mentioned goods | 500.- |
| Board of agent sent after same                            | 36 -  |
| Traveling expenses of agent                               | 20 -  |
| Paid agent for time                                       | 65 -  |

And afterwards to wit, on the twenty eighth day of October in the year last aforesaid comes the said defendant by its attorney and files in this cause a certain demurrer to the plaintiff's said declaration which is in the words and figures following to wit,

Circuit Court of Cook Co.  
Michigan Southern &  
Northern Indiana R.R. }  
ads  
Justin Day for use of &c. }

And the said defendant by N. B. Judd its attorney comes and defends the wrong and injury when &c. & says that the said declaration and the matter therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said plaintiff to have or maintain



his aforesaid action thereof against the said defendant and it, the said defendant is not bound in law to answer the same. And this it is ready to verify. Wherefore by reason of the insufficiency of the said declaration in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him.

And the said defendant according to the form of the Statute in such case made & provided states and shows to the Court here the following causes of demurrer to the said declaration that is to say that the claim of said plaintiff as alleged in his first Count of his said declaration is entirely inconsistent with his claim in his third count & second count of his said declaration, and that the second count in its allegation is inconsistent with the first and third count of his said declaration and that the said declaration is in other respects uncertain informal & insufficient &c.

R. B. ~~Harro~~ Judae.  
(Deft. Atty.)

And afterwards to wit on the twelfth day of December in the year



aforesaid comes the said defendant by its attorneys and files in this cause a certain plea which is in the words and figures following to wit,

Mich. Sou. R.R. Co.

ads

Justin Day to use of &c.

Cook Circuit Court  
November Term 1888

And the said defendant by Judah Frink & Winston its attorneys comes and defends the wrong and injury when &c. & says that it did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against it and of this it puts itself upon the Country &c.

Judah Frink & Winston  
Defts. Atty.

And afterwards to wit, on the third day of December in the year of our Lord one thousand eight hundred and fifty five the same being one of the days of the regular November Term of our said Circuit Court for said year, this cause having been regularly adjourned from term to term, to the present



term, the following proceedings were had &  
entered of record therein, in this cause to wit,  
Justin Day Jr. for use of  
Cornelius A. Burr & John Fowler  
vs.  
Michigan Southern  
R. R. Company

This day comes the  
above named parties by their respective attor-  
nies and issue being joined in this cause it  
is ordered that a jury come and thereupon  
come the jurors of a jury of good & lawful men  
to wit, Austin Hines, Julius Hatch, J. C.  
Carpenter, W. G. Flatter, William Coleman,  
S. J. Grannis, G. G. Chilcote, Daniel Muller,  
R. N. Fiske, E. M. Green, J. R. Allen & S. H.  
Grannis, who being duly elected, tried and  
sworn well & truly to try the issue joined be-  
tween the parties according to law and the co-  
science & they ~~have~~<sup>hearing</sup> the evidence produced  
as well on the part of the plaintiff as on that  
of the defendants are allowed to disperse &  
the further hearing of this cause is postponed  
to the coming in of the Court on to-morrow  
morning.

And afterwards to wit, on the fourth  
day of the month & year last aforesaid it being



as yet of said term of Court last aforesaid the following further proceedings were had & entered of record in said Court in this cause to wit,  
 Justin Day use of Cornelius  
 A. Burr & John Fowler

vs  
 Michigan Southern  
 R.R. Company } asst

This day again come the said parties by their respective attorneys and the Jurors of the Jury also come and they having now heard the testimony as well on the part of the plaintiff as on that of the defendants the arguments of counsel thereon and instructions of the Court retire under charge of an officer of the Court to consider of their verdict and afterwards come into Court and say. We of the Jury find the issue for the plaintiff and assess his damages at the sum of Eight hundred and twenty dollars whereupon the said defendants by their attorneys move the Court for a new trial of this cause which motion is overruled by the Court.

Therefore it is considered by the Court that the said plaintiff do have & recover of the said defendants his damages of Eight hundred & twenty dollars, assessed as aforesaid & together with his costs & charges by him



about his suit herein expended & have execution therefor.

And afterwards to wit, on the tenth day of December in the year last aforesaid it being still of the November term of said Court the following further proceedings were had & entered of record in this cause in said Court to wit

|                                                          |   |      |
|----------------------------------------------------------|---|------|
| Justin Day Jr. use of<br>Cornelius A. Burr & John Fowler | } | asst |
| vs<br>Michigan Southern<br>R. R. Company                 |   |      |

This day again come the said defendants by Messrs Judd Frink & Winston their attorneys & pray an appeal of this cause from the judgment of this Court to the supreme Court of this State which is allowed by the Court, the said defendants to file a bond in the sum of sixteen hundred and forty dollars with Norman B. Judd as security by the first day of January next

And afterwards to wit, on the day of December in the year last aforesaid comes the said defendant by its attorneys & files in the office of the Clerk of said Court



its certain bill of exceptions in this cause which is  
in the words & figures following to wit,

Cook Circuit Court

Justin Day for the use of

vs.

Michigan Southern Rail  
Road Company

Be it remembered that on  
this third day of December Eighteen hundred  
and fifty five the above entitled cause came  
on to be heard upon issue joined & thereupon  
to maintain the issue on his part, plaintiff called  
as a witness

H. L. Kingsbury who testified as  
follows. Know the plaintiff - remember shipping  
goods for Plff at Adrian for Chicago 29 October  
1852. The goods were loaded at Adrian on  
Thursday the twenty ninth of October, and  
the agent told me they would get to Chicago on  
Saturday. I called at the Rail Road office on  
Monday and the goods had not come. I called  
almost every day until the third of November  
when the man in the office told me they  
had come, the bill shown me is the receipt



I took for the box at Adrian

Plaintiff offered in evidence the bill as follows

"Michigan Southern Rail Road  
"No 538 Adrian Oct. 29, 1852

"Received from Paulding for account of  
"H. L. Kingsbury - one box to be forwarded to  
"Chicago without further liability after Lake  
"shipment or loss by fire - H. H. Kennedy agent  
per C. Crane

I paid charges and took a receipt and the man in the office told me to go to the Freight agent, Mr. Smith delivery clerk in the Depot and he would give me the goods. I went to Smith who had charge of the freight and we examined and could not find them. Looked over the goods in the depot and Smith said they might be in the cars on the track, not yet unloaded. I told Smith I would like to have him send them to the Red Bird Packet office in Chicago to be sent by the Red Bird Packet line to LaSalle and he said he would. He took a memorandum - Smith was the man that delivered the goods from the cars - I then started for LaSalle, I remained in LaSalle about sixteen or eighteen days waiting for the goods to come - Telegraphed and



found no goods, I then came back to Chicago -  
 went to the Depot and saw Smith - Plaintiff  
 here asked the witness the following question  
 What did Smith say to you about what had  
 been done with the goods? which question  
 was objected to - objection overruled and ex-  
 ception taken, and witness stated that  
 Smith said he had shipped goods the day  
 before by Mitchell - that the goods had been  
 so long arriving he had forgotten what I had  
 told him and had sent the goods by Mitchell  
 in the other line: that they had been in the hab-  
 it of shipping in that line - Plaintiff here  
 read a receipt as follows

Chicago 3. Nov. 1852

Mr. H. L. Kingsbury

To Northern Indiana Rail  
 Road Co. Cr.

To freight & charges as follows

1 Box Goods 2 30

Received Payment

L. Darling Freight agent

By J. Rosseter

Afterwards saw the goods at Lockport,  
 canal was frozen, had then been frozen 4 or  
 5 days, came up on the last packet that came  
 up - I got the goods and brought them to



Grubbs auction Store. This was about 1st. December 1852.

Plaintiff then asked witness - What was the condition of the goods at that time? which question was objected to by defendant and objection overruled and exception taken - They were wet and mouldy. Sold at Grubbs at auction. Plaintiff here asked witness - What did the goods bring at that auction sale? question objected to, objection overruled and defendants excepted. They brought a little over \$300. There was a large number of persons at auction - mostly fall clothing, Vests, coats &c. Drew the schedule myself. Day's brother called the goods off to me - Billed at cost at Fredonia. Goods were worth about (\$2000. at Fredonia, and about \$1500 first November at Chicago, at forced sale.

Bill shown him is an invoice of the goods made out by me, and were the goods contained in the box. The invoice was read in evidence as follows.

H. L. Kingsbury Reid of Justin Day Jr. the following Bill of goods to sell or return when called for



|   |       |       |    |       |    |   |       |    |       |       |
|---|-------|-------|----|-------|----|---|-------|----|-------|-------|
| 2 | Coats | \$8.  | 12 | 16    | 25 | 2 | Coats | \$ | 6.75  | 13.50 |
| 1 | Do    | 7.00  |    | 7.00  |    | 1 | Do    |    | 6.90  | 6.90  |
| 3 | Do    | 8.50  |    | 25.50 |    | 1 | Do    |    | 8.00  | 8.00  |
| 1 | Do    | 5.38  |    | 5.38  |    | 2 | Do    |    | 7.50  | 15.00 |
| 1 | Do    | 7.50  |    | 7.50  |    | 1 | Do    |    | 5.38  | 5.38  |
| 1 | Do    | 6.25  |    | 6.25  |    | 1 | Do    |    | 6.75  | 6.75  |
| 1 | Do    | 7.00  |    | 7.00  |    | 1 | Do    |    | 15.00 | 15.00 |
| 1 | Do    | 4.57  |    | 4.57  |    | 1 | Do    |    | 10.00 | 10.00 |
| 1 | Do    | 4.00  |    | 4.00  |    | 1 | Do    |    | 3.00  | 3.00  |
| 1 | Do    | 9.25  |    | 9.25  |    | 1 | Do    |    | 10.00 | 10.00 |
| 1 | Do    | 6.00  |    | 6.00  |    | 1 | Do    |    | 2.00  | 2.00  |
| 1 | Do    | 3.50  |    | 3.50  |    | 1 | Do    |    | 3.25  | 3.25  |
| 1 | Do    | 12.00 |    | 12.00 |    | 1 | Do    |    | 3.12  | 3.12  |
| 1 | Do    | 8.00  |    | 8.00  |    | 1 | Do    |    | 3.62  | 3.62  |
| 1 | Do    | 8.00  |    | 8.00  |    | 1 | Do    |    | 2.50  | 2.50  |
| 1 | Do    | 8.50  |    | 8.50  |    | 1 | Do    |    | 3.00  | 3.00  |
| 1 | Do    | 13.00 |    | 13.00 |    | 1 | Do    |    | 3.00  | 3.00  |
| 1 | Do    | 6.25  |    | 6.25  |    | 1 | Do    |    | 1.00  | 1.00  |
| 1 | Do    | 3.50  |    | 3.50  |    | 1 | Do    |    | 2.00  | 2.00  |
| 1 | Do    | 15.00 |    | 15.00 |    | 1 | Do    |    | 3.00  | 3.00  |
| 1 | Do    | 4.75  |    | 4.75  |    | 1 | Do    |    | 9.75  | 9.75  |
| 1 | Do    | 8.50  |    | 8.50  |    | 1 | Do    |    | 8.50  | 8.50  |
| 1 | Do    | 5.00  |    | 5.00  |    | 5 | Do    |    | 5.62  | 5.62  |
| 1 | Do    | 3.00  |    | 3.00  |    | 1 | Do    |    | 3.00  | 15.00 |
| 1 | Do    | 4.00  |    | 4.00  |    | 1 | Do    |    | 2.50  | 2.50  |
| 1 | Do    | 3.00  |    | 3.00  |    | 1 | Do    |    | 3.12  | 3.12  |
| 1 | Do    | 5.00  |    | 5.00  |    | 1 | Do    |    | 5.50  | 5.50  |



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|   |    |       |       |   |    |       |       |
|---|----|-------|-------|---|----|-------|-------|
| 1 | Do | 5.00  | 5.00  | 1 | Do | 10.00 | 10.00 |
| 1 | Do | 3.00  | 3.00  | 1 | Do | 5.62  | 11.25 |
| 1 | Do | 2.62  | 2.62  | 2 | Do | 5.50  | 5.50  |
| 1 | Do | 6.25  | 6.25  | 1 | Do | 5.50  | 5.50  |
| 1 | Do | 7.62  | 7.62  | 1 | Do | 3.25  | 3.25  |
| 1 | Do | 6.25  | 6.25  | 1 | Do | 6.75  | 6.75  |
| 1 | Do | 10.00 | 10.00 | 1 | Do | 6.00  | 12.00 |
| 1 | Do | 8.00  | 8.00  | 2 | Do | 6.50  | 6.50  |
| 6 | Do | 1.00  | 6.00  | 1 | Do | 5.00  | 5.00  |
| 1 | Do | 4.00  | 4.00  | 1 | Do | 4.50  | 4.50  |
| 1 | Do | 4.00  | 4.00  | 1 | Do | 6.00  | 6.00  |
| 1 | Do | 4.00  | 4.00  | 1 | Do | 6.50  | 6.50  |
| 1 | Do | 3.25  | 3.25  | 1 | Do | 4.00  | 4.00  |
| 1 | Do | 4.00  | 4.00  | 1 | Do | 4.50  | 4.00  |
| 1 | Do | 3.25  | 3.25  | 1 | Do | 4.50  | 4.50  |
| 1 | Do | 3.50  | 3.50  | 1 | Do | 4.50  | 4.50  |
| 1 | Do | 2.50  | 2.50  | 1 | Do | 2.00  | 2.00  |
| 1 | Do | 3.25  | 3.25  | 1 | Do | 3.25  | 3.25  |
| 1 | Do | 4.00  | 4.00  | 1 | Do | 4.50  | 4.50  |
| 1 | Do | 5.00  | 5.00  | 1 | Do | 4.00  | 4.00  |
| 1 | Do | 3.50  | 3.50  | 1 | Do | 5.50  | 5.50  |
| 1 | Do | 2.50  | 2.50  | 1 | Do | 2.87  | 2.87  |
| 2 | Do | 2.75  | 5.50  | 1 | Do | 4.50  | 4.50  |
| 1 | Do | 2.75  | 2.75  | 1 | Do | 3.00  | 3.00  |
| 1 | Do | 3.25  | 3.25  | 1 | Do | 3.00  | 3.00  |
| 1 | Do | 3.75  | 3.75  | 1 | Do | 3.50  | 3.50  |
| 1 | Do | 4.50  | 4.50  | 1 | Do |       |       |
| 1 | Do | 3.25  | 3.25  |   |    |       |       |



|   |      |       |       |   |          |       |       |
|---|------|-------|-------|---|----------|-------|-------|
| 1 | Coat | 4 12  | 4 12  | 1 | Coat     | 7 00  | 7 00  |
| 1 | Do   | 5 50  | 5 50  | 1 | Do       | 9 50  | 9 50  |
| 1 | Do   | 5 00  | 5 00  | 1 | Do       | 9 50  | 9 50  |
| 1 | Do   | 7 25  | 7 25  | 1 | Do       | 7 50  | 7 50  |
| 1 | Do   | 6 50  | 6 50  | 1 | Do       | 7 00  | 7 00  |
| 1 | Do   | 8 50  | 8 50  | 1 | Do       | 7 50  | 7 50  |
| 1 | Do   | 7 00  | 7 00  | 1 | Do       | 6 75  | 6 75  |
| 1 | Do   | 12 00 | 12 00 | 1 | Do       | 3 00  | 3 00  |
| 1 | Do   | 14 00 | 14 00 | 1 | Do       | 6 00  | 6 00  |
| 1 | Do   | 8 00  | 8 00  | 1 | Do       | 8 50  | 8 50  |
| 1 | Do   | 8 50  | 8 50  | 1 | Do       | 10 00 | 10 00 |
| 1 | Do   | 8 00  | 8 00  | 1 | Do       | 8 50  | 8 50  |
| 1 | Do   | 5 00  | 5 00  | 1 | Do       | 6 00  | 6 00  |
| 1 | Do   | 6 75  | 6 75  | 1 | Do       | 3 50  | 3 50  |
| 1 | Do   | 6 00  | 6 00  | 1 | Do       | 8 50  | 8 50  |
| 1 | Do   | 7 00  | 7 00  | 1 | Do       | 8 00  | 8 00  |
| 1 | Do   | 6 50  | 6 50  | 1 | Do       | 7 00  | 7 00  |
| 1 | Do   | 7 50  | 7 50  | 1 | Do       | 3 50  | 3 50  |
| 1 | Do   | 10 00 | 10 00 | 2 | Do       | 7 00  | 14 00 |
| 5 | Do   | 7 00  | 35 00 | 1 | Do       | 3 25  | 3 25  |
| 1 | Do   | 6 38  | 6 38  | 1 | Do       | 14 00 | 14 00 |
| 1 | Do   | 8 00  | 8 00  | 1 | Do       | 14 00 | 14 00 |
| 1 | Do   | 4 00  | 4 00  | 1 | Do       | 5 00  | 5 00  |
| 1 | Do   | 4 38  | 4 38  | 1 | Do       | 11 00 | 11 00 |
| 1 | Do   | 8 00  | 8 00  | 1 | Do       | 10 00 | 10 00 |
| 1 | Do   | 9 00  | 9 00  | 1 | Do       | 10 00 | 10 00 |
| 1 | Do   | 5 88  | 5 88  | 1 | Do       | 10 00 | 10 00 |
| 1 | Do   | 7 50  | 7 50  | 1 | Pt Pants | 4 62  | 4 62  |



|   |             |      |       |   |            |        |      |
|---|-------------|------|-------|---|------------|--------|------|
| 2 | Do          | 6 00 | 12 00 | 1 | Do         | 3 00   | 3 00 |
| 1 | Do          | 4 50 | 4 50  | 1 | Do         | 2 00   | 2 00 |
| 1 | Do          | 6 62 | 6 62  | 1 | Do         | 3 00   | 3 00 |
| 1 | Do          | 4 38 | 4 38  | 1 | Do         | 3 38   | 3 38 |
| 1 | per Pants   | 1 50 | 1 50  | 2 | Do         | 2 62   | 5 25 |
| 1 | Do          | 5 25 | 5 25  | 1 | Do         | 2 62   | 2 62 |
| 1 | Do          | 3 00 | 3 00  | 1 | Do         | 2 62   | 2 62 |
| 2 | Do          | 2 50 | 5 00  | 1 | Do         | 1 75   | 1 75 |
| 1 | Do          | 2 62 | 2 62  | 1 | Do         | 1 88   | 1 88 |
| 2 | Do          | 3 00 | 6 00  | 3 | Do         | 1 00   | 3 00 |
| 1 | Do          | 3 50 | 3 50  | 5 | Do         | 88     | 4 40 |
| 1 | Do          | 3 00 | 3 00  | 3 | Do         | 1 25   | 3 75 |
| 1 | Do          | 2 75 | 2 75  | 1 | Do         | 1 25   | 1 25 |
| 1 | Do          | 5 25 | 5 25  | 1 | Do         | 5 00   | 5 00 |
| 1 | Do          | 2 75 | 2 75  | 1 | Do         | 2 18   | 2 18 |
| 1 | Do          | 5 00 | 5 00  | 2 | Do         | 1 50   | 3 00 |
| 1 | Do          | 4 50 | 4 50  | 2 | Do         | 1 75   | 3 50 |
| 1 | Do          | 3 00 | 3 00  | 1 | Do         | 3 00   | 3 00 |
| 1 | Do          | 4 50 | 4 50  | 1 | Do         | 2 38   | 2 38 |
| 1 | Do          | 2 00 | 2 00  | 1 | Do         | 4 50   | 4 50 |
| 1 | Do          | 4 50 | 4 50  | 1 | Do         | 4 00   | 4 00 |
| 1 | Do          | 3 38 | 3 38  | 4 | silk Vests | 2 25   | 9 00 |
| 1 | Do          | 4 50 | 4 50  | 2 | Do         | 1 13   | 2 26 |
| 1 | Do          | 6 50 | 6 50  | 1 | Do         | - 75   | - 75 |
| 2 | Boys' Coats | 4 00 | 8 00  | 1 | Do         | 1 50   | 1 50 |
| 1 | Do. Do      | 2 90 | 2 90  | 1 | Do         | 1 50   | 1 50 |
| 1 | Do          | 2 40 | 2 40  | 1 | Do         | * 1 50 | 1 50 |
| 1 | Do          | 1 44 | 1 44  | 3 | Do         | 2 25   | 6 75 |



|   |             |      |       |    |              |      |       |
|---|-------------|------|-------|----|--------------|------|-------|
| 1 | Do          | 2 88 | 2 88  | 1  | Do           | 2 50 | 2 50  |
| 1 | Do          | 2 00 | 2 00  | 1  | Do           | 1 50 | 1 50  |
| 1 | Do          | 2 80 | 2 80  | 1  | Do           | 1 75 | 1 75  |
| 1 | Do          | 2 80 | 2 80  | 2  | Do           | 1 75 | 3 50  |
| 1 | Do          | 2 44 | 2 44  | 1  | Do           | 2 50 | 2 50  |
| 1 | Do          | 2 80 | 2 80  | 1  | Do           | 3 50 | 3 50  |
| 7 | pers. pants | 1 50 | 10 50 | 1  | Do           | 2 25 | 2 25  |
| 1 | Do          | 2 62 | 2 62  | 1  | Do           | 1 75 | 1 75  |
| 1 | silk Vest   | 1 75 | 1 75  | 1  | Do           | 4 00 | 4 00  |
| 1 | Do          | 3 25 | 3 25  | 1  | Do           | 4 00 | 4 00  |
| 1 | Do          | 2 25 | 2 25  | 3  | Do           | 4 00 | 12 00 |
| 1 | Do          | 3 50 | 3 50  | 1  | Do           | 3 25 | 3 25  |
| 1 | Do          | 3 25 | 3 25  | 4  | Do           | 4 00 | 16 00 |
| 1 | Do          | 1 50 | 1 50  | 1  | Short Jacket | 6 50 | 6 50  |
| 1 | Do          | 2 50 | 2 50  | 1  | Do           | 4 00 | 4 00  |
| 1 | Do          | 2 00 | 2 00  | 5  | per Drawers  | 8/6  | 5 50  |
| 1 | Do          | 1 75 | 1 75  | 4  | Do           | 8/   | 4 00  |
| 1 | Do          | 2 50 | 2 50  | 1  | Do           | 9/   | 1 12  |
| 1 | Do          | 3 50 | 3 50  | 2  | Do           | 5/   | 1 25  |
| 1 | Do          | 4 00 | 4 00  | 2  | Do           | 6/   | 1 50  |
| 1 | Do          | 2 50 | 2 50  | 1  | Do           | 4/6  | — 56  |
| 1 | Do          | 2 12 | 2 12  | 31 | Do           | 4/   | 15 50 |
| 1 | Do          | 1 75 | 1 75  | 7  | Do           | 4/   | 3 50  |
| 1 | Do          | 1 75 | 1 75  | 6  | Do           | 6/   | 4 50  |
| 2 | Do          | 2 25 | 4 50  | 1  | Do           | 6/   | 75    |
| 1 | Do          | 3 00 | 3 00  | 3  | Do           | 4/   | 1 50  |
| 2 | Do          | 2 00 | 4 00  | 8  | Do           | 6/   | 6 00  |

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|    |        |      |       |    |              |       |      |
|----|--------|------|-------|----|--------------|-------|------|
| 1  | Do     | 3 00 | 3 00  | 1  | Do           | 8/    | 1 00 |
| 2  | Do     | 3 50 | 7 00  | 3  | Do           | 9/    | 3 38 |
| 1  | Do     | 2 00 | 2 00  | 1  | Do           | 8/6   | 1 06 |
| 1  | Do     | 3 50 | 3 50  | 6  | Do           | 5/    | 3 75 |
| 1  | Do     | 3 00 | 3 00  | 1  | Do           | 1 1/2 | 1 40 |
| 1  | Do     | 4 00 | 4 00  | 1  | Do           | 10/   | 1 25 |
| 1  | Do     | 1 75 | 1 75  | 2  | Do           | 4/6   | 1 12 |
| 1  | Do     | 4 00 | 4 00  | 5  | Do           | 7/    | 4 38 |
| 1  | Do     | 3 30 | 3 30  | 1  | Do           | 12/   | 1 50 |
| 1  | Do     | 3 57 | 3 57  | 1  | Do           | 12/   | 1 50 |
| 1  | Do     | 4 50 | 4 50  | 1  | Do           | 9/6   | 1 18 |
| 1  | Do     | 3 50 | 3 50  | 12 | Do           | 16    | - 75 |
| 1  | Do     | 3 50 | 3 50  | 17 | Do           | 110   | 1 70 |
| 3  | Stocks | 8/   | 3 00  | 1  | Tie          | 9/    | 1 13 |
| 16 | Ties   | 7/   | 14 00 | 1  | Do           | 11/   | 1 38 |
| 1  | Do     | 7/   | - 88  | 1  | Do           | 11/   | 1 38 |
| 1  | Do     | 8/   | 1 00  | 1  | Do           | 6/6   | - 81 |
| 1  | Do     | 6/6  | - 88  | 1  | Do           | 11/   | 1 38 |
| 1  | Do     | 8/   | 1 00  | 1  | Do           | 6/6   | - 81 |
| 1  | Do     | 7/   | - 88  | 1  | Do           | 8/    | 1 00 |
| 1  | Do     | 7/6  | - 94  | 2  | Do           | 6/    | 1 50 |
| 1  | Do     | 7/   | 88    | 1  | Do           | 6/    | - 75 |
| 1  | Do     | 5/6  | 68    | 3  | Do           | 6/    | 2 25 |
| 2  | Do     | 4/   | 1 00  | 2  | Do           | 6/    | 1 50 |
| 4  | Do     | 8/   | 4 00  | 5  | Silk cravats | 6/    | 3 75 |
| 1  | Do     | 6/   | 75    | 1  | Do           | 9/    | 1 13 |
| 1  | Do     | 4/   | 50    | 4  | Do           | 6/    | 3 00 |



|       |                |     |      |    |           |     |      |
|-------|----------------|-----|------|----|-----------|-----|------|
| 2     | Do             | 4/  | 1 00 | 1  | Do        | 3/  | 38   |
| 1     | Do             | 2/  | 25   | 2  | Do        | 4/  | 1 00 |
| 1 1/2 | Do             | 9/  | 1 56 | 11 | Do        | 5/6 | 7 56 |
| 3     | Do             | 5/  | 1 88 | 3  | Do        | 7/  | 2 63 |
| 4     | Do             | 4/6 | 2 25 | 1  | Do        | 4/  | - 56 |
| 4     | Do             | 6/6 | 3 25 | 1  | Do        | 5/  | - 63 |
| 1     | Do             | 6/  | 75   | 1  | Do        | 6/6 | - 81 |
| 1     | Do             | 8/6 | 1 66 | 5  | Do        | 8/  | 5 00 |
| 3     | Do             | 6/  | 2 25 | 1  | Do        | 8/  | 1 00 |
| 12    | Do             | 6/6 | 9 75 | 1  | Do        | 4/  | - 56 |
| 1     | Do             | 4/6 | 56   | 1  | Do        | 7/  | - 81 |
| 8     | Do             | 6/  | 6 00 | 4  | Pocket do | 5/  | 2 50 |
| 2     | Do             | 7/  | 1 75 | 4  | Do        | 4/  | 2 00 |
| 1     | Do             | 8/  | 1 00 | 3  | Do        | 2/3 | - 84 |
| 1     | Do             | 7/  | 88   | 2  | Do        | 3/  | - 75 |
| 1     | Do             | 11/ | 1 38 | 1  | Do        | 3/  | - 38 |
| 1     | Do             | 9/  | 1 13 | 1  | Do        | 8/  | 1 00 |
| 1     | Do             | 7/  | 88   | 1  | Do        | 7/  | - 88 |
| 7     | Pocket cravats | 4/  | 3 56 | 15 | Gloves    | 2/3 | 4 21 |
| 1     | Do             | 4/  | - 50 | 8  | Do        | 2/  | 2 00 |
| 5     | Do             | 4/  | 2 50 | 3  | Do        | 7/  | 2 63 |
| 5     | Do             | 4/  | 2 50 | 1  | Do        | 6/  | - 75 |
| 7     | Do             | 4/  | 3 50 | 8  | Do        | 1/9 | - 53 |
| 5     | Do             | 3/  | 1 88 | 12 | Do        | 1/9 | 1 08 |
| 5     | Do             | 3/  | 1 88 | 4  | Do        | 2/6 | 1 25 |
| 6     | Do             | 4/  | 3 00 | 5  | Do        | 9/  | 5 63 |
| 5     | Do             | 5/  | 3 13 | 8  | Do        | 1/6 | 1 50 |
| 6     | Do             | 3/  | 2 25 | 12 | Do        | 1/6 | 2 25 |



|    |        |      |   |    |    |        |     |   |    |
|----|--------|------|---|----|----|--------|-----|---|----|
| 1  | Do     | 5/   | - | 63 | 12 | Do     | 1/9 | 1 | 08 |
| 4  | Do     | 4/   | 2 | 00 | 9  | Do     | 2/6 | 2 | 81 |
| 5  | Do     | 6/   | 3 | 75 | 2  | Do     | 3/  | - | 75 |
| 1  | Do     | 4/   | - | 50 | 1  | Do     | 7/  | - | 81 |
| 6  | Do     | 4/   | 3 | 00 | 10 | Do     | 2/  | 2 | 50 |
| 4  | Do     | 9/   | 4 | 50 | 10 | Do     | 2/4 | 2 | 90 |
| 2  | Do     | 6/   | 1 | 50 | 4  | Do     | 1/  | - | 50 |
| 2  | Do     | 5/   | 1 | 25 | 2  | Do     | 2/  | - | 50 |
| 5  | Do     | 5/   | 3 | 13 | 12 | Do     | 1/9 | 1 | 08 |
|    | Cotton |      |   |    | 1  | Cravat | 4/  | - | 50 |
| 4  | Do     | 1/8  | - | 32 | 6  | Do     | 2/  | 1 | 50 |
| 6  | Do     | 1/8  |   | 48 | 2  | Do     | 2/  | - | 50 |
| 14 | Do     | 1/10 | 1 | 40 | 3  | Do     | 1/6 | - | 50 |
| 6  | Do     | 1/   | - | 75 | 9  | B. Mt  | 5/  | 5 | 68 |
| 1  | Do     | -    |   | 08 | 8  | Do     | 2/  | 2 | 00 |
| 2  | Do     | 1/   | - | 25 |    |        |     |   |    |
| 12 | Do     | 1/10 | 1 | 20 |    |        |     |   |    |
| 14 | Do     | 1/10 | 1 | 40 |    |        |     |   |    |
| 12 | Do     | 1/10 | 1 | 20 |    |        |     |   |    |
| 4  | Do     | 1/15 | - | 60 |    |        |     |   |    |
| 6  | Do     | 1/15 | - | 90 |    |        |     |   |    |
| 5  | Gloves | 2/   | 1 | 25 |    |        |     |   |    |



Upon cross examination the witness testified that he was mere agent for Mr Day - stopped first at Adrian and then started for Chicago got to Chicago on Saturday and went Monday - afterwards went on 3<sup>d</sup> November and got receipt - Went to Mr. Mitchell by direction of Smith and found my goods had been sent on line boat - found them at Lockport on canal boat - goods were not in the bottom of the boat. Took the goods to Grubb's auction store before I opened them, to sell them at auction, was anxious to get home, it was so late in the season was afraid it would freeze up and I have to stage it. Went to several shops and tried to sell them at Chicago.

They were fall goods, not winter goods, every thing was wet, first discovered that they were wet when opened at Grubb's - The signature to the receipt shown me is in my hand writing (offered and read as follows)

"We the undersigned acknowledge to have received of the Northern Indiana Rail Road Corporation at their station in Chicago the articles set opposite to our names in good order.

Date of receipt

1852 Nov. 3. 494 - 1 Box Goods

Description of articles -

for whom rec'd - signatures

H. S. Kingsbury. H. L. Kingsbury



This was given before I went to look for goods, at that time I went back to the office & told the man who took receipt that the goods had not come. He said they were on the cars and would soon be unloaded.

Re-examined by Plaintiff - question - "What was your expenses in going for the goods?" question objected to - objection overruled and exception taken - Witness answered - My expenses to Lackport and back were about \$20, including fare of box back from Lackport.

Plaintiff here called Mr. R. Mitchell who testified as follows - "I am a commission and forwarding merchant. I find acct. of having received a Box Nov. 15 and sent it off 16 Nov. by Boat Malone, canal Boat, Crawford line - (Do not know whether the boat froze up - Do not know <sup>if</sup> whether canal froze - Line boats went through in about two days - It was not the custom to send all the goods to us - If goods were not consigned they sent part to us -

Mr. Kingsbury being recalled said - Red Bird Packet line had an office in Chicago. I was never on freight boats. Know nothing of speed of Line. Made an arrangement with Red Bird Packet agent to bring the goods forward to LaSalle.



The following deposition was then read on part of the Plaintiff-

The Deposition of Stephen O. Day of the County of Chautauque and State of New York a witness of lawful age, produced, sworn and examined upon his corporal oath on the 13th. day of November 1854 at the office of Stephen <sup>Snow</sup> Snow in the Village of Fredonia Chautauque County New York State, by us Stephen <sup>Snow</sup> and Lorenzo Morris Commissioners duly appointed by a Dedemas Potestatem or Commission issued out of the Clerk's office of the Circuit Court of Cook County in the State of Illinois, bearing Title in the name of Louis D. Hoard Esq. Clerk of <sup>the</sup> said Circuit Court with the seal of said Court affixed thereto and to us directed as such Commissioners for the examination of the said Stephen O. Day a witness in a certain suit and matter in controversy now pending and undetermined in the said Circuit Court, wherein Justin Day Jr. who sues for the use of Cornelius A. Burr and John Fowler is plaintiff, and the Michigan Southern Rail Road Company is defendant, in behalf of the said Plaintiff as well upon the Cross interrogations of the said Defendant as on the interrogatories of



The Plaintiff which were attached to or inclosed with the said Commission, and upon none others. The said Stephen C. Day being first duly sworn by Stephen Snow one of the said Commissioners, as a witness in the said cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff and defendant so far as he should be interrogated testified and deposed as follows -

Interrogatory First

What is your age, occupation and place of residence?

Answer to first Interrogatory - My age is forty eight years - My occupation is Merchant & Dealer in ready made clothing - and my place of residence Fredonia, Chautauque County New York

Interrogatory Second

Are you acquainted with the parties to this suit or either of them? If so state how long you have known them?

Answer to second Interrogatory

I am acquainted with the Plaintiff Justin Day Jr. and some acquainted with Cornelius A. Burr and John Fowler, but am not acquainted with defendant - I



have known the said Justin Day Jr. for about thirty eight years, always since his birth - he is a brother of mine - Fowler I have known ten years and Burr five years -  
Interrogatory Third

Do you know of Mr. Justin Day's sending any clothing or other goods to Illinois some time in the fall of 1851 or 1852? If so, state when? What kind of goods and what they were worth, mentioning each class of goods so sent and their value - then giving their total value. State in what shape they were shipped and in whose care they were intrusted?

Answer to the Third Interrogatory

About the month of September 1852 Mr. Justin Day Jr. gave me orders to deliver H. L. Kingsbury on his account, such a lot of clothing and goods as I might think would sell best in the Western States. In pursuance of such orders I did on the 22 day of September 1852 deliver to the said H. L. Kingsbury at Fredonia Chautauque County a lot of ready made clothing and other goods such as Handkerchiefs and furnishing goods amounting in all to the sum of \$1861.37 Eighteen hundred and one dollars and thirty seven cents at prices as billed to me wholesale prices. The said goods were



sent to me by Justin Day Jr. from Rochester New York to sell for him. I was agent for him to sell the said goods at Fredonia. The goods were owned by the said Justin Day Jr. and were his sole property & I delivered the same to said Kingsbury by virtue of said orders for said Justin Day Jr. They consisted of numerous articles being a long bill of eleven pages on my book. And the Invoice price of the whole lot was the said sum of \$1801.37

The goods consisted mostly of over coats, Dress Coats, Frock coats, Vests of different kinds, Pantaloon of different kinds, Undershirts, Drawers, Cravats, Stocks &c. The said goods were worth the said sum of Eighteen hundred and one dollar and thirty seven cents. I packed the said goods in common Dry Goods Boxes and delivered them to the said H. L. Kingsbury at Fredonia Chautauque County, they were intrusted to his care to take west to dispose of.

#### Interrogatory Fourth

Did you help pack the goods, or by whom were they packed, and did you know of your own knowledge what they were worth?

#### Answer to Fourth Interrogatory

I did help pack the goods. H. L. Kingsbury helped me. I did know of my own knowledge what the goods were worth.



Interrogatory Fifth

Do you know whether the goods belonged to Justin Day Jr. or to H. L. Kingsbury, if so state and also what means you have of knowing.

Answer to the fifth Interrogatory

I knew the goods belonged to Justin Day Jr. at the time I delivered them to Mr. H. L. Kingsbury - I knew it from the fact that I received the goods at Rochester, of Mr. Justin Day Jr. and took them to Fredonia to sell as agent for Justin Day Jr. and I delivered them to the said H. L. Kingsbury as agent for said Justin Day Jr. He said Kingsbury was to take them west to sell for the owner Justin Day Jr.

Interrogatory Sixth

Do you know what season and particular market said goods were intended for? If so state.

Answer to the Six Interrogatory

The goods were mostly woollen goods and would sell best in the fall & winter but were saleable at all times of the year most of them. They were intended for markets in Western New York & the Western States.

Interrogatory Seventh

Do you know any other matter or thing connected with said goods or the matter in dispute in this cause of advantage



to the said plaintiff? if so state the same as fully as if interrogated thereto

Answer to the 7th. Interrogatory

In my answer to the Third Interrogatory when I stated that the goods amounted to \$1801.37 I have reference to the footing on my book as corrected - the Amount of the bill so made out at the time and the footing there I think exceeded that sum by about one hundred dollars - but on examining the extensions and footing and correcting all errors I arrive at the said amount of \$1801.37 as the real value of the goods - which may vary some from the amount of bills made out of the same by me.

Cross Interrogatories and Answers thereto by the witness on the part of the defendants  
First Cross Interrogatory

Have you any interest of any kind or nature whatever in said goods mentioned in the direct interrogatories? If so, what?

Answer to the first Cross Interrogatory

I have no interest of any kind or nature whatever in said goods.

Second Cross Interrogatory

Had H. L. Kingsbury any interest of any kind or nature whatever in said goods? If so, state what was the nature of said interest &



amount of same.

Answer to the Second Cross Interrogatory

He had no interest of any kind or nature in said goods, to my knowledge.

Third Cross Interrogatory

Were said goods of such a kind & nature as to render them unfit for market except at certain times and seasons & was not the price of such goods uniformly the same or with slight variation?

Answer to the Third Cross Interrogatory

No, the said goods were saleable at all times of the year, but most of them would sell best in the fall & winter being mostly woollen goods - the prices of such kind of goods <sup>varies</sup> some years with others - but it is as uniform as the price of almost any other kind of dry goods.

Fourth Cross Interrogatory

(Do you know at what prices said goods were purchased, and at what prices the same were sold? If so state the same.

Answer to the Fourth Cross Interrogatory

I know at what prices the said goods were billed to me by Justin Day Jr. at Rochester - and they were billed to the said Kingsbury at the same price. I do not know what the goods cost Justin Day Jr. for some of them were manufactured by him at Rochester and others he purchased after they were made.

(Stephen Q. Day



We Stephen Snow and Lorenzo Morris Counselors at Law of the Supreme Court of the State of New York residing at Fredonia Chautauque County, State of New York, Commissioners duly appointed to take the deposition of Stephen Q. Day a witness whose name is subscribed to the foregoing deposition do hereby certify that previous to the commencement of the examination of the said Stephen Q. Day as a witness in the suit between the said Justin Day Jr. who sues for the use of Cornelius A. Burr and John Fowler, Plaintiff, and the said Michigan Southern Rail Road Company Defendants, he was duly sworn by Stephen Snow one of said Commissioners to testify the truth in relation to the matter in controversy between the said Justin Day Jr. who sues for the use of Cornelius A. Burr and John Fowler Plaintiff and the said Michigan Southern Rail Road Company Defendants. So far as he should be interrogated concerning the same & the said Deposition was taken at the office of Stephen Snow in Fredonia Chautauque County New York on the 13th. day of November 1854 & that after said deposition was taken by us as aforesaid, the interrogatories & answers thereto, as written down, were read over to the said witness and that thereupon the same was signed and sworn to by the



said deponent before us, the oath being administered by Stephen Snow one of said Commissioners as such Commissioner at the place and on the day and year last aforesaid

Stephen Snow Commissioner  
Lorenzo Morris Commissioner

Here the Plaintiff rested his cause and the defendants called his first witness, Gilbert Rossiter who testified as follows - Am delivery clerk for defendants, have been employed in freight office since April 1852 - Receipt to Kingsbury of the freight for goods identified by witness. The general freight agent in 1852 was L. Darling - Kingsbury left no directions in the office - John Smith was delivery clerk for the delivery of goods to be sent to warehouses & other places. He was delivering freight - on goods arriving at Depot he sent them to store or delivered them to persons calling for them, when goods were marked to go forward they were sent by him as marked. Smith's duty was to send goods to store when we did not know owner's place of business & to send them to merchants or others when we did know them. I know these goods were received on 13th. November



Remained in the Depot two days and then sent to Mitchells. It was the duty of Smith to send goods to Mitchells where the owner was not known. Think Smith must have had verbal orders from Kingsbury. He sometimes did such business on his <sup>own</sup> ~~account~~ responsibility. Smith was in the habit of receiving orders to send goods forward by such lines as he was directed by the owners. Reid pay from them for so doing. Never saw him receive pay. I have sent them forward in same way.

Mr. William Lock was then called by the defendant and testified as follows. I was in clothing business in 1852, and since 1840 (The deposition of C. D. Day heretofore referred to, was here read to witness) There was very little if any difference between the value of goods on 1st. and 15th. November - might be some little depreciation of goods - Goods would not depreciate 5 per cent in value during that time.

Upon cross examination witness stated - "Should not think there would be a large depreciation - cravats always same - vests a small depreciation. Plaintiff then asked witness. "what would be the depreciation of goods at 1st. December?" which question was objected to, objection overruled and exception



taken. "I think it would be difficult to tell."  
Would sell within twenty five per cent of what  
they are worth on 1st. December - cash.

Witness being re-examined says. (Dont know whether  
the goods would bring their face on time 1st. December  
Merchants generally get their supply before 1st. November

(Defendant here called Mr. James Turner who  
testified as follows. "Was drayman for defendant in  
1852 - Rosseter and Smith gave me goods to drag. Hub-  
bard who was then general freight agent directed Smith  
to let me have loads, used to take extra pains to find  
the owners. I have known Smith to forward goods.  
The owners paid for dragging goods not the compa-  
ny when the goods were delivered in town. Have  
drawn some goods which were sent to Milwaukee  
for which I rec'd pay from Company. Have known  
Smith and Rosseter to send goods forward. Do  
not know whether they had authority from the  
Company. While I was there it was customary  
for the defendants to ship goods to R. M. Mitchell  
& Co. when goods were directed to be forwarded  
to any other place. And when owner could  
not be found they were likewise sent to Mitchell  
Smith was then and in the habit of sending  
goods upon such orders as he might receive

The above was all the evidence given in  
the case, and after argument by counsel.



# ( The Court at the request of the plaintiff instructed the jury as follows.

First - If the jury believe from the evidence that the defendant received the goods in question to be carried to Chicago, to the account of H. L. Kingsbury, and that said Kingsbury was the agent of Justin Day Jr. the plaintiff, and that they were the goods of said plaintiff and that the Company failed to deliver the said goods in Chicago within a reasonable time according to the usual course of business, it is liable for all depreciation in the market value of the goods, which was occasioned by the delay."

Second - If the jury believe that the defendant undertook to carry the goods of the plaintiff from Adrian to Chicago, they are instructed that it is an implication of Law that it should make a proper delivery of them to the plaintiff or his agent in Chicago, or to store them in some safe place for his benefit unless otherwise instructed by such agent or owner, and if he failed so to do, and did not follow the instructions of the agent or owner, but caused them to be shipped aboard of a line boat in consequence of which they were frozen up in the canal and were damaged and deteriorated in value then the law is for the plaintiff.

Third - If the jury believe from the evidence



that the defendant by its agent undertook to carry or cause to be carried the goods of said plaintiff from Adrian to Chicago, and before the goods arrived at Chicago the agent of the goods directed them to be delivered to the office of the Red Bird Packet in Chicago to be shipped to La Salle and the freight agent for said defendant agreed so to deliver them and that in so doing he was acting in the ordinary and usual line of his business duties - and that they were afterwards sent to the warehouse of Mitchell & Co. and were forwarded to La Salle by a line Boat and were in consequence frozen in upon the canal, and detained or damaged, then the Jury will find for the plaintiff.

Fourth - If the Jury find the issues for the Plaintiff they may take into account in assessing the damages the loss on the goods and the reasonable expenses of the agent in recovering them.

To all of which instructions the Defendants excepted

The Defendant then requested the Court to instruct the Jury as follows -

First - If the Jury believe from the evidence that the contract of carriage was



from Adrian to Chicago, then the defendants liability as a common carrier ceased when the goods arrived at Chicago and any damage accruing to them afterwards, cannot be charged against the defendants as common carriers.

Second - That the Plaintiffs cannot recover in this action for any injury or damage to the goods arising from any neglect to forward them, if the jury believe from the evidence that they were directed to Chicago and the contract for carriage was from Adrian to Chicago.

Third - If the jury believe from the evidence that the goods were received by the defendants to be carried to Chicago and that they were delayed on the passage then the rate of damage is the difference between the market value of the goods at Chicago, at the time they should have arrived and the time when they did actually arrive.

Fourth - If the jury believe from the evidence that Defendants Rail Road Line terminated at Chicago, and that the goods were delivered to them directed to Chicago, that Defendants liability as common carriers ceased upon their arrival at Chicago, and if the jury further believe



that the damage of goods accrued after their arrival at Chicago, and by a neglect to forward them, the plaintiffs cannot recover as this action, as there is no count in the declaration against them as forwarders or warehousemen.

Fifth - If the Jury believe from the evidence that the goods in question were consigned to Chicago and that the consignee was absent from Chicago, then it was competent for defendant to deliver the goods to some responsible warehouseman, and from that time the liability of Defendants ceased and they were not liable for any injury received subsequently.

Which last instruction was refused by the Court as asked for but the first four were given in the following language.

First - If the Jury believe from the evidence that the contract of carriage was from Adrian to Chicago, then the Defendants liability as a common carrier ceased when the goods arrived at Chicago and any damage accruing to them afterwards cannot be charged against the defendants as common carriers, unless they shall find that such damage was caused by a wrongful delay of the goods.

Second - That the plaintiffs cannot



recover in this action for any injury or damage to the goods arising from any neglect to forward them if the jury believe from the evidence that they were directed to Chicago and the contract for carriage was from Adrian to Chicago - and that the said freight agent Smith was not in the line of his duty in receiving the directions from the Plff's agent and delivering them to the canal boat.

Third - If the jury believe from the evidence that the goods were received by the defendant to be carried to Chicago, and that they were delayed on the passage, then the rate of damage for such delay is the difference between the market value of the goods at Chicago at the time they should have arrived, and the time when they did actually arrive.

Fourth - If the jury believe from the evidence that defendant's Rail Road line terminated at Chicago and that the goods were delivered to them directed to Chicago that defendant's liability as common carriers ceased upon their arrival at Chicago and if the jury further believe that the damage of goods accrued after their arrival at Chicago, and by a neglect to forward them the Plaintiffs cannot recover in this action as there is no count in the declaration against



them as forwarders or warehousemen, unless they shall also find that the freight agent Smith was in the line of his ordinary and usual duty as such agent in delivering the goods directed to Chicago to such place or persons as he might be directed by the owners, and that he made a wrongful delivery thereof.

To which modification of such first four instructions and the refusal to give the fifth the said Defendant excepted.

The Court also gave the following instructions to which the defendant excepted.

First — If the Jury shall find from the evidence that it was the duty of the freight agent Smith to make delivery of goods directed to Chicago by sending them to the owners or to such persons and places in said City as the owners or their agents might direct — and if they shall also find from the evidence that the agent of the owners of the goods in question gave directions to said freight agent to have them sent to the Red Bird line of Packet boats in Chicago to be forwarded to another point, and that the said agent caused the same to be placed upon another line of boats, by means whereof delays were occasioned in the forwarding said goods, or the said goods were injured



then the plaintiffs are entitled to recover what ever damage the jury shall find the said plaintiff to have sustained by reason of the depreciation of the value by reason of the delay or other injury done to the goods

Second - In estimating the damage done to the goods in question by delay in forwarding them to Chicago or by their being wet and mouldy, if they shall find such injuries done by any act of the defendants, they will not regard the amount brought by the goods at public sale as conclusive evidence of the extent of depreciation in the goods, but in determining this question the jury will take into consideration such other evidence of the actual value of the goods at the time they were sold as they may have before them.

To which instructions so given by the Court the Defendants excepted.

The jury having retired returned and reported that they found in favor of the Plaintiff to the amount of Eight hundred and twenty Dollars.

The Defendants moved for a new trial which motion was overruled by the Court and thereupon said defendants



excepted to the decision of the Court overruling  
the motion for a new trial, and prayed the  
Court to sign and seal his Bill of exceptions  
which is hereby done on this the 3<sup>rd</sup> day of  
December A. D. 1855

George Manierre  
Judge of 7<sup>th</sup> Judicial  
Circuit, Illinois

And afterwards to wit on the twenty  
second day of December in the year last  
aforesaid comes again the said defend-  
ant by its attorneys and files herein its  
certain appeal bond which is in the  
words and figures following to wit,

Know all men by these Presents  
That We Michigan Southern Rail Road  
Company and Norman B. Judah <sup>are</sup> ~~and~~  
held and firmly bound unto Justin  
Day in the sum of Sixteen Thousand  
& forty Dollars lawful money of the Uni-  
ted States to be paid to the said Justin  
Day, his executors, administrators or  
assigns, for which payment well and  
truly to be made we bind ourselves, our  
<sup>each of our</sup> heirs, executors and administrators jointly



and severally firmly by these presents.

Sealed with our seals this 20th. day of December in the year of our Lord one thousand eight hundred and fifty five.

The condition of the above obligation is such that whereas on the      day of December in the year aforesaid in the November term of this Cook County Circuit Court a judgment was entered against the above bounden Michigan Southern Rail Road Company in favor of the above mentioned Justin Day Jr. for the sum of Eight hundred and twenty      damages and costs and whereas the said Michigan Southern Rail Road Company has prayed an appeal to the Supreme Court of this State. Now therefore if the above bounden Michigan Southern Rail Road Company shall duly prosecute said appeal and pay the judgment costs interest and damages in case the judgment of said Court shall be affirmed then this bond to be void, otherwise to remain in full force and effect

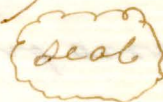
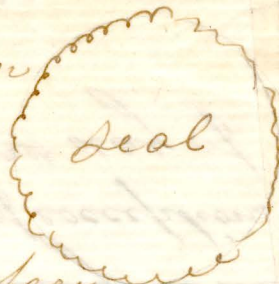
Josia Wilkinson

Prest.

Jm. Hopkins

Secretary

W. B. Judol

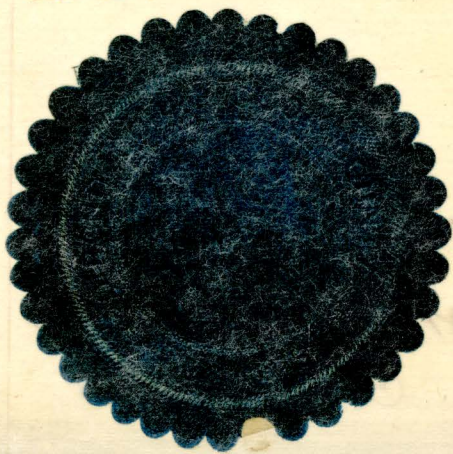


Dec 16.



State of Illinois }  
Cook County } ss.

I Louis D. Hoard Clerk  
of the Cook County Circuit Court in & for said County  
Do hereby certify, that, the above and foregoing is a true,  
full, and perfect transcript of all the papers filed in this  
office, together with all the proceedings had and entered of  
record in our said Circuit Court in the foregoing entitled  
cause.



In Witness whereof I have hereunto  
set my hand and affixed the seal  
of said Court at Chicago this  
seventh day of May A. D. 1856

L. D. Hoard  
Clerk Cir. Court,

Fees \$16.<sup>00</sup>

Michigan Southern &

Western Indiana Rail R. Co.

Appellants

Errors.

Justin Day Jr. for vs.

Appellee

The Appellants say that there is error in this  
Verdict to them prejudicial in this to wit.

1. The Court erred in the admission of improper  
evidence.

2. In overruling the objections of the appellants



to the testimony given by the self in the Court below -

3. In giving the instructions asked by Day

4. In refusing and modifying those asked by the Rail Road Comrs.

5. In overruling the motion for a new trial - and in every other step taken and opinion rendered from the beginning to the end of the trial.

Wherefore a verdict is asked -

Allan A. Burton

for Appellant

And now comes the said defendant and says there is not any error in the above record & proceedings

H. B. Hurd  
Deft. atty