

No. 12301

Supreme Court of Illinois

Potter.

VS.

Frink, et al.

71641  7

State of Illinois }
La Salle County }

Pleas before the Honorable Edmund
S. Seland Presiding Judge of
the ninth judicial Circuit of the State of
Illinois at a term of the Circuit Court in
and for said La Salle County, commenced
and held at the Court House in Ottawa on
Monday the fourteenth day of November A.D.
1853, the same being the second Monday in
said month of November & the seventy eighth
year of American Independence.

Proin

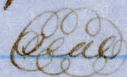
The Honorable Edmund S. Seland Presiding Judge
Philo Lindsey Clerk
W. H. S. Wallace States Attorney
Richard Thome Sheriff

On the 17th day of September A.D. 1853, a
summons was issued out of the Office of
the Clerk of said Court, which was in
the words and figures following to wit:

" State of Illinois }
County of La Salle }

The People of the State of
Illinois. To the Sheriff of said
County greeting; We command that you sum-
mon John Brink, Lorenzo P. Sanger, Martin O
Walker and Oren C. Parmelee if they shall be
found in your County, 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 Ottawa, in said County, on the 14th day of November next, to answer unto Champion R. Potter in a plea of Trespass on the case to the damage of the said Plaintiff as he says in the sum of Five Thousand Dollars. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same. Witness Philo Lindley, Clerk of said Court and the seal thereof at Ottawa in said County, this 17th day of September A.D. 1853



P. Lindley, Clerk

Which summons was returned and filed October 6, 1853, with an endorsement thereon in the words and figures following to wit

" Executed this writ by reading the same to C.C. Parnell Sept 20th 1853.

Sept 20th 1853

R. Thorne Sheriff,

Ser & Ret, 60

16 miles .80

\$ 1.40

And on the 28th day of September another summons was issued, in the words and figures following to wit

State of Illinois }
La Salle County } The People of the State of Illinois
To the Sheriff of Peoria County, Greeting We
command you, that you summon John Mink

Lorenzo P. Sanger, Martin O. Walker & Oscar
B. Parmelee if they shall be found in your
county, to be and appear before the Circuit
Court of said La Salle County, on the first day
of the next term thereof, to be holden at the
Court House in Ottawa, in said county, on
the 14th day of November next, to answer unto
Champlin R. Potter in a plea of Trespass in
the case to the damage of the said plaintiff
as he says in the sum of Five Thousand
dollars. And have you then and there this
writ, with an endorsement thereon in what
manner you shall have executed the same
Witness Philo Lindley, Clerk of said Court, and
the seal thereof, at Ottawa, in said county,
this 28th day of September A.D. 1853



P. Lindley Clerk,

Which summons was returned and filed
October 25, 1853, with an endorsement thereon
in the words and figures following to wit

" I served this writ by reading to the within
named John Frick, but Lorenzo P. Sanger
and M. O. Walker are not found in my
County October 17, 1853

Serving , 50

1 Mile & return 15

.65

L. B. Cornwell

Sheriff P. C. Als

And on the 28th day of September A.D. 1853 an-
other summons was issued, in words and
figures following to wit

"State of Illinois }
 La Salle County }

The People of the State of Illinois
 To the Sheriff of Cook County - Greeting
 We command you, that you summon John
 Frink, Lorenzo P. Sanger, Martin C. Walker
 & Orson C. Parmelee, if they shall be found in
 your County, to be and appear before the Circuit
 Court of said La Salle County, on the first day
 of the next term thereof, to be holden at the
 Court House in Ottawa, in said County, on the
 14th day of November next, to answer unto Cham-
 ples R. Potter in a plea of Trespass on the case
 to the damage of the plaintiff as he says in the
 sum of Five Thousand dollars. And have you
 then and there this writ, with an endorsement
 thereon in what manner you shall have exe-
 cuted the same. Witness, Philo Sundry, Clerk
 of said Court, and the seal thereof, at Ottawa
 in said County, this 28th day of September
 AD, 1853

Seal

P. Sundry Clerk,

Which said summons was returned and filed
 June 5th 1854, with ~~the~~ an endorsement there-
 on, in the words and figures following to wit

"Served by reading to the within named John
 Frink October 7th 1853, and Martin C. Walker
 October 8th 1853, Lorenzo P. Sanger and Orson C.
 Parmelee not found in my County

Cyrus P. Bradley Sheriff
 of Cook County

By J. B. Norton Deputy

Fees & services 1.00

2 miles .10

1 Return .10
 1.20

And on the 3^d day of January AD. 1854. a declaration was filed which is in the words and figures following to wit

" In the Circuit Court of La Salle County of the November Term of said Court AD. 1853

State of Illinois $\frac{2}{2}$ p
La Salle County $\frac{2}{2}$

Champlin R. Potter the plaintiff in this suit by C. L. Starbuck his attorney complains of John Smith Oran C. Parmelee Martin C. Walker and Lorenzo P. Sanger defendants who have been summoned &c. of a plea of trespass on the case. For that whereas the said defendants before and at the time of committing the grievances herein after mentioned were owners and proprietors of a certain Stage Coach for the Carriage and Conveyance of passengers from Peoria in the County of Peoria and State of Illinois to Springfield in the County of Sangamon and State aforesaid for hire and reward to the said defendants in that behalf to wit. at the County of La Salle and State of Illinois. And the said defendants being such owners & proprietors of the said Coach as aforesaid. Thereupon heretofore to wit. on the twenty eighth day of December in the year of our Lord one thousand eight hundred and fifty two. to wit at the County of La Salle aforesaid the said plaintiff at the special instance and request of the said defendants became and was a passenger in the said Coach to be safely and securely carried and conveyed thereby on a certain journey to wit from Peoria.

aforesaid to Springfield aforesaid for a certain
 fare and reward to the said defendants in
 that behalf, and the said defendants then and
 there received the said plaintiff as such passen-
 ger as aforesaid, and thereupon it then and there
 became and was the duty of the said defendants
 to use due and proper care that the said
 plaintiff should be safely & securely carried and
 conveyed by and upon the said Stage Coach
 on the said journey from Peoria aforesaid to Springfield
 aforesaid. Yet the said defendants not regarding
 their duty, in that behalf, did not use due and
 proper care that the said plaintiff should be safely
 and securely carried & conveyed by and upon the
 said ^{Stage} Coach on the said journey from Peoria afo-
 resaid to Springfield aforesaid, but wholly neglected
 so to do, and suffered and permitted said Stage
 Coach to ^{be} used for the carrying and conveyance of
 the said plaintiff on said journey from Peoria to
 Springfield as aforesaid, the same being at the
 time old worn out and rotten and wholly unfit
 and unsafe for the conveyance of passengers, and
 also suffered and permitted said Coach to be
 used for the purpose of carrying and conveying
 the said plaintiff on said journey from Peoria to
 Springfield aforesaid without any sufficient bolts
 or braces to secure the forward axle tree and a
 certain piece of timber above & resting thereon com-
 monly called a bolster to their proper places, the
 bolt or rod of iron passing through the centre of
 said forward axle tree & bolster, commonly called
 the King bolt, being then and there entirely too
 small, altogether insufficient and wholly unfit
 for that purpose, and said axle tree then and

there from long use, being worn out and rotten unsafe
and wholly unfit to be used for ~~that~~^{the} purpose of
carrying and conveying the said plaintiff as
aforesaid on the journey as aforesaid. And also
suffered and permitted the said Coach to be then
and there so greatly overloaded that by reason
thereof and by reason of the old worn out and
rotten condition of the said Coach and the said
forward axle-tree especially, and the small size
and insufficiency of the said Bolt, commonly
called the King bolt, afterwards and whilst the
said Coach was proceeding with the said plaintiff
therein in and along the public highway, on
the said journey from Peoria aforesaid, and before
the arrival thereof at Springfield aforesaid, on
the day and year aforesaid to wit at the County
of La Salle aforesaid the said forward axle-tree
became and was broken, and the said King bolt
became and was so bent and crooked that the
several parts of the said Coach could no longer
be held and secured together in their proper
places. And the said Coach then and there be-
came and was overturned, and by means whereof
one of the legs of the said plaintiff became and
was greatly bruised wounded sprained and
injured, and the said plaintiff was otherwise
greatly bruised wounded and injured, and also
by means of the premises the said plaintiff be-
came and was sick, sore lame and disordered
and so remained for a long space of time to wit
hitherto: During all which time the said plain-
tiff suffered & underwent great pain and was
hindered and prevented from transacting and
attending to his necessary & lawful affairs and

business by him during all that time to be performed and transacted and last and was deprived of divers great gains profits & advantages which he might and otherwise would have acquired and derived, and thereby also the said plaintiff was forced obliged and compelled to and did then & there pay lay out and expended divers large sums of money amounting in the whole to the sum of one hundred dollars, in and about the mending to be cured of the said wounds, bruises and injuries as aforesaid to wit at the County of La Salle aforesaid.

2nd Count

And whereas also heretofore to wit, on the day & year aforesaid to wit, at the County of La Salle aforesaid the said plaintiff, at the special instance and request of the said defendants, became and was a passenger by a certain other coach to be safely and securely carried and conveyed thereby on a certain journey to wit from Peoria aforesaid to Springfield aforesaid for a certain reward to the said defendants in that behalf, and thereupon it then and there became and was the duty, of the said defendants to use due and proper care that the said plaintiff should be safely and securely carried & conveyed by the last mentioned coach on the said journey from Peoria aforesaid to Springfield aforesaid, yet the said defendants not regarding their duty in this behalf, did not use due and proper care, that the said plaintiff should be safely and securely carried and conveyed by the said last mentioned coach on the said journey from Peoria aforesaid to Springfield aforesaid but wholly neglected so to do, and by reason thereof afterwards and whilst the said last men-

tioned coach was proceeding with the said plaintiff as a passenger thereby in & along the public highway on the said journey from Peoria aforesaid and before the arrival thereof at Springfield aforesaid to wit, on the day and year at the County of La Salle aforesaid the said last mentioned coach was broken and overturned, and by means whereof one of the legs of the said plaintiff then and there became and was greatly bruised sprained wounded and injured, and also by means of the premises the said plaintiff became and was sick sore lame and disordered and so remained and continued for a long space of time to wit, hitherto during all which time the said plaintiff suffered and underwent great pain and was hindered & prevented from transacting and attending to his necessary and lawful affairs and business by him during all that time to be performed and transacted, and last^{and} was deprived of divers great gains profits & advantages which he might and otherwise would have derived and acquired from the same and thereby also the said plaintiff was forced and obliged to & said did then and there pay lay out and expend divers other large sums of money amounting in the whole to the sum of one hundred dollars in and about the endeavoring to be cured of the said last mentioned bruises, wounds, and injuries so received by him as last aforesaid And whereas also the said defendants before the committing of the grievances hereinafter next mentioned were owners and proprietors of a certain ^{other} stage coach by them the said defendants used and employed for the carriage and conveyance of —

3^d Count

passengers at and for certain hire and reward
 to them in that behalf to wit at the County of La Salle
 aforesaid, and the said defendants being such
 owners and proprietors of the said last mentioned
 coach as aforesaid the said plaintiff heretofore to wit
 on the day and year aforesaid to wit at the County
 of La Salle aforesaid at the special instance and
 request of the said Defendants became and
 was a passenger by the said last mentioned coach
 to be safely and securely carried and conveyed
 thereby on a certain journey to wit from Peoria
 aforesaid to Springfield aforesaid for certain
 hire and reward to the said defendants
 in that behalf, and although the said plaintiff
 was then and there received by the said defend-
 ants as such passenger by the said last mentio-
 ned coach as aforesaid to be carried and con-
 veyed thereby as aforesaid yet the said defend-
 ants not regarding their duty in that behalf
 so carelessly negligently unskillfully and im-
 properly loaded drove managed and conducted
 the said last mentioned coach that afterwards
 and whilst the said last mentioned coach
 was proceeding with the said plaintiff as such
 passenger as aforesaid on the said journey
 from Peoria aforesaid to Springfield aforesaid
 and before the arrival thereof at Springfield
 aforesaid to wit on the day and year aforesaid
 to wit at the County of La Salle aforesaid the
 said last mentioned coach was by and through
 the carelessness negligence and improper conduct
 of the said Defendants overturned broken and
 thrown down with the said plaintiff thereon
 by means whereof one of the legs of the said

plaintiff then and there became and was greatly bruised, sprained wounded & injured and the said plaintiff was otherwise greatly bruised, wounded and injured inasmuch that the said plaintiff then and there became and was sick sore lame and disordered for a long space of time to wit from thence hitherto - during all which time the said plaintiff suffered and underwent great pain and was hindered and prevented from carrying on ~~and~~ transacting and proceeding in his lawful and necessary affairs and business by him during that time to be performed and transacted and thereby lost and was deprived of divers great gains & profits which had been accustomed to arise and accrue to the said plaintiff from the transacting & carrying on of the same. And also by means of the premises last aforesaid the said plaintiff was forced and obliged to, and did, then and there pay lay out & expend divers large sums of money amounting in the whole to the sum of one hundred dollars in and about the curing and endeavoring to cure the said last mentioned bruises, wounds sprains and injuries to wit at the bounty of La Salle aforesaid.

4th Count

And whereas also the said defendants before the committing the grievances hereinafter next mentioned were the owners and proprietors of a certain other stage coach by them the said defendants ~~and~~ used and employed for the carriage and conveyance of passengers at and for certain hire and

reward to them in that behalf to wit at the
 County of La Salle aforesaid, and the said
 defendants being such owners and proprie-
 tors of the said last mentioned Coach as last
 aforesaid the said plaintiff heretofore to wit
 on the day & year aforesaid to wit, at the
 County of La Salle aforesaid at the special
 instance and request of the said defend-
 ants became and was a passenger by the
 said last mentioned Coach to be safely and
 securely carried and conveyed thereby on
 a certain journey to wit from Peoria aforesaid
 to Springfield aforesaid for certain
 hire and reward to the said defendants
 in that behalf, and thereupon it then and
 there became and was the duty of the said
 defendants to carefully examine the said
 last mentioned Stage Coach and see that
 the same was strong substantial and in
 every respect fit suitable and proper for the
 safe and secure conveyance of passengers
 and for the conveyance of the said plaintiff
 on his said journey from Peoria to Spring-
 field, aforesaid. And although the said
 plaintiff was then and there received by
 the said said defendants as such passen-
 ger by the said last mentioned Coach as
 aforesaid, yet the said defendants not
 regarding their duty in that behalf suff-
 ered and permitted the said last mention-
 ed Coach to be used & employed for the purpose
 of carrying and conveying the said plaintiff
 on his said journey from Peoria aforesaid
 to Springfield aforesaid the same being then

and there old worn out, unsubstantiated and wholly insufficient and not of sufficient strength for the purpose aforesaid, whereby and by means reason whereof, afterwards to wit on the day and year aforesaid to wit at the County of La Salle aforesaid, and whilst the said last mentioned Coach was proceeding with the said plaintiff as such passenger as aforesaid on the said journey from Peena aforesaid to Springfield aforesaid the said Coach became and was broken overturned and thrown down with the said plaintiff thereon as aforesaid, by means whereof one of the legs of the said plaintiff then and there became and was greatly bruised sprained and injured And the said plaintiff was otherwise greatly bruised wounded and injured, inasmuch that the said plaintiff then and there became and was sick sore lame and disordered for a long ~~time~~ space of time to wit from thence hitherto during all which time the said plaintiff suffered & underwent great pain and was hindered and prevented from carrying on and transacting his necessary affairs and business by him during all that time to be performed and transacted, And thereby lost & was deprived of divers great gains and profits which had been accustomed to arise and accrue and which otherwise would have continued to arise and accrue to the said plaintiff from the transacting and carrying on of the same, And also by means of the premises last aforesaid the said

plaintiff was forced and obliged to and did then and there pay lay out & expend divers large sums of money amounting in the whole to the sum of one hundred dollars in and about the curing and endeavoring to cure the said last mentioned bruises wounds and injuries to wit at the County of La Salle aforesaid, wherefore the said plaintiff saith that he is injured and hath sustained damage to the amount of five thousand dollars

C. L. Starbuck p.p.
att, "

And on Monday February 6th said day being one of the days of the February special term of said Court for the year A.D. 1854. The following proceedings were had, which are in the words and figures following to wit

" Champlin R. Potter }
vs } Respects in the case
John F. Smith, Lorenzo B. }
Sanger, Martin C. Walker & Orson C. Parnely

This day comes the plaintiff by Glover & Cook his attorneys & on their motion It is ordered by the Court that they have leave to amend their declaration filed herein by adding the names of the attorneys "

And on the 13th day of February A.D. 1854 a summons was issued in this cause - in the words and figures following to wit

State of Illinois }
 County of La Salle } The People of the State of Illinois
 To the Sheriff of Sangamon County, Greeting
 We command you, that you summon Leverge
 P. Sanger and Martin C. Walker impleaded
 with John Frink & al if they shall be found
 in your county, to be and appear before the
 Circuit Court of said La Salle County on the
 first day of the next term thereof, to be holden
 at the Court House in Ottawa in said county,
 on the eighth day of may next, to answer
 unto Champlin R. Potter in a plea of Mes-
 pass in the case, to the damage of the
 said plaintiff as he say in the sum of Five
 thousand dollars. And have you then and
 there this writ, with an endorsement there
 on in what manner you shall have executed
 the same - Witness, Philo Lindley, Clerk of said
 Court, and the seal thereof, at Ottawa, in said
 County, this 13th day of February A.D. 1854

(Seal)

P. Lindley, Clerk,

Which said summons was returned and
 filed March 9th 1854, with an endorsement
 thereon in the words and figures following
 to wit

" I have executed service of the within writ by
 reading the same to the within named Leverge
 P. Sanger this 14th day of February A.D. 1854, the
 within named Martin C. Walker not in my
 County, date above service 50

Shffs fees Rec^d 1 mile travel 5
 of C. R. Potter Feb 15th Return 10

Charles Arnold Shff # 65
 Sangamon County, Illinois

And on the 12th day of April an alias summons was issued, in the words and figures following to wit

" State of Illinois }
 La Salle County) The people of the State of Illinois. To the Sheriff of Cook County. Greeting. We command you, as we have before commanded you, that you summon Martin O Walker impleaded with John Minkerals if he shall be found in your County, personally to be and appear before the Circuit Court of said ^{La Salle County} County on the first day of the next term thereof to be holden at the Court House in Ottawa in said County, on the eighth day of May next, to answer unto Champion R. Potter in a plea of Trespass on the case to the damage of the said plaintiff as he says in the sum of Five thousand dollars. And have you then and there this writ with an endorsement thereon in what manner you executed the same. Witness Philo Lindley Clerk of our said Court and the seal thereof at Ottawa this 12th day of April A.D. 1854

Seal

P. Lindley Clerk,

Said summons was returned and filed on the 13th day of May, 1854, with an endorsement thereon in the words and figures following to wit

" The within named Martin O. Walker not found in my County May 4th 1854. C. Bradley Sheriff
 Paid & Return, 10 Cook County,
 By J. N. Moore Deputy

And on Tuesday May 9.th said day being one of the days of the May term of said Court for the A.D. 1854. The following proceedings were had in this cause. in the words and figures following to wit

" Champlin R. Potter }
vs } In respap in the case
John Smith }
Lorenzo P. Sanger Martin C. Walker & Orion C. Parnely

On Motion of plaintiff by Starbuck his attorney it is ordered that he have leave to amend his declaration filed herein, and that this cause be continued "

And on Tuesday November 21st. said day being one of the days of the November term of said Court for the year A.D. 1854. the following agreement was made in the words and figures following to wit

" Champlin R. Potter }
25 vs } In respap in the case
John Smith. Martin }
C. Walker, and Orion C. Parnely

By agreement of parties it is ordered that this suit be continued,

11
and on the 15th day of May A.D. 1855. a Plea was filed in this cause. in words and figures following to wit

17
[12301-9]
" La Salle Circuit Court - May term 1855

Champlin R. Potter

vs

John Frink - Martin O Walker

Oren C. Parmelee and Lorenzo P. Sanger

And now come John Frink, Martin O. Walker and Lorenzo P. Sanger by Dickey & Wallace their attorneys and say they are not guilty of the wrongs whereof plaintiff hath complained against them in manner and form as plaintiff in his said declaration hath alleged and of this they put themselves upon the country

Dickey & Wallace
for defts "

And on the same day another plea was filed in words and figures following to wit

" State of Illinois 3^d Circuit Court in & for said
La Salle County 7th County - May Term A.D. 1855

Champlin R. Potter 3

vs

John Frink Oren C

Parmelee. Martin O Walker & Lorenzo P. Sanger

3 Trespass on the Case

Now comes the said Oren C. Parmelee one of the defendants in said cause by Selana & Jones his attorneys & defends the wrong & injury when &c. & says acted non &c. because he says that he is not guilty in manner & form as the said plaintiff hath ~~stove~~ in his said declaration complained against him, & of this he puts himself upon the country

Selana & Jones attys
for said Parmelee

And on Tuesday May 22nd said day being one of the days of the May Term of said court for the year A.D. 1855. The following further proceedings were had in this cause. in words & figures following to wit

" Champlin R. Potter }
15 vs. } Insup in the case
John Frank Lorenzo }
P. Sanger, Martin C. Walker and Orson C. Parnely
The Plaintiff by Glover & Cook his
attorneys moves the court to continue this case //

And on Wednesday May 23rd 1855 said day being one of the days of said May Term. The following further proceedings were had in the words and figures following to wit

" Champlin R. Potter }
15 vs. } Insup in the Case
John Frank Lorenzo P. }
Sanger, Martin C. Walker & Orson C. Parnely

On the motion of the plaintiff grounded on his affidavit. it is ordered that this case be continued. It is further considered that the costs of this continuance be paid by the plaintiff ~~there~~ and that defendants recover of the plaintiff their costs of this continuance. to be Taxed //

And on Wednesday November 28th said day being one of the days of the November Term of said Court for the year A.D. 1855. further proceedings were had, in words and figures following to wit

" Champlin R. Potter

12

vs

3

3 Insup on the case

John Brink, Lorenzo

P. Sanger, Martin C Walker and Oron C. Parnely

On Motion of W. H. L. Wallace of counsel for the defendants it is ordered that an attachment issued for J. O. Davis for neglecting to appear as a witness after having been lawfully subpoenaed so to do

And now the defendant Parnely by Jones his attorney moves the Court to suppress the deposition of Andrew Pennell //

And on Friday Nov 30th said day being one of the days of said November term further proceedings were had in words and figures following to wit

" Champlin R. Potter

12

vs

3

3 Insup on the case

John Brink, Lorenzo

P. Sanger, Martin C Walker & Oron C. Parnely

This day again come the parties hereto by their counsel and after hearing the arguments of counsel the Court overrule the motion to suppress the deposition of Andrew Pennell. And now come the following jurors of a jury to wit, Abraham L. Laya, J. C. Shaw, M. W. Linnick, O. J. Paine, Joseph Brewster, James Prescott, Enos Brown, Archibald Sharp, Lemara Milber, D. M. C. Gording, D. C. Gopping & James Morse, who are duly elected tried and sworn to well and truly try the issues herein according to the

evidence, and after hearing a part of the evidence the further hearing of this cause is postponed until nine o'clock to morrow morning,

And on Saturday December 1st said day being one of the days of said November Term the following further proceedings were had, in words and figures following to wit

" Champlin R. Potter }
12 vs }

John Frank. Lorenzo } Trespass on the Case }

P. Sanger, Martin O. Walker & Orson C. Parnely,

This day again came the parties hereto by their counsel, as well as the jury sworn herein, and after hearing a continuance of the evidence during the day, the further hearing of this cause, is postponed until ten o'clock next Monday morning,

51 And on Monday December 3^d said day being of the days of said November Term, the following further proceedings were had, in words and figures following to wit

" Champlin R. Potter }
12 vs }

John Frank. Lorenzo } Trespass on the Case }

P. Sanger, Martin O. Walker & Orson C. Parnely,

This day again came the parties hereto by their attorneys together with the jury sworn herein, and after hearing a continuance of the evidence, the further hearing of this cause is postponed until nine o'clock to morrow morning,

And on Tuesday December 4th said day being one of the days of said November term the continuance of this case was resumed in words and figures following to wit

" Champlin R. Potter 3
 12 vs 3 Inespap on the case
 John Smith. Lorenzo P. 3
 Sanger. Martin C. Walker & Orson C. Parnely

This day again came the parties hereto by their attorneys together with the jury sworn herein, and after hearing the balance of the evidence and a part of the arguments of counsel, the further hearing of this cause is postponed until the coming in of Court to morrow morning //

And on Wednesday December 5th said ^{day} being one of the days of said November term of said Court, the continuance of this cause was resumed in words and figures following to wit

" Champlin R. Potter 3
 12 vs 3 Inespap on the case
 John Smith. Lorenzo P. 3
 Sanger. Martin C. Walker & Orson C. Parnely

This day again came the parties hereto by their counsel and after hearing a continuance of the arguments of attorneys, the further hearing of this cause is continued until the coming in of the Court to morrow morning //

And on Thursday December 6th said day
being one of the days of said November Term
of said Court. The following further proceedings
were had in cause, in words and figures
following to wit

" Champlin R. Potter 2
12 vs 2 Respap on the Case
John Frank, Lorenzo P. Sanger
Sanger, Martin C. Walker & Olson C. Parmely

This day again come
the parties hereto by their attorneys, together with
the jury sworn herein, and after hearing the
balance of the arguments of counsel, and the
instructions of the parties, the jury retire to
consider of their verdict! And after due delib-
eration thereon had, return into Court the
following verdict to wit! We the jury find
the defendants guilty in manner and form
as the plaintiff hath in his declaration set
forth. And that the plaintiff has sustained
damages in the sum, Three Thousand Six
hundred and four dollars and sixteen cents.
Whereupon defendants counsel move the Court
for a new trial herein //

And on Wednesday December 19th said day
being one of the days of said November Term
of said Court. The following further proceedings
were had, in words and figures following to wit

" Champlin R. Potter 2
12 vs 2 Respap on the Case
John Frank, Lorenzo P. Sanger
Martin C. Walker & Olson C. Parmely

The parties again come by their counsel, and after hearing their arguments on the defendants motion for a new trial, the Court after due deliberation thereon had, overrule said motion. And now the defendants by Wallace their attorney move the Court in arrest of judgment, which motion is overruled by the Court.

It is therefore considered by the Court, that the plaintiff have and recover of the defendants the sum of three thousand six hundred and four dollars and sixteen cents for his damages, and his costs and charges by him herein expended and that he have execution therefor.

The defendants counsel move the Court for an appeal herein to the Supreme Court of this State, which is granted upon condition that the defendants within forty days from this date, file an appeal bond payable to the plaintiff in the penal sum of Five Thousand dollars, with William Reddick or George E. Walker as their security,

And on the first day of January A.D. 1856 the defendants filed their Bill of Exceptions herein, in the words and figures following to wit:

" Champlin R. Potter }
 vs } November term La Salle
 John P. Nick & others } Circuit Court A.D. 1855.

Be it remembered that on

the trial of the issue in the cause. the Plaintiff to maintain the issue on his part offered to read in evidence the depositions of Andrew Pennell, (hereinafter set out) which was objected to on the part of the defendants on the ground that the Deponent, Andrew Pennell was then present in Court, and which fact the defendants verified to the Court at the time of making the objection. But the said objection was overruled by the Court and the said deposition was read in evidence to the jury - to which the defendants excepted at the time. The defendants also objected to the reading in evidence of the 8th Interrogatory, and the answer thereto in said Deposition, on the ground that the same called for & was answered by an opinion of the witness merely, which objection of the was overruled by the Court and the defendants at the time thereof excepted to that decision of the Court & the said Interrogatory & answer were read to the jury. The Court however instructed the jury that so much of said answer as was the opinion of the witness was not evidence.

52. The defendants then claimed the right to call said Pennell to the stand and cross examine him as an adversary witness, but the same was objected to by the Plaintiff & the objection sustained by the Court and to which decision of the Court, the defendants at the time of the making thereof also excepted. The Plaintiff however at the time of making said objection stated, that they desired time to consider, and would perhaps

withdraw said objection

On the next day after the last foregoing decision was made & before the Plaintiff had closed his case, but after the examination of Wyatt hereinafter set out, he consented that the said Andrew Pennell might be called to the stand and cross examined by the defendants which was accordingly done,

The deposition of the said Pennell which was so read in evidence to the jury is in the words & figures following

" The deposition of Andrew Pennell of Miles in the County of Benham and State of Michigan a witness of lawful age, summoned and sworn and examined upon his corporate oath on the eighth day of August in the year of our Lord one thousand eight hundred & fifty five at the office of Charles Jewett in the village of Miles in the County of Benham and State of Michigan aforesaid by me Charles Jewett a Commissioner for the State of Illinois residing at Miles in the County and State aforesaid duly appointed by a Decimus Potestatum or Commission issued out of the Clerk's office of the Circuit Court of La Salle in the State of Illinois and bearing date the 17th day of April A.D. 1855. Teste in the name of Philo Lindley Esqr Clerk of the said Circuit Court with the seal of said Court affixed thereto and to me directed as such Commissioner for the examination of the said Andrew Pennell a witness in a certain suit

and matter in controversy now pending and undetermined in the said circuit court wherein Champlin R. Potter is Plaintiff and John Frank Olson & Parnely and Lorenzo P. Sanger impleaded with Martin O. Walker are Defendants in behalf of the said Champlin R. Potter, as on the Interrogatories of the said Champlin R. Potter, which are attached to or inclosed with the said Commission and upon none others. The said Andrew Pennell being first duly sworn by me 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 Defendants in relation to the matter in controversy between the said plaintiff and defendants so far as he should be interrogated

Interrogatory first

What is your name age and place of residence

Answer to first Interrogatory

My name is Andrew Pennell am twenty three years old past. reside at Miles Berman County, Michigan

Interrogatory second

Do you know the parties plaintiff and defendants in the title to their interrogatories named, or either, and which of them and how long have you known them respectively

Answer to second interrogatory

I do know the parties plaintiff & defendants in the title to these interrogatories, named. Have known the Plaintiff since the last of December AD. 1852, Have known John Brink over eight years last past. George P. Sanger over ten years. Martin C. Walker over eight years & have known Orson C. Parnely since the fall of AD. 1852.

Interrogatory Third

When did you first become acquainted with the above named plaintiff, and what what business were you engaged in at that time

Answer to third Interrogatory

I first became acquainted with the above named plaintiff the last days of December AD. 1852, and was driving Stage for the above named defendants.

Interrogatory Fourth

In what business were you engaged on the twenty eighth and twenty ninth days of December AD. 1852, - If you were engaged in driving Stage who were the proprietors and who employed you as a driver

Answer to the fourth Interrogatory

I was engaged on the twenty eighth day of December A.D. 1852 in the business of Stage driving. The above named defendants were the proprietors & Harvey Clark & John D. Dore employed me as a driver

Interrogatory Fifth

State whether Champlin R. Potter the above named plaintiff was a passenger on the coach upon which you were engaged as a driver at the time mentioned in your answer to Interrogatory four: and whether said coach was broken or overturned & which, while you were so driving & said Potter was a Passenger?

Answer to the fifth Interrogatory

Champlin R. Potter the above named plaintiff was a passenger on the coach upon which I was engaged as a driver at the time mentioned in my answer to Interrogatory four said coach was broken & overturned when I was driving and said Potter was a passenger on the coach

Interrogatory Sixth

What was the cause of the accident referred to in your answer to interrogatory 5;

Answer to the Sixth Interrogatory

The cause of the accident was the coach was old and defective in this viz: the transit plate rod in the socket which prevented the king bolt from passing down into the axle tree; this caused the coach body to rock & that bent the bolt & caused the axle tree to break - The bolster and axle tree were chained when coach was sent to Peoria for repairs but it was not repaired but was put on to the road, without the chain being on, hence it broke in axle tree. If chain had been on the coach could not have turned over

Interrogatory Seventh

State what means were used by you to prevent accidents, and ~~whether~~^{whether} you were more than usually careful, or whether the accident was caused by any neglect on your part as a driver?

Answer to Seventh Interrogatory
I drive careful & more than usually so
The accident was not caused by any neglect on my part as a driver

Interrogatory Eighth

What was the condition of the Stage Coach mentioned in your answer to the foregoing Interrogatory? State particularly whether said coach was a safe and in good condition for carrying passengers and if not what were the defects in said coach

Answer to the eighth Interrogatory

The condition of the Stage Coach was bad, it was an old coach much out of repair & wholly unfit to run in the road for the carrying of passengers. The defects are heretofore fully stated in the answer to the sixth interrogatory.

Interrogatory Ninth

State if you know wheather said Coach was old or new, and how long the same had been used?

Answer to The Ninth Interrogatory

The coach was old. Cant state how long it had been used

Interrogatory Tenth

Where the defendants named in the title to these interrogatories or either of them informed of the unsafe condition of the Coach mentioned in your previous answer: and if so which of them, and in what manner were they so informed?

Answer to the Tenth Interrogatory

I do not know that the defendants or either of them knew any thing about the unsafe condition of the Coach

Interrogatory Eleventh

Do you know if any other matter or thing that may tend to the benefit & advantage of the Plaintiff in this cause. If you can state the same fully and particularly, as if you had been thereunto especially interrogated.

Answer to the Eleventh Interrogatory
I first became acquainted with the Plaintiff about the last days of December A.D. 1852 when in the defendant's Stage Coach between Cornes & Middletown Stations, north of Springfield in the State of Illinois, and when I was driving & in about two miles of Cornes Station in the direction of Springfield on a hard smooth road, in the forenoon the axle broke in the centre & the body of the coach settled down & struck the wheel horses & immediately thereafter the coach turned over.

I was more than usually careful in driving at the time referred to, because before I started from Middletown Station & on the route to Cornes Station ~~was the route~~ I noticed the defects before stated about the axle tree & knew the coach was so out of repair that it was unfit for the carrying of passengers.

Andrew J. Pennell

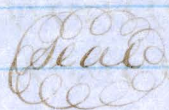
Subscribed and sworn to
before me August 8th 1855

Charles Jewett

A Commissioner for the State of Illinois

I Charles Jewett of the County of Benzie
and State of Michigan a commissioner duly
appointed to take the deposition of the said
Andrew J. Pennell a witness whose name
is subscribed to the foregoing deposition do
hereby certify that previous to the commence-
ment of the examination of the said Andrew
J. Pennell as a witness in the said suit between
Champlin R. Potter plaintiff & the said John
Smith, Orion C. Parnely & Lorenzo P. Sanger
impleaded with Martin C. Walker the said
defendants, he was duly sworn by me as such
commissioner to testify the truth in relation to
the matters in controversy between the said
Champlin R. Potter plaintiff and the said
John Smith, Orion C. Parnely & Lorenzo P. Sanger
impleaded with Martin C. Walker the said
defendants, so far as he should be interroga-
ted concerning the same that the said
deposition was taken at my office in the
village of Niles in the County of Benzie & State
of Michigan on the 8th day of August A.D.
1855, & that after said deposition was taken
by me as aforesaid, the interrogatories and
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 Andrew J. Pennell before me
the oath being administered by me as such
commissioner at the place & on the day &
year last aforesaid

Charles Jewett
Commissioner



The said Andrew Pennell after being duly sworn upon ~~the~~ his crop examination testified substantially as follows:

Pennell's
crop
examination

That he did not know the name of the coach to which the accident happened. That some of the defendants coaches had names - that he had been driving for the defendants about six months

That he had seen the coach but once before & that was at Springfield two or three days before the Sunday that it was run north from Springfield & which Sunday was the next Sunday before the 29th day of December A.D. 1852. which was the day in which the accident happened

The coach was old looking and he was not certain but thought it was of a yellowish color & had a break to lock the wheels but no lock chain. The coach was much spattered with mud. In going north on the Sunday mentioned. the witness hitched on to the coach at Middletown and drove it to the next station (Chesnut) about ten miles and next saw it at Middletown the morning of the accident. It had a chain on around the bolster and axle tree when the witness started as above to go north with the coach which after driving about a mile and a half the witness took off and threw away as far as he could

The reason why the witness took the chain off he said was because he could not make his

connections in going over the bridge across
Salt Creek - because he said that by means
of the chain the Coach would not track by
four feet, and that he threw the chain away
instead of putting into the coach - because
he was so mad that he didn't care.

He further testified that after taking off the
chain the Coach went very nice except
that it rocked very much.

He ^{witness} noticed the coach at Springfield, because
it was a standing Coach there and it was run
back to Peoria as a return ^{extra}, and could not
say whether it was going up for repairs or
not, and do not know what it was going
north for. There was no chain on the coach
when he saw it at Springfield - and it was
not put on at Middleton by himself.

The object of putting on the chain was to
keep the perches from raising the coach up
so that it would ride in the transit seat
it - The chain was fastened with a toggle
and while he was driving with it, it became
untoggled two or three times and he had to
get off and get splinters from the fence
to toggle it.

The chain was put on one side of the centre
of the axle tree because it could not be got
through the safety staple - The safety staple
is 3 or 4 inches across. Thinks as much as
four inches - The break on the coach was
old and the wood part that went against
the wheel was gone - this let the handle
down so that he had to reach it with his
foot - when he got off to retoggle the chain

& to water & when he stopped at stations after the chain was off he noticed the transom plate riding in the socket

Note. During the cross examination of this witness the ~~the~~ defendant brought into court and exhibited to the jury and witness a piece of iron, representing a safety staple which the witness said was the same size and shape of that in the coach in question. The said piece of iron so produced was a semi circle, whose diameter was seven inches and a half and the witness showed by explaining the mechanism of a coach that the distance from the under side of the coach the centre perch to the upper side of the safety staple was from five to six inches.

The socket upon which the witness said the bolster rode is an iron cylinder, springing from the centre of the plate on the top of the axle tree and ~~extending~~ entering the bolster above a distance of about $2\frac{1}{2}$ inches. The king bolt passes through it. The walls of this cylinder are about $\frac{1}{4}$ of an inch in thickness.

The ~~socket~~ ~~in~~ preceding facts after the word "note" above were proven to the jury by the exhibition of two iron plates one for the axle tree and one for the bolster which the witness said were like those in the coach in question except that the socket of the coach was more worn than that produced, and not quite so high.

The witness then further testified that the chain was passed around the axle tree & bolster by passing it ~~up~~ ^{up} on one side of the centre perch

of the coach and passing it back on the other side of the centre perch

that the coach would jolt up on to (what he called) the socket, being the iron cylinder before described in such manner that the small part of the king bolt could be seen being that part of it below the middle the king bolt tapering a little from the middle each way

He further testified that the horns of the coach were sprung upwards forward of the axle tree, so that when the pole was brought to a horizontal position by the draft of the lead horses it caused the sway bar to act as a lever upon the centre perch of the coach, and thus produced the jolting up of the coach on to the socket, and the rocking of the coach before described, that if the chain had been round the centre of the axle tree the coach would have tracked well & could have been turned without difficulty, but that it could not be placed there because the centre perch was in the way, that putting the chain on prevented the bolster from riding on, the socket, that there were iron braces composed of iron $\frac{7}{8}$ of an inch thick running from the fore part end of the horns where they were bolted to them, back under the axle tree, to which they were firmly bolted, to the back end of the horns, to which ^{also} they were firmly bolted, the horns extend about three feet back of the axle tree

that the accident happened between 11 & 12 O'clock in the morning, in the prairie and

on a smooth road

that the sway-bar runs from the back end of one perch to the back end of the other, at right angles with the perches —

that the night preceding and the morning of the day of the accident were very cold the ground frozen hard, but at the time of the accident it was thawing some

that the roads were good — no chuck holes in the prairie — but there were some in the timber — had passed through timber about three miles back of where the accident happened

Brought the horses around at Middleton about day light, then got breakfast & started after breakfast. started in $\frac{1}{2}$ or $\frac{3}{4}$ of an hour afterwards drove slow — not over 5 miles an hour. The distance from Middleton to the next station (towards Springfield) was ten miles and the accident happened about 2 or $2\frac{1}{2}$ miles this side of the next station. beyond Middleton — viz. Con's station after leaving Middleton, when I stopped to water at Irish Grove, the passengers got out and walked a short distance & got in again

at the time of the accident Potter was riding on the outside of the coach in the drivers seat with the witness who was the driver. The first that witness noticed at the time of the accident, the coach settled right down in front and Potter then jumped or slid right off, when the coach first settled down — he went off pretty quick

The horses then run 10 or 15 rods before the coach turned over

The iron axletree broke - it broke clean off
Don't know whether the transom plate of the axletree broke or not

Harvey Clark hired me to drive for the company - nobody else hired me, he and Major Dade were agents for the company at Springfield at the time, but I think it was Harvey Clark alone that hired me to drive

I never told any one that the coach to which the accident happened was the Pitt Henry Warren Coach. I never told Major Dade so at Niles last summer, in the evening in the yard in front of Major Dade's house. I never said to Dade, that I could make more out of Potter, or by going for Potter than I think would be willing to give me, or words to that effect

The cause of the accident was the breaking of the axletree but I do not know what caused the axletree to break

I never saw one of those kind of sockets until about 2 years before the accident

The coach was a nine passenger Coach - the mails were in the forward boot, there were six passengers inside besides Potter who was riding outside. In consequence of the springs being sprung the end of the pole stuck up - the pole is

firmly fastened in the hounds by two bolts running through, and a plate of iron on top. He further testified that he saw Gorek at Carl's station the next station beyond Middleton the next day after the accident happened.

He further ~~expressed~~^{testified} that he did not notice any unusual rocking of the coach at the time of the accident - the rocking did not increase as though the breaking was not all done instantly. When the coach is crowded they put on people outside and the proprietors knew of it.

The chain was on three or four inches one side of the centre of the axle-tree on one side and the same distance one side of it, on the other side of the centre.

He also stated that it was a common thing for the passengers to ride outside with the driver - that he thought the proprietors must have known of it - that he never heard of any rule of the company against it, and he made no objection to Potter riding outside with him.

He also stated that the accident happened on the trip of the defendants' coach from Peoria to Springfield, between which points the defendants were running coaches and that the name of J. Mink Ho was on the coach.

Wyatt - Benjamin P. Wyatt was also called as a witness by the Plaintiff and testified that he took passage in the defendant's coach at Pekin for Springfield on Tuesday night in the last of Dec. 1852 and being the last Tuesday night before the first Monday of January A.D. 1853

Every thing went on pleasant enough till the next day about noon, about 14 miles north of Springfield - when all of a sudden we keeled over, and after we keeled over the box or body of the Coach hung to the five wheels about one hundred yards after we upset

The Plaintiff Potter was riding outside, and after we got out, I went back about 100 yards to where Potter was and found him seriously hurt & unable to walk and assisted him to get to the next house, about 1/4 miles distant where we procured a conveyance and Potter was conveyed to Springfield

4411
Something had been said at Pekin about the unsafety of the coach, and at Middletown we examined it, but did not see any thing except it was an old badly worn common four horse Coach I made no minute examination of it I don't recollect that there was any peculiarity in the motion of the Coach, and I made no examination to see what was the cause of the upsetting - The ground ^{was} a level pretty ground as could be found in the County of Sangamon & we were driving at a moderate

There ~~was~~ were six passengers including Potter. I examined the way bill and found Potters fare paid from Teona to Springfield \$5.00

I saw Potter a half a dozen times a day while I was in Springfield - seven days and my recollection is that I did not see Potter out of his room until the Monday after the accident when he appeared in the house on crutches - his leg covered with bear skin - he was holding his leg up

Doctor Richardson attended upon him and Richardson is dead. I think I counselled him & I think Mr Cook did to have a Doctor

I saw Potter's leg twice it was black, bruised & swollen

On his cross examination Wyatt said the night before the accident the weather was cold. I called it very cold - the ground was frozen solid - at the time of the accident the weather was pleasant - thawing some

I do not recollect the name of the coach and cannot tell its color - I think it was not spattered with mud, but it might have been - [This witness was afterwards called again to the stand by the Plaintiff and then said "I have an impression that the color of the coach was yellow or yellowish brown

None of the passengers inside the Coach were hurt, but one fellow waved considerable and I took hold of his napper and shook him

It was a three seated-nine passenger Coach

This driver started from Middletown

There were five inside - when I got in at Pekin there were two in the front seat two in the back seat and Potter & I were on the middle seat. The persons in the front seat had carpet bags &c that made the middle seat uncomfortable - and at Delavan something was said about who would ride with the driver. I got out & rode with the driver between ~~Middletown~~ Delavan and Middletown rode about two miles

32
The Plaintiff then propounded to the witness the following question, what has been the custom on that route as to passengers riding outside with the driver? which was objected to by defendants the objection overruled by the Court, and to which decision of the Court the defendants at the time thereof excepted and the witness answered "It is customary for passengers to ride outside"

I have rode on the above line twice in 1851, twice in 1852 & twice in 1853, six times in all

I think the axle-tree was broke near the middle

The Coach had the name of J. Pennick & Co on it

The defendants then called as a witness Major John O. Dore, who testified substantially as follows

Major Dore. I was the agent of the defendants in the fall of 1852 at Springfield. came there in November, 1852, and Pennell was hired as a driver by Harvey Clark & myself after I came to Springfield and I think about the 1st of December 1852. Harvey Clark was the out door agent of the defendants at Springfield at that time

I saw Mr Potter a few minutes after he arrived in Springfield on the day of the accident. I requested the Landlord, McMillan to go with me to Potter's room, which he did and introduced me to him

Potter said they got along very pleasantly till they got to Middletown - it was a clear cold day - Potter went on to give an account of the accident - promising by saying that it was an unavoidable accident, that the axle tree broke and let the forward part of the Coach down and it dragged some distance that way, and that had he remained in the Coach as he ought to have done, he would not have got hurt for after going some way the Coach uncoupled and the passengers inside the Coach were not hurt. He (Potter) said there was no person to blame

I had a conversation with Pennell at Miles Michigan last summer in the yard in front of my house in the evening. My family were living at Miles at the time.

As a reason for seeing Andrew (Pennell) Frink had told me that Potter was trying to manufacture testimony, and Frink wanted me to see Andrew, and see what position he took.

I called on Andrew and found him pretty warm against the company because they had not done him what he thought was justice after stating what he had done towards a settlement - and said he could not get his pay of Gov. - I told him he ought to go to Frink - He then went on to say that he did not know as that would have done any good and spoke of some communication with Potter through Major Graves - I told Andrew what Mr Frink's apprehensions were, in the event of a suit going on.

I thought from what Andrew said he thought Mr Frink had sent me to him to bribe him. I told him that that was not my object. That all that Mr Frink and I desired was, that he should tell just what he knew and there stop. That there was a difference in the way that a witness came in ~~the~~ to the stand, whether he wanted to tell just what he knew or tell more - and if this was done, that I would pledge myself to try and get for him all that was due him from the Company - He knew what my

sentiments on that subject were so which he replied that he could make more out of Potter than he could out of Snik, and that Snik might go to hell

The coach to which the accident happened was the Fitz Henry Warren Coach - It was a strong well made coach, and in good condition. I knew that it was in good order or I would not have sent it out. We have sometimes sent coaches to Peoria for repairs. I do not remember the color of the coach exactly - I think it was a sky blue body at any rate it was a peculiar color

I think Pennell named the coach to me, at the time of our conversation in Miles. I think he said it was the Fitz Henry Warren Coach

In my conversation with Potter before stated, I was anxious to know whether the driver was at fault for I had generally noticed that when accidents happened the drivers were blamed and I felt particularly anxious on this occasion as I had hired the driver

Potter spoke particularly of the driver and said that he was not to blame and said that the accident was an unavoidable one, such as we were all subject to through life

At the time of the accident there was rather more down travel than up - the up travel was good however as there were a good many returned Californians on their way home at that time

I saw every coach that went out, every day and night - I saw no coach with a chain on. I did not see the coach after the accident. I think it was sent back to Peoria for repairs though it might possibly have been repaired at Springfield - I am not sure about that.

The reason why I know it was the Fitz Henry Warren Coach is because I understood it so at the time - and because I know that the Fitz Henry Warren was the coach that was due on that trip.

Smuck

The defendants also called Guilford W. Smuck as a witness, who on oath testified substantially that he was in the employment of Smith and Co at Springfield as road agent at the time the accident happened.

NJ

I went up after the coach, the next day after the accident. It was the Fitz Henry Warren Coach - a sky blue coach - the only one the company had of that color. I found the fore axle of the coach broke near the middle.

I have been engaged with coaches nine or ten years.

The plates shown are the same kind as those that were on the Fitz Henry Warren Coach.

I do not see how the upper plate could ride in the socket where the king bolt was in - I think it could not. This kind of plate is of a late date.

The Pitt, Henry Warren Coach was one among the best coaches we had. She was in good repair when I found her, except the broken axle-tree.

A coach will last from six to twelve years with good luck - if she had bad luck the body would get broke up.

The tongue of a coach is a stiff tongue. The hounds run through the fore axle-tree - there is an iron brace about $1\frac{1}{4}$ inch thick under it - bolted on to the forward end of the hounds, running under the axle and bolted to it and then continued to the back end of the hounds and bolted to them. There is also an iron plate on top of the hounds with a shoulder against the axle-tree.

The tendency of the hounds and tongue is to spring down. I think the Coach weighed about 2300 pounds. & the lead bars would weigh at least 30 pounds.

I think the hounds were not sprung when I found the coach after the accident, and the hounds could not have been sprung without my having noticed it.

I have lifted empty coaches by bearing down on the end of the tongue but it is very hard work.

The king bolt was bent and left in the bolster and I had some trouble in getting it out.

The king bolt was half bent cannot tell which way it was bent - it was a good bolt.

I think the hounds could not be springing up
I do not think they could be springing up by the
Coach running down into a chuck hole

I never saw a coach at Springfield with a chain
round the axle tree - I think I did not see the
Coach on its trip up

I know the Coach for a year
before the accident

Iron axles are liable to break
from frost - The iron of this axle was broke clear
off

The defendants also called Edward Haulan as a
witness, who on oath testified substantially as
follows

Haulan - I reside at Chicago, am by trade a
blacksmith, and have been engaged in the
manufacture and repair of coaches for over 12
years

I have been in the employ of Mink & Co
in repairing and ironing Coaches, as a foreman
for 7 or 8 years

I know of the Fitz Henry Warren
Coach - She was built in Chicago while I was
foreman. The axle trees were sent on ready
made - The iron was good satisfactory iron - as
good iron as I ever saw in an axle tree

I know this because I had occasion to weld
it at the time the coach was made - as iron
axle trees are sent on in two parts - they have
therefore to be welded together

The traces under the hounds were Sweden iron

about $\frac{3}{4}$ in. of an inch thick - as they run forward they are flattened and bolted to the ends of the hounds - the same behind there is no iron on top of the hounds behind and no trace - but a plate of iron on top of the hounds forwards of the axletree

The hounds and tongue are kept together by two bolts and a plate of iron and a tea bolt - the hounds and tongue are straight forwards and backwards I never saw hounds spring up, and think it not possible for them to spring up - the traces are to keep the hounds from springing down

The Coach was built about four years ago or possibly five or between four and five years ago

I think this Coach would weigh about 2500 or 2600 pounds

There ^{were} other Coaches constructed at the time the Fitz Henry Warren was, the most of these Coaches for the last 6 or 7 years were built in Chicago

Iron wire break easier when frost is in it

The Fitz Henry Warren was a blue Coach

I cannot tell how many Coaches I have built, and cannot remember their names - I remember the Fitz Henry Warren Coach - it had patent axletrees they were then just beginning to be used in the west or had not been long in use here - the Coach had such plates as those shown here

There is a block over the sway-bar on the centre perch from 4 to 6 inches thick upon which the swaybar pivots, and thus keep the pole in its horizontal position.

I don't know what made the axle-tree break unless it got froze and got a jar.

I have seen pretty new axle-trees break with frost.

I do not see how it is possible for the upper plate to ride on the socket with the king bolt in. The wood of the bolster would keep the king bolt snug in its place.

I think the Fitz Henry Warren Coach was built without breaks - I think breaks had pretty much gone out of use at the time she was built.

The defendants then called as a witness Luke Bonstock, who ^{on} oath testified substantially as follows.

24 I reside in Chicago & have lived there upwards of 18 years - have been in the employment of Smith & Co about 17 years up to two years ago - when I left their employment. My business was attending to their out door business - seeing to the horses, harnesses, stables and Coaches.

I was in their employment when the Fitz Henry Warren Coach was built - it was built 4 or 5 years ago - it was a sky blue coach. I think it was a string coach. I know it was ~~a string~~ built for a good one.

I think the kind of

plates shown, came into use from 5 to 8 years ago, it may be 5 or 6 years since those with a socket came into use. There was a similar plate without the socket or nuzzle in use before

The company I think had got out of the conceit of using brakes about the time the City Henry Warren Coach was built and I think she was built without brakes. He also stated that the defendants were the proprietors of the line of coaches from Peoria to Springfield and members of the firm of J. Frank & Co

Wyatt - The Plaintiff then recalled the witness Wyatt who testified that he had an ~~impression~~ impression that the Coach might have been yellow. If it had been recently painted sky blue thinks he would have noticed it but he did not see the Coach after it was taken to Springfield

Osman The Plaintiff then called William Osman who on oath testified substantially as follows

I saw the Coach in question after it was broken down. saw it in packing in the prairie near Con's, have no recollection of its color - Cannot tell whether it was sky blue or not. The coach was very much bespattered with mud. I never saw a sky blue Coach that I know of. This might have been a sky blue Coach - It was an old dilapidated looking Coach

Pennell
recalled
by Ptff -

The Plaintiff also recalled the said Andrew Pennell - who further testified, that the coach had a break in it -

The coach was all daubed with mud so that I couldn't hardly tell what color it was, but think it was yellow - I don't believe I would notice it if the coach was blue - I never saw the coach until it went North on the Sunday referred to

The Plaintiff also called as a witness Burton C. Cook who on oath testified substantially as follows

Cook - I saw the coach in question $\frac{1}{2}$ or $\frac{3}{4}$ of a mile North of Cone's Station when on my way to Springfield. I think the next day after the accident. I cannot pretend to state particularly about the color, but I think it was a brownish yellow, this is my impression merely. Did not get out to examine the coach - think it was not much muddy - the ground was frozen and the roads smooth

The plaintiff also called as a witness George H. Hunter who was sworn and testified that he was acquainted with Pennells, general reputation for truth and veracity at Niles - when he Pennell was a boy some 16 or 18 years old - Witness left Niles in 1847, but had been back twice since and staid about a month at a time - knew the acquaintances of Pennell at Niles.

The Plaintiff then propounded the following question to the witness: "Do you know what his general reputation for truth & veracity was there?" which question was objected to by defendants at the time it was put, but the objection was overruled by the Court, and to which decision of the Court in overruling said objection the defendants at the time thereof excepted, and the witness ~~thereupon answered~~ "I never heard anything against his character for truth or anything else"

Rood was also called as a witness for the Plaintiff and testified that he was acquainted with Pennell's general reputation for truth and veracity at Niles, when he lived there & in the vicinity, which was up to four or five years ago, and that he was acquainted with the acquaintances of Pennell there - Whereupon the Plaintiff propounded to this witness the same question as last above propounded to Hunter, which was objected to, and the objection overruled ~~by the Court~~ and the overruling excepted to, and the question answered, in the same manner as in the above case of the witness Hunter

which was all the testimony given on the subject of the ~~character~~ Character and identity of the coach, the cause and manner of the breaking of the same and the manner and circumstances under which the Plaintiff received the injury complained of. No testimony was given on the subject of the general character of Pennell for truth and veracity except that which was given by the Plaintiff.

and which was objected to by the defendants

And thereupon the Court at the request of the Plaintiff instructed the jury as follows

Champion A Potter
vs
John Smith et al

Instructions to Plaintiff

25
Given
If the jury believe from the evidence that the defendants being proprietors of a line of Stage Coaches and engaged in the business of carrying passengers for hire received the plaintiff into one of their coaches to be carried for hire from Peoria to Springfield and if they did not provide a suitable coach and if by reason of the coach being defective in a manner that human care skill and foresight might have remedied it, was overturned or came apart and the plaintiff was thereby thrown to the ground & injured the jury should find a verdict for plaintiff

26
Given
2 If the plaintiff was a passenger in a public conveyance belonging to defendants and used by them to carry passengers for hire and if said conveyance was overturned, or broken down, without any apparent cause, the law will imply negligence on the part of defendants and the defendants can only avoid this imputation of law by showing that the accident happened from some defect undiscoverable, upon

the closest inspection or from some cause unavoidable by human care skill or foresight

3 It is the duty of the Proprietors of a Stage Coach engaged in carrying passengers for hire to make a most thorough and careful examination immediately previous to each journey, and if they neglect to do so and passengers are injured from a defect which might have been discovered upon such thorough and careful examination the proprietors are liable

4 The Proprietors of a line of coaches used for the transportation of passengers for hire are bound to provide safe coaches and they are liable for all damages caused by defects in the vehicle which might have been seen at the time of construction of the vehicle, as well as for such as might exist afterwards, which could be discovered on the closest and most careful examination

5 The Proprietors of coaches carrying passengers for hire have a right to make and enforce all needful rules for the safety of their passengers, and if by reason of the vehicle used not being road worthy a passenger is injured he has a right to recover compensation for such injury, whether he was riding on the outside or inside of the coach provided such passenger was riding in a place where the proprietors permitted passengers to ride, and no objection was made by the

proprietors their servants or agents to his riding in that place

6 In order to entitle the plaintiff to recover it is only necessary to prove in the first ~~place~~ instance that the defendants were proprietors of a coach engaged in the business of carrying passengers for hire 2nd that the plaintiff was a passenger for hire in said coach and 3rd that the coach was overturned or came apart without any apparent cause while being driven on smooth road in a careful manner and that the plaintiff was thereby injured and then the burden of proof is the defendants to show that the accident arose from some cause unavoidable by human care skill or foresight

7 If the jury believe that a witness has wilfully testified falsely in one material point they are at liberty to disregard his entire testimony

8 If the jury find for the Plaintiff they ought to give such damages as will in their judgment be a sufficient compensation for all loss of time for all the physical suffering the plaintiff is shown to have sustained by reason of his injury caused by the insufficiency of defendants coach and also for the necessary expense thereby occasioned to him and if the jury believe from the evidence that the plaintiff is permanently injured and disqualified thereby from labor he might otherwise have done, and is liable to future

suffering for such injury they should award him such damages as will be a just compensation for such permanent injury.

And to the giving of which instructions for the Plaintiff and each of them the defendants at the time of giving the same excepted.

And thereupon the Court at the request of the defendants instructed the Jury as follows

- 1 If the jury believe from the evidence that the coach in which the plaintiff was a passenger at the time of the accident was a coach capable of holding nine passengers inside - that there ^{were} but six or seven passengers inside at the time of the accident & plenty of room inside for the plaintiff if he had chosen to sit there, and if they further believe from the evidence that by the rules and regulations of the defendants, known to ~~the~~ plaintiff the outside of the coach is for the use of the driver and the baggage only, and not for the passengers, unless the coach was full and that the injury to the plaintiff happened in consequence of the plaintiff being on the outside of the coach under the circumstances above stated and would not have happened to him if he had been inside of coach then the plaintiff cannot recover.

Given

2 In order to charge the defendants with damages in this action it is necessary for the plaintiff to prove that the injury to the plaintiff resulted from negligence upon their part or on the part of their servants or agents

3 If the breaking of the axle tree unexplained by any cause would be sufficient to authorize the jury to presume negligence on the part of the defendants, yet, if the jury should further believe from the evidence that the defendants have shown that a cause for which they are not responsible was the probable cause of the breaking of the axle tree then before the jury can find for the plaintiff they must be satisfied by further evidence than the breaking of the axle tree that the defendants have been guilty of negligence

4 If the jury believe from the evidence that the defendants have shown a probable cause for the breaking of the axle tree with which they are not ^{chargeable} ~~chargeable~~ - and if they further believe from the evidence that the only evidence on the part of the plaintiff tending to show that the axle tree was broken from causes for which the defendants are responsible rests upon the testimony of Andrew Pennell, and that the testimony of Pennell is unworthy of belief then the jury might to find for the defendants

5 It is immaterial whether the defendants their servants or agents ever inspected the coach in question or not, unless the jury are satisfied from the evidence that the breaking of the axle tree or the injury complained of proceeded from some defect which might have been discovered upon and by such careful examination as it would be the duty of the defendants to make in order to discover all probable defects which such an examination could disclose

6 If the jury believe from the evidence that Pennell has sworn wilfully false in many material particular it is then right to discredit his whole testimony, unless it is supported by other testimony which they believe to be credible

7 If the jury believe from the evidence that the defendants coach to which the accident happened was constructed in a safe strong & secure manner and free from any defect that the utmost human skill and vigilance could guard against, and was in that state at the time of the accident and if they further believe from the evidence that the cause of the accident which resulted in injury to the plaintiff, was one against which human skill and vigilance could not provide, then they ought to find for the defendants

8

Given

If the Jury believe from the evidence that the cause of the breaking of the axle-tree of the defendants Coach was severe frost in the iron axle-tree of the Coach, and that that was a cause against which the utmost human skill and diligence could not provide then they ought to find for the defendants

Qualification ~~to~~ depts instructions for Plff

Given

If however the Coach might have been constructed in a manner that would have obviated all danger from frost and still have been suitable for the business of carrying passengers or if the defendants by housing or taking the utmost care of their Coach when it was not running, could have prevented the action of the frost then even if the axle-tree did break from frost that would not constitute a defence

61

And the defendants also asked the Court to instruct the Jury as follows:

Refused

If the Jury believe from the evidence that the cause of the accident which occasioned the Plaintiffs injury was the breaking of the axle-tree of the defendants Coach from frost, and not from any defect in the axle-tree, then they should find for the defendants

Refused
If the Jury believe from the evidence that the cause of the accident which occasioned the plaintiff's injury was the breaking of the axle-tree of the Coach from frost and not from any defect in the Coach or in the axle-tree then whether the Coach was old and defective or not, they should find for the defendants

Refused
If the Jury believe from the evidence that it is equally as probable that the axle-tree broke from the effect of frost as from any defect in the Coach or in the axle-tree then the Jury should find for the defendants

Refused
If the Jury believe from the evidence that the plaintiff's injury resulted from sliding or jumping from the outside of the Coach before the same upset, and not from the upsetting of the Coach, then the Jury should find for the defendants

Refused
Whether the Plaintiff would be justified or not in jumping or sliding from the Coach in order to avoid a greater apprehended peril that might result to him from awaiting the upsetting of the Coach yet inasmuch as that state of facts is not alleged in the declaration, the Plaintiff cannot recover even although the above state of facts may be true

Refused

Unless the jury believe from the evidence that all the defendants, Wink, Sanger, Walker & Parnely were joint owners of the Coach in which the plff was a passenger at the time of the accident they cannot find for the plff

And which last mentioned instructions and each of them the Court refused to give. And to which refusal of the Court to give the said last mentioned instructions and each of them, asked for by the said defendants, the defendants at the time of such refusal excepted

And thereupon the Jury found the issue for the Plaintiff and assessed his damages at the sum of Three thousand six hundred and four dollars & sixteen cents

And thereupon the defendants moved the Court for a new trial, which motion was overruled by the Court - and to which decision of the Court in overruling the said motion for a new trial the defendants at the time of such refusal excepted

And thereupon the defendants moved the Court to arrest the Judgment in this cause, which motion was overruled by the Court and to which decision of the Court in overruling the said motion in arrest of Judgment the said defendants at the time of such overruling also excepted and prays

the Court here to sign and seal this his bill of exceptions

And thereupon it was ordered and appointed by the Court that the defendants have until and including the third day of January A.D. 1856. to prepare and tender to the Court their Bill of exceptions and to file the same with the same effect as though it had been done during the term aforesaid and within which time, this the said defendants Bill of exceptions was prepared and on this first day of January A.D. 1856 the same was signed and sealed by the Court and with the same effect as though the same had been signed and sealed during the term aforesaid

Witness my hand and seal the day and year aforesaid
 W. C. Hollister 

And afterwards to wit on the 16th day of January A.D. 1856. The Defendants filed their Appeal Bond in this cause, in the words and figures following to wit

" Know all men by these presents that we John
 " Frank Lorenzo P. Sanger, Martin C. Walker
 and Cassin C. Parnely as principals, and
 George C. Walker as surety, are held and firmly
 bound unto Champlico R. Potter in the penal
 sum of five thousand dollars, good and law-
 full money of the United States, to the payment

of which sum well and truly to be made we
do bind ourselves, our heirs, executors and adm-
inistrators jointly and severally jointly by these
presents, Witness our hands and seals this 17th
day of January A.D. 1856

The Condition of the
above obligation is such that whereas the said
Champlin R. Potter on the nineteenth day of
December A.D. 1855 at the November term of
the Circuit Court in and for the County of La
Salle in the State of Illinois in the year 1855,
by the consideration and judgment of said
Court did recover against the above bounden
John Frink, Lorenzo P. Sanger, Martin C. Walker
and Orson C. Parmely a judgement for the sum
of three thousand six hundred and four dollars
and sixteen cents, besides costs, from which
judgment the said John Frink, Lorenzo P. Sanger,
Martin C. Walker and Orson C. Parmely have prayed
an appeal to the Supreme Court of said State
Now therefore of the said John Frink, Lorenzo P.
Sanger, Martin C. Walker and Orson C. Parmely
shall duly prosecute said appeal, and shall
pay and satisfy the said judgement, costs,
interest and damages in case said judgement
shall be affirmed by the said Supreme Court, then
the above obligation to be void, otherwise to be and
remain of full force and virtue

John Frink

Lorenzo P. Sanger

M. C. Walker

G. C. Walker

O. C. Parmely

Real

Real

Real

Real

Real

State of Illinois } I John H. Nash Clerk of the
 LaSalle County } Circuit Court in and
 for said County and State do
 hereby Certify that the above and foregoing record
 in the case of Champlin R. Potter vs John Fink & Co
 comprises a true, full, perfect and complete record
 of all the proceedings had in said cause as the
 same appear on file and of record in my office
 In Testimony Whereof I have hereunto set
 my hand and the seal of said Court
 at Ottawa this 29th day of January
 A.D. 1886

J. H. Nash Clerk

- And now comes the Appellant John
 Fink by L. L. Dickey & Wm H. L. Wallace
~~for~~ his attorneys and says
 That there is manifest error
 in the judgment and proceedings
 aforesaid - in this 1st -
- 1st In permitting plaintiff to read Pen-
 nells deposition - when the wit-
 ness was present in Court -
 - 2nd The Court erred in admitting
 evidence for plaintiff which was
 incompetent - & excluding evidence
 offered by defendant -
 - 3rd - The Court Erred in refusing
 to defendant the right of cross-
 examine the witness Pennell

4th The Court erred in permitting plaintiff to prove that it was customary for passengers to ride outside -

5 The Court Erred in admitting evidence of Pennell's good character - nine years & more ago -

6 The Court erred in refusing to give each instruction asked by defendant & refused -

7. The Court erred in giving the instructions given ~~but~~ ^{not} ~~to~~ ^{to} which defendant objected

8 The Court Erred in rendering judgment upon the record in the case ————— Wherefore he asks that said judgment be reversed.
L. L. Dickey
Jm H. A. Wallace

Attys for appellant

And now comes the said appellee says that in the record aforesaid is no error and he prays that said Court be affirmed

Edmund

Blewon

Attys for appellee

94

Thompson C. 14th

Testified before me
and signed

Recd in 1717
no. 1. Section 1
of the Statute in
1717

28 7 92

6. *Leaves*
of the

94

~~1856~~ True

78. Trinity
June 8. 18. 11.

1230