


No. 12518

Supreme Court of Illinois

Claypool, et al.

vs.

McAllister, et al.

71641  7

State of Illinois--Supreme Court, 3d Division.

JACOB CLAYPOOL and
LAWRENCE W. CLAYPOOL,

vs.

ARCHIBALD McALLISTER,
And JESSE McALLISTER.

} Appeal from Will Co Cir. Court.

This was an action on the case brought by appellees against appellant.

Record
Page 17 1st COUNT.—Amended declaration filed 19th February, 1856. Pliffs alledge that on the first day of Nov., 1854, they delivered to the def'ts, being then and there the owners duly licensed of a certain ferry across the Illinois river, at Morris, and common carriers; and def'ts as such owners and occubants of said ferry and common carriers, received from the pliffs upon the ferry boat of def'ts, a span of horses, harness and wagon, loaded with stoves, to be by def'ts ferried across the Illinois river at Morris, for reward; and the defts so being such ferrymen and common carriers, & their servants and agents so carelessly behaved and conducted themselves in the premises, that by and through the carelessness, negligence and default of def'ts and their servants and agents in the premises, the said horses, harness, wagon, &c., were wholly lost.

Record
Page 18 2nd COUNT.—That on the 14th day of Nov., 1850, the def'ts obtained a license to keep a ferry across the Illinois River, at a point between the S fr. of the N E $\frac{1}{4}$ of sec. No. 9, R 7, and the E $\frac{1}{2}$ of b'lk 17 of the canal addition to Morris, for 5 years from the 27th day of Feb., 1851, provided the def'ts should enter into a bond to keep said ferry in all respects in accordance with the statute, and should pay a certain tax named in said order; that def'ts complied with the requisitions aforesaid, and accepted the powers and franchises so granted; and afterwards, to wit: on the first day of April, 1851, at the place mentioned in said license, did establish the ferry across the Illinois river.

And pliffs aver that by reason of the acceptance by def'ts of said powers and franchise, it became and was the duty of def'ts to be furnished and provided at that place with good tight boat or boats, of sufficient number, dimensions, &c., for the transportation of all passengers, teams, &c., and with men of sufficient number, skill and strength to manage the same.

And pliffs aver that on the 1st day of Nov., 1854, at the place of the ferry aforesaid, upon the ferryboat so as aforesaid, furnished by said def'ts, they delivered 1 span of horses, wagon, &c., to be ferried across the river, for certain toll in that behalf.

That on the day aforesaid, and previously, the def'ts neglected and omitted to provide themselves with a good tight boat or boats, but the

boats furnished were old and leaky, without sufficient rigging or implements, and did neglect and omit to furnish suitable small craft, and did neglect and omit to furnish said boats with men of sufficient number, strength and skill to manage the same, and by reason of such insufficiency of said boat, rigging and implements, and the carelessness and indiscretion of the men upon the same, and the insufficiency of the number of the men, and the omission to furnish any small craft, &c., the horses, wagon, and other property of the pl'ffs, were thrown into the river, and the horses were drowned and the other property damaged.

Page 24 PLEA.—General issue to 1st Count, and demurrer to 2d Count, filed Feb. 19, 1857.

Page 30 Demurrer overruled and Plea of general issue filed 2d Count.

Page 32 Change of venue to Will county, on petition of pl'ffs.

Page 58 On the trial, pl'ffs read the deposition of Perry A. Armstrong, as follows :

I am Clerk of the Grundy County Court, and have in possession the record of the board of supervisors of Grundy County ; paper marked A. is a correct transcript of said records ; said paper contains, first, a certificate showing that Grundy county is organized under the township law ; that on the 14th day of Nov., 1850, at a meeting of the board of supervisors of said county, a petition was presented from appellants, praying for a license to keep a ferry across the Illinois river at Morris, and a resolution of said board, as follows :

Page 61 "Resolved, That Jacob and Lawrence W. Claypool be, and they are hereby licensed to establish and keep a ferry across the Illinois river in the county of Grundy, and State of Illinois, at a point between the S fr. of the N E $\frac{1}{4}$ of sec. 9. T 33, R 7, and the E $\frac{1}{2}$ of bl'k No. 17, of the canal addition to the town of Morris, for the term of 5 years from and after the 28th day of Feb., 1851. *Provided*, that the said Jacob and L. W. Claypool shall enter into bonds of \$500 to keep said ferry, in all respects, in strict accordance with the statute law in such case made and provided ; and provided further, that the said Jacob and Lawrence W. Claypool shall pay into the County Treasury annually, the sum of \$10, as a tax thereon ; and provided further, that nothing herein contained shall be so construed as to prejudice or affect the grant heretofore given by the Legislature of the State of Illinois to William E. Armstrong, to build a bridge across said river, at, or near said point. Said resolution also contained the rate of tolls to be charged by said Claypool.

Page 65 Said witness then testified that he presented the said petition of def'ts to the board of supervisors ; Jacob Claypool was present ; I do not know whether any license was issued or not, farther than appears by order of the board ; nor do I know whether the bond was executed ; I do ~~not~~ know the taxes were paid ; def'ts established the ferry at the place mentioned in exhibit "A." in the spring of 1851.

Page 70 Evan Roberts, called by pl'ffs, testified, that he drove the team that was drowned ; his testimony tended to show that the property belonged to pl'ffs ; that they went on to a ferry boat at Morris, in Grundy county ; that they went overboard from the ferry boat into the river, and the horses were drowned and the property damaged ; that the cause of the accident was a want of sufficient bars or chains across the ends of the ferry boat, and there was no sufficient small craft to assist in saving the horses after they went over.

This witness gave no testimony as to who owned or were the owners of

the ferry, farther than this, "the ferry was at Morris; there were 2 ferry boats connected together; the boat farthest from shore, and from which the team went off, was called the Claypool boat, and that the man who directed him what place to take upon the boat was called Slyter.

Page 74 John McCrary was called by pl'ffs; his testimony tended to show that the team of the pl'ffs was drowned and their property injured, at a ferry in Morris, and to show the amount of the loss; and that the boats were deficient in not having chains or bars at the end, and that the ferriage was paid.

The only part of the testimony of this witness which tended to show what ferry it was or who was the owner or occupant at this time, was as follows:

There was no other ferry at that time near that; I know of the boat the team went off from was the Claypool boat; Slyter had the boat at that time, and was working it; Slyter was running the ferry at that time; know that he had charge of the ferry sometime before the accident; did not see either of the Claypools about the ferry that summer, except when crossing as passengers.

Page 77 Pl'ffs rested their case.

C. M. Gould, called by def'ts, testified: I reside at Morris; have resided there 12 years; William E. Armstrong originally run a ferry at Morris; Mr. Claypool run a ferry at Morris after Armstrong did; a free ferry company also run a boat there; Mr. Clapp was the ferry man for the free company; a part of the time he run the boat for whatever he could get; a Mr. Slyter run the same ferry after him in 1854; Slyter was running the ferry; Clapp used the boat that Claypool had run when he, Clapp, was running under the free ferry company; Slyter used it after he had got the ferry of Clapp.

Cross Examination.—Claypools commenced running their ferry in the year 1850 or 1851; Claypools had 2 boats then: they charged and received ferriage; 2 boats were attached together in the summer, or early in the fall of 1854; one of the boats belonged to the Claypools, the other to the free ferry company; I knew the Claypool boat from the time it was first put on; I never knew any chains or bars across the end of it; the free ferry company was not a licensed company; the free ferry did not carry for the public; carried their own members; the ferriage was done by the Claypool ferry for any one except for the members of the free ferry company; Clapp and Anderson made an agreement with the free ferry company for their boat and then hired the Claypool boat; Clapp and Anderson then let Slyter have both boats, who afterwards run the ferry.

Alonzo Keith was called by def'ts, testified: I was at the ferry in Morris, at the time pl'ffs horses were drowned; Slyter had charge of and was running the ferry. The testimony of this witness tended to show that the accident happened from the driver of the team, and that the driver disobeyed Slyter's instructions; but he said nothing further as to who owned or occupied the ferry.

Page 83 Curtis Cobler was called by def'ts. The testimony of this witness tended to show that he was present at the time of the accident, and that the boats were in good repair; but he said nothing concerning the ownership or occupancy of the ferry, except as follows: Mr. Slyter had charge of that ferry at the time of the accident.

Isaac N. Fitch's deposition read by def'ts. The testimony of this wit-

ness tended to show that he was present when the team was drowned; that the driver of the team disobeyed the orders of the ferryman, that the team was drowned from his neglect. All this witness said upon the question of the ownership of that ferry, is as follows: A man by the name of Slyter, I think, had charge of the ferry at that time.

Andrew Ober—Deposition read by def'ts.

P'ge 98 The testimony of this witness tended to show that the accident was occasioned by the fault of the driver of the team, in disobeying the instructions of the ferryman. There was nothing in the testimony of this witness in relation to the question of who owned the ferry, or who occupied it at that time, except this, that Mr. Slyter was running the ferry, and gave directions as to the teamster about placing his team on the boat.

P'ge 107 Jos, James.—This witness testified that he was present at the time the team was drowned. This testimony tended to show that the accident happened solely from the fault of the driver of the team.

Upon the question of the ownership and occupancy of the ferry, he testified as follows:

Mr. Slyter was on the ferry at that time; think he had charge of it; seemed to have most to say about it; Mr. Slyter gave directions to the driver of the team in relation to their order of coming on the boat.

Allan W. Slyter:

P'ge 102 The testimony of this witness showed that he was present on the ferry boat at the time of the accident; as to the ownership and occupancy of the boat at that time, he testified as follows:

One of the boats was owned by the Claypools and the other by the Morris Free Ferry Company; I controlled the boats at the time and received the money for the ferriage, or my hands did for me, for my own use; the ferry had been erected by William Clapp, and put by him into the hands of Smith, Clapp & Anderson, if I am not mistaken, and I gave them a stipulated price for what I could make out of it, to the expiration of their time; the agreement between myself, Smith, Clapp and Anderson was, that I was to pay them a stipulated price for the use of the ferry during the balance of their term, and they were to deliver the ferry to me clear and free from all incumbrance and in good running order; I took the ferry, to the best of my judgment, on the 1st of August, and continued it until the 1st of December, thereafter; the time would not exceed 4 months; I never had anything to do with the ferry at any other time; the accident happened while I was running the ferry.

P'ge 137 William Clapp.—There was a ferry kept across the Illinois river at Morris, in the county of Grundy, during the summer and fall of 1854; there was one boat owned by what was called the free ferry company, and also one owned by def'ts; the boats were pulled across the river by a rope; there was but one rope used; Allen W. Slyter kept the ferry in the fall of '54, and had the right to control it; I took the company ferry and after I hired the Claypool boat, and took my brother, Smith Clapp, in partnership afterwards; I think in June, 1853; I was sick during that fall and winter, but controlled my interest in the ferry until the spring following, when I sold out my interest to Edward Anderson, and he and Smith Clapp sold out to the Messrs. Slyters; A. W. Slyter was the principal I suppose; I sold out to Anderson in the spring of 1854; I had then run the ferry about eighteen months; had about a year and a half more to run on the company boat; I hired the Claypool boat for a year at a time; had

just hired it on a second year when I sold out ; in running the boats I fastened them together and ran them both on one rope, I made no distinction as to the right of teams having to pass on either boat.

The testimony of this witness also tended to show that the boat owned by def 'ts was a good boat and in proper condition for ferrying.

P'g 146 Edmund Anderson.—I had a lease of the ferry across the Illinois River at Morris, in conjunction with Smith Clapp ; it was a lease of what was termed the company boat ; in May, 1854, we leased the boat and afterwards hired the Claypool boat ; we run the ferry until September, 1854, and then sold out to Mr. Slyter, who afterwards run it ; we hired the Claypool boat at \$10 per month ; during the time occupied the ferry we had the right to control it ; we did control it, any way ; there was no reservation by the Claypools, or the company, to control the ferry ; the money received for ferriage was received for our own use.

P'g 149 Aaron Smith.—This witness testified that he was on the bank of the river at the time of the accident. His testimony tends to show that the accident happened solely from the fault of the driver of the team, in refusing to obey the orders of the ferryman in allowing a lighter wagon to go on the boat before him ; he said nothing as to the ownership or occupation of the ferry, except as follows,

Mr. Slyter had charge of the boat at that time ; Mr. Slyter told the driver to hold on and let a lighter team go on ahead ; the driver said it was his turn and he would have it, and drove on to the boat.

P'g 155 Smith B. Clapp.—My brother and myself had possession of the ferry across the Illinois River at Morris, in the summer of 1854, up to the 1st of September, when we sold out to Mr. Slyter ; just before we sold out to Slyter, Mr. Anderson bought out my brother's interest, and Slyter obtained the Claypool boat from Anderson and myself ; we paid Claypool \$9 or \$10 per month for the boat ; Slyter had it on the same terms ; paid the same rate per month.

P'g 158 Thos. Moran.—I worked on the ferry at Morris at the time of the accident ; I had been to work on the ferry between two and three months ; I was in the employ of Mr. Slyter ; Mr. Slyter had charge of the ferry at that time and for several months previous.

This was all the evidence ; at the request of pl'ffs the Court instructed the Jury as follows :

1st.—That the board of supervisors, of the county of Grundy, had the legal and competent authority to establish a ferry at the place in question in said county, and to award a license to the defendants to establish and keep the same.

2d.—That if the said board of supervisors, did establish the ferry in question, and award a license to the defendants to establish and keep the same ; and the defendants under, and in pursuance of the same, established such ferry, and accepted the rights and franchises conferred thereby, then they became common carriers, and were also responsible to keep said ferry as required by the statute, in such case made and provided, and they cannot, during the existence of such license, relieve themselves from such responsibility by leasing the said ferry to any other person or corporation.

3d.—That if the Jury believe from the evidence, that the defendants were licensed by the board of supervisors to establish and keep a ferry, at the place in question, for five years from the 27th day of February, A. D.

1851, and that they accepted the said trust and franchise—it became their duty, at all times during such period, to furnish and provide for said ferry, good tight boat or boats, if more than one was necessary, and other small craft of sufficient number, dimensions, strength and steadiness, for the safe and speedy transportation of all passengers, their teams, horses, Cattle and other animals, as well as their goods, chattles and other effect; and the said boat or boats, and other small craft, should at all times be well furnished with suitable oars, setting polls and other implements necessary for the service thereof, and also with men of sufficient number, strength, discretion and skill to manage the same; and if they further believe that the plaintiffs put their property in question upon said ferry, and that the same was lost by reason of the insufficiency of such boats, as respects guards and protections, or for the want of small craft, or sufficient men, and the loss occurred during the existence of said license, the def'ts are liable, although the Jury believe from the evidence that the def'ts had leased the ferry to other persons.

4th.—That if the def'ts were licensed as ferrymen, at the place in question, such license could not be assigned to other persons, so as to discharge def'ts from liability.

5th.—That all persons had a right to be received upon the ferry boat and conveyed across the river in question according to their arrival, or first coming to the ferry, and if the team in question arrived first at the said ferry, the driver thereof had the legal right to go upon the said boat on its first passage over the river.

6th.—That if the Jury believe from the evidence that the defendants accepted the trust and franchise, under and by virtue of the order of the board of supervisors, read in evidence, and that they established the ferry in question, and received ferriage for transporting passengers and their property, and paid the taxes on the said ferry, the giving of bond, and receiving the license, will be presumed in the absence of all testimony to the contrary.

To the giving of which instructions the defendants then and there excepted.

The defendants then asked the court to instruct the Jury as follows:

1st.—The record of the board of supervisors of Grundy county does not of itself show that the defendants were licensed ferrymen; to show this, it is necessary to show, in addition to such record, that a bond has been given by said def'ts, so required by said order, and that a license had been issued to them to keep said ferry.

4th.—If the defendants were, in 1851, licensed ferrymen, at Morris, and did occupy and use a ferry there until May, 1854, and then discontinued running their ferry, and leased their boat to Clapp and others, and Clapp and others did run said boat in connexion with another which they had hired from the Morris Ferry Company, for their own use and on their own account, until September, 1854, and then sold their right to Slyter, and then Slyter run said boats on his own account and for his own profit until after the loss of the plaintiff's horses, and if Slyter was so running said boats on his own account at the time of such loss, then def'ts are not legally liable for such loss.

5th.—Even if the defendants were, prior to May, 1854, the owners of a legally established ferry at Morris, still they had a right to discontinue and abandon the same; and if the proof does not show, that at the time

*This instruction
Could not mislead,
The case was tried
on the assumption that
the property was duly
delivered upon the ferry.
Besides that is not the
point in the instruction.
It simply means that
the plffs property being
on the ferry to be carried
It is not contended
that they can be liable as
Common carriers—*

*See 1st Scam R
§ 3 - It being proved
that the property was
duly delivered the
Court will not, as it
so appears, reverse the
case—*

the plaintiff's property was lost, the defendants had any interest in the ferry other than the ownership of one of the boats, and shows that said boat was rented by defendants at ten dollars a month, and had been so rented from May, 1854, the Jury should find for defendants.

6th.—The owner of a ferry is not liable for the loss of goods in crossing it, if the ferry be rented and in possession of the ferryman as tenant at the time of the loss, and is being run by the ferryman on his own account.

To the refusal of the court to give each of said instructions, the defendants then and there excepted.

The Jury found a verdict for the plaintiffs for \$479.

The defendants moved for a new trial, The Court overruled the motion, To which the defendants then and there excepted.

Errors assigned :—

1st.—The court erred in giving each of the instructions severally, as asked by the plaintiffs.

2d.—The Court erred in refusing to give the instructions as asked by the defendants, and each of them severally.

3d.—The Court erred in overruling the defendants' motion for a new trial.

4th.—The Court erred in rendering the judgment aforesaid, in manner and form aforesaid.

Points made and authorities cited by appellants :

1st.—The Record of the Grundy County Court did not, of itself, show that defendants were licensed ferrymen. It was necessary to show that a bond had been given and a license issued,

*The court did not
so hold - See 2nd Instru-
tion. It was held that
they became responsible
to keep it as required
by the Statute,*

2d.—The rule laid down by the Circuit Court, in relation to the liability of ferrymen, is this : Where a ferryman has been regularly licensed for a term of years, and accepts the franchise and commences running a ferry in pursuance of a license, he is liable, as a common carrier, for the transportation of all passengers and their property across the ferry, at any time during the term for which his license extends, and this although, the ferryman had ceased running his ferry and abandoned the same, and the negligence complained of may have been the act of third parties, with whom the ferryman had no privity whatever.

*See 2^o - 3^o - & 4th Instructions given
for Pltff -
also 4th - 5th of Def^t Refused*

3d.—We maintain that the doctrine laid down by the Circuit Court is wrong ; because,

First—The liability of a common carrier is founded upon a contract. The law will not presume that the person actually running a ferry boat is contracting on behalf of a person who may be the legal owner of the ferry, if the man who runs the boat at the time affirms that he is contracting for himself and no one else, and the licensed ferryman has nothing to do with the boat run, and does not claim to have.

Angell on Carriers chap 4. sec. 67. 68 282 -
inclusive -
Powell v. Saxton 5th B R 365 -
May v. Roberts 3rd B R 454 -

Cases
 4th.—The lease shows, that the person running the boat at the time of the accident, had leased, not the ferry of the defendant's, but the ferry of the Morris ferry company. The defendants had discontinued their ferry and had no privity with the actual ferryman at the time, except that they hired to him a boat, at \$10 a month. To hold them liable under these circumstances, *as common carriers*, would be to overturn well-settled principles of law, and to establish a rule which would make the general owner of every chartered vessel, and the owner of every hired carriage, liable as common carriers.

The case does not show that the ferry boats, at the time and place of the accident, were running between the points where defendants were licensed to run.

*The action is not
 founded upon
 contract express
 or implied but
 upon breach of a
 public duty -*

5th.—By no proper rule, can a contract be implied between the plaintiffs and the defendants, that Slyter was a skillful ferryman and had good boats on the ferry leased by him of the Morris Ferry Company.

6th.—Even if the case showed (which it does not,) that Slyter was running the same ferry which defendants formerly kept, and even if Slyter had leased the ferry at the time, the law is, that the owner of a ferry is

Ferry Co v Moore
 8 Dana 158
 Thompson v Snow
 4 Grant 264-
 Emery v Keeney
 4 Grant 407-
 Arnold v Taffin
 15 Mass 370-
 Taggart v Doring
 16 Mass 336-
 Frazar v March
 13 East 238-
 McIntire v Bowne
 1 Johns 239-
 Abbott on Shipping 70

not liable for the loss of goods in crossing it, delivered to the ferryman, if the ferry be rented and in possession of the ferryman as tenant.

Biggs v Ferrell 12. Dredell 1-
 Fenton v Deale 22. Vermont 170-
 Boyd v Anderson 2. Leigh 250-
 Parsons on Contracts 657-
 Angell on Carriers 143 + 563-

7th.—The third instruction given for the plaintiff is wrong, for two reasons:

First—Because the principle upon which the liability of the defendants is stated, is not correct, if defendants had a license to keep a ferry at that time, and were bound to do so, still if they did not keep the ferry at all, their liability would be upon their bond given in pursuance of the statute, or under section five of the forty-second chapter of the Revised Statute, they would be liable to a penalty to every person who came there and desired to be transported across, and their ferry franchise might be taken away, in manner pointed out in section thirteen of same act. But certainly a failure to act as ferryman to transport any person, or anything, or to offer to do so, would not make them liable, as common carriers.

1st Purples Stat 578 + 580-
 Chap 42 Sec 2-5 + 13-

It is not sought to make them liable as common carriers but for a breach of the statutory duties.

8th.—That instruction was wrong, because it makes the defendant liable, as common carriers, even if the property had never been delivered to them. The language of the instruction is: If the plaintiffs put their property in question upon said ferry, and the same was lost by the insufficiency of the boats, the defendants are liable. If this be so, the property may never have been delivered to the defendants or to the ferryman; but in absence of the ferryman the property may have been placed upon the boats, or have been placed on the boat by unauthorized persons,

1 Parsons on Cont 654-
 Buckman v Levi 3 Camp 414
 Leigh v Smith 1 Car of Payne 640-
 Packard v Kistman 6 Leaw. 757-
 Angell on Carriers 137-

9th.—The 5th instruction given for the plaintiff is wrong. There were two boats attached together. It was the right of the ferryman to designate which of the boats the driver should drive on to.

GLOVER & COOK, Attys for Appellant.

Answer
 the 8th
 Sec of
 Statute

Fisher v Belcher

12 Dec. 344-

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Claypool coal

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McAllister & Co

Appellants Points

Abstract & more

Filed April 17, 1888

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Supreme Court---State of Illinois.

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| ARCHIBALD McALLISTER & JESSE McALLISTER <i>ads.</i> JACOB CLAYPOOL & LAWRENCE W. CLAYPOOL. | } | POINTS FOR APPELLEES. |
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This was a special action on the case brought against the Claypools as licensed ferrymen, for a breach of their statutory duties, and damages to the plaintiffs below consequent thereon.

I.

It was not necessary for the plaintiff below to give strict proof of the issuing of a license to the defendants, nor of their giving the bond required by the statute. Having presented their petition to the Board of Supervisors (and therein stipulating to give the bond) for the legal establishment of the ferry; having paid the taxes, taken ferriage, and enjoyed the franchise, they are precluded by way of Estoppel from disputing that they had given the bond and taken the license from the Clerk of the Board.

1 Phillipp's Ev. 226, 227, Radford vs. M'Intosh 3 Term R. 632 and note (a). Berryman vs. Wise 4 Term, R 366. Trowbridge vs. Baker 1 Cow., R. 251.

II.

It is an indisputable proposition of law, that an action on the case will lie upon the violation of a public duty and consequent damage to the complainant. Broom's Com. on Com. Law 661.—Henly vs. The Mayor of Lyme, Regis. 15 E., Com. Law Rep. 376. Riddle vs. The Proprietor of Locks, &c., on Merrimack River 7 Mass., R. 169.

III.

A ferryman licensed under the statute of the State of Illinois, is in legal contemplation an officer, and charged with a public trust.

In *Henly vs. The Mayor of Lyme Regis*. Best J. says:—"Then what constitutes a public officer? In my opinion, every one who is appointed to discharge a public duty, and receives a compensation, in whatever shape, whether from the Crown or otherwise, is constituted a public officer."

In *Fisher vs. Clisbee* 12 Ill. 349, Mr. Justice Caton giving the opinion of the Court says of him "he enjoys a franchise, a special privilege which is granted to him in consequence of his superior qualifications to fill a *public trust of great responsibility*."

III.

It was no defence to the defendants below, that at the time of the injury complained of, the ferry was leased to a third person, because,

1st. Such a result would be a direct evasion of the objects of the statute. See Sections 1, 2, 3, 13, 16, of Chapter 42 of R. S. 1845, pages 252, 253, 255, 256.

2d. The same rule of public policy should be applied to the rejection of this defence as in the case of Railroad Corporations, as to them it has been frequently repudiated.

Nelson vs. The Vermont & Canada R. R. Co. 26 Vermont.

721 and cases cited.

17 Barbour (N. Y.) Reps. 601.

17 Howard U. S. 30.

The reason is obvious. If they may lease, and thereby discharge themselves, it may be done at any time, and to any person, however irresponsible, and thus deprive the public of that security in which it reposes, and which it *apparently* possesses.

3d. The license being a personal trust is not assignable.

Alger vs. Weston 14 Johns R. 231.

Munsell vs. Temple 3 Gil 93.

In *Bowman vs. Wathen* 2 M'Lean 376, 393, Judge M'Lean while speaking of a ferry license which was assignable by the Indiana statute, says: "Where an office is conferred which implies *personal confidence, and a capacity to discharge public duties, no assignment can be made of it.*"

4th. Would such a defence be sanctioned by this Court, if the Claypools had been indicted for a breach of their statutory duties?

It has been expressly held that it is no defence to show that a third person has been charged with the duty of repairing in such a case.

Rex vs. Inhabitants St. G. Hanover Square, 3 Camp. 222.

In the Mayor of New York vs. Furze 3 Hill, 618, the Court holds that if such a defence is allowable in a civil action, it would be equally fatal to an indictment which it is conceded would lie against the defendant.

V.

It is obvious from the prohibition contained in the 16th Sec. of the Statute of Ferries, that no one was intended by that statute to be authorized to keep and use a ferry, except him who is licensed under that statute, and a lease made by the licensed ferryman of the ferry to be kept or used by another without license would be clearly void, as a contract for the use of property in violation of law—as the leasing of a house to be kept for the purposes of prostitution.

Griffith vs. Wells, 3 Denio 226.

VI.

The verdict in this case is necessarily a finding that the defendants below accepted the franchises conferred by the law, when a license is awarded, and if so, the duties imposed by the 3d section attached, and they continue during the term of the license. Nor can they escape from those duties by any mere abandonment or neglect on their part.

The very identical position was taken in the case in the 7th Mass. R. 183 above cited, which has been assumed in this case, and the principles there laid down is applicable here. The Court said: "When the act of incorporation first passed, it was optional with the proprietors whether they would or would not take the benefit of it; but after they had made their election by executing the powers granted and claiming the tolls, then the duties imposed by the 10th Sec. to make the canals &c attached; *from which they cannot be discharged but by a seizure of the franchises into the hands of the government, or by a repeal of the act with their consent.*"

Sup Court
McAlister
Deft in error
ad,
Jacob Claypool
et al. plffs in error
Deft. Brief

against the defendant.
be edually fatal to an indictment which it is conceded would lie
holds that if such a defence is allowable in a civil action, it would
In the Mayor of New York vs. Prince & Hill, 618, the Court
Rez vs. Inhabitants St. G. Hanover Square & Camp. 333.

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McAlister
for Defts

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Supreme Court---State of Illinois.

ARCHIBALD McALISTER
& JESSE McALISTER, *Defts. in error.*
ads.
JACOB & LAWRENCE W. CLAYPOOL,
Plffs. in error.

REPLY TO NEW POINTS MADE
BY PLAINTIFFS IN ERROR.

It is a settled matter that the plaintiffs below have no remedy against the County for their loss. Hedge vs. the County of Madison 1, Gilm. 567.

The lessee, Slyter, is a man, who, by his own testimony, changed his residence some four or five times, in about a year, and is not, therefore very likely to be responsible. He is, in fact, wholly irresponsible. So that if the plaintiffs below have no remedy against the Claypools, whom the Records of the County Court of Grundy show to be the licensed ferrymen, then it is a case of great hardship, and illustrates the facility with which a little ingenuity can evade the most rigid statutes for public protection.

The cases cited by the counsel for plaintiffs in error, are, all of them clearly distinguishable from the case at bar, and it is the statute which forms that distinction. But those cited respecting ferries show one legal result, which I wish the Court to mark:—It is, that where there is a lease of the ferry, the lessee is deemed the owner—the proprietor, the ferryman.

Now if the legal effect of the lease is to make the lessee the proprietor, the ferryman and the Courts are bound to so regard him. Can he take a lease and keep and use his ferry in carrying for hire, without a license, and not fall directly within the prohibition of the 16th section of the Statute of Ferries? I submit that he cannot. If that is so, what must follow of logical necessity? One of two things; the law may hold the lease to be valid as between the parties, but to sustain the policy of the statute

make the lessee, without license, the constructive agent of him having the license during its continuance, and that of the lease.—which has been frequently so held in analagous cases. *Leshers vs. The Wabash Navigation Co.* 14 Ill. 85, 26th Vermt. R. 721, 22 id 372-3. *Clark vs. Corporation of Washington* 12 Wheat. 40.

Or the law will render the lease for the purpose of using the ferry without license, wholly void under that section.

In *Bartlett vs. Vinor Carth.* 252, Holt C. J. says: "Every contract made for or about any matter or thing which is prohibited and made unlawful by any statute, is a void contract; although the statute itself doth not mention that it shall be so, but only inflicts a penalty on the offender, because a penalty implies a prohibition, although there are no prohibiting words in the statute." See *Wheeler vs. Russell*, 17 Mass. R. 258, where all the authorities are collected.

The only question the Court has to determine is whether the lease by the Claypools discharged them from their statutory duties, whether they were the ferry keepers in legal contemplation, or the lessee was.

It is assumed as a clear conclusion, that it is the policy and intention of that statute to hold him who is licensed to be the ferry keeper during his term. In *Munsell vs. Temple*, 3 Gilm. 96, which was in respect to a tavern license, the Court say: "The County Commissioners must have acted upon the idea that licenses are transferable *and that they might be granted for the residue of a term.* But this is a mistake; licenses attach to the person, and cannot be used by others, even with the consent of the Court, for what remains of the annual term for which they have been originally given."

Look at the 13th section of the Ferry statute, which provides that if the ferry is not furnished, &c., according to the 3d section within 3 months, or if at any time, it shall not be kept in *good condition* or repair, or is abandoned or disused, the Commissioners Court may, on complaint, summon whom? The man in charge—the lessee? No; the proprietor or proprietors of such ferry. For what purpose? To show cause why the ferry should *not be discontinued, and their license revoked.*

This is a summary proceeding in the nature of a *quo warranto* to declare the franchises forfeited. But does that section contemplate jurisdiction over any one beside him who is licensed? Clearly not. And if it were intended by the statute that he could lease, and substitute the lessee in his place, and be himself thereby relieved from the duties prescribed, why did not the legislature give that Court jurisdiction over the lessee, as well, and not confine it to him having the license?

This view of the statute shows conclusively that ferry rights in this State, are not incident to the land, but arise out of the license of the County Commissioners Court or the Board of Supervisors, under the statute of 1849, and although the defendants below might have owned the land on the margin of the river, yet in law, and in fact, they had no ferry until the license was awarded by the proper authority.

The Court will perceive, that this case must be determined upon the force policy, and reason of our statute; and not by the principles involved in the cases cited by the counsel for plaintiffs in error.

In those cases the principal question was whether the lessee, without reference to any statute, was the servant of the lessor, and the maxim of *respondent superior* would apply; and the Courts, very properly, held that they were not, and the maxim did not apply. But those decisions are very far from determining this case.

The counsel for plaintiffs in error say there could be no recovery here, because there could be no privity of contract between the Claypools and the plaintiffs below. If the lessee is to be regarded as the agent of the Claypools, as before contended, then there was privity of contract.

But it is not necessary that the action arise out of contract between the Claypools and them. A breach of duty on their part and damage peculiar to the plaintiff from that to the public generally, are all the elements required.

To illustrate what I mean: The 3d section of the statute requires the ferry keeper to keep the place of embarking and landing

at all times in good repair, &c. Suppose he neglects to do so, and a teamster in passing down to embark, and using due care, by reason of the bad condition of this ferry-way, gets his horse's leg broken. The team is not yet delivered to ferrymen, and no contract of common carrier is implied; but would any good lawyer contend that no action would lie for the breach of duty and consequent damages, because there was no such contract?

Is there an implied contract between a Turnpike Co. and every traveller who passes the Turnpike, that he shall go safely and securely? No. But if the road is out of repair, and the traveller's horse is injured, in consequence, or he sustains any other damage specially beyond what the public generally sustains, an action on the case will lie, and the gravamen of the action is the breach of duty and damage.

Now, in this case there was no small craft, and the evidence tends to show that if there had been, the horse might have been saved. The statute requires the ferry keeper to have a boat or boats and other small craft of sufficient strength, dimensions, &c. for the safe conveyance of all passengers, their teams, &c. The boats are to be well furnished with oars, rigging, and other implements, and also with men of sufficient number, strength, discretion and skill, to manage the same. This ferry boat of defendants had no bars or chains across the end, and never had. There were not men enough on it; both were required to hold the boat ashore; so that there was nobody to chain the wheels. There was no small craft at all; the testimony shows that if there had been, the horses might have been saved. Not to have these things, so required, was a breach of public duty; and the damages sustained give a right of action irrespective of the carrier's implied contract. That boat or ferry being used in that manner was unsafe, and therefore a public nuisance, and if the Claypools permitted it to become a nuisance, and leased it in that condition to be so continued, they are liable upon the principles of the common law for the continuance of a nuisance.

Fish vs. Dodge 4 Denio 317; Kane vs. The People 8 Wend 203; Lansing vs. Smith 4 id. 9; Dygert vs. Schenk 23 id. 446; 6 Cow. R., 446.

The liability of the Claypools is grounded upon their own breach of duty under the statute, in consequence of which the plaintiffs below have lost their property.

Another position taken by their counsel is that the Claypools had abandoned this ferry. We say, that when the accident occurred they were receiving ten dollars per month for the use of it, so that it is not true in fact. But suppose they so far neglected their duty in the premises, that the proceedings under the 13th section, in the nature of *quo warranto*, might have been instituted, and the franchises forfeited. If that had been done it was a matter of defence to be shown by them. If it has not been done, can they evade responsibility by showing that they had omitted their duty to such an extent as would authorize the County Commissioners Court to discontinue the ferry and revoke their license, and therefore they were discharged? Certainly not; for that would allow them to take advantage of their own wrong. Apply the position taken to Corporations; their charters frequently provide that for certain omissions their franchises may be forfeited upon *quo warranto* proceedings. But can they, when sued, be held not amenable to the law because they have done what would authorize this forfeiture?

Again, the Counsel says in their second point, that the Circuit Court held that the ferryman when licensed for a term of years became liable as a common carrier, &c. at any time during the term for which his license extends. The Court did not so hold; an attentive reading of the second instruction, which is the only one upon which that proposition is based, will satisfy this Court that such is not the purport of that instruction; the point in it, so far as the *continuence* of their liability is concerned, is, that they were responsible to keep the ferry as required by the statute, and that they cannot during the existence of such license, relieve themselves from such responsibility by leasing the said ferry to any other person or corporation. That is what the Court held; and we still maintain that their *statutory* duties, no matter how it may be as *common carriers*, do continue attached to them during the existence of their license, for it is the license which makes it a ferry at all.

There is also a point made upon the 5th instruction on the part of plaintiffs below. Now that instruction is based upon the 8th section of the statute, and is in conformity with it.

Lastly, there is a criticism made upon the language of the 3d instruction on the part of plaintiffs below, that the liability is based upon a wrong hypothesis as to the delivery of the property upon the ferry. The object of that instruction was to detail the statutory duties of ferrymen to the jury, and to instruct them that those duties could not be avoided by leasing the ferry to others. It was not intended to make any point as to what sort of delivery was necessary, for no such point was made upon the trial. The evidence clearly proves it, and the defendants below assumed it in their instructions asked. The jury could not possibly be misled by that branch of the instruction.

It clearly appears that the team was driven on the boat while the persons who had charge of it were there, and the ferriage paid, which is all the delivery necessary.

In *Humphrey vs. Collins* 1 Scam. 53, which was an action against an endorser, the Court instructed the jury thus: "That the law of Missouri in regard to the liability of the assignor in this case, is to govern the case"—without including also, if the jury found that the assignment was made in Missouri.

It did not appear in the evidence preserved in the bill of exceptions, that it was, in fact, made there. And the Court held, inasmuch as it did not appear in the evidence, that the endorsement was made in Missouri, they must reverse the judgment, but expressly stated, that if they could see from the evidence that such was the fact, the instruction would be correct and they would not reverse it.

Courts will not reverse for an erroneous instruction when it is apparent from the record that such instruction could not have prejudiced the party complaining. *Finney vs. Allen* 7 Mo. R. 416; *Newman vs. Lawlep* 6, id. 301.

The Court can say with entire confidence after reading the bill of exceptions, that the jury could not have been misled by that part of the instruction referred to.

W. K. McALISTER,
Atty. for Appellees.

Supreme Court
Archibald McAlister
et al Deft in error
ad.

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Supreme Court---State of Illinois.

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ads.
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& LAWRENCE W. CLAYPOOL.

POINTS FOR APPELLEES.

This was a special action on the case brought against the Claypools as licensed ferrymen, for a breach of their statutory duties, and damages to the plaintiffs below consequent thereon.

I.

It was not necessary for the plaintiff below to give strict proof of the issuing of a license to the defendants, nor of their giving the bond required by the statute. Having presented their petition to the Board of Supervisors (and therein stipulating to give the bond) for the legal establishment of the ferry; having paid the taxes, taken ferriage, and enjoyed the franchise, they are precluded by way of Estoppel from disputing that they had given the bond and taken the license from the Clerk of the Board.

1 Phillipp's Ex. 226, 227, Radford vs. M'Intosh 3 Term R. 632 and note (a). Berryman vs. Wise 4 Term, R 366. Trowbridge vs. Baker 1 Cow., R. 251.

II.

It is an indisputable proposition of law, that an action on the case will lie upon the violation of a public duty and consequent damage to the complainant. Broom's Com. on Com. Law 661.—Henly vs. The Mayor of Lyme, Regis. 15 E., Com. Law Rep. 376. Riddle vs. The Proprietor of Locks, &c., on Merrimack River 7 Mass., R. 169.

III.

A ferryman licensed under the statute of the State of Illinois, is in legal contemplation an officer, and charged with a public trust.

In *Henly vs. The Mayor of Lyme Regis*. Best J. says:—"Then what constitutes a public officer? In my opinion, every one who is appointed to discharge a public duty, and receives a compensation, in whatever shape, whether from the Crown or otherwise, is constituted a public officer."

In *Fisher vs. Clisbee* 12 Ill. 349, Mr. Justice Caton giving the opinion of the Court says of him "he enjoys a franchise, a special privilege which is granted to him in consequence of his superior qualifications to fill a *public trust of great responsibility*."

III.

It was no defence to the defendants below, that at the time of the injury complained of, the ferry was leased to a third person, because,

1st. Such a result would be a direct evasion of the objects of the statute. See Sections 1, 2, 3, 13, 16, of Chapter 42 of R. S. 1845, pages 252, 253, 255, 256.

2d. The same rule of public policy should be applied to the rejection of this defence as in the case of Railroad Corporations, as to them it has been frequently repudiated.

Nelson vs. The Vermont & Canada R. R. Co. 26 Vermont. 721 and cases cited.

17 Barbour (N. Y.) Reps. 601.

17 Howard U. S. 30.

The reason is obvious. If they may lease, and thereby discharge themselves, it may be done at any time, and to any person, however irresponsible, and thus deprive the public of that security in which it reposes, and which it *apparently* possesses.

3d. The license being a personal trust is not assignable.

Alger vs. Weston 14 Johns R. 231.

Munsell vs. Temple 3 Gil 93.

In *Bowman vs. Wathen* 2 M'Lean 376, 393, Judge M'Lean while speaking of a ferry license which was assignable by the Indiana statute, says: "Where an office is conferred which implies *personal confidence, and a capacity to discharge public duties, no assignment can be made of it*."

4th. Would such a defence be sanctioned by this Court, if the Claypools had been indicted for a breach of their statutory duties?

It has been expressly held that it is no defence to show that a third person has been charged with the duty of repairing in such a case.

Rex vs. Inhabitants St. G. Hanover Square, 3 Camp. 222.

In the Mayor of New York vs. Furze 3 Hill., 618, the Court holds that if such a defence is allowable in a civil action, it would be equally fatal to an indictment which it is conceded would lie against the defendant.

V.

It is obvious from the prohibition contained in the 16th Sec. of the Statute of Ferries, that no one was intended by that statute to be authorized to keep and use a ferry, except him who is licensed under that statute, and a lease made by the licensed ferryman of the ferry to be kept or used by another without license would be clearly void, as a contract for the use of property in violation of law—as the leasing of a house to be kept for the purposes of prostitution.

Griffith vs. Wells, 3 Denio 226.

VI.

The verdict in this case is necessarily a finding that the defendants below accepted the franchises conferred by the law, when a license is awarded, and if so, the duties imposed by the 3d section attached, and they continue during the term of the license. Nor can they escape from those duties by any mere abandonment or neglect on their part.

The very identical position was taken in the case in the 7th Mass. R. 183 above cited, which has been assumed in this case, and the principles there laid down is applicable here. The Court said: "When the act of incorporation first passed, it was optional with the proprietors whether they would or would not take the benefit of it; but after they had made their election by executing the powers granted and claiming the tolls, then the duties imposed by the 10th Sec. to make the canals &c attached; *from which they cannot be discharged but by a seizure of the franchises into the hands of the government, or by a repeal of the act with their consent.*"

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Sup¹³⁹ Court
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Fish vs. Dodge 4 Denio 317; Kane vs. The People 8 Wend 203; Lansing vs. Smith 4 id. 9; Dygert vs. Schenk 23 id. 446; 6 Cow. R., 446.

The liability of the Claypools is grounded upon their own breach of duty under the statute, in consequence of which the plaintiffs below have lost their property.

Another position taken by their counsel is that the Claypools had abandoned this ferry. We say, that when the accident occurred they were receiving ten dollars per month for the use of it, so that it is not true in fact. But suppose they so far neglected their duty in the premises, that the proceedings under the 13th section, in the nature of *quo warranto*, might have been instituted, and the franchises forfeited. If that had been done it was a matter of defence to be shown by them. If it has not been done, can they evade responsibility by showing that they had omitted their duty to such an extent as would authorize the County Commissioners Court to discontinue the ferry and revoke their license, and therefore they were discharged? Certainly not; for that would allow them to take advantage of their own wrong. Apply the position taken to Corporations; their charters frequently provide that for certain omissions their franchises may be forfeited upon *quo warranto* proceedings. But can they, when sued, be held not amenable to the law because they have done what would authorize this forfeiture?

Again, the Counsel says in their second point, that the Circuit Court held that the ferryman when licensed for a term of years became liable as a common carrier, &c. at any time during the term for which his license extends. The Court did not so hold; an attentive reading of the second instruction, which is the only one upon which that proposition is based, will satisfy this Court that such is not the purport of that instruction; the point in it, so far as the *continuance* of their liability is concerned, is, that they were responsible to keep the ferry as required by the statute, and that they cannot during the existence of such license, relieve themselves from such responsibility by leasing the said ferry to any other person or corporation. That is what the Court held; and we still maintain that their *statutory* duties, no matter how it may be as *common carriers*, do continue attached to them during the existence of their license, for it is the license which makes it a ferry at all.

There is also a point made upon the 5th instruction on the part of plaintiffs below. Now that instruction is based upon the 8th section of the statute; and is in conformity with it.

Lastly, there is a criticism made upon the language of the 3d instruction on the part of plaintiffs below, that the liability is based upon a wrong hypothesis as to the delivery of the property upon the ferry. The object of that instruction was to detail the statutory duties of ferrymen to the jury, and to instruct them that those duties could not be avoided by leasing the ferry to others. It was not intended to make any point as to what sort of delivery was necessary, for no such point was made upon the trial. The evidence clearly proves it, and the defendants below assumed it in their instructions asked. The jury could not possibly be misled by that branch of the instruction.

It clearly appears that the team was driven on the boat while the persons who had charge of it were there, and the ferriage paid, which is all the delivery necessary.

In *Humphrey vs. Collins* 1 Scam. 53, which was an action against an endorser, the Court instructed the jury thus: "That the law of Missouri in regard to the liability of the assignor in this case, is to govern the case"—without including also, if the jury found that the assignment was made in Missouri.

It did not appear in the evidence preserved in the bill of exceptions, that it was, in fact, made there. And the Court held, inasmuch as it did not appear in the evidence, that the endorsement was made in Missouri, they must reverse the judgment, but expressly stated, that if they could see from the evidence that such was the fact, the instruction would be correct and they would not reverse it.

Courts will not reverse for an erroneous instruction when it is apparent from the record that such instruction could not have prejudiced the party complaining. *Finney vs. Allen* 7 Mo. R. 416; *Newman vs. Lawlep* 6, id. 301.

The Court can say with entire confidence after reading the bill of exceptions, that the jury could not have been misled by that part of the instruction referred to.

W. K. McALISTER,

Atty. for Appellees.

Supreme Court
Archibald McAlister
et al Depts in Error

ads

Jacob Blaylock et al
Additional Arguments
Re for Depts

W. K. McALISTER,
Attorney

that part of the instruction referred to.
The Court can say with entire confidence after reading the
bill of exceptions, that the jury could not have been misled by
the instruction as alleged. id. 301.

Reversed the party complaining. Kinney vs Allen & McR.
is abundant proof the record that such instruction could not have
convinced the jury for an erroneous instruction when it

was not used they would not reverse it.
The instruction was the best the instruction would be cor-
rected by the jury. It is stated that if they could see from the
evidence that was made in the instruction they would reverse the
instruction. It is stated that they did not appear in the evidence that the
instruction was in fact made there. And the Court
has not shown in the evidence presented in the bill of

the instruction was the best the instruction would be cor-
rected by the jury. It is stated that if they could see from the
evidence that was made in the instruction they would reverse the
instruction. It is stated that they did not appear in the evidence that the
instruction was in fact made there. And the Court
has not shown in the evidence presented in the bill of

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rected by the jury. It is stated that if they could see from the
evidence that was made in the instruction they would reverse the
instruction. It is stated that they did not appear in the evidence that the
instruction was in fact made there. And the Court
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evidence that was made in the instruction they would reverse the
instruction. It is stated that they did not appear in the evidence that the
instruction was in fact made there. And the Court
has not shown in the evidence presented in the bill of

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1
The People of the State of Illinois. By the Grace of God Free
and Independant.

To all whom these presents may come

Greeting.

Know Ye that we having caused to be inspected the Records
and Proceedings remaining in the Office of our Clerk of
our Circuit Court in and for our County of Will do find
these certain Records in words and figures following.

Will Circuit Court.

March Term A.D. 1857.

United States of America

State of Illinois

County of Will

Shew before the Honorable Jesse O. Norton
Judge of the Eleventh Judicial Circuit of the State of Illinois
at the March Term of the Will County Circuit Court began and
held at the Court House in the City of Solist in said County
of Will in the State aforesaid on the third Monday, the same
being on the sixteenth day of March in the Year of our Lord
one thousand eight hundred and fifty seven and of the
Independence of the United States the Eighty Second.
Present.

Honorable Jesse O. Norton, Judge of the 11th Jud. Circuit Court,

Wm. W. Bartleson, State Atty for 11th Jud. Cir.

George R. Dyer Sheriff of Will County.

Alexander Mcintosh Clerk of the Will C. Cir. Court.

As it is remembered that heretofore to wit, on the 15th day of February A.D. 1855, a Precipe was filed with the Clerk of the Circuit Court in and for the County of Brundy and State of Illinois - which Precipe is in the words and figures following to wit -

"Circuit Court Brundy County"

Archibald McAllister &

Decees McAllister -

"Jacob Claypool &

Lawrence H. Claypool -

"Clerk will please issue a Summons returnable at the March Term of this Court, in a plea of trespass on the case, to plaintiffs damages Six Hundred Dollars -

"Feb 14th 1855 -

Anderson McAllister & Harrison
Chicago Ill -

Whereupon Summons was issued by the Clerk aforesaid on the 15th day of February aforesaid in the words and figures following to wit -

State of Illinois 3

Brundy County 3

The People of the State of Illinois to the
Sheriff of said County greeting -

We Command you that you

"that you summon Jacob Claypool and Lawrence W.
 "Claypool if they shall be found in your County, personally
 "to be and appear before the Circuit Court of Said County
 "on the first day of the next Term thereof to be holden at the
 "Court House in Morris in Said County on the 14th Monday
 "of March next, to answer unto Archibald McAllister and
 "Jesse McAllister in a plea of Respass on the case now
 "pending in Said Court - to the damage of the Said Plaintiff
 "as they say in the Sum of Five Hundred Dollars -

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

"Witness the H^{on}ts Honorable Clerk of our Said Court
 "And the Seal thereof at Morris aforesaid this 15th
 "day of February A.D. 1855 -

"H^{on}ts Honorable Clerk of the
 "Circuit Court"

And afterwards to wit on the 2^d day of March A.D. 1855
 the Sheriff of the Said County of Grundy and State aforesaid
 made the following endorsement upon Said Summons to wit,

"Served the within on the within named defendants by
 "reading" -

"March 2^d 1855"

"John Hallonay Sheriff"

And afterwards, to wit on the nineteenth day of February
 A.D. 1855 - the following Transcript of the Record and

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proceedings of the said Circuit Court of Mundy County
and State aforesaid was filed in the Office of the Clerk
of the Circuit Court of this County and State aforesaid
and is in the words and figures following to wit -

Brundy County Circuit Court.
 State of Illinois
 Brundy County

Pleas before the Honorable S. W. Randall
 Judge of the Eleventh Judicial Circuit of the State of
 Illinois, and Presiding Judge of the Circuit Court of
 Brundy County, in Said State at a Court begun and held
 in and for Said County on Monday the 26th day of
 March in the Year of our Lord one thousand eight hundred
 and fifty five and of the Independence of the United
 States the Eightieth.

Present - S. W. Randall Judge
 S. W. Bowen State Attorney
 John Gallonay Sheriff
 Attest Geo H Kierulde Clerk.

Be it remembered
 that heretofore to wit, on the 15th day of February A.D.
 1855, Archibald McAlister & Jesse McAlister filed
 with the Clerk of Said County a Precept for a summons
 in a Plea of Repass in the case against Jacob
 Claypool and Lemmon W. Claypool, which Precept is
 marked (1). And thereafter to wit, on the said 15th day
 of February 1855, a Summons issued from said Court
 in accordance with the Precept aforesaid, which said
 Summons is marked (2) & herewith transmitted. And afterwards
 to wit, on the 26th day of March 1855, it being one of the
 days of Session of said Court, the following proceedings were
 had before and entered of Record in said Court.

Viz -

Archibald McAlister &
 Jesse McAlister -

"

Prepara on the Case -

Jacob Claypool &

Lawrence W Claypool

This day come the parties ^{here to} by their
 respective attorneys, and the plaintiffs by their attorney, move
 the Court, ^{or can} to amend their narrative, which is granted, and that
 they amend by tomorrow morning at nine o'clock, -

And afterwards
 to wit on the 27th day of March 1855, the said plaintiffs
 having filed their amended narrative in accordance with
 the previous order of Court, which amended narrative is
 transcribed herewith and is marked (4)

The following
 further proceedings were entered of Record in said
 Court viz -

Archibald McAlister &

Jesse McAlister

"

Prepara on the Case -

Jacob Claypool &

Lawrence W Claypool

Now again come the parties ^{here to} by their
 respective attorneys, and by their agreement, it
 is ordered that this cause be continued until next term -

October Term 1855 -

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And afterwards to wit on the 3^d day of October
A.D. 1855, it being one of the days of Session of the
October Term of Said Court for said year the Hon S. W.
Randall as Judge presiding, the following further pro-
ceedings were had in said Cause viz-

Archibald McAllister &

Dees McAllister -

Prepares on the Case -

Jacob Claypool &

Lawrence W Claypool }

Now again Come the parties here
to by their respective Attorneys, W. H. McAllister for the
Plaintiffs and Reading and Hopkins for the Defendants
and upon motion of the Plaintiffs Attorney the Defendants
are ruled to plead herein by two o'clock this afternoon,
and this Cause to stand Continued from day to day
until taken up for trial, at the Defendants Costs -
And thereupon the Defendants in accordance with the
foregoing order filed there Plea to the 1st Count in
the Pliffs Declaration and there Demurer to the 2^d Count,
which Plea and Demurer are herewith transmitted and
marked (9) -

And afterwards to wit, on the 4th day
of October 1855 - at yet of the Said Term of Said
Court, the following further proceedings were had
in said Cause - viz -

The plaintiffs having filed their
replication and joinder in demurer which are herewith

transmitted and marked (5), the following proceedings were had and entered of Record, to wit -

Archibald McAllister &

James McAllister -

Praspass on the Case -

Jacob Claypool &

Surrend M. Claypool

Now again on this day came the parties hereto by their respective Attorneys, W. A. McAllister for the plaintiffs and Seely & Cook for the defendants and the Court being fully advised in relation to the defendants demurer to the second Count in the plaintiffs declaration do Consider and order that the same be overruled and that the defendants have leave to answer over - And thereupon on motion of the defendants, it is ordered that this Cause be continued at their costs -

And afterwards and at the upon the same day last aforesaid, the defendants filed their plea to the 2^d Count in the plaintiffs declaration and in which plaintiffs joined issue, and the same is herewith transmitted marked (8)

December Special Term 1856 -

And afterwards to wit, on the 3^d day of December A.D. 1856 it being one of the days of Session of said Circuit Court at a Special Term begun and held in and for said County at the Court House in Morris on the 1st day of December

1856 the said S. W. Randall as Judge presiding, the plaintiffs herein filed their petition for a change of Venue in this cause, which petition is herewith transmitted marked (35)

Whereupon the following further proceedings were had and entered of Record in said Cause to wit;

Archibald McAllister &

Deas McAllister -

"

Prepares on the case -

Jacob Claypool &

Lawrence W. Claypool

Now again on this day come the parties hereto, by their respective Attorneys W. H. McAllister for the plaintiffs and Seely and Reading & Stephens for the defendants, and the said plaintiffs by their said Attorney file their petition verified by oath, praying the Court that the Venue in this cause be changed for reasons in said petition set forth - and the Court being fully advised in relation thereto, do consider and order that the same be granted, and that the Venue herein, be changed to the Circuit Court of Will County -

State of Illinois

Brandy County, Ia -

I W. W. Minsted Clerk of the Circuit Court within and for said County in the State aforesaid do hereby Certify the foregoing to be a ~~true~~ full ^{true} and correct Copy of the Record of the proceedings and of

Certain papers filed in and pertaining to the above
entitled Cause in said Court, That the papers herewith
transmitted numbered from (1) to (33) inclusive are all the
papers remaining on file in my said office pertaining
to said Cause, and that of the said papers those numbered
1, 2, 4, 9, 10, 8, & 33, are respectively the Process for Sum-
mons, Summons, Amended Narrative, Plea & Demurer
replication & joinder in demurrer, Plea to second
Count, and petition for changing of Venue, referred to
the foregoing abstract.

In witness whereof I have hereunto set my
hand and official seal at Morris this
5th day of December A.D. 1857—

Wm. W. Minsted Clk—

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And afterwards to wit, on the aforesaid 19th day of Feb'y
A.D. 1857, the following Starr, and Amended Starr, was filed
in the Office of the Circuit Court of Mill County, and are
in the words and figures following to wit -

Circuit Court

Brandy County - Of the ^{Mag} Term in the year 1855 -

Brandy County for Archibald McAllister and Jesse McAllister
 Complain of Jacob Claypool and Lemmon W Claypool who
 reside in said County of Brandy; of a plea of trespass
 on the Case, For that whereas heretofore to wit, on the
 first day of November, one thousand eight hundred and
 fifty four, to wit at Morris in said County, the said
 plaintiffs delivered to the said defendants, being then
 and there the proprietors of a certain Ferry Boat and
 Common Carriers, and the said defendants as such
 proprietors and Common Carriers, then and there received
 from the said plaintiffs on board of said Ferry Boat a
 Span of Horses, Harness, wagon, buffalo skin, and also
 divers to wit - ten Cook Stoves and trimmings of the said
 plaintiffs of great value to wit, of the value of six
 hundred dollars - to be by the said defendants
 carried and conveyed in the said Boat from Morris
 aforesaid across the Illinois River and to the opposite
 bank thereof and there to wit, at said opposite bank
 aforesaid safely and securely to be delivered to the
 said plaintiffs, for certain reasonable reward to the
 said defendants in that behalf. Yet the said defendants
 not regarding their duty as such Common Carriers as
 aforesaid, but contriving and fraudulently intending, craftily
 and subtly to deceive defraud and injure the said plaintiffs
 in this behalf did not, nor would safely or securely carry
 or convey the said Span of horses, Harness, wagon, buffalo

Skins and Cook Stoves, nor any or either of them from Morris aforesaid across said river to the opposite Bank thereof nor there to wit - at said opposite bank of said river, safely or securely deliver the same for the said plaintiffs but on the contrary thereof the said defendants so being such common carriers as aforesaid, so carelessly and negligently behaved and conducted themselves in the premises, that by and through the carelessness negligence and default of the said defendants in the premises the said horses harness, wagon, buffalo skin Stoves and trimmings being of the value aforesaid, afterwards to wit, on the day and year aforesaid to wit, at the place aforesaid, became and were wholly lost to the plaintiffs to wit, at Morris, aforesaid -

And whereas also heretofore to wit, on the ^{first} ~~fourth~~ day of November in the Year Eighteen Hundred and fifty four, to wit at Morris in the County aforesaid the said plaintiffs at the special instance and request of the said defendants - caused to be delivered to the defendants being common carriers, a certain other Span of Horses a certain Set of Double Harness, a Double Wagon with a covered top, to the Seat thereof, one buffalo Skin, one Whip, and ten Cooking Stoves, of the goods and Chattels of the said plaintiffs of great value to wit, of the value of six hundred dollars, to be taken care of and safely and securely conveyed and conveyed by the said defendants in and by a certain ferry boat from the Bank of the said Illinois River at Morris aforesaid, to the opposite bank of said river, over and across the same, and there to wit at the opposite bank aforesaid to be safely and securely delivered for the

said plaintiffs, for certain here and remand to the said defendants in that behalf, and although the said defendants then and there accepted and received the said last mentioned goods and Chattels, for the purpose and on the terms aforesaid. Yet the said defendants not regarding their duty in that behalf, but contriving and fraudulently intending craftily and subtly to deceive and defraud the plaintiffs in this respect, did not nor would they safely and securely carry and convey, the said last mentioned Span of Horses, Harness, Wagon, buffalo Skin and Stoves to the opposite banks of said River - and by means of the negligence and improper conduct of the defendants and the servants and agents in that behalf, the said last mentioned Horses, Harness, Wagon, buffalo Skin and Stoves were precipitated into the said River to wit, on the day and year aforesaid, at the place aforesaid, and became and were to wit, at Morris aforesaid wholly lost to the said plaintiffs -

And whereas also heretofore to wit, on the day and Year aforesaid, the defendants being the owners and by their agent in the use of a ferry boat, by which they as common carriers did carry passengers, goods and Chattels ~~for hire~~, across the Illinois River at Morris in said County, the plaintiffs delivered to the defendants to wit, at Morris aforesaid, upon the said ferry boat of defendants, One Span of Horses, One set of double Harness One Stone Wagon with a top to the seat, One buffalo Skin one Whip, ten Cook Stoves, ten teakettles, ten boilers, ten dripping pans, ten clippers, of the property of the said plaintiffs

of great value to wit, Of the value of Six Hundred Dollars,
 and the Said Defendants by their Servants and agents
 accepted and received the last mentioned goods and Chattels
 from the plaintiffs, to be safely and securely, carried upon
 said ferry boat from the bank of said River at Morris
 aforesaid, across said River to the opposite bank thereof
 for certain hire and rewards to the defendants on that behalf
 but the Said Defendants not regarding their duty, in that
 behalf, but contriving and fraudulently, intending craftily
 and subtly to deceive and defraud the plaintiffs in this
 respect, would not safely and securely carry the said
 goods and Chattels, across the said River as aforesaid
 but by means of the insufficiency and improper state
 and condition of said ferry boat, and the carelessness
 and negligence of the Said Defendants and their agents
 and Servants, the Said, Horses, Harness, Wagon, Buffalo Skin,
 Stoves, Kettles, boilers, and Clipping pans, and Clippers -
 being of the value aforesaid, were precipitated to wit on the
 day and Year aforesaid, at Morris aforesaid, into said River,
 and the Said Horses then and there drowned, the Said Wagon broken
 and injured, the Said Stoves and furniture broken injured and
 defaced, so that the aforesaid goods and Chattels, became
 and were wholly lost to the plaintiffs to wit at Morris aforesaid,
 So the Damages of the Said plaintiffs of Six Hundred Dollars
 and therefore they bring this Suit

Anderson McAlister & Barnson

Plffs Attorneys

Chicago Ill

Amended Narr-

Circuit Court Grundy County-

Of March Term in the Year A.D. 1855-

Grundy County for-

Archibald McAlister and Esau McAlister
 Complain of Jacob Claypool and Lawrence M. Claypool
 who reside in said County of Grundy of a plea of trespass
 on the case. For that whereas heretofore to wit, on the first
 day of November in the Year of our Lord one thousand eight
 hundred and fifty four, to wit, at Morris in said County the
 said plaintiffs delivered to the said defendants, being then
 and there the owners duly licensed of a certain Ferry across
 the Illinois River at Morris aforesaid, and common carriers
 and the said defendants as such owners and occupants
 of said Ferry and common carriers, then and there received
 from the said plaintiffs upon the Ferry Boats of said
 defendants, one Span of Horses, one set of double harness
 one wagon, ^{one} ~~and~~ buffalo Skin & Whip, divers to wit, two Cooking
 Stoves, and trimmings, and furniture to the same of the property
 of the said plaintiffs of great value to wit, of the value of
 six hundred Dollars, to be by the said defendants carried
 in said ferry boat, from Morris aforesaid across the
 Illinois River to the opposite bank thereof and then to wit
 at said opposite bank safely and securely to be delivered for
 the said plaintiffs for certain reasonable reward to the said
 defendants in that behalf: Yet the said defendants not regarding
 their duty as such ferryman and common carriers as
 aforesaid, but contriving and fraudulently intending
 craftily and sully to deceive defraud and injure the said

plaintiffs in that behalf, did not, nor would safely or securely carry or convey the said span of Horses, Warnings, Wagon, buffalo Skin, Cook Stoves, trimmings or furniture nor any or either of them from Morris aforesaid across said River to the opposite bank thereof nor there to wit, at said opposite bank of said River safely or securely deliver the same for the said plaintiffs, but on the contrary thereof the said Defendants, so being such ferryman and common carriers as aforesaid and their servants and agents so carelessly and negligently behaved and conducted themselves in the premises, that by and through the carelessness negligence and default of the said Defendants and their servants and agents in the premises the said Horses, Warnings, Wagon, buffalo Skin, Stoves, trimmings and furniture being of the value aforesaid, afterwards to wit, on the day and year aforesaid to wit at the place aforesaid became and were wholly lost to the plaintiffs to their damage of Six Hundred Dollars -

And whereas also heretofore to wit on the fourteenth day of November in the year of our Lord one thousand eight hundred and fifty, the said Defendants in pursuance of the prayer of their petition then filed with and presented to the Board of Supervisors in and for said County of Grundy, and authorized and empowered to grant the same, to wit at Morris aforesaid, obtained of and from the said Board of Supervisors at a meeting thereof then and there held, a license, granted and issued by said Board to them the said Defendants, under and by virtue of the Statute of the State of Illinois Entitled

'Perms and Sell Bridges' and the acts of the said
 State amending thereof, by which license the said defendants
 were authorized and licensed to establish and keep
 a ferry across the Illinois River in the County of Grundy
 and State of Illinois, at a point between the south fraction
 of the North East quarter of Section number nine in Town
 number thirty three, Range number Seven, East of the third
 principal meridian, and the East half of Block number
 Seventeen of the Board of Trustees of the Illinois and Michigan
 Canal addition to the town of Morris - for the term of five
 years from and after the twenty seventh day of February
 A.D. One thousand Eight Hundred and fifty one, provided
 that the said defendants should enter into a bond of
 five hundred dollars to keep said ferry in all respects
 in strict accordance with the Statutes law in such case
 made and provided, and pay a certain sum therein
 mentioned to the County Treasurer of said County as a tax
 thereon, and the said plaintiffs further in fact say, that
 the said defendants afterwards to wit on the day and
 year aforesaid complied with the requisitions aforesaid
 and accepted the powers and franchises so granted to
 them, by said Board of Supervisors in and for said
 County as aforesaid, and afterwards to wit, on the
 first day of April A.D. Eighteen Hundred and fifty
 one, to wit, at the place mentioned in said license to wit,
 at Morris aforesaid, established a Ferry across the Illinois
 River aforesaid, and the plaintiffs further in fact say
 that by reason of the acceptance by the said defendants
 of said powers and franchise it became and was

the duty of the said defendants to wit, on the day and
 year last aforesaid and from thence and at the place
 aforesaid to be furnished and provided with a good
 light boat or boats, if more than one were necessary and
 other small craft of sufficient number dimensions strength
 and readiness for the safe and speedy transportation
 of all passengers their teams horses, cattle and other animals
 as well as their goods chattels and effects, and to furnish
 the said boat or boats, and other small craft, at all times
 with suitable oars, setting poles, rigging, and other implements
 necessary for the service thereof - and also with men of
 sufficient number, strength, and discretion and skill to
 manage the same. And the plaintiffs further say, that
 afterwards to wit, on the ~~first~~^{first} day of November
 A.D. Eighteen Hundred and fifty four to wit at the
 place a ferry aforesaid upon the ferry boat so as aforesaid
 furnished by ^{said} defendants, they delivered one span of horses,
 one set of double harness, one stone wagon with a top to
 the seat, one buffalo skin one whip, six Cook stoves six kettles
 six boilers, six chopping pans, six coppers of the property of
 the plaintiffs of the value of six hundred dollars, to be safely
 and securely carried upon said ferry boat from the bank
 of said River to wit, at Morris aforesaid across the same
 River to the opposite bank thereof for certain toll hire and
 reward in that behalf. Yet the said defendants in no way
 ignorant of the premises but unmindful of their duty in this
 behalf, on to wit said first day of November one thousand
 eight hundred and fifty four, and for a long time previously
 did neglect and omit to furnish and provide themselves -

with a good light boat or boats, but the boats furnished were old leaky, and without any rigging or implements to prevent Horses from running off the Dams into the River and did neglect and omit to furnish any small Craft to be used in securing or saving property which might get into said River, and did neglect and omit ^{to} furnish said boats with men of sufficient number, strength discretion and skill to manage the same or with men sufficient in number, and by reason of ^{such} ~~the~~ insufficiency of said boat, rigging and implements as aforesaid, and the carelessness and indiscretion of the men upon the same, as also the insufficiency of the number thereof and of the aforesaid omission to furnish any small Crafts & have the same in readiness the plaintiffs Horses, Harness, wagon, and the other property as stated aforesaid, being of the Value aforesaid were to wit, on the day and Year and at the place aforesaid precipitated into said River, the said Horses drowned, the Harness broken and otherwise injured, the wagon broken and damaged, the said Hoes, and trimmings greatly broken and damaged, and the plaintiffs hindered and delayed in their business and subjected to great expense in remaining at the place aforesaid in their attempts to recover this aforesaid property, and getting the same repaired, and they say that they have sustained damages by reason of the premises in the sum of Six Hundred Dollars, and therefore bring this suit -

Anderson McAllister & Garrison

Plffs Attys -

And afterwards (to wit) on the 19th day of February
 A.D. 1857- The plea & demurrer of defendants above named
 was filed in the Office of the Clerk of the Circuit Court
 of Mid County - and is in the words and figures following
 to wit -

Gundy Co. Cir. Court -
 Archibald McAllister &
 Jesse McAllister -

Jacob Claypool &
 Lawrence W. Claypool

October Term A.D. 1865 -

And now come the said defendants
 by Soley & Cook their Attys and defend se, When se
 as to the 1st Count of pliffs Declaration and say Actio
 non se, because they say they are not guilty of the said
 several supposed trespasses or any or either of them in
 manner and form as the said plaintiffs hath above them
 of complained against them, and of this they put themselves
 upon the Country -

And as to the second Count of plaintiff
 Declaration Defendants say Actio non se because the
 said Count and the matters and things therein contained
 are not sufficient in law for plaintiffs to have or
 maintain his action aforesaid against these defendants,
 and Defendants are not bound in law to answer the
 same and thus they are ready to verify - Whereupon they
 pray Judgment se -

Soley & Cook P. W.

And afterwards to wit, On the 19th day of February A.D.
1857. The Replication And joinder in demurrer, of plaintiffs
was filed in the Office of the Clerk of the Circuit Court
of Mill County - and appears in the words and figures
following to wit -

Circuit Court Grundy County -
 Archibald McAlister &
 Jesse McAlister -

vs
 Jacob Claypool &
 Lawrence W Claypool -

And the said plaintiffs as to the
 plea of the said defendants by them pleaded, and whereof
 they have put themselves upon the country doth the like -

And
 the said plaintiffs say that the second count in said declaration
 and the matters therein contained in manner and form as the
 same are above stated and set forth, are sufficient in law
 for them the said plaintiffs to have and maintain their
 aforesaid action thereof against the said defendants, and
 the said plaintiffs are ready to verify and prove the same
 as the counts here shall direct and award, therefore in as
 much as the said defendants have not answered the ^{2d} second
 count of said declaration, nor hitherto in any manner
 denied the same, the said plaintiffs pray judgment
 and their damages by them sustained on occasion of
 the committing the said grievances in said count men-
 tioned, to be adjudged to them &c -

Anderson McAlister & Co

Attys for Plffs -

And Afterwards to wit on the 19th day of February
A.D. 1857- The plea to 2^d Count of plaintiffs declaration
was filed in the office of the Clerk of the Circuit Court
Of Mill County and State of Illinois, and is in the words
and figures following to wit-

McClellan et al. v. Andy Co. Cir. Court.

October Term A. D. 1852

Claypool et al. v.

As to the 2^d Count of plaintiffs Declaration they say Actio non because they say they are not guilty of the several supposed trespasses in said Declaration mentioned in manner and form as plees have above thereof Complained against them and of this they put themselves upon the Country.

Seely & Cook P. W.

And as to the above plea by the said Jacob and Lawrence W. Claypool pleaded, whereof they put themselves upon the Country, the said Archibald and Jesse McClellan do the like.

Anderson McClellan & Co
plees A. D.

And afterwards to wit on the 19th day of February A.D. 1857
a petition of plaintiffs for Change of Venue from said County
of Grundy, was filed in the Office of the Clerk of the Circuit
Court of said County and is in the words and figures
following to wit -

Mundy County Circuit Court,
Archibald McAlister v
Jesse McAlister

Jacob Claypool v
Lawrence W. Claypool -

State of Illinois v B. the Hon S. W. Randall Judge of said
Mundy County for 3 Count. -

The petition of Archibald McAlister
& Jesse McAlister plaintiffs in the above entitled Cause, shew
unto your Honor that they fear they will not receive a fair
trial of the above entitled Cause in the Mundy County Circuit
Court, in which said action is now pending on account
that the said Defendants therein above named have an
undue influence over the minds of the inhabitants of said
County - so that they cannot expect a fair and impartial
trial of said Cause in said County, and they further shew
that the information of such undue influence came to
their knowledge to day - and they further shew that the
same Cause of such fear as above mentioned, and
complained of, exists in the County of La Salle -

Archibald McAlister
Jesse McAlister

State of Illinois
County of Mundy - for

Jesse McAlister one of the above
named plaintiffs being duly sworn says that he

read the above petition by him subscribed and known
the contents thereof, And that the same is true according
to the best of his knowledge information and belief;
Subscribed and sworn to Jesse M^cAlister

this 3^d day of December
A.D. 1856.

John Hallonay Clerk

And afterwards to wit on the 11th day of May A.D. 1857. it also being one of the regular days of said May Term of the Circuit Court in and for the County of Will and State of Illinois for the said Year A.D. 1857 aforesaid, and the said Court being then duly Organized and sitting in open Court, for the transaction of business, The following proceedings were had and entered of Record by the said Court in words and figures following, To wit -

Archibald McAllister &

Jesse McAllister

vs
J. & G. W. Claypool

Prepass on the Case -

And now come the said plaintiffs by W. H. McAllister their Attorney, and enter their motion to call this suit for hearing. Whereupon it is ordered by the Court, that this Cause be and it is called as aforesaid, Thereupon said plaintiffs enter their motion for leave to withdraw all of the papers in this Cause for the purpose of having a correct Transcript, made by the Clerk of Mundy County Circuit Court in this Cause - And the Court being fully advised in the premises, it is ordered that said plaintiffs do have such leave, to withdraw the papers herein for the purpose aforesaid, And it is ^{also} further ordered by the Court, that the said Clerk of said Mundy County Circuit Court, do forthwith upon being served with a copy of this Order, and receiving said

Papers so withdrawn, shall make a full perfect and correct Transcript, of the Records and proceedings in this Cause in said Grundy County Circuit Court, And it is also further Ordered that said Clerk do Certify to the genuineness of each and every Original paper in this Cause so filed in said Grundy County Circuit Court, and the said Transcript when made. And all the Original papers herein so Certified as aforesaid, to return to the Clerk of the said Grundy County Circuit Court, without delay. Whereupon said plaintiffs enter their Motion to Continue this Cause. Thereupon it is ordered by the Court that this Cause be and is continued until the next Term of this Court, or until such Transcript be made, and filed in this Court in this Cause.

And afterwards (to wit) on the 12th day of May A.D. 1857- it also being one of the regular days of said May Term of said Court for the said year A.D. 1857- aforesaid, and the said Court being then duly organized and sitting in open Court, for the transaction of business - plaintiffs above named filed with the Clerk of the Circuit Court of Will County Illinois, the following notice and affidavit in the words and figures following (to wit)

Will Co' Cir Court
 Asst. Clk. W. C. Clifton
 Secy W. C. Clifton
 May Special Term W. C. 1857
 Jacob Claypool
 Lawrence W. Claypool

You will please take notice that the papers in this cause have been by leave of the Court withdrawn for the purpose of having a correct transcript thereof made only, and that the same will not be tried at this term of said Court, and you need not attend said Court for trial of the same at said term.

To Suley & Cook Defts Attys - House 28
 or to said Defts, Select May 11th 1857
 W. H. McAlister Atty for Plffs

State of Illinois
 County of Will for E. McAlister being duly sworn
 deposes and says that on the morning of the 12th inst
 before the defts attended the Will Co' Cir Court, he personally
 served on defts Atty Mr Suley at Morris a copy of the
 within notice.

Sworn this 12th day of
 May 1857, before me
 W. H. McAlister Clerk
 of Will Co' Cir Court.

James M. Alister

Archibald M. Alister

Circuit Court Will County

Jacob Claypool & and State of Illinois

Lawrence W. Claypool

State of Illinois

Grundy County

Lawrence W. Claypool

being duly sworn on oath saith, that he is one of the defendants in the above entitled suit that Allen W. Sliter, Joseph Vance, William Clapp, Smith B. Clapp, Curtis Cobler, Aaron Smith, Thomas Moran Jr, Andrew A. Oter, Isaac Pitch and Ed Anderson and each and any of them was at the time his deposition was taken in the above entitled case before Perry W. Armstrong Clerk of the County Court in and for said County of Grundy at the instance of the said defendants to be read in evidence on the trial of said case a resident of said County of Grundy and that each and any of said witnesses still resides in said Grundy County.

Subscribed and sworn to

L. W. Claypool

before me this 18th day of March A.D. 1857

A. M. Black Clerk

Will County Circuit Court—

Sherr McAllister vs. —

Archibald McAllister vs. —

Jacob Claypool vs. —

Lawrence W Claypool vs. —

State of Illinois

County of Will. ss. Sherr McAllister of said County being duly sworn deposes and says, that he is one of the plaintiffs above named, and he further says that P. W. Armstrong who resides in the City of Morris in the County of Grundy is a necessary witness for the plaintiffs upon the trial of this cause, and that he is Clerk of the County Court of said County of Grundy and has charge and custody of the records of the Board of Supervisors of said County. That as this deponent is informed and believes to be true the proceedings of the said Board, respecting the licensing of the above named defendants, to keep the Ferry mentioned in the declaration in this cause are material to be proved on the trial of this cause, and the said Armstrong being such Clerk, it would be highly prejudicial to the said Armstrong if not impossible to procure his attendance with said records at the trial of this cause in the aforesaid County of Will. Given this 13th day of — Sherr McAllister —
November A.D., 1857 before
me J. Hagar S.P.

And afterwards to wit, On the ninth day of December
in the year of Our Lord One thousand eight hundred and
fifty seven, it also being one of the regular days of said
December Term of said Court for the said Year A.D. 1857,
aforesaid and the said Court then being duly organized
and sitting in open Court, for the transaction of business
the defendants filed in said Court their plea in words
and figures following to wit,

State of Illinois

This County -

Jacob Claypool &

Samuel Claypool -

vs.

Archibald McAllister &

James McAllister

And the said Defendants by Seeley & Oliver & Cook, their Attorneys, Come and defend the wrong and injury when &c and as to the third and fourth Counts of said plaintiffs Declaration say Verdict, because they say they are not guilty of the said several supposed trespasses or any or either of them in manner and form as the said plaintiffs hath above thereof complained against them, and of this they put themselves upon the Country -

Seeley & Cook

Pro Defs -

And the said plffs do the like &c

W. B. McAllister -

Plffs Attys -

And afterwards to wit, On the Eleventh day of December in the Year of our Lord One thousand eight Hundred and fifty Seven it being One of the regular days of the December Term of said Court for the said Year A.D. 1857 aforesaid and the said Court being then duly Organized and sitting in open Court for the transaction of business, the following proceedings were had and entered of Record in words and figures following to wit-

Archibald McAllister &

Jesse McAllister

} Repairs on the Case

Jacob Claypoole &

Lawrence W. Claypool

} And now come the said plaintiffs by W. H. McAllister their Attorney, and the said defendants also come by Glover and Cook and McRoberts their Attorneys and by the Arguments of said Parties, and the general Consent of the Bar, it is Ordered by the Court that the trial of this Cause, be and it is set for next Wednesday morning at the coming in of Court.

And afterwards to wit, On the Sixteenth day of December in the Year of our Lord One thousand Eight Hundred and fifty Seven, it being One of the regular days of the said December Term of said Court for the said year A.D. 1857 aforesaid, and the said Court being then duly Organized and sitting in open

For the transaction of business, the following proceedings were had and entered of Records by the said Court, in words and figures following to wit—

Archibald McAllister &

Isaac McAllister—

Prepass on the Case—

Jacob Claypool &

Lawrence W. Claypool—

And now come the said Plaintiffs by W. H. McAllister their Attorney, and the said Defendants also come by Glover & Cook and McRoberts & Goodspeed and Seely their Attorneys, on whose motion it is ordered by the Court that the trial of this Cause do now proceed and that a Jury come for that purpose. Whereupon come the Jurors of a Jury of good and lawful men To wit—

Isaac Van Alstine, Franklin Boardman, Henry Adams,

Nehemiah H. Cutter, Redham Cooper, John Clifford,

Daniel S. Burdett, Julius H. Walker, Walter B. Hamley

Wesley Jones, Frederick Robbins, Ed. ^{David} Frederick Thompson—

Who being duly empannelled and sworn to well and truly try the issues herein joined between the said parties to this Suit and a true Verdict give according to the evidence, and after hearing the evidence this day adduced, by the agreement of said parties it is ordered by the Court, that said Jury do have leave to separate and meet the Court tomorrow morning at nine o'clock.

And afterwards to sit on the nineteenth day

* Whereupon it is ordered by the Court that said plaintiffs do have judgment on the verdict of said Jury as aforesaid -
 adjudicate to the sum aforesaid.
 It is thereupon considered by the Court that said plaintiffs do recover of said
 defendants their damages aforesaid to the sum of four hundred and seventy nine dollars. Together with
 their costs and charges by them about their suit in this behalf expended, and that they do have execution
 therefor.

of December in the Year of Our Lord One thousand eight
 hundred and fifty seven, it also being one of the regular
 days of said December Term of said Court for the said
 Year A.D. 1857 aforesaid and the said Court being then
 duly Organized and sitting in open Court for the transaction
 of business, the following proceedings were had and entered
 of Record by the said Court in words and figures following
 To Wit -

Archibald McAllister &

vs
 Jesse McAllister -

Prepared on the Case -

Jacob Claypool &

vs
 Lawrence W Claypool

And now again come the said parties
 to this suit by their respective Attorneys, and the said Jury
 heretofore impannelled herein also ^{again} come, and after hearing the
 remainder of the evidence adduced, and the arguments of
 Counsel, and receiving the instructions of the Court, said Jury
 retire in charge of an Officer of Court to consider of their
 Verdict, And said Jury returning into open Court for Verdict
 say, "We the Jury find the issue herein joined, for the said
 plaintiffs, and assess their damages to the sum of, Four hundred
 and Seventy nine dollars - Thereupon said defendants enter their
 motion for a new trial in this Cause - And after hearing the
 arguments of Counsel on said motion, and the Court being
 fully advised on the premises, it is ordered that said motion
 be and ^{is} is overruled. * Thereupon said defendants by their
 said Attorneys excepted to the opinion and ruling of the

Court, in overruling their said Motion for a new trial in this cause, and pray an appeal from the judgment of this Court, to the Supreme Court of this State, Thereupon it is ordered by the Court, that such appeal be and it is granted upon condition that said Defendants do file Bond in this Cause in the Sum of One thousand five Hundred Dollars, with George W. Lane, Lewis P. Lott, E. M. Hubbard Charles H. Gould, and Perry A. Armstrong as Security And that such Bond and the Bill of Exceptions in this Cause be filed within thirty days —

And afterwards to wit, On the Seventeenth day of December in the Year of Our Lord One thousand Eight Hundred and fifty Seven, it also being One of the regular days of said December Term of said Court for the said year A.D. 1857, aforesaid, and the said Court being then duly organized and sitting in Open Court for the transaction of business — the following Notice of Motion for new trial in this Cause was filed in said Court by Defendants in words and figures following To wit —

Archibald McAllister & Co

vs
James McAllister & Co

In the New Circuit Court

Sherman W Claypool & Co

vs
Jacob Claypool & Co

The said plaintiffs will take notice, that the said defendants will move for a new trial, in the above entitled cause for the following reasons to wit:-

First. The Court erred in admitting improper testimony on the part of said plaintiffs.

Second. The Court erred in excluding proper testimony on the part of said defendants.

Third. The Court erred in giving improper instructions on the part of said plaintiffs.

Fourth. The Court erred in refusing proper instructions on the part of said defendants.

Coxe & McRoberts, & Goodspeed


Pro Defts.

And afterwards to wit, On the second day of January
in the Year of our Lord One thousand eight hundred and
fifty Eight, the said Defendants filed with the Clerk of
the Circuit Court of Will County and State of Illinois, an
Appeal Bond in the words and figures following to wit—

Know all men by these presents that we Jacob Claypool and Lawrence W. Claypool, as principals and Lewis P. Holt Charles H. Gould, E. W. Hurlburt, Perry W. Armstrong, Geo W. Lane as securities, are held and firmly bound unto Jesse McAllister and Archibald McAllister in the penal sum of Fifteen Hundred Dollars, lawful money of the United States, for the payment, of which well and truly to be made we do hereby bind ourselves our heirs executors and administrators, jointly and severally firmly by these presents. Witness our hands and seals this Twenty ninth day of December A.D. 1857.

The Condition of the above obligation is Such that Whereas, Jesse McAllister and Archibald McAllister did recover a Judgment against the above bounden Jacob Claypool and Lawrence W. Claypool for the sum of Four Hundred and Seventy nine dollars besides costs, in the Circuit Court of Miss County, Illinois at the December Term A.D. 1857 of said Court, from which said judgement the said Jacob Claypool and Lawrence W. Claypool, have ^{prayed} for and obtained an Appeal to the Supreme Court of the said State.

Now if the said Jacob Claypool and Lawrence W. Claypool shall prosecute their said appeal with effect and without delay, and shall pay the said judgment with all costs, interest and damages which have or may accrue thereon, or be adjudged against them in said suit, in case the said judgment shall be affirmed by the said Supreme Court, then this obligation to be void, otherwise to remain in full force and effect.

Jacob Claypool 

S. W. Claypool,
Lewis P. Lott,
C. H. Gould,
E. W. Hulturd,
P. W. Armstrong,
Geo W. Lane.



And afterwards to wit On the twelfth day of January
in the Year of our Lord One thousand eight Hundred and
fifty Eight, the aforesaid Defendants filed with the
Clerk of the Circuit Court in and for the County of Madison
and State of Illinois, their Bill of Exceptions in words
and figures following to wit -

James McAlister &

Archibald McAlister

vs

Jacob Claypool &

Samuel W. Claypool

Will County Circuit Court

December Term 1857

Be it remembered, that on the trial of this Cause, the plaintiffs to maintain the issues on their part read in evidence, the following deposition—

State of Illinois

Will County Circuit Court,

Archibald McAlister &

James McAlister,

vs

Jacob Claypool &

Samuel W. Claypool

Depositions

Examination of witnesses taken in the above Cause, before me, A. S. Reeding, Clerk of the Circuit Court of Brundy County, pursuant to the annexed notice, and in the presence of W. R. McAlister, of Counsel for plaintiffs, no one appearing for said Defendants taken at the Office of the Circuit Court Clerk of said County of Brundy— this 16th day of November A.D. 1857

Alexander S. Reeding, Clerk
Circuit Court Brundy County

Perry A. Armstrong a witness, produced from and examined on the part of the plaintiffs, to the following interrogations answers as follows:-

1st What is your name and age and where do you reside.

My name is Perry A. Armstrong, I am thirty four years of age, and reside in Morris, Grundy & State of Illinois.

2 Do you know the parties in this suit, or any or either of them.

I know one of the plaintiffs Jesse McWhiter, and I also know both the Defendants.

3 Do you hold any public office & if so, what and how long have you held the same.

Ans I do, I am Clerk of the Grundy County Court, & have held the same for the last four years.

4 Have you in possession or keeping, the Record of the proceedings of the Board of Supervisors of the County of Grundy.

Ans I have. Plaintiff by his Counsel offers in evidence, and makes an exhibit of a paper writing, purporting to be a copy of certain proceedings of the Board of Supervisors of the County of Grundy, under the seal of P. A. Armstrong, County Clerk, which I have marked exhibit A. for Plaintiff.

Exhibit A. for Plaintiffs Nov 16th 1854

J. A. Reading Clk Brandy Co
Circuit Court

State of Illinois

Brandy County ss. J. Perry W. Armstrong clerk of the County Court, and Ex. Officer Clerk of the Board of Supervisors of said County, and State, do hereby certify that said County adapted what is termed Township Organization in the year A.D. 1849, and elected Town Officers, at the April Town Meeting in the year A.D. 1850, and that at the November Meeting of the Board of Supervisors of said County, held at the Court House in Morris on the 11th day of November A.D. 1850 nine Supervisors being present, and forming a quorum to do business (there being but three Supervisors absent) the following among other business was transacted by said Board of Supervisors, and entered of Record as appears of Record in my office viz -

Wm Armstrong presented a petition of Jacob and S. N. Claypool praying for a license to establish a Ferry across the Illinois River at the town of Morris in the County of Brandy & State of Illinois, which is in the words and figures as follows to wit:

"To the Board of Supervisors of Brandy County Illinois -
The undersigned owners of the S. frac of the NE $\frac{1}{4}$ of Sec 9 T 33 R 7 East, and the East half Block 17 of the Board of Trustees of the Illinois and Michigan Canals addition to the Town of Morris adjoining to and embracing the Illinois River, do hereby make application to said Board for a license to keep a Ferry across the Illinois River at the point above named under the

Law of Ferries and Toll Bridges, approved March 3^d 1845, and Acts amendatory thereto", Due notice of such application having been given as required by law, the license herein prayed for to take effect from and after the 27th day of February next at which time said A. and S. ^N Claypool shall enter into Bond as required by law and pay into the County Treasury the sum of ten dollars as a tax thereon for one year from this date.

Signed S. N. Claypool
 Jacob Claypool,

Mr Armstrong offered the following resolution to wit, Resolved that Jacob and Lawrence N. Claypool, be, and they ~~are~~ hereby are licensed, to establish and keep a Ferry across the Illinois River in the County of Grundy and State of Illinois, at a point between the South fraction of the North East quarter of Section number nine (9) in town number thirty three (33) Range number second (2) east, of the third principal Meridian, and the East half of Block number seventeen 17 of the Board of Trustees of the Illinois and Michigan Canal addition to the town of Morris, for the term of five years from and after the twenty seventh day of February A.D. one thousand eight hundred and fifty one, provided that the said Jacob + S. N. Claypool shall enter into Bonds of five hundred dollars to keep said Ferry in all respects in strict accordance with the Statute Law in such cases made and provided, and provided further, that the said Jacob and Lawrence N. Claypool shall pay into the County Treasury annually the sum of ten dollars as a tax thereon, and provided further, that nothing herein contained shall be so construed, ^{to} to prejudice or affect the grant heretofore given by the Legislature of the State of Illinois to —

62 Wm E. Armstrong to build a Bridge across said River at or near said point, and provided further that the said S. and S. W. Claypool, shall be entitled to and receive the following Sums as a Toll or Permage as follows to wit, -

| | |
|---|----|
| For Each head of neat Cattle Horses or Mules | 5 |
| " " Footmen over in the Skiff & back same day | 5 |
| " " " On the Flat Boat with Team over and back same day not belonging to the team | 2 |
| For Each Head of Sheep or Hogs of One Hundred or under that number $1\frac{1}{2}$ | |
| For Each Sheep or goat &c over Hundred Head Footmen may commute by paying 25¢ per month, | 1 |
| For Each Wagon Sled or other vehicle drawn by one or two Horses or other Animals over and back the same day | 15 |
| For the same over only | 10 |
| For each additional Horse or animal in team | 5 |
| For man and horse or other Animal over on the Flat alone | 10 |
| For man and horse over on Flat at time of teams crossing | 5 |

Double Permage may be charged 'tween eight o'clock P. M. and daylight, and also when the River is so high as to prevent safe landing at the Banks, and when it is necessary to ferry across the bottom to the first sand ridge on the south side of the River, and from the time the Anchor ice commences running in the River in the fall until the breaking up thereof in the spring, the following rates of Permage may be charged - For each Wagon drawn

| | | |
|----|--|----|
| 63 | by one or two horses or other animals over and back the same day | 20 |
| | For the same over only | 15 |
| | For each man and horse over & back same day | 15 |
| | For the same over | 10 |

And the balance of rates of Ferryage as herein before specified.

Mr. Remer moved to amend by inserting \$25 as the amount of Animal tax on said Ferry, and that the rates of Ferryage be the same as now charged by what is termed the Free Ferry.

Mr. Morgan offered to amend the amendment by assessing the annual tax on said Ferry, at \$40 and charging increased ferryage to non residents, pending which amendments much discussion ensued.

Mr. Armstrong called for the previous question which was put by the Chair and sustained by the Board, the vote then recurring upon the amendment, by ayes and noes was lost, Ayes 4 noes 5, the vote then recurring upon Mr. Remer's amendment was also lost, 3 ayes and 6 noes, and Mr. Armstrong's original motion and Resolution was adopted, Ayes 6, noes 3. Those voting in the affirmative were Messrs. Ringely, Doubt, Morgan, Armstrong, Norman, & Hoge. Those voting in the negative were Messrs. Cloier, Norton and Remer.

State of Illinois

Grundy County ss. I Perry A. Armstrong clerk of the County Court, within and for said County and State and Ex Officio Clerk of the Board of Supervisors within and

64 for said County and State, do hereby certify the above to be a full and correct copy of the petition of Jacob Claypool and Lawrence W. Claypool, for a license to keep a ferry across the Illinois River at the point described in said petition, as presented to said Board of Supervisors on the 14th day of November A.D. 1855 for them by myself, then acting as Supervisor for the town of Morris in said County, together with a correct copy of the action had on said petition, by the said Board of Supervisors of said County of Grundy, as appears by the Record of the proceedings of said Board, of Supervisors for the November Term A.D. 1855 in my Office.

In witness whereof I hereunto set my hand, and the seal of my Office & of the said County Court, at Morris in said County and State, this sixteenth day of November A.D. 1855.



Perry A. Armstrong Co. clk.

5 Will you look at said exhibit A. & state whether you have compared the same with the Records of the proceedings of the said Board of Supervisors in your possession or keeping, and whether the same is a correct copy of ~~the~~ and Transcript from the said Records.

Ans. I have, and it is a correct copy or Transcript from said proceedings.

65 6. State if you know who presented to the Board of Supervisors the Petition mentioned in said exhibit (A.)

7 I do know who presented the same, I presented it myself at the request of both of the defendants, as a member said Board of Supervisors, Isaac Claypool one said defendants was also a member of the Board, was also present at the same time, but did not vote upon the petition.

8 What do you know in reference to a License being issued in pursuance of the resolution mentioned in Exhibit A and of the compliance on the part of the defendants with the provisions of said Resolution, respecting the tax and Bond.

Ans. I do not know whether any License was issued or not, further than ^{as} appears by the Order of the Board, nor do I know whether the Bond was executed, I do know that the taxes were paid, in conformity with the order of the Board.

9 Do you know anything of the defendants establishing a Ferry at the place mentioned in Exhibit (A.) and if anything state what you know.

Ans. They did establish and keep a Ferry there.

10 State at what time after the order of the Supervisors mentioned in Exhibit A. the defendants, commenced to keep & use a Ferry at the place therein designated.

66 *Ans.* I think in the time therein specified, or in the Spring of 1857.

11 State whether any other person or persons, other than the defendants have been licensed to keep or use a Perry at the place designated in Exhibit A. Since you have been Clerk of said Mundy County Court,

Ans. No there has not.

Perry A. Armstrong

State of Illinois
Mundy County ss. I James A. Reeding Clerk of the Circuit Court of Mundy County aforesaid do hereby certify that the above Deposition of Perry A. Armstrong was sworn to and signed by the said Perry A. Armstrong, before me at the Office of said Clerk, of said Circuit at Morris this Sixteenth day of November in the Year of our Lord One thousand eight hundred and fifty seven.

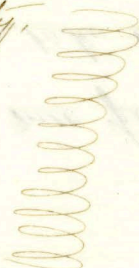


Witness my hand, and the seal of said Court at Morris aforesaid, the day and year last before written.

J. A. Reeding Clerk Mundy Co.
Circuit Court.

Circuit Court of Miss County,
Archibald McAlister &
Jesse McAlister

as



Jacob Claypool &
Samuel W. Claypool

You will please to take notice that the
Jlffs above named, will take the deposition of J. Armstrong
Esqr. Clerk of the County of Grundy before the Clerk of the
Circuit Court, of Grundy County, at his Office in Morris in
said County of Grundy on the 16th day of November A.D. 1857
at 2 o'clock P.M. of that day & to continue till the same
is taken, at which time and place you are at liberty to appear
& cross examine, Yours &c.

W. R. McWhiter Jffs Atty—

P. Seely & Baughen Esqrs
Defts Atty—

"Have Copy of the above to C. P. Seely Esqr 5 Nov 1857—"

B. M. Atherton—

Service of the above on the undersigned defts Atty on the
5th day of Nov inst is hereby admitted in

"State of Illinois

County of Grundy for B. M. Atherton of the City of Morris
in said County, being duly sworn according to law, Affirms
and says, that on the 5th day of November A.D. 1857, he
personally served on Esqr P. Seely one of the Defendants
Attorneys in the above entitled cause a notice of which
the foregoing is a copy, by delivering him the same personally
and having presented and shown to him the foregoing
notice—

B. M. Atherton—

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Shewn this 16th day of November
A.D. 1857, before me,
E. P. Seely J. P.

State of Illinois

Grundy County

I, P. A. Armstrong Clerk of the
County Court in and for said County
do hereby certify that Ezra P. Seely, whose name is subscribed
to the annexed Affidavit, was at the time of taking and
certifying the same, an Acting Justice of the Peace in and
for said County, duly commissioned and sworn and authorized
to take the same, and full faith and credit is due to all his
official acts.

In testimony whereof, I have hereunto set my hand
and affixed the official seal of said County Court, this
sixteenth day of November A.D. 1857.

Perry A. Armstrong Clerk
of the County Court



The Plaintiffs then called as witness Owen Roberts who testified as follows:-

I reside at Pontiac in this State. Among the plaintiffs were the defendants partially. I was in the employ of the plaintiffs in the Year 1854. and at the time the accident occurred. I drove the Team that was drowned. It was at Morris in Grundy County and on or about the 25th day of November 1854. I had two Horses in my Team and they were attached to a peddling wagon made for the purpose of carrying Stock, the wagon had a seat in front with a covered top to it with curtains around it. The property lost belonged to the plaintiffs. I loaded the Stock at Sanis Ware House near McAlister and John McCreary had each a Team and wagon which were loaded at Sanis Ware House in Morris. Near McAlister had a three horse Team. We all started together to the Ferry from Sanis Ware House. I was ahead the three horse Team came next to mine a few yards behind. The bank of the River at the ferry is steep. after getting down the Bank, there is a short curve to get on the ferry boat, the bank is difficult for a heavily loaded Team to go down, when my turn came I drove into the boat. The ferryman directed me to drive as far ahead as possible to give room for the Team behind me. There were two Boats attached together by the ends, I drove into the Boat farthest in the stream, the outer Boat. I think the name of the ferryman who directed me

was Sleyter. There was no other Team on the boat
 when I arose on. There were but two men in charge of
 the ferry. I arose into the short boat and the one furthest
 out in the stream, the boats were fastened together as
 canoes are fastened. The boats were propelled across the
 River by a rope. the boats were kept against the Shore
 by the two men in charge of the ferry. They held the boats
 against the Shore so that the Teams could get on. The
 boat next the Shore had no apron on it. The two men
 were holding the boat against the Shore when I arose
 on the boat, There was nothing across the end of the outer
 boat, it was entirely open, There were Chains on the boat
 fastened to the Standards on the side to Chain wheels with,
 The ferryman gave me no other instructions upon coming
 upon the boat, - told me to drive ^{as far} ahead as possible. just
 as my Horses entered the first boat, After getting on the
 forward or outer boat, I heard the Chains rattle. I then
 got off my Wagon to stand at the heads of my Horses as
 I had been directed on former occasions when crossing the
 River. My Horses Stopped about three feet from the outer
 end of the boat, as I got off of the Wagon, I saw that
 the wheels were not chained, the Horses then Stopped forward
 and went over into the water, the boat tipped forward
 at the time. I got off of the Wagon when I heard the
 Chains rattle, so as to stand at the heads of my Horses.
 Team Stopped by the Chains from three to five minutes while
 another Team got on, One Team had got on, and another
 partly on before my Team went over into the River. I
 had crossed over the ferry before on the same day.

also at other times. The ferryman had always before chained the wheels of my wagon as soon as I drove on the boat, I had four stores in my wagon together with their furniture. the stores and furniture weighed about four hundred pounds each. The River was rather high, there was no ice. the day was cold and windy. I saw the horses after they went into the river. nothing was done to save them. there was no small boat about the ferry. The horses struggled hard to get out. They were between five and six rods from the shore. the two men were holding the boat to the shore when I got off of the wagon. While on the seat the curtain prevented me from seeing behind me. the wagon, loaded, buffalo and whip, went over with the horses. the wagon struck right side up when it went over. The top of the seat was torn all to pieces, the reaches to the wagon were broken. The furniture set on the stores in their places. They were lost. A set of furniture to each store was worth seven dollars. there were four sets. That top cost \$50, I don't know what it cost to repair the wagon, think it would cost \$10, to repair the reaches. There was a frame brake to the wagon, from \$8 to \$10 includes the whole. The horses were a pair of large horses they would readily sell for \$400. they were about 16 hands high. One was a gray, and the other a chestnut sorrel. an excellent team to work, true and kind, sound every way. If the wheels had been chained, or if there had been bars across the end of the boat, the team could not have gone in. I think if there had been a light boat, & some means of getting at the horses heads, they could have been held until

they could have been cut loose from the wagon and saved. I did not receive any directions from the ferry man while coming down the hill as to my coming on to the boat. The ferriage was paid for crossing at that time. It was paid by John McCary previous to my getting on to the boat. The bank right at the shore is sandy, and we had to turn to get on to the boat and it was quite rough. One must go onto the boat slowly with such a load as we had. There is a highway on each side of the River where this ferry crossed. There was no other means of crossing at Morris beside this Ferry. It had been the custom to charge ferriage at the ferry, it was 10 cents I think, either 10 or 15. The boat the horses went off from was called the Claypool boat.

Cross Examined.

I have been in the employ of the plaintiffs for more than three years. Am in their employ now. There was a Wood Beam standing on the bank, which was directed to drive on after me. I drove on to the boat when the ferry man said it was ready, the Wood Beam went on after me. No apron on the boat when I drove on. There were chains on the boat. If the chains had been put round the wheels, the Beam would not have gone over. When I got off of the wagon I left the reins on the dash board. did not have hold of horses when they started. I sat on the seat and held the horses until I supposed the wheels were chained. I sat on the wagon from three to five minutes. I was partly on the boat when somebody said to let the light team come

first. Syster told me to drive to the far end of the outer boat - Am. not certain that I saw Lawrence W. Claypool there - plaintiffs have never said to me that I must pay for the property lost if they failed to collect it of defendants -

Direct Resumed -

I heard one of the ferrymen give directions to let the light team come on board after I got on, that was the only direction I heard given in relation to the light wagon - The ferrymen were on the end of the boat next the shore when I passed -

Cross Ex. - Res.

They were there when I got off, and I did not hear them leave that place, before I got off -

The plaintiffs then called as a witness John McCrany who testified as follows -

I reside in Springfield have resided in Plainfield and in that neighborhood for the last 15 ^{years} ~~to~~ about six months ago - I know the parties to this suit, I was in the employ of plaintiffs in 1854 - I recollect the circumstance of the horses being drowned in the Illinois River at Morris - The mare loaded at James Ware House in Morris - there were then 2 Horse Teams & one two Horse Team, they all left the Ware House together or about the same time - I was on a wagon with Jesse

McAllister Another man drove my Team out. The Team
 that drove into Morris and another went on the first
 time. The Team that got into the river went on ahead
 another went after them, and Jesse McAllister next.
 I got off of the load and took the forward horse by the
 head, while I was leading him a wood wagon, and the
 Team driven by Roberts was on the Boat - I waited until
 the forward Team got its place before I started & took
 his place, the ferryman halloed to Jesse or me to let the
 light Team come on ahead, they went on and took their
 place back of the first team - after they had got their place,
 the hind wheels of our wagon might not have got on to
 the boat, but the wagon was partly on the boat at least,
 when the horses went off - I was on the top of the hill
 the wood Team was on the second Boat - There were two
 men on the Boat, they were holding the boat to the shore.
 They stood on the Boat - There was but one rope, these men
 were both on the same side of the Boat standing some little
 ways apart, - Roberts Team had stopped, and the other
 Team got onto the Boat - It was standing still while I
 was going on - Roberts stood beside his horses when they
 went off - There was a top to the boat - There was nothing
 at the End of the boat to keep the wagon on, it was open.
 There was a chain fixed to a Standard on the side of the
 boat, to chain the wheel - nothing was done with it then -
 I saw the horses go into the River - the wagon was loaded
 with stones, the horses plunged and kept their heads
 above water as long as they could, both of them, there
 was no attempt to save them, in fact there was no chance

the horses kept plunging - There was no light boat - If we had had a boat - we might possibly have saved them - The few last times there was blood came from their nostrils - I paid the ferryage, it was 10 cents - When I was coming into Morris that day - I had crossed the ferry in July - it was the custom to charge ferryage for crossing - no other ferry near them at that time that I know of - Plaintiffs were doing business together then - I think the horses were worth \$400. they were large in size - I thought it was about as good a team as could be got together for that business - I had a couple of tops made, that same spring that the horses drowned - they were leather tops and cloth lining - I saw the top afterwards and it was of no use - I don't know how long the wagon was in there - the furniture of the store was worth about \$7 - I have dealt in stores myself - a man by the name of Slyter had the boat at that time & was working it - The boat Roberts team went off from was the Claypool boat -

Cross Examined -

Slyter was running the ferry at the time - I know that he had charge of the ferry sometime before the accident - did not see either of the Claypools about ferry that summer, except when crossing as passengers - I paid both ways for the three teams, over to and back from Morris - I took hold of the head of the lead horse of the three horse team - started when Roberts team had been placed in outside boat - ferryman called to light team to come on after I had started, I followed the light wagon - Roberts team

Stopped three or four minutes before they went off. at the time Roberts horses started, he stood by them. Roberts wound the reins round the dash board. - Not many persons about the ferry. - Some of the goods were recovered.

Direct Resumed.

There was a slab laid down for the wagon to go on to the boat. I think it was a slab and not a round pole.

Plaintiffs rested their case here.

The defendants to maintain the issues on his part, then called as a witness C. W. Gould. who testified as follows. - I reside at Morris, have resided there 12 years, William C. Armstrong originally ran a ferry at Morris. - Mr Claypool ran a ferry there since Mr Armstrong did. - a free ferry company also ran a boat there. - Mr Clapp was the ferryman for the free company, a part of the time he run the boat for whatever he could get. - a Mr Syster run the same ferry after him. - In 1854. Syster was running the ferry, the bank on the north side was somewhat steep. the soil was sand and gravel. - it is not so steep as to be difficult. - Clapp used the boat that Claypool run, when he Clapp was running under the free ferry company. - Syster used it after he had got the ferry of Clapp. - the bank there is from 8 to 12 feet high. - heavy loads were hauled up that landing customarily.

Cross Examined.

Claypool commenced running their ferry some years before in the year 1850 - or 1851 - I think - Claypool had two boats ~~there~~ then, they charged and received ferriage. This boat was running some considerable time before the accident - The boats were attached together some time in the summer or early in the fall - of 54 - One of the boats belonged to the Claypools, and the other to the free ferry Company - I knew the Claypool boat from the time it was first put on - I never knew any chains or bars across the end of this boat - This free ferry Company was not a licensed Company - The free ferry did not carry for the public - but carried only for their own members - The general ferriage was done by the Claypool ferry for any one, except for the members of the free ferry Company - Clapp and Anderson made an agreement with the free ferry Company for their boats - and then hired the Claypool boats - and Clapp and Anderson then let Syster have both boats who afterwards ran the ferry -

The defendants then called along Huth who testified as follows -

I resided in Morris in November 1854 - and was at the ferry at the time plaintiffs horses were drowned - Syster had charge of and was running the ferry, I stood on the outer end of the boat farthest in the River - I saw Stams coming down the Bank - I heard Syster say to let the light team come on the boat first, the team that was drowned, was driven on first, the light team then followed - As the team which was drowned came to the outer end of the boat, I stepped a little back - the driver's attention -

appeared to be attracted across the River - As he stopped the team, he got off on the off side, & was standing on the near side - He came round behind the wagon to where I was, as he got nearly opposite the hind wheel, the horses put down their heads as if they were angry - The wagon seemed to press upon them and they went over the end of the boat into the river - They went off before the driver could get hold of them - the horses stood on the boat but a short time before they went off. the driver I think got off of the wagon as soon as the horses stopped - There was no team on the boat when Syster directed the light team to come on first -

Crops Examined by plaintiffs -

The Teams on the Bank stood nearly abreast - the light team, and the team that was drowned, stood close together, they were a rod or two from the boat - the Store team came on the boat first, I stood near the outer end of the boat - the Store wagon was on Springs and had a covered top, the top, was up - the horses stopped and the driver got off; the driver was going towards their heads - when they went off; there was nothing across the end of the end of the boat - my Boat came across from the other side of the River before the horses went down, I tried to get to them & others did but there was no small boat there, mine was the other side -

The Defendants then read in evidence the depositions of Edmund Anderson, Aaron Smith, Smith P. Clapp -

Thomas Moran, Curtis Cobler, Isaac V. Pitch, Andrew
Ober, Joseph James, Allan W. Syter, William Clapp.
~~This was all the evidence in the case~~

Archibald M^cAlister &Isaac M^cAlister

vs

Jacob Claypool &

Lawrence N. Claypool

Circuit Court Will County

& State of Illinois—

So the above named plaintiffs or their Attorney, take notice that on the 20th day of January A.D. 1857, between the hours of nine o'clock A.M. and four o'clock P.M. and continuing from day to day if necessary, we shall proceed before Perry W. Armstrong County Clerk of Brandy County And State of Illinois, at his Office in Morris in said County to take the depositions of George Kirk, Isaac Pitch, Aaron Smith, B. Clapp, Edmund Anderson, Curtis Cullen, Andrew J. Ober, John Rodgers, Thomas Moran, to be read in evidence on the trial of the above entitled case, when and where you may attend and cross examine if you see fit.

Morris January 8th 1856.

Seeley & Baughner

Attys for Defts—

State of Illinois

Brandy County ss Oscar Baughner being duly sworn on oath saith that he served the above notice on B. M. Arthurson Esqr the Attorney for the said plaintiffs by handing to and leaving with him a copy thereof on the 8th day of January 1857—
 Subscribed and sworn to before Oscar Baughner
 on this 8 day of January A.D. 1857,

P. W. Armstrong Clk.

Archibald McAlister +
 Geo McAlister,

vs Circuit Court Miss County
 Jacob Claypool + and State of Illinois -
 Lawrence N. Claypool,

Depositions of Curtis Cobler and others
 taken before Perry A. Armstrong, Clerk of the County Court
 within and for the County of Grundy and State of Illinois
 pursuant to the foregoing notice, commencing on the 20th
 day of January A.D. 1857 - and continued from day to day,
 Present on this first day commencing at 10th A.M. S
 N. Claypool, one of the defendants, and Ezra P. Leely his
 Attorney, and B. M. Thornton Atty for plaintiffs -

Curtis Cobler being first duly sworn
 according to law, deposes and answers the following
 interrogations as follows to wit,

- 1 What is your name, age, occupation and place of your
 residence -
- a My name is Curtis Cobler, I am thirty four years
 old, my occupation is farming, and my residence
 is in Grundy County in the State of Illinois -
- 2 Are you acquainted with the parties to this suit -
- a I am acquainted with the defendants, and one of
 the plaintiffs -

3 State whether you were present, at the Ferry across the Illinois River at Morris, when an accident happened there to some horses, said to belong to some men of the name of McAlister, and if you were, what was the nature of the accident, and when did it happen.

Q I was present. There were a span of horses drowned - it happened in the year 1854, in the fall of that year, I think in November -

4 Who had charge of that Ferry at the time of the accident

Q Mr Syster -

5 In what state of repair were the Boats at that time,

Q The Boats were good -

6 What means have you of knowing in what condition the Boats were in at that time

Q I had just repaired & caulked the Boat, and put it in the River, and it had only gone over and back, one time when the accident happened.

7 Which Boat was it, that you repaired.

Q The Blaypool Boat.

8 State whether you made any examination of the Boat after it was repaired, and if you did when, and what condition the Boat appeared to be in.

A I was on the Boat and examined it, after about an hour after the horses were downed, as near as I can recollect I don't think there was a pint of water in the Boat.

9 What was the ^{size} of that Boat, and of what timber was it made, and in what condition was the timber, at the time you repaired it,

A It was 44 feet long, as near as I can recollect, and a little over nine feet wide, about 9½ feet wide, it was not quite ten feet wide I think. The gunwells were Burr Oak timber, and the bottoms were pine. The timber was just as good apparently when I caulked it, that day as when it was first put there. It never gave any and the caskings only gave way at the end of the Boat, where it jammed against the Bank.

Cross examined by B. McArthur on the part of the Plaintiff.

1 How many teams were there waiting on the North Bank to be crossed on that occasion.

A I could not say particularly, I did not count them.

but there were some 7 or 8

2 Did you notice a team with three horses, to whom did that belong, who drove it, was that team on the rear boat or not when the accident happened—

A Yes, I saw such standing on the bank, I could not say who owned the team, but I believe there were stores on the wagon, I could not say who drove the team, I did not see anybody on the wagon or with the team, when I saw it standing on the bank. I could not say whether that team was on either boat, at the time of the accident, as I was in the house eating my dinner at the time the horses went off—

3 How far from the boat was this house where you eat your dinner—

A About 7 or 8 rods, ^{I don't think it was 10 Rods} it was right on the bank—

4 When you saw the boats after the accident, was not the 3 horse team on the rear boat,

A I could not say certain, but I think not my recollection is that one of Mr C. M. Prop's teams was on it—

5 Whose team was on the ^{front} ~~rear~~ boat at that time

A I could not tell you, I don't recollect, it was an empty

wagon I believe - I think it was a wood wagon -

6 Was not the descent from the bank, to the boat somewhat
^{was it not difficult}
 difficult - to get a team on the Boat,

Q No I think not, there was a little hill to go down, but I
 don't think it was difficult, I landed the Perry some 3 years off
 & on & never saw but one man die off - and he was drunk,

7 How long after the accident happened, before you got to the
 boat,

Q The Horses were entirely drowned, but the boat had not left
 the bank yet - and had not made a trip across the
 River -

8 Did you see any effort by the Perryman or any other person
 connected, with the boat, to save the Horses and if so what,

Q I did not, they were all still and standing on the boat
 when I got there, standing just still, and the Horses
 were drowned -

9 Was there any skiff or light Boat near the Perry Boat or bank
 which could or might have been used on that occasion,

Q I believe there was one on the South side of the River but
 none on the North side or near the Boat

10 How wide is the River at the Ferry—

A Two Hundred and Forty Feet, wide in low water, marks,
I have measured it several times, by the rope, and also
on the ice when it was frozen up—

11 Were there any bars or chains, across the bow of the Boat
to prevent teams from going off—

A No I believe not—

Curtis Collier ^{his}
mark—

Isaac A. Petch sworn—

Examined in chief by E. P. Seeley for deft—

1 What is your name, age, occupation and place of
residence—

A My name is Isaac A. Petch, I am 28 years old
my occupation is farming, and I reside at present
in Morris Brandy Co, Ills,

2 Are you acquainted with the parties to this suit—

A I am acquainted with the defendants, but am not personally
acquainted with either of the plaintiffs—

3 Were You present at the Ferry across the Illinois River at Morris, when some horses said to belong to some men by the name of McAllister, were drowned, and if so when was it, —

A Yes I was there when they were drowned, I stood on the bank of the River. It was two years ago this last fall if I recollect right,

4 Who had Charge of the Ferry at that time,

A A man by the name of Sleyter I think.

5 What direction if any was given by Sleyter, to the driver who was driving the team which was drowned immediately previous to his driving on the boat.

A If I recollect right he Sleyter, told him to hold on and let the light team come on ahead.

6 What answer did the driver make to Sleyters direction.

A I dont recollect now what the answer was, there was some thing said by the man who drove the stove wagon, but I dont recollect what it was,

Adjourned then to 1 P.M.

Continued again at 1 P.M. present E. P. Seeley Attorney

for defense and B. M. Atkinson Attorney for the plaintiff
Direct examination of E. N. Keith
resumed—

7 How far were you from the boat at the time Sleyter gave the direction to the driver—

A I was somewhere from 20 to 30 feet from the boat.

8 How far was the driver of the McAlister team from the boat—

A I should think that he was some two or three rods from the boat—

9 State whether the driver obeyed the directions given by Sleyter, and what the driver did immediately after the directions

A I did not calculate he obeyed the orders of Sleyter he drove right on

10 State whether the driver stopped his team on the boat,

A I did not see them stop. I was looking at them all the time—

11 State whether you saw the team and wagon when they went

into the River, and who if anybody had hold of the lines—

A I saw them go into the River, I did not see anybody have hold of the lines—

12 State whether you were in a position, that you could have seen, if anybody had hold of the lines—

Objected to by plff's Atty—

A I was not in a position that I could see fair into the boat, because there was a cover to it, and that was raised up—

13 Where was the driver, when the horses went off of the boat into the River—

A Tho. Am that drove the team from the bank, on to the boat, stood on the boat, when the team went into the River—

14 On what part of the Boat, were the wagon and horses when the driver got off of the wagon—

A They were just the Centre of the Boat, some when he jumped off—

15 Where did the driver leave the lines when he jumped

off the wagon

A He left them in the wagon.

16 State whether the lines were so left by the driver, that they could have been reached by a person standing in the boat.

Objected to by plffs Atty.

A I should think not. I should not wanted to have reached them any way

17 What was the condition of the Road from the Boat landing to the top of the bank.

A It was very good. I called it.

18 What was the condition of the Boat landing for getting on to the boat.

A Well it was passable.

Cross Examined by B. M. Atherton Attorney for plaintiffs.

1 How many teams were there standing on the bank to pass the Ferry, and waiting when the accident happened.

Q There were 3 teams that I recollect of standing on the bank—

Q Whose teams were they—

A One was E. M. Ross', One was a 3 Horse team loaded with stoves, And a Buggy—

Q Had you not a team there—

A Yes—

Q Were you behind or before the 3 Horse Team—

A Behind—

Q Where was E. M. Ross' team,

A I had E. M. Ross' Team

Q What other team was on the Boat besides the one that was lost, when it went out into the River—

A E. M. Ross' team driven by Joseph James

Q What Team was on the other or rear Boat,

A I don't recollect now that there was any—

8 Did not the 3 horse team go upon the Boat, and if so when—

A I think they went on after the other team was drowned. I would not be positive—

9 Was there any difficulty in driving the 3 horse on the Boat—

A I think there was none, I saw none—

10 How many persons were there on the wagon drawn by the three horse team—

A I dont recollect now whether there was one or two, one certain—

11 Did not the wagons as they were going on to the Boat, strike it with a great deal of force—

A No— they went on very easy, I calculated—

12 Did any person make any effort, to recover the horses before they were drowned, if so who, and what was done—

A I did not see any of them, making any effort to save them—

13 What was Sleyter doing while the Horses were drowning—

a He was around there on the Boat, & I don't recollect what he was doing— he had hold of the rope once in a while—

14 For what purpose did he have hold of the Rope—

a I don't know what his intentions were, & I saw him have hold of it—

15 Did he hold it with one or both hands—

a Some time with one, and some of the time he had hold with both hands—

16 When holding the Rope did he stand at the same place or did he hold it at different places—along the side of the Boat, did he appear to be holding the Boat up close to the shore—

a He stood pretty much at the same place while he had hold of the Rope— He stood so that he could hold it to shore if he wished— I did not see as he braced himself much—

17 In what other part of the Boat was he when away

from the Rope -

Q He was the most of the time at the end of the Boat where the Horses went off -

18 How long was he at the end of the boat where the horses went off, and what was he doing there -

A There long enough to walk out and look at them. I did not see him do anything only look at the Horses -

19 Where were you during that time -

A I stood on the shore end of the Boat, next to the shore looking at them -

20 Where was Ross' team that was driven by Jones -

A I think that the Horses, and the fore wheels of the wagon stood on one Boat, and the hind wheels on the other - That is my recollection of it -

21 Do you mean to say, that Ross' Horses and wagon were there in that position during all the time that the Horses of McAlister were drowning -

A Yes, they were pretty much in that position. They might have stepped back or forward -

22 Where was James during this time -

a He had his horses by their heads I believe -

23 Was there not another man working at the Perry besides Sleyter -

a I think there was -

24 What was he doing on or about the Boat, at and during the time of the accident

a He was holding the boat up to the shore, when the horses went off -

25 Did he continue to hold the Boat to the shore, after the horses went off - If not what did he do -

a I think all he did was to hold the Boat,

26 At what time did the driver of the first team leave the wagon, how long before the horses went off -

a He jumped off after the team got past the Centre of the ^{last Boat} ~~ford~~
It want a great while, for they rolled right along -

Isaac N. Pitcher

Pitcher claimed three days attendance
was paid \$3. by Capt Claypool -

Andrew Ober, being then duly sworn deposes and says—

1 What is your name, age, occupation, and place of residence—

A Andrew Ober, age 31, I am a farmer, and live in Grundy County Illinois—

2 Are you acquainted with the parties to this suit—

A I am acquainted with the Claypools but not with the McAlister—

3 State whether you were at the Ferry across the Illinois River at Morris, when some horses said to have belonged to some men by the name of McAlister were drowned, and if so, when was it.

A I was there— it was two years ago this last fall, it was when Mr Sleyter was running the Boat.

4 What directions if any, were given by Mr Sleyter, to the driver about driving on to the Boat, at the time the horses were drowned—

A I think he pulled up to the shore, when the driver started to drive on to the Boat, when Sleyter told him to hold on

I think the driver said it was his turn, and drove right on.

5 On what part of the Boat, if at all did the driver stop his Team.

W I did not see as the team stopped at all until it went into the River.

6 On what part of the Boat, was the team when the driver jumped off the wagon.

A I think little past the middle of the Boat next the middle of the River when he jumped off.

7 Where did the driver leave the lines when he jumped off the wagon.

A He left them hanging over the dash board, with the ends in the wagon. I think there was a cover the seat of the wagon so I could not see.

8 What effort if any did the driver make to get hold of the lines after he jumped off.

A I don't think he made any effort, I think his back was towards the wagon, when the team went off the Boat.

9. What effect has it upon a Boat to put a heavy loaded wagon upon the outer end -

A It tips it up some -

10 State whether the danger of a team running off would be increased by putting a heavy loaded wagon on the outer end -

Objected to by J. H. H. Allen -

A I think it would

11 For what reason would the danger be increased -

Objected by J. H. H. Allen -

A It would tip the boat up and the load would come on the team, and be more liable to run them off -

12 Where were you standing, when the driver, started to drive on to the Boat -

A On the Banks of the river close by the boat, about two rods from the Boat.

13 State whether you have ever been engaged in Ferrying and if so how long -

A I have, I think about ten or eleven months -

14 For the safety of teams crossing how should the loaded and unloaded teams be placed upon the Boat -

a Light teams forward was always my rule -

15 Why would you place a light team forward -

a They are not so apt to run off, and it turns the Boat so as to make it run easier -

16 In what condition was the road from the Boat landing out on to the top of the Banks, at the time of the accident -

a I think it was pretty good at that time -

17 How was the Boat landing, and how was the getting on and off of the Boat -

a It was good at that time I think -

Cross Examined by P. W. Arthur Attorney
for Pliffs -

1 What was you engaged in, at the Ferry at that time -

a I was hauling coal across there -

2 How many teams were there waiting at the north

banks to cross at that time -

Q I don't know exactly how many, there were some 6 or 7 or 8 and I don't know but more -

3. Did you see L. A. Petch there at that time -

A I think I did, I was not acquainted with him, or anybody much around here then -

4 Had you a team there, and where was it at the time of the accident

A I had, it stood on the hill close by waiting to go over -

5 What efforts if any were made by the Perryman, to prevent the beams from going off the Boat, or to save or recover the Wreck -

A Not any that I saw -

6 What was the Perryman doing at the time the team went off -

A He had hold of the Rope holding the Boat ashore -

7 What was his assistant doing

Q I don't recollect whether there was any other man there helping him at that time or not, or whether he was offered
 Andrew Ober-

Ober claimed attendance for one day which was paid by S. W. Claypool \$1.00

Adjourned to 10 A. M. Jan'y 21 1857-

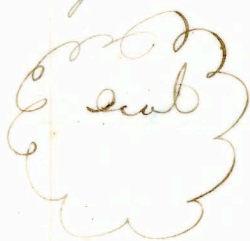
Wednesday January 21 1857. 10 A. M.

Commission and Council herein met pursuant to adjournment, and owing to the extreme inclemency of the weather the other witnesses were not in attendance and the further examination was discontinued.

State of Illinois

Grundy County ss. I, Perry C. Armstrong Clerk of the
 County Court, within and for the County
 and State aforesaid and Commissioner mentioned in the
 notice hereto attached, and made a part of these depositions
 do hereby certify that in conformity with said notice, I
 did proceed to take the depositions of the witnesses whose
 names appear in the foregoing depositions, at my Office
 in Morris, at the times specified therein. And that the
 several Interrogations and Cross interrogations herein
 contained were propounded to the witnesses after said
 witnesses had been ^{first} duly sworn and that said Interrogations
 and Cross interrogations were committed to writing as
 set forth herein by me, and then read to the several

Witnesses, and their answers made thereto, as set forth
in said depositions, and by me then written down and
read to the several witnesses, and that after the several
witnesses had been fully examined they severally signed
their respective names to said depositions and were
again severally sworn to the accuracy thereof by me in



In witness whereof I hereunto set my name
and the seal of my office at Morris in said
County and State, this 22nd day of January
AD 1857

Perry W. Armstrong County Clerk
& Commissioner in

Archibald McAlister &

Jesse McAlister

vs

Circuit Court of Mill County
& State of Illinois

Jacob Claypool &

Samuel W. Claypool

It the above named plaintiffs or their Attorney take notice that on the 23^d day of December A.D. 1856 between the hours of nine o'clock A.M. and four o'clock P.M. and continuing from day to day if necessary, we shall proceed to take the depositions of W. M. Syster, William Clapp, Smith B. Clapp, Joseph James, Thomas Moran jun. and — Pitch, before Perry A. Armstrong, County Clerk of Grundy County at his Office in Morris, to be read in evidence on the trial of the above entitled cause when and where you may attend and cross examine if you see fit.

Morris Dec 10th 1856

Seeley & Baughner

Attys for Defs.

State of Illinois

Grundy County ss Oscar Baughner being duly sworn on oath says that he served the above notice on F. M. Atherton the attorney for said plaintiffs on the 10th day of December A.D. 1856. by reading to and leaving with him a true copy thereof.

Subscribed and sworn to

Oscar Baughner

before me this 23^d day of
December A.D. 1856

P. A. Armstrong Clk Co Court Grundy Co Ill.

Archibald McAlister &

Seas McAlister -

vs

Jacob Claypool &

Lawrence W. Claypool -

Circuit Court of Miss

County Illinois -

Deposition of Joseph Jones and others taken before Perry W. Armstrong, clerk of the County Court of Grundy County, and State of Illinois on the 23^d, 24th and 25th days of December A.D. 1886 in conformity with the annexed notice & Commission. Plaintiff Seas McAlister one of the Plaintiffs, and Bray McAlister Attorney for the plaintiffs, and L. W. Claypool one of the defendants and E. P. Seely Attorney for the defendants, - Testimony taken on behalf of the defendants -

Joseph Jones sworn and examined by E. P. Seely Attorney for the defense -

1. What is your name, age residence and occupation,
 - a. My name is Joseph Jones, my age is 22 years, my residence is in the town of Vienna, County of Grundy, and State of Illinois, my occupation is farming -
2. Are you acquainted with the parties to this suit -
 - a. I am acquainted with both the Claypools, and have seen one of the McAlisters - the McAlister plaintiff ^{I believe} is not the

108 the one I have heretofore seen -

3 State whether a Ferry was kept across the Illinois river opposite Morris in the County of Grundy in the year A.D. 1854 -

a There was -

4 State whether you were present at the Ferry in 1854 when an accident to some Horses happened there, and if you were, state who had charge of the Ferry -

a I was there I think Mr Slater had charge of it, Mr Slater was on the Ferry, at the time - I do not know who had charge of it, Mr Slater seemed to have the most to say about it -

5 What was the nature of the accident which happened there -

a A span of Horses were drowned -

b How did these Horses come to be drowned -

a They were driven on to the Boat, and driven to the extreme end of the Boat, and if I were to judge the Horses were dry, and the driver not attending to his business they went in -

109 7 Who was driving the Horses at the time of the accident -

a I did not know him. He was a stranger to me. I saw him drive on to the Boat, and jump off of the wagon

8 State whether the driver who drove the team on to the Boat, drove it to the bank where teams usually stop before driving on to the Boat -

a I do not know whether he drove it there or not -

9 State whether anything was said by Syster to the driver about driving the Horses on the Boat, and if there was what was it -

a He wanted the driver of the stove team to hold on, and let my team on first and the driver of the stove team said he was going on first - The words which Syster used were 'let that light team come on ahead -

10 What if anything was said by Syster to the driver about it being necessary to have a light team on the front of the Boat -

a I dont know as he said anything about it being necessary -

11 What reply did the driver make when Syster told him -

to let the light team come on ahead—

Q He said he was going on ahead himself

12 State whether Syster when he spoke to the driver, spoke so that he could be distinctly heard on the bank—

Q I was behind him and I heard it—

13 With what was the team to which the accident happened loaded—

Q Loaded with stones—

14 Had anybody hold of the lines at the time of the accident

Q No Sir—

15 Where was the driver at the time—

Q He was standing by the side of the Boat, by the side of the railing— On the Boat by the side of the railing—

16 In what condition was the lines at the time—

Q I think, I won't be sure, that he wound the lines around a stake, as he jumped out of the wagon—

17 Whereabouts was the wagon when the driver jumped off

a It was on the Ferry Boat, on the forward end of the Boat
next to the river.

18 How near were the horses to the outer end of the Boat, when
the driver jumped off of the wagon.

a They were within about a foot of the end.

19 State whether the Beam was stopped from the time it went on
to the Boat, until it went off over the end into the water.

a I don't think it had a full stop.

20 Was there any other Beam on the Boat at the time.

a Yes I was right behind him with a Beam.

21 State whether the driver when standing on the Boat could
have reached the lines where they were tied, so as to have
controlled the ~~team~~ Horses.

a No he could not.

Cross Examined by B. M. Atherton atty for the
plaintiffs.

1 Was there only a single Boat, Or were there two Boats fastened endwise together—

A There were two Boats fastened endwise together—

2 On which of the Boats did the accident happen—

A The forward Boat.

3 On which Boat was you with your Team at the time of the accident

A I was on the forward Boat,

4 How many and whose Teams were behind you, and on which Boat were they—

A I could not say positively that there were any Teams clear on the boat behind me—

5 Was there not sufficient room on the forward boat for two or more Teams, or for how many teams was there room

A There was room for two Teams—

6 How many hands were engaged in managing the Boat, and what were they doing at the time of the accident

Q Well there was two, and I dont know whether there were any more or not, they were holding the Boat up to the shore so Beams could get on.

7 How were they holding the Boats.

A Holding them by the Ropes.

8 What time in the Year was this.

A In the fall of the Year - rather late I think.

9 Was it not difficult to drive a loaded Beam upon the boat.

10 I dont know how it was with other folks but I got on very well with my team.

11 Were you not without any load at the time.

A Yes, I had no load at the time, but was hauling loads across there all the while almost.

12 What did you haul.

A Wood - nothing else.

13 Did you haul any wood, the way you were going.

Q No

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14 With what were you loaded then when going that way

A I was light - had no load -

15 Was the River at its usual pitch of water at that time,

A I think it was a little higher than it was in the summer time -

16 Was it so high as to make it difficult to cross it -

A I think not -

17 Is it necessary at such a pitch of water, to have two hands holding the rope, to enable Beams, to get upon the boat -

A I don't know whether it was necessary or not but they were there

18 Were there any bars, chains, or ropes, across the ends of the Boat, to keep Beams from running off -

A No -

19 Were there any chains or ropes at the sides of the Boat or either of them, with which to chain the wheels -

Of Wagons or Carriages passing—

Q Yes, there were chains there—

20 Had the wheels of this Stone wagon as you call it been chained or fastened before the team went off? And if so by whom—

A It had not—

21 Who usually fastened the chain to the wheels of wagons generally in such circumstances—

A Mr Slater the Perryman—

22 Who was on the Boat, assisting Slyter the Perryman—

A I think his brother—

23 Did any person attempt to chain the wheels of the Stone wagon, or any other wheels, that were then on the Boat—

A No—

24 How long had the driver of the Stone wagon stood by the railing as you have stated when the team started off—

A He had just got there, just got fairly standing

by the sailing -

25 Had the Boat Started across before the team started.

A No -

26 Was there not a load of Stones with a Team of three horses, with two men on the wagon directly behind you upon the Boat, before the team you speak of started off -

A I did not notice any such Team at that time -

27 Was there not a Calash top at the drivers seat on the Stone wagon you speak of. And could you see the driver from where you were before he jumped from the wagon -

A There was a Calash top at the drivers seat, I did not see him until he commenced winding his lines around a stake ^{or stick} he had there -

28 What Stake do you speak of where was it -

A It was in the forward end of the wagon, on the right side to fasten reins to, it was inside of the box, I do not know what it was fastened to -

29 Was there any light Boat or Skiff Connected in any way with the Perry Boat, Or within reach of the Perry man -

W. M.

30 Was not the Boat on which the Store Wagon was an old leaky boat.

W. I do not know it always carried me safe.

31 How long a period had you been in the habit of crossing the river in that Boat.

W. Two years on that one and the other one.

32 Was neither of the Boats leaky.

W. I could not tell.

33 Were they run in old Boats. How old was that on which the Store Wagon went.

W. I do not know how old the Boat was on which the Store Wagon went, the other one was a new Boat I believe.

34 How old was the other one.

W. I cannot tell.

35 Have you not heard the Ferryman say that the Boat leaked and had water in it at the time of the accident.

36 For whom were you hauling at that time -

W Ed Rosen

37 With whom do you now live -

W A Board with John Palk

38 Have you not often conversed with the defendants or either of them respecting the loss of Chase horses -

W Now

39 Do you not expect to leave the County soon and if so when.

W Now

40 How long have you resided in Grundy County -

W A little over four years -

41 During that time have you not been well acquainted with the Perry at Morris and crossed the same frequently

W Yes -

42 Have not both the Boats that you have spoken of been in use at that Ferry, all the time until the Bridge was built -

a The new Boat had not been there all the time, but the other one from which the accident happened had all the time since I have been here. The latter point objected to by E. P. Seelyy Atty for defense on the ground that it was dictated to the witness by plaintiffs Counsel, The words objected to, are the words interlined in above answer -

43 Do you not know that the Old Boat from which the Horses fell was partially filled with water at the time -

Objected to by E. P. Seelyy Counsel for Defendant -

a I dont think there was any water in it -

44 Was there any particular difficulty in drawing a loaded wagon upon the Boat, at that landing and if so what,

a I always got over safe with my team, I dont know how it was with others -

Resumed in Chief by E. P. Seelyy Counsel for defense -

120 Q2 Now have been asked by the plaintiffs Counsel, how long the driver had stood by the railing of the Boat, before the Steam started, and went off into the river. Did the Steam come to a full stop at all upon the boat, so that it had to start again when it went into the river.

Objected to by B. W. Atherton Counsel for plaintiffs.

A Now the Steam did not come to a full stop I think.

Joseph ^{his} & James
marks

Adjourned to 9 Am. Tomorrow

December 24th 9 A.M. Same parties present as yesterday.

Allen W. Syster being next duly sworn upon his Oath direct questions by the plaintiffs Counsel B. W. Atherton.

1 Mr Syster are you not interested in this cause.

A I am not to my knowledge.

2 Were you not the manager of the Boat, or Ferryman at the time McAlister's team was lost from it.

A I suppose I was.

3 Was you managing it on hire or had you rented it,

a I think neither of those cases would apply to me according to my understanding -

4 How then came you to be managing the Perry if you had not rented it, or been employed by the owner to manage it -

a It had been rented to William Clapp and put by him into the hands of Smith Clapp and Anderson if I am not mistaken and I gave them a stipulated price for what I could make out of it to the expiration of their time -

5 By whom was it rented to William Clapp -

a I am not well enough acquainted in Morris to know their names, the writings I suppose would tell -

6 How long had you lived in Grundy County before you took the Perry from Smith Clapp & Anderson & how near to the Perry did you live -

a Something over a year I think - It is difficult to answer the latter part of the question as I had moved several times during that time - Come to think the thing over I had not been in the County, quite a year - I first moved on to

Mazon Island and went from there to the Ausable timber on Chapins land, and from there into George Collins house, from there into Joshua Collins house & from there to the Perry House.

7 If the McAlisters should recover in this suit, would you not be liable to the defendants to pay them what might be so recovered.

a I think not I am not a lawyer and dont know what the consequences would be.

8 Have you not said at any time that if a fuss was made with the Claypoles about this matter it would injure you, and if so, what injury did you apprehend.

a I have no knowledge of intimating any such thing at all.

9 Did you not say to John McCreary if McAlisters made a fuss with the Claypoles about this matter, that they the Claypoles or one of them, would take the boat away from you or to that effect.

a I should think not, I have no recollections of that kind. nor do I think they had the power.

10 Did not the Claypoles defendants own the Perry.

Q I should think not, they did not own the 7 Boats according to my understanding—

11 What interest had they in the Boats or Perry, did not they at times often or otherwise either or both of them give you instructions or directions about the Perry or its management—

A My understanding is that they owned one Boat, with regard to the latter question, I think that they from time to time gave me their advice about the safety of the Perry, but no more so than other persons of experience who were continually crossing there—

When the Voir dire examination ceased and the said A. W. Syster was sworn and examined in Chief by C. P. Seeley Counsel for the defense—

1 What is your name age occupation and place of residence—

A Allen W. Syster my age is thirty nine years—my occupation I cannot tell, I have a piece of land and intend farming it, My residence is Greenfield Brandy County Illinois—

2 Who had the direction of the Perry across the Illinois river at Morris during the fall of 1854—

124 Q I joined myself to the first of December, if that was the year I was there. I have no dates to refer to -

3 Who controlled the Boats as the owner for the time being for the purpose of Ferrying -

A My understanding is that one Boat was owned by the Claypoole, and the other by the Morris Free Ferry Company -

4 Who had the Custody of the Boats and the Control of the Ferrying And who received the pay for the Ferryage and for whose use was it -

The Specs Atty here objects to the answer to the 3 Interrogatory, and states that he intended to have done so at the time but forgot to do it at the time -

A I suppose that I controlled the Boat myself at that time and received the money for the Ferryage or my hands did for me and for my own use -

5 How did you come in possession of the Ferry -

A It had been rented to William Clapp and past by him into the hands of Smith Clapp and Anderson if I am not mistaken, and I gave them a stipulated price for what I could make out of it to the expiration

6 What was the agreement, between yourself Smith Clapp and Anderson in reference to the Perry.

Objected to by Jffs Counsel.

A The agreement was that I was to pay them a stipulated price for the use of the Perry during the balance of their terms, and they were to deliver the Perry to me clear and free from all encumbrances and in good running order.

7 At what time did you take possession of the Perry under the agreement between yourself Clapp and Anderson and how long did you continue to run it under the agreement.

A I could not tell what month I took the Perry but to the best of my judgement, it was in August and continued to run it until about the first of December then after.

8 State whether you run or was engaged on that Perry more than one season.

A I think the whole time would not exceed four months the best my knowledge is that I had the Perry about four months, I never had anything to do with the Perry.

except at the time as above stated -

9 State whether during the time that you were running that Perry any accident happened ^{there} to the property of the plaintiffs and if there was state what the accident was and how it happened -

a Of my own personal knowledge I could not state whose property it was but there was an accident happened there and I understood from the driver that it was Mr McAlister's Team and I was also told by Mr McAlister that it was his team, shortly thereafter, the accident was that a pair of Horses and a Wagon loaded with Stoves & Stove Furniture went off of the Boat into the River and the Horses were drowned. I think ^{that} there were two Teams loaded with Stoves, came to the river bank. I requested the driver to let a light Team go on the bow of the Boat, He claimed that his turn was ahead and drove on, when he drove on to the Boat, if my recollection serves me he spoke to his Horses, to stop and got off of the Wagon, my impression is that the Horses did not more than come to a stop. I think they did not entirely stop and walked into the river, without any hands hold of the lines -

10 State whether the lines were left in such a way that the driver could have reached them when standing on the Boat -

Q I think the lines were left upon the seat according to the best of my recollection - I apprehend he could have reached the lines if he had ^{have} tried -

11 How high was the seat from the Box of the Wagon

A I don't think I could tell, I think it was a common drivers raised seat -

12 How many long Boats had you at the Ferry for crossing Steamers

A Two -

13 From which of the Boats did the Steamer go immediately off of when they went into the river -

A My impression is that it was the Claypool Boat it was the smaller boat and not so long as the other -

14 In what state of repair was the Claypool Boat, at the time of the accident -

A We called it in good repair -

15 State whether there was any water in it at the time

A I have no recollection on that matter -

128 16 State whether the Boat had just been newly repaired
and launched -

Objected to by plffs counsel -

a It had -

17 State whether any repairs had been made upon the
Claypool Boat, and if there had, what was the nature
of those repairs and how long had they been made before
the accident -

a There were, the bottom had been caulked and pitched
I think it was not many days previous to the accident I
could not state how many days -

18 State whether the repairs upon the Boat, had been well
done -

Objected to by Counsel for plffs -

a Well I was satisfied with the job myself -

19 State in what condition the boat appeared to be after the
repairs and at the time of the accident as to its leaking

a It did not leak so much after its repairs as it did
before both Boats always leaked more or less, It did

not leak so much after it was fired, but what it floated handsomely.

20 What was the reason of your directing the driver to let a light team come ahead.

A One reason was that the Boat floated best, with a loaded Team behind. The other reason was there was a horse in the team to the best of my recollection had crossed before the same day, and I thought he was too wild to stand on the bow.

21 State whether teams could be easily stoped on the Boat when a heavily loaded Team went ahead.

Objected to by Juffs Counsel.

A I think not. I suppose the reason is that when the bow is heavy loaded it sinks and throws up the stern.

22 What arrangements if any were on the Claypool Boat to secure the safety of Teams when crossing.

A There were two chains on it to Chain Wagon.

23 What was the reason the McClellan Wagon was not chained on the Boat.

Q Because it went off while we were holding the Boat ashore before we had time to chain it—

24 What was the condition of the Banks of the River, and the Boat landing at the time of the accident—

A I should think according to my recollection that they were ordinarily good—

25 State whether more than one accident happened to McAlister's teams while you had charge of the Perry—

A I think not—

Cross Examined by W. M. Atherton Attorney for the Plaintiff,

1 How many hands had you besides yourself to manage the Boat at that time—

A I generally kept but one besides myself, I think I had but one hand to help me at that time—

2 Were there any chains or bars at the bow of the Boat to prevent teams from going off—

A Not any—

3 Were there any light Boats, or Skiffs, attached to the Perry Boat, or either of them—

A Not at that time—

4 Were there any Skiffs or light Boats that were manageable at or near the Ferry landing, upon that side of the River—

a There was none there, I think the only light boat that we had was at the opposite shore at that time—

5 Was there an unusual number of passengers wishing to cross over at that time—

a My memory does not serve me in regard to that matter whether there was or was not—

6 Who assisted you in the boat at that time and how and in what manner were you both engaged at the time of the accident

a Thomas Moran was assisting me. We were holding the boats ashore, having hold of the ropes—

7 On which boat were you standing, and on which boat was Thomas Moran standing whether on the Claypool Boat or the one nearest the Shore—

a I think Thomas was on the boat next to the Shore and that I was on the Claypool Boat— to the best of my recollection

8 Did it require the exertion of much strength to keep the boats to the landing—

Q It did when they stood high on the water—

Q Did the Boats then stand high on the water—

A That is my impression

10 Under what Circumstances did the Boat stand high upon the water—

A When they had least water in them—

11 How far were you standing from the team at the time it went off from the boat—

A So near that I caught the rear hind wheel of the wagon and held it until it went off of the boat—

12 How were you standing when the team started, whether your face towards them, or towards the Banks of the River—

A I was standing on my feet, holding the rope in my hands, and looking at the Horses—

13 How far was the Driver from the Horses at the time they started, and where was he standing—

A He was not standing but was sitting on his seat when the Team started from the bank—

14 Where was the driver standing when you perceived that there was danger of the teams going off the boat -

a On the Boat not far from the horses -

15 How near to the wagon was he then standing -

a I could not tell exactly, but I should think quite near to -

16 Was he nearest to the wagon or the Boat railing -

a Probably nearest to the railing for they generally stood against the railing to keep out of the way of the wagon

17 How near was he to the horses -

a Well I should think he could not have been more than six feet certain - probably not so far -

18 How many teams were on the boat, when the accident occurred -

a I think but the one

19 How many teams were there on the other Boat -

a I could not tell for my life whether any had driven

20 Had not the last team with the same driver often crossed the River while you were ferrying there -

A The driver informed me on crossing from the other side that the Grey Horse had recently been got - The same driver with a team I think had crossed frequently excepting the grey Horse -

21 Did not the driver pay you for his return ferryage when he crossed over in the morning -

A I could not tell certainly but I apprehend I received my ferryage - It was customary when a team recrossed the same day to pay for both ways at the one time -

22 Did you notice a calash top over the drivers seat in that wagon, and was it spread open -

A There was a cover to the seat, whether it was up when he drove on or not I could not tell - I know it was up after the wagon went into the river -

23 What exertions did you or your assistants make to recover the wagon or to save the Horses if any -

A We made no exertions - we had nothing to make exertions

with more than I held to the wagon wheel as before stated -

24 Did you give any directions about anything to the driver after the wagon came upon the boat -

A I don't know that I did -

25 Did you make any attempt to chain either wheel of that wagon or did any other person attempt to do so -

A We never chained a wagon until it had stop'd - We did not attempt to chain it -

26 Had there been a bar across the bow of that boat, would it not probably have saved the team from going off -

A It would depend upon the nature of the bar, - if there had had been a sufficient bar of course it would -

27 Had there been a Skiff or light Boat, at your command could not that team probably been saved from drowning -

A I think not from the fact, that one of the horses had his back or neck broken, as reported by the man ^{Dr. L.} who was with them at the time -

28 How deep was the water where the team went in -

136 a About ten feet -

29 Did not the water grow shallower towards the middle of the river, and towards the bank from the place where the horses fell in -

a The water was not so deep in the middle of the river as it was where the horses fell in and it was also shallower near the shore -

30 Did not the horses rise out of the water - or spring out of the water, after they fell off of the boat, as many as three times, or more often -

a As near as my memory serves me one of them succeeded in getting his nose to the surface twice - the other I think did not at all -

31 Did not the wagon fall right side up when it went off the boat, into the river, and remain so -

a It did -

32 Did you or any person in your employment make any effort to get the wagon out of the river, and if so, what & when -

a No effort - I went to the Directors of the Bee Ferry

About it, and they told me it was none of my business -

33. Did you not for some time, and how long after the accident run your Ferry Boats, upon and over the wagon in the river and against, or upon the Calash top over the drivers seat, and did not your Boats crush it down

as as often as the wind blew us over the wagon we run over it and presume the boat, smashed the top more or less - until the wagon was taken out, which I think was the next day - I am willing to say that the Boat injured & smashed it more or less -

The Corp Ex here rests -

Resumed in Chief

26 What efforts if any did the driver make after he jumped off of the wagon, to prevent the horses from going off the boat into the river -

as I dont think he made any -

A. W. Slyter -

A. W. Slyters witness fee paid by L. W. Claypool \$2 -

adjourned to 9 A. M. Thursday Dec 25

Tuesday Dec 25th 1856 9 A.M.

Present the plaintiffs by P. M. Atherton their Attorney and
S. W. Claypool one of the defendants and E. P. Suley their
Attorney -

William Clapp being duly sworn P. M. Atherton atty for
plffs objects to this witness testimony on the ground of
interest -

1 What is your name age occupation and place of
residence

a William Clapp - my age is 44 years, occupation farming
my residence Township of Vienna Grundy County Illinois -

2 Are you acquainted with the parties to this suit -

a I am acquainted with the Claypools and have had an
introduction to one of the McAlisters, and think I have seen
the other one -

3 State whether there was a Perry kept across the Illinois
river at Morris in the County of Grundy during the
summer and fall of A.D. 1854, and if there was, state if
there was more than one Perry kept there -

a There was a Perry kept there - there was one boat -

owned by what was called the Pea Ferry Company and also one owned by the Mrs Claypools the defendants -

4 What were the means ~~of~~^{for} working or propelling the Ferry boats across the river -

a They were pulled over by means of a rope stretched across the river - the boat being attached to the rope by what is called Boat Heads or Pullies, and we sometimes used oars and poles to ferry when the ice was running so as to prevent the rope from being stretched across the river and also in case of high water -

5 How many ropes were there stretched across the river for the use of the Ferry in the fall of 1854 -

a Only one -

6 Who kept the Ferry in the fall of 1854, and who had the charge and the right to control it -

Objected to by plffs Counsel

a Mr Syster - Allen W. I think is his given name, kept the Ferry at that time and had the right to control it -

Objected to by plffs Counsel -

7 How did Mr Syster come in possession of the Perry and by what authority had he the right to control it -

Objected to by plff

A I took the Company Perry and hired the Claypool boat, and took my brother Smith B. Clapp in partnership with me afterwards, which I think was in June 1853 - being sick myself during that fall and winter, but still controlled my interest in the Perry until the Spring following when I sold out, my interest in the Perry to Edmund Anderson and he and Smith Clapp sold out to the Messrs Systers A. W. Syster being the principal I suppose

Objected to by plff -

8 How long had your terms for which you had rented the boats, yet to run when you sold out to Mr Anderson -

Objected to by plff

A I took it in the fall of 1853. I think in Nov and had run it about Eighteen Months, I run it one summer and two winters and sold out in the second Spring - I sold out in the Spring of 1854. Well there was about a year and a half more to run on the

Company Boat. I hired Claypoole's boat for a year at a time. I don't recollect what time I hired the Claypoole boat, I think it was in the Spring. I have a paper somewhere that will give the date, Well if I am correct in my ideas we had just hired the Claypoole boat on the second year when I sold out.

Objected to by plf

9 What Compensation if any were you to give the Claypoole's for the use of their boat.

Objected to by plff

W Few dollars per month.

10 State whether in running that Ferry the boats were kept separate, and whether any distinction was made between the boats in ferrying over Rains.

Objected to by plf

W They were not kept separate, there was a staple on one & a ring on the other, to toggle them together and both strung on the rope alike with ropes and pulleys or Boat Heads, I made no distinction as to teams having the right to pass on either boat.

Objected to by plf

1411 11. What kind of a boat was the Claypool Boat, as for
size strength and adaptation as a Ferry Boat—

Objected to by self—

A I think the width of the boat was about nine or ten feet
and the length about 45 feet, and was a good strong
boat, I would call it, well braced, Well it was rigged
as other boats, as to its adaptation to Ferrying as I have
ever seen—

objected to by self—

12 What was the Character of the workmanship of the Boat
as to its leaking or otherwise—

Objected to by self—

A When I left the boat it was a good tight boat and
leaked but a trifle—

Objected to by self—

13 Of what material was the Boat made—

A The gunnels were Burr Oak, and the top and bottom
were pine plank—

142 14 What was the quality of the planks on the bottom of the Boat—

a They were good sound clear ~~stiff~~ planks on the bottom or nearly clear—

15 In what condition was the landings kept in the fall of 1854, and the roads out and on to the top of the Banks—

Objected to by self

a They were at times just after a heavy rain gullied a little, but were generally kept in pretty good repair—

Objected to by self

16 State whether Beams had any inconvenience in getting up and down to and from the Boat—

Objected to by self

a At times as I have before stated just after a rain it was difficult, but in a general stage of water there was no difficulty—

Objected to by self

17 What experience have you had in the conducting of

Q I have had a year and a half school there which is all -

18 State whether it was customary while you conducted the Perry, to have bands or chains across the end of the Boat -

Objected to by self

Q I never had any -

19 How were the Boats secured to the shore when Teams were being driven on

Objected to by self

Q In winter we generally drove a stake into the bank and had a chain to fasten to it connected to the boat and in summer we generally held the boat, to the shore by the ropes -

20 Who generally drives teams on and off the boat

Objected to by self

Q The Teamsters generally drove their own Teams -

144 21 Who generally at that Perry attended to the team
when it was on the trail -

Objected to by self

a The man that was nearest the wagon as a general
thing fastened the chain to the wheel of the wagon as a
general thing myself or man in my employment chained
the wagon after the wagon had stopt -

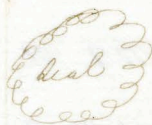
Wm Clapper

State of Illinois

Brandy County sp - I Perry A Armstrong County Clerk
within and for the County and State aforesaid do hereby
certify that the foregoing depositions were taken by me at
the time and place mentioned in the caption thereof that
the said witnesses were first duly sworn and the several
interrogations stated by the Counsel and committed to writing
by me and then read to the witnesses by me and their several
answers thereto written down by me and read to them and
that previous to their signing said depositions they were duly
read to the said witnesses respectively and they were again
duly sworn by me to the truth of the several statements and
depositions by them made.

In witness whereof I hereunto set my hand
and official seal at Morris this 20th day
of December A.D. 1856 -

Perry A Armstrong Co Clerk -



Archibald McAlister &

Jesse McAlister -

Circuit Court of Will County
 Jacob Claypool & + State of Illinois -
 Lawrence W. Claypool

To the above named Plaintiffs or
 their Attorney - Take notice that on the 26th day of
 February A.D. 1857 - between the hours of 9 o'clock A.M.
 and 4 o'clock P.M. and continuing from day to day
 if necessary we shall proceed to take the depositions of
 Smith B. Clapp, Edmund Anderson, Thomas Moran, Sr.
 Aaron Smith and David M. Newport, before Perry A.
 Armstrong County Clerk of Grundy County & State of Illinois
 at his Office in said County - to be read in evidence on the
 trial of the above entitled cause, when and where you
 can attend and cross examine if you see fit -
 Morris Peby 16th 1857 - Sulley & Baughner
 Attys for Defts -

State of Illinois

Grundy County ss - Oscar Baughner being duly sworn
 on oath saith that he served the above notice on B.M.
 Atherton Esqr Attorney for the said Plaintiffs by handing
 to and leaving with him a copy thereof on the 16th day
 of February A.D. 1857 -

Subscribed & Sworn to before

Oscar Baughner -

on this 26th day of February

A.D. 1857.

P. A. Armstrong Clks -

Archibald McAlister &
 Jesse McAlister

Jacob Claypool &
 Lawrence W. Claypool,

Circuit Court of Mill County
 & State of Illinois.

State of Illinois
 Grundy County ss.

Depositions of Edmund Anderson
 Et al. taken before Perry W. Armstrong Clerk of the County
 Court of said County of Grundy and State aforesaid
 at the Office of the said Clerk of Morris commencing
 on the 26th day of February A.D. 1874 in conformity with
 the annexed notice to be used on the trial of said cause
 on behalf of the defense.

Present L. W. Claypool one of the
 defendants. and his attorney Ezra P. Suley Esq.

Edmund Anderson being first duly sworn in oath
 deposes and saith to the following interrogations as follows
 to wit.

1. What is your name, age, and residence, and what is your
 occupation.

a. My name is Edmund Anderson I am 27 years I reside
 in the town of Morris and my occupation is Blacksmithing.

Q Are you acquainted with the Parties to this suit -

A I am acquainted with the Claypoole but not with the others -

Q State whether you ever had any Lease of the Perry across the Illinois River at Morris and if so when was it and from whom did you obtain it -

A I had in conjunction with Mr Smith Clapp a Lease of what was termed the Company Boat, and we afterwards hired the Claypool Boat, It was two years ago last May when we leased said Boats -

Q How long did you run the Perry -

A I think we run until some time in September following -

Q What disposition if any did you make of the Perry -

A We sold out to Mr Syster, who afterwards run the Perry -

Q At what time did you sell out to Mr Syster -

A I could not tell the day but it was some time in September A.D. 1854 -

148 7 How long did Syster continue to run the Ferry -

a I could not say as to that -

8 On what terms did you lease the Ferry Boat from the Claypools

a At ten dollars per month -

9 During the time that you occupied the Ferry under your lease who had the right to control it -

a We had, we controlled it any way. There was no reservation by the Claypools or the Company to control the Ferry -

10 For whose use was the money which was received for Ferryage received whilst you were running the Ferry -

a For our use -

At this place the plaintiffs appear by their Attorney B. M. Atherton and objects to the questions and answers of this witness entire

E. Anderson -

No Cross Ex -

Anderson claimed his witness fee \$1 - which was paid by the defendant -

Aaron Smith being duly sworn deposes as follows -

1 What is your name age residence and occupation -

a My name is Aaron Smith, my age is 67 years, I reside in Morris, my occupation is Laborer -

2 Are you acquainted with the parties to this suit

a I am acquainted with the Claypools and have seen the McAlisters but am not acquainted with them -

3 State whether you were at the Ferry across the Illinois river at Morris when some horses were drowned and if so when was it -

a I was on the bank of the river when the horses were drowned, it was a year ago last fall, I think in August or September - I was at work for Mr. Syster -

4 To whom did the horses belong -

a I could not answer you any more than what I heard from the young man who drove the team and he said they belonged to McAlister -

5 Whereabouts were you standing when the accident occurred

a I stood by the post to which the Rope was fastened
on this side of the river - perhaps from 5 to 8 paces
from the water -

b Who had charge of the Ferry at that time -

a Mr Syster had -

y What if any thing was said by Mr Syster to the driver
of the team which was drowned, previous to his driving
on to the Boat -

a He told him to hold on and let a light team go on
ahead -

8 What reply did the driver make to Syster -

a He said it was his turn, and he would have it, and
drove on to the Boat -

9 What if anything was said by Syster to the driver after
he got on to the boat -

a The first that I heard I don't know if I can tell
all - was for him to hold on -

10 What did the driver do when he was on the Boat
after the directions of this Syster, -

Q He got off the wagon and left the lines on the seat it was a kind of a Stage seat, and started towards the Horned Meads but I didn't see that the Horned stopped walking entirely & when the boat began to pitch they walked right off into the water.

11 State whether you have ever been engaged as a Ferryman and if so for how long.

A I have worked on that Ferry, I think some 20 days.

12 In regulating teams upon the Ferry Boat, on what part do you put the loaded teams - and on what part the light ones -

Objected to by plffs Attyr

A Generally put light teams ahead and the loaded teams next - going either way.

13 What is the reason that you put the light teams ahead on the Boat -

Objected to by plffs Attyr

A So the boat would not settle so deep in front and make the Boat run hard, and because there would be less danger of a teams running off.

14 In what state of repair was the Claypool Boat at the time of the accident—

a Well I thought it was in good repair. It did not leak at that time—

15 What means had you of knowing that the boat was in good repair at that time—

a I worked then on the boat—

16 State whether any repairs had been made on the Boat about that time and if so what repairs—

a Previous to the accident there, the boat was taken out and caulked, I caulked it, and the deck was partly renewed with new planks—

17 Who if any body assisted you to caulk the Boat—

a William Clapp and Curtis Collier—

Cross Examined by B. M. Atherton Counsel on pt
Plaintiffs—

1 How near the Boat was the driver of the McAlister Team when the boatman called to him to let the light wagon go on first—

Q He was right on top of the bank. I should think
 three rods perhaps over. I don't know the exact distance.

Q Where was the light dragon at that time.

A It was on the right of his team and about the same
 distance off.

Q Had not McAlister's team started to go down the hill
 before the boatman called to him.

A I could not say whether he had started or not, but
 I think he had.

Q If he had started down the hill would it not have been
 difficult for him to stop on account of his heavy load.

A If he had started far enough it would have been difficult,
 but he had not gone far enough when he was spoken to.

Q How far had he gone.

A I could not tell the number of feet, he had just started,

Q How far would it have been necessary for him to have gone
 before it would have been found difficult to stop.

A I don't know as I can tell you. I should think

that if he went 8 or 10 feet with the load he had on it would have been difficult to stop -

7 Were there any bands or chains across the end of the boat to prevent same from going off -

A There were not -

Re Examined in Chief by C. P. Seeley

18 Do you know of any other matter or thing in reference to the matters to which you have been already interrogated if you do state fully -

Objected to by plfs Atty -

A I was mistaken as to the time when the accident occurred I stated that I thought it occurred a year ago last Sept or August - I should have said 300 years ago -

Recross Examined -

8 Who told you that it was 300 years ago, or how did you discover the supposed mistake -

A Mr Seeley said that I stated one year, I informed him if I had that it was a mistake, that it should have been 300 years, It was my own mistake & no

person spoke to me about it, until I asked Mr. Luley the question.

Aaron Smith -

Aaron Smith claimed his attendance \$1 - and was paid by Defendants Claypoole -

Smith B. Clapp being next duly sworn deposes and says as follows -

1 What is your name age occupation and place of residence -

A My name is Smith B. Clapp, my age is thirty three years residence Grundy County, and my occupation is that of Farming -

2 Are you acquainted with the parties to this suit -

A I am not much acquainted with the plaintiffs, but know the defendants -

3 Who had possession of the Ferry across the Illinois River at Morris in the summer and fall of 1854 -

Objected to by J. J. J.

A My brother and myself had it up to the first of

September when we sold out our lease to Mr Styler—

4 Who had charge of the Claypool boat after the first of September—

Objected to by self

a Mr Styler—

5 From whom did Mr Styler obtain the possession of the Claypool Boat—

Objected to by self

a He obtained it from myself and Mr Anderson just previous to selling our lease to Mr Styler— Mr Anderson bought out my brothers interest being one half the lease—

b How did you come in possession of the Claypool Boat—

a My brother made the bargain with Mr Claypool for himself and me to have the boat—

Objected to—

7 What were you to give the Claypools for the use of their Boat—

Objected to on part self—

Q I think it was \$9 or \$10 per month -

Objected to by p/f

8. How was Lyter to take the Claypool boat from you -

Objected to by p/f

Q He was to take it the same as we did - to pay the same per month that we did -

Cross Examined by P. M. Atherton Counsel for p/f's -

1. How was the Contract between you & Claypool's verbal or in writing

Q I could not state, I believe Mr Claypool gave my brother a paper with writing on, but I don't know what it was as I did not read it -

S. B. Clapp -

Which S. B. Clapp claimed 2 days attendance, having been here a former day & 8 miles for mileage \$2.00 which was paid by the depts Claypool -

Commission then adjourned to 9 A.M. tomorrow -

Attest P. W. Armstrong C. clk -

Friday Feb'y 27, 1857

Commission opened pursuant to adjournment.

Present P. W. Armstrong Commt P. M.
Atherton Attorney for plffs + E. P. Seely Attorney for
defendants.

Thomas Moran^{Jr} being then duly sworn deposes as follows -

1 What is your name age residence and occupation.

A Thomas Moran - 22 years old, reside in Grundy Co. Ills
+ am a farmer.

2 Are you acquainted with the parties to this suit

A I am.

3 State whether you ever worked on the Ferry across the
Illinois River at Morris - and if so when.

A I did but I cant tell how many years ago it was.

4 How long did you work upon the Ferry.

A Between two and three months.

5 State whether any Bonds were consumed there during

159 the time you were engaged on the Perry, and to whom did they belong -

a There was - I suppose they belonged to Messrs McAllister - There were two horses -

b So what if to anything were the horses attached and with what if with anything were they loaded -

a The Horses were attached to a wagon - and the wagon was loaded with stores -

7 How long had you been at work on the Perry at that time -

a Between two + three months -

8 In whose employ were you -

a Mr Syster -

9 Who had Charge of the Perry at the time the Horses were drowned -

a Mr Syster -

10 How long had Mr Syster had Charge of the Perry at that time -

Q I am not positive - I think from 4 to 5 months -

11 Who was engaged on the Perry at the time the horses were drowned beside yourself -

Q Mr Syster -

12 In what condition was the road from the Boat landing to the top of the bank on the North side of the river at the time of the accident -

Q About the same as usual - It was always pretty bad as the Hill is pretty steep - but it was as good then as usual -

Cross Examined by J. P. L. Atty -

1 How far is it from the boat landing to the top of the hill -

Q I am not positive - but I think it is about three rods -

2 Would it not be difficult for a loaded Wagon to stop after commencing the descent, of the hill -

Q No Sir - I have seen many loaded wagons standing there it is a kind of Sand Bank -

3 Were there any bars or chains or anything across the end of the Boat to prevent horses from going off into the river

a No -

4 Were you working then as a ferryman -

a I was -

5 Was there any effort made by you or Syter by chaining the wheels or other wise to prevent the wagon and team from running into the river and if so what -

a No we were holding up the Boat, to the Bank and had not time -

6 When the Boat was not fastened to the Bank was it -

a No we always held it up to the land by hand -

Thomas Moran Jr

Thomas Moran claimed his attendance fee and was paid him by Claypools defendants -

And further Examinations closed -

State of Illinois
 Grundy County ss.

I Perry A. Armstrong Clerk of the County Court within and for the County and State aforesaid and Commissioner named in the notice hereto attached and made a part of these depositions do hereby certify that in conformity with said notice and Commission, I did on the 26th & 27th days of February A.D. 1857 between the hours of 9 A.M. and 4 P.M. proceed to take the depositions of Edmund Anderson, Smith B. Clapp, Aaron Smith, Thomas Moran &c. That the several witnesses were first duly sworn by me according to law and the several interrogations and cross interrogations were stated by the Counsel of the respective parties and by me committed to writing, and then stated by me to the witnesses severally and their several answers thereto immediately written down under the respective interrogations, and then read to the witnesses respectively and that after the several interrogations and cross interrogations and the several answers thereto had been written down and finished they were all carefully read to the said witnesses respectively before they signed their respective names thereto and were then duly again sworn to the truth of their several answers to the several interrogations which had been to them put as aforesaid.

In witness whereof I hereunto set my hand and the seal of my Office at Morris in said County and State this 27th day of February A.D. 1857—
 Perry A. Armstrong C. Clerk.

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This was all the evidence in the case

The Court at the request of the plaintiffs instructed the Jury as follows—

1st

That the Board of Supervisors of the County of Grundy had the legal and competent authority to Establish a Ferry at the place in question in said County, and to award a License to the defendants to Establish and keep the same—

2^d That if the said Board of Supervisors, did establish the ferry in question, and award a License to the defendants, to Establish and keep the same, and the defendants under and in pursuance of the same Established such ferry and accepted the rights and franchises conferred thereby—then they became Common Carriers, and were also responsible to keep said Ferry as required by the Statute in such case made and provided— and they cannot during the existence of such License, relieve themselves from such responsibility by leasing the said ferry to any other person or corporation—

3^d That if the Jury believe from the evidence, that the defendants were Licensed by the Board of Supervisors, to Establish & keep a ferry at the place in question for five years from the 27th day of February A.D. 1857— and that they accepted the said trust and franchise, it became their duty at all times during said period, to furnish and provide for said ferry good tight boat or boats, if more than one was necessary, and other small Craft of sufficient number, dimensions strength and steadiness, for the safe and speedy transportation of all passengers their teams, horses, cattle, and other animals, as well as

their goods Chattels and effects - And the said boat or boats, and other small Craft, should at all times be well furnished, with suitable oars, Sailing poles, rigging and other implements necessary for the service thereof: And also ^{with} ~~of~~ men of sufficient number, strength, discretion and skill to manage the same - And if they further believe that the Plaintiffs, put their property in question upon said Ferry and that the same was lost by reason of the insufficiency of such boats as respects guards and protections, or for the want of small Craft, or sufficient men - And this loss occurred during the existence of said License the Defts are liable although the Jury believe from the Evidence that the Defts had leased the Ferry to other persons -

- 4 That if the Defendants were Licensed as ferry men at the place in question such License could not be assigned to other persons, so as to discharge Defts from liability -
- 5 That all persons had a right to be received upon the ferry boat and conveyed across the River in question according to their arrival or first coming to the ferry, and if the Team in question arrived first at the said Ferry, the owner thereof had the legal right to go upon the said boat, on its first passage over the river -
- 6 That if the Jury believe from the evidence, that the Defts accepted the trust and franchise, under and by virtue of the order of the Board of Supervisors, read in evidence

and that they established the Ferry in question and received ferriage for transporting passengers and their property, and paid the Taxes on said Ferry, the giving of Bond, and receiving the License will be presumed in the absence of all testimony to the contrary.

As to the giving of which instructions the defendant by his Counsel then and there Excepted: &

The defendant asked the Court to instruct the jury as follows:-

- 1 The record of the Board of Supervisors of Grundy County does not of itself show that the defendants were licensed ferrymen. To show this it is necessary to show in addition to such record that a bond had been given by said defendants, as required by said order, and that a license had been issued to them to keep said ferry.
- 4 If the defendants were in 1851. licensed ferrymen at Morris, and did occupy and use a ferry there until May 1854 - and then discontinued running their ferry and leased their boat to Clapp and others, and said Clapp and others did run said boat in connection with an other which they had hired from the Morris Ferry Co. for their own use and on their own account, until September 1854 - and then sold their right to Syster, and then Syster run said boats on his own account, and for his own profit, until after the loss of plaintiffs horses, &

And if Styler was so running said boats, on his own account, at the time of such loss, the Defendants are not legally liable for such loss.

5 Even if the Defendants were prior to May 1854 the owners of a legally established ferry at Morris. Still they had a right to discontinue and abandon the same and if the proof does not show that at the time the Plaintiffs property was lost, the Defendants had any interest in the ferry other than the ownership of one of the boats - and shows that said boat was rented by Defendants at ten dollars a month and had been so rented from May 1854, the Jury should find for the Defendants.

6 The Owner of a ferry is not liable for the loss of goods in crossing it, if the ferry be rented and in possession of the ferryman as tenant at the time of the loss, and is being run by the ferryman on his own account.

To the refusal of the Court to give each of said instructions, the Defendants then and there Excepted.

The Jury found a Verdict for the plaintiffs.

The Defendants moved the Court for a new trial which motion was refused, by the Court - So which decision of the Court in

269. Overruling said motion, the defendants then and
there Excepted, and pray that this their Bill of Exceptions
may be signed, sealed and made a part of the
Record - which is done.

A. O. Norton *(Seal)*
Judge 11th Judicial Circuit
dls -

State of Illinois }
County of Mill } ss I Alexander M. Intosh
Clerk of the Circuit Court in
and for the County of Mill in the State aforesaid,
do hereby certify the above and foregoing to be a
full true and correct Transcript of the Records of
the Mill County Circuit Court, in said Cause as will
appear from the Records of said Court now on
file in my Office -

Attest, my hand and the Seal of our said
Court here to affixed at Office in the City
of Joliet in said County this 2^d day of
February A.D. 1858 -

A. M. Intosh Clerk

See on Transcript #40.

Rec^d payment of McRoberts & Goodspeed Attorneys for said
Plaintiffs.

A. M. Intosh Clerk

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Lawrence W. Claypool

by
Jesse McAllister
et al

Record



Filed April 11 1888
L. Leland
CLK

[Faint, illegible handwritten text, possibly bleed-through from the reverse side]

Supreme Court State of Illinois

Archibald McAllister &
Jesse McAllister
ad, Appellants

Isaac Claypool &
Lawrence W. Claypool

And now come the above named
Appellants by W K McAllister their attorney
and say that there is no error in the
record & proceedings and in giving the
judgment aforesaid And they pray that
the said court may examine the same
as well as the errors above assigned
and that the said judgment may
be in all things affirmed &c

W K McAllister
Atty for appellants,

Sup Court
Nicholas McAllister
& Jesse McAllister
ad, 139

Jacob Claypool &
Laurence H. Claypool
Jourdum Enn

Filed April 21 1858
L. Leland
Clk.

State of Illinois--Supreme Court, 3d Division.

JACOB CLAYPOOL and
LAWRENCE W. CLAYPOOL,

vs.
ARCHIBALD McALLISTER,
And JESSE McALLISTER.

} Appeal from Will Co Cir. Court.

Record
Page 17 This was an action on the case brought by appellees against appellant.
1st COUNT.—Amended declaration filed 19th February, 1856. Plffs
allege that on the first day of Nov., 1854, they delivered to the def'ts,
being then and there the owners duly licensed of a certain ferry across the
Illinois river, at Morris, and common carriers; and def'ts as such owners
and occupants of said ferry and common carriers, received from the plffs
upon the ferry boat of def'ts, a span of horses, harness and wagon, loaded
with stoves, to be by def'ts ferried across the Illinois river at Morris, for
reward; and the def'ts so being such ferrymen and common carriers, & their
servants and agents so carelessly behaved and conducted themselves in the
premises, that by and through the carelessness, negligence and default of
def'ts and their servants and agents in the premises, the said horses, har-
ness, wagon, &c., were wholly lost.

Record
Page 18 2nd COUNT.—That on the 1st day of Nov., 1850, the def'ts obtained
a license to keep a ferry across the Illinois River, at a point between the
S. fr. of the N E $\frac{1}{4}$ of sec. No. 9, R 7, and the E $\frac{1}{2}$ of blk 17 of the canal
addition to Morris, for 5 years from the 27th day of Feb., 1851, provided
the def'ts should enter into a bond to keep said ferry in all respects in ac-
cordance with the statute, and should pay a certain tax named in said or-
der; that def'ts complied with the requisitions aforesaid, and accepted the
powers and franchises so granted; and afterwards, to wit: on the first day
of April, 1851, at the place mentioned in said license, did establish the
ferry across the Illinois river.

And plffs aver that by reason of the acceptance by def'ts of said powers
and franchises, it became and was the duty of def'ts to be furnished and
provided at that place with good tight boat or boats, of sufficient number,
dimensions, &c., for the transportation of all passengers, teams, &c., and
with men of sufficient number, skill and strength to manage the same.

And plffs aver that on the 1st day of Nov., 1854, at the place of the
ferry aforesaid, upon the ferryboat so as aforesaid, furnished by said def'ts,
they delivered 1 span of horses, wagon, &c., to be ferried across the river,
for certain toll in that behalf.

That on the day aforesaid, and previously, the def'ts neglected and
omitted to provide themselves with a good tight boat or boats, but the

boats furnished were old and leaky, without sufficient rigging or implements, and did neglect and omit to furnish suitable small craft, and did neglect and omit to furnish said boats with men of sufficient number, strength and skill to manage the same, and by reason of such insufficiency of said boat, rigging and implements, and the carelessness and indiscretion of the men upon the same, and the insufficiency of the number of the men, and the omission to furnish any small craft, &c., the horses, wagon, and other property of the pl'ffs, were thrown into the river, and the horses were drowned and the other property damaged.

P'ge 24 PLEA.—General issue to 1st Count, and demurrer to 2d Count, filed Feb. 19, 1857.

P'ge 30 Demurrer overruled and Plea of general issue filed 2d Count.

P'ge 32 Change of venue to Will county, on petition of pl'ffs.

P'ge 58 On the trial, pl'ffs read the deposition of Perry A. Armstrong, as follows :

I am Clerk of the Grundy County Court, and have in possession the record of the board of supervisors of Grundy County ; paper marked A. is a correct transcript of said records ; said paper contains, first, a certificate showing that Grundy county is organized under the township law ; that on the 14th day of Nov., 1850, at a meeting of the board of supervisors of said county, a petition was presented from appellants, praying for a license to keep a ferry across the Illinois river at Morris, and a resolution of said board, as follows :

P'ge 61 "Resolved, That Jacob and Lawrence W. Claypool be, and they are hereby licensed to establish and keep a ferry across the Illinois river in the county of Grundy, and State of Illinois, at a point between the S fr. of the N E $\frac{1}{4}$ of sec. 9. T 33, R 7, and the E $\frac{1}{2}$ of bl'k No, 17, of the canal addition to the town of Morris, for the term of 5 years from and after the 28th day of Feb., 1851. *Provided*, that the said Jacob and L. W. Claypool shall enter into bonds of \$500 to keep said ferry, in all respects, in strict accordance with the statute law in such case made and provided ; and provided further, that the said Jacob and Lawrence W. Claypool shall pay into the County Treasury annually, the sum of \$10, as a tax thereon ; and provided further, that nothing herein contained shall be so construed as to prejudice or affect the grant heretofore given by the Legislature of the State of Illinois to William E. Armstrong, to build a bridge across said river, at, or near said point. Said resolution also contained the rate of tolls to be charged by said Claypool.

P'ge 65 Said witness then testified that he presented the said petition of def'ts to the board of supervisors ; Jacob Claypool was present ; I do not know whether any license was issued or not, farther than appears by order of the board ; nor do I know whether the bond was executed ; I do ~~not~~ know the taxes were paid ; def'ts established the ferry at the place mentioned in exhibit "A." in the spring of 1851.

P'ge 70 Evan Roberts, called by pl'ffs, testified, that he drove the team that was drowned ; his testimony tended] to show that the property belonged to pl'ffs ; that they went on to a ferry boat at Morris, in Grundy county ; that they went overboard from the ferry boat into the river, and the horses were drowned and the property damaged ; that the cause of the accident was a want of ; sufficient bars or chains across the ends of the ferry boat, and there was no sufficient small craft to assist in saving the horses after they went over.

This witness gave no testimony as to who owned or were the owners of

the ferry, farther than this, "the ferry was at Morris; there were 2 ferry boats connected together; the boat farthest from shore, and from which the team went off, was called the Claypool boat, and that the man who directed him what place to take upon the boat was called Slyter.

Page 74 John McCrary was called by pl'ffs; his testimony tended to show that the team of the pl'ffs was drowned and their property injured, at a ferry in Morris, and to show the amount of the loss; and that the boats were deficient in not having chains or bars at the end, and that the ferriage was paid.

The only part of the testimony of this witness which tended to show what ferry it was or who was the owner or occupant at this time, was as follows:

There was no other ferry at that time near that; I know of the boat the team went off from was the Claypool boat; Slyter had the boat at that time, and was working it; Slyter was running the ferry at that time; know that he had charge of the ferry sometime before the accident; did not see either of the Claypools about the ferry that summer, except when crossing as passengers.

Page 77 Pl'ffs rested their case.

C. M. Gould, called by def'ts, testified: I reside at Morris; have resided there 12 years; William E. Armstrong originally run a ferry at Morris; Mr. Claypool run a ferry at Morris after Armstrong did; a free ferry company also run a boat there; Mr. Clapp was the ferry man for the free company; a part of the time he run the boat for whatever he could get; a Mr. Slyter run the same ferry after him in 1854; Slyter was running the ferry; Clapp used the boat that Claypool had run when he, Clapp, was running under the free ferry company; Slyter used it after he had got the ferry of Clapp.

Cross Examination.—Claypools commenced running their ferry in the year 1850 or 1851; Claypools had 2 boats then: they charged and received ferriage; 2 boats were attached together in the summer, or early in the fall of 1854; one of the boats belonged to the Claypools, the other to the free ferry company; I knew the Claypool boat from the time it was first put on; I never knew any chains or bars across the end of it; the free ferry company was not a licensed company; the free ferry did not carry for the public; carried their own members; the ferriage was done by the Claypool ferry for any one except for the members of the free ferry company; Clapp and Anderson made an agreement with the free ferry company for their boat and then hired the Claypool boat; Clapp and Anderson then let Slyter have both boats, who afterwards run the ferry.

Alonzo Keith was called by def'ts, testified: I was at the ferry in Morris, at the time pl'ffs horses were drowned; Slyter had charge of and was running the ferry. The testimony of this witness tended to show that the accident happened from the driver of the team, and that the driver disobeyed Slyter's instructions; but he said nothing further as to who owned or occupied the ferry.

Page 83 Curtis Cobler was called by def'ts. The testimony of this witness tended to show that he was present at the time of the accident, and that the boats were in good repair; but he said nothing concerning the ownership or occupancy of the ferry, except as follows: Mr. Slyter had charge of that ferry at the time of the accident.

Isaac N. Fitch's deposition read by def'ts. The testimony of this wit-

ness tended to show that he was present when the team was drowned ; that the driver of the team disobeyed the orders of the ferryman, that the team was drowned from his neglect. All this witness said upon the question of the ownership of that ferry, is as follows : A man by the name of Slyter, I think, had charge of the ferry at that time.

Andrew Ober—Deposition read by def'ts.

P'g 106 The testimony of this witness tended to show that the accident was occasioned by the fault of the driver of the team, in disobeying the instructions of the ferryman. There was nothing in the testimony of this witness in relation to the question of who owned the ferry, or who occupied it at that time, except this, that Mr. Slyter was running the ferry, and gave directions as to the teamster about placing his team on the boat.

P'g 107 Jos. James.—This witness testified that he was present at the time the team was drowned. This testimony tended to show that the accident happened solely from the fault of the driver of the team.

Upon the question of the ownership and occupancy of the ferry, he testified as follows :

Mr. Slyter was on the ferry at that time ; think he had charge of it ; seemed to have most to say about it ; Mr. Slyter gave directions to the driver of the team in relation to their order of coming on the boat.

Allan W. Slyter :

P'g 102 The testimony of this witness showed that he was present on the ferry boat at the time of the accident ; as to the ownership and occupancy of the boat at that time, he testified as follows :

One of the boats was owned by the Claypools and the other by the Morris Free Ferry Company ; I controlled the boats at the time and received the money for the ferriage, or my hands did for me, for my own use ; the ferry had been erected by William Clapp, and put by him into the hands of Smith, Clapp & Anderson, if I am not mistaken, and I gave them a stipulated price for what I could make out of it, to the expiration of their time ; the agreement between myself, Smith, Clapp and Anderson was, that I was to pay them a stipulated price for the use of the ferry during the balance of their term, and they were to deliver the ferry to me clear and free from all incumbrance and in good running order ; I took the ferry, to the best of my judgment, on the 1st of August, and continued it until the 1st of December, thereafter ; the time would not exceed 4 months ; I never had anything to do with the ferry at any other time ; the accident happened while I was running the ferry.

P'g 137 William Clapp.—There was a ferry kept across the Illinois river at Morris, in the county of Grundy, during the summer and fall of 1854 ; there was one boat owned by what was called the free ferry company, and also one owned by def'ts ; the boats were pulled across the river by a rope ; there was but one rope used ; Allen W. Slyter kept the ferry in the fall of '54, and had the right to control it ; I took the company ferry and after-ward the Claypool boat, and took my brother, Smith Clapp, in partnership afterwards ; I think in June, 1853 ; I was sick during that fall and winter, but controlled my interest in the ferry until the spring following, when I sold out my interest to Edward Anderson, and he and Smith Clapp sold out to the Messrs. Slyters ; A. W. Slyter was the principal I suppose ; I sold out to Anderson in the spring of 1854 ; I had then run the ferry about eighteen months ; had about a year and a half more to run on the company boat ; I hired the Claypool boat for a year at a time ; had

just hired it on a second year when I sold out ; in running the boats I fastened them together and run them both on one rope, I made no distinction as to the right of teams having to pass on either boat.

The testimony of this witness also tended to show that the boat owned by def'ts was a good boat and in proper condition for ferrying.

^{pg 149} Edmund Anderson.—I had a lease of the ferry across the Illinois River at Morris, in conjunction with Smith Clapp ; it was a lease of what was termed the company boat ; in May, 1854, we leased the boat and afterwards hired the Claypool boat ; we run the ferry until September, 1854, and then sold out to Mr. Slyter, who afterwards run it ; we hired the Claypool boat at \$10 per month ; during the time occupied the ferry we had the right to control it ; we did control it, any way ; there was no reservation by the Claypools, or the company, to control the ferry ; the money received for ferriage was received for our own use.

^{pg 149} Aaron Smith.—This witness testified that he was on the bank of the river at the time of the accident. His testimony tends to show that the accident happened solely from the fault of the driver of the team, in refusing to obey the orders of the ferryman in allowing a lighter wagon to go on the boat before him ; he said nothing as to the ownership or occupation of the ferry, except as follows,

Mr. Slyter had charge of the boat at that time ; Mr. Slyter told the driver to hold on and let a lighter team go on ahead ; the driver said it was his turn and he would have it, and drove on to the boat.

^{pg 155} Smith B. Clapp.—My brother and myself had possession of the ferry across the Illinois River at Morris, in the summer of 1854, up to the 1st of September, when we sold out to Mr. Slyter ; just before we sold out to Slyter, Mr. Anderson bought out my brother's interest, and Slyter obtained the Claypool boat from Anderson and myself ; we paid Claypool \$9 or \$10 per month for the boat ; Slyter had it on the same terms ; paid the same rate per month.

^{pg 158} Thos. Moran.—I worked on the ferry at Morris at the time of the accident ; I had been to work on the ferry between two and three months ; I was in the employ of Mr. Slyter ; Mr. Slyter had charge of the ferry at that time and for several months previous.

This was all the evidence ; at the request of pl'ffs the Court instructed the Jury as follows :

1st.—That the board of supervisors, of the county of Grundy, had the legal and competent authority to establish a ferry at the place in question in said county, and to award a license to the defendants to establish and keep the same.

2d.—That if the said board of supervisors, did establish the ferry in question, and award a license to the defendants to establish and keep the same ; and the defendants under, and in pursuance of the same, established such ferry, and accepted the rights and franchises conferred thereby, then they became common carriers, and were also responsible to keep said ferry as required by the statute, in such case made and provided, and they cannot, during the existance of such license, relieve themselves from such responsibility by leasing the said ferry to any other person or corporation.

3d.—That if the Jury believe from the evidence, that the defendants were licensed by the board of supervisors to establish and keep a ferry, at the place in question, for five years from the 27th day of February, A. D,

1851, and that they accepted the said trust and franchise—it became their duty, at all times during such period, to furnish and provide for said ferry, good tight boat or boats, if more than one was necessary, and other small craft of sufficient number, dimensions, strength and steadiness, for the safe and speedy transportation of all passengers, their teams, horses, Cattle and other animals, as well as their goods, chattles and other effect; and the said boat or boats, and other small craft, should at all times be well furnished with suitable oars, setting polls and other implements necessary for the service thereof, and also with men of sufficient number, strength, discretion and skill to manage the same; and if they further believe that the plaintiffs put their property in question upon said ferry, and that the same was lost by reason of the insufficiency of such boats, as respects guards and protections, or for the want of small craft, or sufficient men, and the loss occurred during the existence of said license, the def'ts are liable, although the Jury believe from the evidence that the def'ts had leased the ferry to other persons.

4th —That if the def'ts were licensed as ferrymen, at the place in question, such license could not be assigned to other persons, so as to discharge def'ts from liability.

6th.—That if the Jury believe from the evidence that the defendants accepted the trust and franchise, under and by virtue of the order of the board of supervisors, read in evidence, and that they established the ferry in question, and received ferriage for transporting passengers and their property, and paid the taxes on the said ferry, the giving of bond, and receiving the license, will be presumed in the absence of all testimony to the contrary.

To the giving of which instructions the defendants then and there excepted.

The defendants then asked the court to instruct the Jury as follows:

1st.—The record of the board of supervisors of Grundy county does not of itself show that the defendants were licensed ferrymen; to show this, it is necessary to show, in addition to such record, that a bond has been given by said def'ts, so required by said order, and that a license had been issued to them to keep said ferry.

4th.—If the defendants were, in 1851, licensed ferrymen, at Morris, and did occupy and use a ferry there until May, 1854, and then discontinued running their ferry, and leased their boat to Clapp and others, and Clapp and others did run said boat in connexion with another which they had hired from the Morris Ferry Company, for their own use and on their own account, until September, 1854, and then sold their right to Slyter, and then Slyter run said boats on his own account and for his own profit until after the loss of the plaintiff's horses, and if Slyter was so running said boats on his own account at the time of such loss, then def'ts are not legally liable for such loss.

5th.—Even if the defendants were, prior to May, 1854, the owners of a legally established ferry at Morris, still they had a right to discontinue and abandon the same; and if the proof does not show, that at the time

the plaintiff's property was lost, the defendants had any interest in the ferry other than the ownership of one of the boats, and shows that said boat was rented by defendants at ten dollars a month, and had been so rented from May, 1854, the Jury should find for defendants.

6th.—The owner of a ferry is not liable for the loss of goods in crossing it, if the ferry be rented and in possession of the ferryman as tenant at the time of the loss, and is being run by the ferryman on his own account.

To the refusal of the court to give each of said instructions, the defendants then and there excepted.

The Jury found a verdict for the plaintiffs for \$479.

The defendants moved for a new trial. The Court overruled the motion. To which the defendants then and there excepted.

Errors assigned :—

1st.—The court erred in giving each of the instructions severally, as asked by the plaintiffs.

2d.—The Court erred in refusing to give the instructions as asked by the defendants, and each of them severally.

3d.—The Court erred in overruling the defendants' motion for a new trial.

4th.—The Court erred in rendering the judgment aforesaid, in manner and form aforesaid.

Points made and authorities ^{it is} cited by appellants :

1st.—The Record of the Grundy County Court did not, of itself, show that defendants were licensed ferrymen. It was necessary to show that a bond had been given and a license issued.

2d.—The rule laid down by the Circuit Court, in relation to the liability of ferrymen, is this : Where a ferryman has been regularly licensed for a term of years, and accepts the franchise and commences running a ferry in pursuance of a license, he is liable, as a common carrier, for the transportation of all passengers and their property across the ferry, at any time during the term for which his license extends, and this although, the ferryman had ceased running his ferry and abandoned the same, and the negligence complained of may have been the act of third parties, with whom the ferryman had no privity whatever.

*Sec 2^d - 3^d & 4th instructions given for Pltff -
also 4th & 5th do - refused for Deft -*

3d.—We maintain that the doctrine laid down by the Circuit Court is wrong ; because,

First—The liability of a common carrier is founded upon a contract. The law will not presume that the person actually running a ferry boat is contracting on behalf of a person who may be the legal owner of the ferry, if the man who runs the boat at the time affirms that he is contracting for himself and no one else, and the licensed ferryman has nothing to do with the boat run, and does not claim to have.

*Angell on Carriers chap 4 - sec 67.
sec 68 at foot 82 -*

Powell v. Sanborn 5th B.R. 365

May v. Roberts 5th B.R. 454

case

4th.—The ~~lease~~ shows, that the person running the boat at the time of the accident, had leased, not the ferry of the defendant's, but the ferry of the Morris ferry company. The defendants had discontinued their ferry and had no privity with the actual ferryman at the time, except that they hired to him a boat, at \$10 a month. To hold them liable under these circumstances, as *common carriers*, would be to overturn well-settled principles of law, and to establish a rule which would make the general owner of every chartered vessel, and the owner of every hired carriage, liable as common carriers.

The case does not show that the ferry boats, at the time and place of the accident, were running between the points where defendants were licensed to run.

5th.—By no proper rule, can a contract be implied between the plaintiffs and the defendants, that Slyter was a skillful ferryman and had good boats on the ferry leased by him of the Morris Ferry Company.

6th.—Even if the case showed (which it does not,) that Slyter was running the same ferry which defendants formerly kept, and even if Slyter had leased the ferry at the time, the law is, that the owner of a ferry is

Ferry Co v Moore
8 Dana 158-
Thompson v Snow
4 Grant 264-
Emery v Keeseey
4 Grant 407-
Reynolds v Tappan
15 Mass 270-
Taggard v Spring
16 Mass 336-
Hager v Marsh
13 East 238-
McCarty v Bowers
1 Johns 239-
Abbott on Shipping 70-

not liable for the loss of goods in crossing it, delivered to the ferryman, if the ferry be rented and in possession of the ferryman as tenant.

Biggs v Fennell 12 Indell 1-
Fenton v Deall 22 Vermont 170-
Bowyer v Andrus on 2 Leigh 550-
1 Parsons on Contracts 657-
Angell on Carriers 148 & 563-

7th.—The third instruction given for the plaintiff is wrong, for two reasons:

First—Because the principle upon which the liability of the defendants is stated, is not correct, if defendants had a license to keep a ferry at that time, and were bound to do so, still if they did not keep the ferry at all, their liability would be upon their bond given in pursuance of the statute, or under section five of the forty-second chapter of the Revised Statute, they would be liable to a penalty to every person who came there and desired to be transported across, and their ferry franchise might be taken away, in manner pointed out in section thirteen of same act. But certainly a failure to act as ferryman to transport any person, or anything, or to offer to do so, would not make them liable, as common carriers.

1st Purples Stat 578 & 580
Chap 42 Sec 2.5 & 13-

8th.—That instruction was wrong, because it makes the defendant liable, as common carriers, even if the property had never been delivered to them. The language of the instruction is: If the plaintiffs put their property in question upon said ferry, and the same was lost by the insufficiency of the boats, the defendants are liable. If this be so, the property may never have been delivered to the defendants or to the ferryman; but in absence of the ferryman the property may have been placed upon the boats, or have been placed on the boat by unauthorized persons,

1 Parsons on Contracts 654-
Buckman v Levi 3 Campb 414-
Leigh v Smith 1 Car & Payne 640-
Packard v Setman 6 Bow 757-
Angell on Carriers 137-

9th.—The 5th instruction given for the plaintiff is wrong. There were two boats attached together. It was the right of the ferryman to designate which of the boats the driver should drive on to.

Fisher v Blissie
12 Ill 344-

GLOVER & COOK, Att'ys for Appellant,

GLOVER & COOK, 74 1/2 St. Vincent

which of the posts the driver should drive on to

3d.—The 5th instruction given for the plaintiff is wrong. There were

orders on the carriage 1st—

P. 1000 2075

1st—The 1st instruction given for the plaintiff is wrong. There were

orders on the carriage 1st—

posts or have been placed on the post by unauthorized persons

in absence of the testimony the property may have been placed upon the

may not have been delivered to the defendants or to the testimony; but

ciency of the posts, the defendants are liable. If this be so, the property

being in question upon said facts, and the same was lost by the plaintiff

them. The language of the instruction is: If the plaintiff but when the

the common carriers, even if the property had never been delivered to

gin.—That instruction was wrong, because it makes the defendant li-

offer to do so, would not make them liable, as common carriers.

by a failure to let as testimony to transport any person, or anything, or to

away, in many points in section thirteen of same act. But certain-

ing to be true, and the defendants are liable. If this be so, the property

they would be liable to each person who came there, and de-

or under section 13, the plaintiff second chapter of the Revised Statutes

their liability, and the plaintiff second chapter of the Revised Statutes

that time, and the plaintiff second chapter of the Revised Statutes

is stated in no way, still if they did not lose the property at all,

first, the plaintiff second chapter of the Revised Statutes

3d.—The 5th instruction given for the plaintiff is wrong. There were

Filed April 17, 1838
L. Leclercq
Clerk

189 = 156

Claypool & al

vs
The United States

not liable for the loss of goods in crossing it, delivered to the testimony,

Blayhool v. McAllister — Brief —

The liability of a Ferryman as ~~com-~~
~~mon carrier~~ is founded upon a con-
tract — and whenever he does con-
tract to carry persons or property the
law makes his liability that of a
common carrier — ~~but a contract~~
~~to transport persons or property~~

But there must be a contract either
express or implied before he can
become liable as ^{such} carrier —

Angell on Carriers Chap 4 - Sec's 67. 68-82-

Powell v. Dayton 5. B & P. 365-

May v. Roberts 5. B & P. 454-

This Contract may be either express
& made either personally or by Agent
or it may be implied —

If he undertakes generally to trans-
port across his ferry persons & prop-
erty upon application, and the
property is actually delivered to
the ferryman or his Agent, then
the law will imply a contract
& the ferryman will become
liable as Common Carrier

We insist that in this case
the Pliffs never contracted in
any manner with defendants

see testimony of
A. M. S. Dyter
page 4 -

William Kelapp

page 4 -

E. Anderson

page 5 -

S. B. Kelapp

Page 5

et alia -

The injury was not the result of a failure of Pliffs to contract but
resulted from the unimpaired performance of a contract made by Dyter
with a 3^d person

The Evidence in the Case shows
that the contract was made by
Dyter with one Syster, and
that there was no privity what
ever between Syster & Pliffs -
That Syster only hired a boat
of Pliffs at a stipulated price

If Pliffs are liable at all to Dyter
it is in a penalty of \$5 - and
such damages as they sustained
by reason of Pliffs refusal to
contract - under sec 5 - Chap 42 -

They are also liable on their
bond for not properly main-
taining their ferry, if they
have not done so -

see 2^d - Chap 42 -

And also liable to have their
license revoked if they aban-
don their ferry -

See 13 - Chap 42 -

If they fail or refuse to con-
tract they do not thereby be-
come liable as carriers but
only under the statute - the
liability as carrier depending

entirely upon the contract cannot be maintained when no contract has been made

J. M. Cray
page 3

Insist that the Ferry has been abandoned - ^{Slyter had charge of it & received the money for his own use -}

No proof that the boats were running between the points of landing of the clay pool ferry -

see testimony

Or that Slyter ever hired the ferry of clay pools only hired the boat at a stipulated price -

St. Point

Even if the ^{case} showed (which it does not) that the ferry was leased by Platt to Slyter. Then Platt are not liable for the loss of goods in crossing it -

x Biggs v Ferrel 12 Dredell 1-

x Fenton v Deall 22 V L 170-

Dyplabus x Bowyer v Anderson 2 Leigh 550-

x 1 Parsons on Contracts 657-

Ferry Co v Moore 8 Dana 158-

Angell on Carriers 143 & 563-

Charter Thompson v Snow 4 Grant 264-

Charter Emery v Keersey 4 Green 407-

Charter Reynolds v Tappan 15 Mass 370-

Jaggard v Soring 16 Mass 336-

Charter *Fraser & Marsh* 13. East. 238 -
Charter *Mc Intyre & Bowne* 1 Johns 239 -
Abbott on Shipping 70 -
Sadd & Chotard Miner Ala 366 - (Ala)

7th - The 3^d Instruction is wrong be-
cause the principle upon which
the liability is stated is incor-
rect -

8th - And because it makes the Puff
liable ^{as carriers} even if the property had
never been delivered to them but
only placed upon their boats

This would not be such an
delivery as would make them
liable -

Angell on Carriers 137 -
1 *Parsons on Contracts* 654
Buckman & Levi 3 Campb 414 -
Singh & Smith 1 Car of Payne 640 -
Packard & Gutman 6 - *low.* 757 -

131 - 156

Laurel Maypool

by Jennie McAllister

Opinion

139

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1858

~~X~~
In June