No. 14462

# Supreme Court of Illinois

Ill. Cent. R. R. Co.

vs.

Cowles

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 154

Jeff. Cent. R.R. Co. vs. Carter

1863

# Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

ILLINOIS CENTRAL RAILROAD COMPANY,
*vs.*
LUCIUS S. COWLES.

APPEAL FROM JOE DAVIESS. Stephenson

## ABSTRACT.

1 Suit commenced December 24th, 1861, before Justice of the Peace. The Plaintiff filed the following claim before the Justice. Plaintiff declares for goods lost by Defendants on their railroad, in transit as follows:

28 1 Doz. Men's Colored Handkerchiefs.
1 " " " "
2 " " " "
1 " " White "
2 " " " "
2 " " " "
3 " " " "
3 " " " "
1 " " Superfine "
2 " " " "

3 Judgment for the Plaintiff, $75.66.

5 Appeal to the Circuit Court.

7 Judgment of the Justice affirmed.

9 Previous to the trial of the cause, the Defendants moved the Court to suppress the deposition of D. H. Stead, because the deposition did not appear to have been taken before G. P. McClimans, the officer named in

the notice, nor does it appear to have been taken at the hour fixed in the same for taking the same.

2d. The 2d interrogatory, or so much of it as presumes that a paper marked Exhibit A was obtained by the witness. 3d. So much of the ans. to int. 5 as sets up the act of a clerk or agent of an agent of Defendant because thereof. 4th. So much of ans. to said int. 5 as sets forth what the paper or receipt therein mentioned was given for, because thereof, the paper should show for only what it was given for. 5th. Ans. 8 to int. 8, because it attempted to explain a patent ambiguity in a witness.

6th. Ans. 9 to int. 9, because it sets up an arrangement outside of this case, and is irrelevant and impertinent. 7th. Ans. 10 to int. 10, or so much thereof is irrelevant and impertinent to this case because thereof.

The notice under which the deposition was taken is as follows:

STATE OF ILLINOIS, STEPHENSON COUNTY, *ss.*

| | |
|---|---|
| LUCIUS S. COWLES<br>*vs.*<br>THE ILLINOIS CENTRAL RAILROAD COMPANY. | Before Joseph B. Smith, Esq., a Justice of the Peace, of said County. |

Take notice, that on Monday, the third day of February, A. D. 1862, at the hour of 10 o'clock, A. M. of said day, before G. P. McClemans, Esq., a Justice of the Peace, at his office in Sandoval, Illinois, we shall take the deposition of D. H. Stead, a witness to be examined on the part of said Plaintiff, and which said deposition will be read in evidence at the trial of said cause, and when and where you may appear and cross examine said witness, if you see proper.

Affidavit of Fedrick C. Ingalls, of service of notice on the 13th day of January, A. D. 1862.

Caption of Stead's deposition.

LUCIUS S. COWLES
*vs.*
ILLINOIS CENTRAL RAILROAD COMPANY.

Deposition of D. W. Stead, a resident of Marion County, State of Illinois, aged about 30 years, a witness on the part of the Plaintiff in the above-entitled suit, now pending before Joseph B. Smith, Justice of the Peace, in and for the County of Stephenson, and State of Illinois aforesaid, produced, sworn, and examined before George P. McClimans, a Justice of the Peace in and for said County of Marion, on the 3d day of February, A. D. 1862, at the office of said Justice, in the Town of Sandoval, taken by virtue of the annexed notice.

5th Interrogatory. Will you produce a paper, (marked Exhibit A, and attached hereto,) and state from whence you obtained it: state whether you ever saw it before, and if so, when; do you know who signed it? if so, state by whom it was signed, and state, if you know, what was the

occupation and employment of the person who signed it at the time it was signed; and if you state that such person was then in the employment of any person or corporation, state in whose employment he then was.

25 Answer. It is produced, and I obtained it from Mr. A. Wisler, receiving clerk of Mr. E. J. Buster, agent of the Illinois Central R. R., at Sandoval. It was signed Buster, by A. Wisler. A. Wisler was receiving clerk of the Illinois Central R. R. at Sandoval, Ill. He was employed by E. J. Buster, as agentee, but paid by the said Ill. Central R. R.

Butler Butler Butler

Misler Misler

2d Interrogatory 5. State, if you know, for what this paper was given: by whom, and to whom: state all the circumstances you know in regard to it.

25 Answer. This receipt was given by said agent said Ill. Central R. R. to me for one box, directed to L. S. Cowles, and directed to Freeport, Ill. All I know about the delivery is, that it was delivered to the Railroad in good order.

23 Interrogatory 8. Look at the paper marked Exhibit A, and state, if you know, what the letters and figures I. C. 52c mean.

25 Answer. The 52c means that the Ill. Central Railroad proportion of through rates is 52 cts. on the 100 pounds.

23 Interrogatory 9. State whether there is any arrangement between the Ohio and Mississippi Railroad and the Illinois Central Railroad in regard to charges on freight which is shipped on one of the roads, and passes over the other to reach its destination: if so, state what the arrangement is.

26 Answer. There is such an arrangement. The arrangement is, that a through rate of tariff is agreed on when freight passes over both roads, and the last road which takes the freight pays the charges of the first road.

23 Interrogatory 10. State, if you know, what is done with respect to collecting charges for freight, where it is shipped on one road and passes over the other: what is done with the money collected under such circumstances?

26 Answer. When freight passes over the O. & M. Railroad and delivered to the Ill. Central, the said Central Railroad agent pays me the O. & M. charges, as in this case, they paid me $1.59; the remainder which they collect I do not know what they do with it. But the money I collect I send to the Treasurer of the Ohio and Mississippi Railroad.

Copy of the Exhibit attached to the deposition.

EXHIBIT A.

22 No. 202. Sand'l Station, May 16, 1861.

Received 186, of the Ohio & Mississippi Railroad Company in good order, for L. S. Cowles, Freeport, One Box Dry Goods.

Charges, 1.59.

52c 300 lbs. 52d.

Buster, W. C.

Butler M.

Copy of certificate attached to deposition.

STATE OF ILLINOIS, }
MARION COUNTY, ss. } I, the subscriber, a Justice of the Peace in and for said County, do certify that the above deposition was taken at the time and place mentioned in the caption thereof; that the said witness was first duly sworn; that the said deposition was first carefully read to him and signed by him.

Dated this 3d day of February, A. D. 1862.

G. P. McCLANANS, J. P.

R.P. 26
G. P. McClimans
J. P.

10 The Court overruled the motion to suppress the deposition, and the Defendant excepted. It was stipulated that the cause should be submitted to the Court without a jury. That the Court should decide all questions as to the liability of Defendant; and if the Court shall consider the Defendant liable, then the measure of damages is to be the amount, $75.66, found by the jury in the Court below, neither party waiving any right to writ of error, or appeal to Supreme Court.

11 It was agreed that the deposition of Lucius C. Buell, subject to any legal objection on the ground of such witness' interest in the result of the suit, or any other legal objection, together with the original bill of lading from the Ohio and Mississippi Railroad Company, "A," may be read in evidence on the trial, Defendants reserving of making all legal objections to said deposition, except as to the time of making the same.

12 L. C. Buell's deposition. He says I shipped a box, on the 13th day of May, 1861, at Cincinnatti, directed to the Plaintiff at Freeport, Illinois, shipped by the Ohio & Mississippi Railroad. I took a bill of lading for the same; took it from the Ohio & Mississippi Railroad agent. The bill
13 of lading marked A is signed by Leahy,× I received it from the agent. I packed the box myself; gives contents of the box.

× agent of the Ohio & Miss R R Co.

One dozen men's colored handkerchiefs, number 185, were worth four dollars a dozen in Cincinnatti. One dozen men's colored handkerchiefs, marked 205, were worth seven dollars and a half in Cincinnatti. Two dozen colored handkerchiefs, number 195, worth six dollars a dozen in Cincinnatti. He also gives the value of the other articles.

17 I was instructed by Plaintiff to ship them by railroad. They were marked L. S. Cowles, Freeport, Illinois.

18 I shipped them on the Ohio & Mississippi Railroad, at Cincinnatti.

19 The box was lined with a piece of Washington sheeting.

20 Witness is a brother-in-law of Plaintiff.

24 D. W. Stead, in addition to the interrogatories and answers above stated, testified that he was agent for the Ohio & Mississippi Railroad Company at Sandoval. I received a box by the Ohio & Mississippi Railroad from Cincinnatti, and delivered it to the Illinois Central Railroad receiving agent, May 16, 1861, at Sandoval, Marion County, Illinois, received it in good order. The Ohio & Mississippi Railroad forms a junction with the Illinois Central Railroad at Sandoval.

154

Ill. Cent R.R.

v

L. Cowles

Abst Points

14462

Filed April 15 1863

L Leland Clk

1

United States of America
State of Illinois
County of Stephenson }

Pleas before the Hon Benjamin R Sheldon Judge of the Fourteenth Judicial Circuit of the State of Illinois begun and held at the Court House in the City of Freeport on the 7th day of April A.D. 1867

Present Hon Benjamin R Sheldon Judge
Frederick C Ingalls States atty pro tem
William A. Vonnegmann Sheriff
J. Wilem Shaffer Clerk

2

State of Illinois } In Justices Court before Joseph B
Stephenson County } Smith Justice

Lucius S. Coles

vs.

The Illinois Central Railroad Company } Pltffs Demand $100.00

December 27. 1861 Summons issued returnable on the 11th day of January 1862 at 10 o'clock Am. December 28th Summons returned by J. Nelson Constable Served by reading the same to John R Roebrough Agent for the Illinois Central Railroad Company on the 28th day of December 1861 and also by leaving a true copy of the same with the said John R Roebrough Agent on said day Constable fees 30¢ Jany 11th 1862 10 o'clock Am parties appeared on Motion of the Plaintiff by consent of the Defendants Case is continued to the 25th instant at 10 o'clock Am. Jany 25th this case is again continued till the 15th day of February next at 10 o'clock Am as per stipulation of the parties on file. Feby 15th 1862 By agreement of the parties this case is again continued till the 25th inst at 10 o'clock Am Feby 25th 1862 By agreement of the parties this case is again continued to the 4th day of March next at 10 o'clock Am. March 4th 1862 10 o'clock Am parties appeared at request of Plaintiff Venire issued for Sue mento to try the issues returnable at this Court. Plaintiff declared against the Defendants for goods lost in transitu of the value of $100.00 and filed the same herein. to which the Defendants plead non assumpsit. Constable Nelson returned the following named Jurors to wit A. Greene. J. Sheetz. C. Furch. R. D. Waters. E. W. Ayler. O. Stockhoff who were sworn to try the issues joined. Motion by Defendants to suppress deposition overruled by the Court. Mr Kimball. D. C. Smith. Witnesses for Pltff were sworn and testified E. T. Johnson W. C. Clark & J. R. Roebrough Witnesses in behalf of Defendants were

were sworn and testified. After hearing the evidence adduced and the arguments of Counsel the Jury retire to consider of their verdict and again return into Court and say that they cannot agree and are discharged by the Court. Thereupon the case is continued to the 5th day of March 1861 at 9 o'clock A.M. and Venire issued for six Jurors at the day and hour last aforesaid the parties appeared Venire returned by Coach Wilson with the following names of the Jurors duly summoned to wit H. Childs. S. Ranvall. G. A. Heck. William Altineow J. H. Bartlett and G. W. Mudy who were duly elected and sworn to try the issues between the parties D. McKinnell & D. Smith were sworn as Witnesses on behalf of the Plaintiff and G. F. Johnson & W. Clarke on the part of the Defendants after hearing all the evidence adduced the Jury retire to consider of their Verdict. and after a short absence return into Court with the following Verdict to wit "We the Jury find for the Plaintiff and assess the damages at Seventy five 00/100 Dollars This therefore considered by the Court that the said Plaintiff have and recover of the said Defendant the sum of Seventy five Dollars and Sixty six cents for his demand with costs of suit herein taxed at Nineteen Dollars and Six cents to wit

| | | |
|---|---|---|
| J. B. Smith J. P. Docket 20 Summons 75 2 Subpoenas 50 2 Venires 50. | 1.45 | |
| " " 4 Cents 60 Calls 55 Eng Jury 60 Judgt 25. Satd 40. | 2.10 | |
| " " Fees & Disbursements of L. C. Buell for Reff | 2.00 | 5.55 |
| J. Wilson Constables fees on Summons 30 2 Venires 1.50 Subpoenas 55 | | 2.35 |
| E. R. McDowell " Serving Subpoenas | | .75 |
| Reff's Witnesses D. K. Smith 2 Days D. McKinnell 2 Days $1. Each | | 2.00 |
| Defts " D. R. Rosebrough One day | | 50 |
| Reff L. C. Buell 2 Days attendance & Lane Deft's Witness | | 1.00 |
| Defts Witnesses G. F. Johnson 2 Days W. Clarke 2 Days $1. Each | | 2.00 |
| G. D. McDermain 2 P. Sats Deft's at Sandoval | 1.81 | |

4

| | | |
|---|---|---|
| D W Stead Witness named on Dep^n | 1.00 | |
| Clerks Certificate to same 35^c Cons. fee 25^c | .60 | 3.41 |
| Jury fees Paid by Deff | | $1.50 |
| | | 19.06 |
| J B Smith J.P. appeal Cons. Transcript | | 1.00 |
| Total Costs | | $20.06 |
| Judgment | | $45.66 |

State of Illinois
Stephenson County } I, Joseph B Smith a Justice of the Peace in and for said County do certify that the foregoing transcript is truly copied from my docket and that said transcript together with the papers herewith enclosed contain a full and perfect statement of all the proceedings had before me in the above entitled cause
Witness my hand this 2nd day of April A.D. 1862
Joseph B Smith J.P.

Filed April 4^th 1862
D W Shaffer Clk
per S P Hodges Dep. Clk

5 And afterwards to wit on the 14th day of April AD 1862 being one of the days of the April Term of the Stephenson County Circuit Court aforesaid the following entry appears of record. to wit

144 Lucius S. Cowles
vs.
Illinois Central
Railroad Company } Appeal

Now on this day comes the said Plaintiff by F. O. Ingalls Esq his Attorney and enters his appearance herein. And by agreement of parties this Cause that this suit be continued until the next term of this Court

And afterwards to wit on the 9th day of December 1862 being one of the days of the December Term 1862 of the Stephenson County Circuit Court the following Entry appears of record to wit

78 Lucius S. Cowles
vs.
Illinois Central
Railroad Company } Appeal

Now on this day comes the said Plaintiff by his Attorney and files Stipulations of the parties to submit this suit to the Court.

And afterwards to wit on the 11th day of December AD 1862 being one of the days of the December Term of the Stephenson County Circuit Court aforesaid the following entry appears of record to wit

6 78 Lucius S. Coles
vs.
Illinois Central
Railroad Company } Appeal

Now on this day comes the said Defendant by its Attorneys and files Motions to suppress depositions of D. W. Smead

And afterwards to wit on the 16th day of December AD 1867 being one of the days of the December Term of the Stephenson County Circuit Court aforesaid the following entry appears of Record to wit

78 Lucius S. Coles
vs.
Illinois Central
Railroad Company } Appeal

Now on this day come the said parties by their Attorneys and upon the cause joined for trial waive the intervention of a Jury and put themselves upon the Court. And now the Defendants Motions to suppress depositions coming on to be heard it is Ordered by the Court that the Motions be overruled to which ruling of the Court the Defendants by their Attorney except.

And afterwards to wit on the 17th day of December AD 1867 being one of the days of the December Term of the Stephenson County Circuit Court aforesaid the following entry appears of Record to wit

78 Lucius S. Cowles
vs
Illinois Central
Railroad Company

Appeal

Now this day come again the said parties by their attorneys and this cause coming on to be heard by the Court and after hearing the evidence adduced and the arguments of Counsel the Court being advised in the premises the Court finds the issues for the Plaintiff and assesses the damages in the sum of Seventy five Dollars and Sixty six cents. Thereupon said Defendant enters its motions for a new trial and the motions coming on to be heard after due deliberation this Court doth order that the be overruled to which ruling of Court the Defendant by its Attorneys excepts and prays an appeal. Thereupon this Court doth order that the appeal be allowed upon condition that said Defendant file its appeal bond to said Plaintiff properly conditioned with Isaac Bright & W. S. Brawley as sureties in the penal sum of Two Hundred Dollars within Thirty days with the Clerk of this Court. This further Considered and Ordered that said Plaintiff have and recover of said Defendants the said sum of Seventy five Dollars and Sixty six cents his Damages as aforesaid by the Court assessed together with his costs by him about this suit in his behalf expended and that he have Execution for the same.

And afterwards to wit on the 20th day of December A.D. being one of the days of the December Term of the Stephenson County Circuit Court aforesaid the following entry appears of record to wit

78 Lucius S. Bowles
vs.
Illinois Central
Railroad Company
Appeal

Now on this day come the said parties by their Attorneys and settle and file Bill of Exceptions herein

9

| | |
|---|---|
| The Illinois Central Railroad Company ads Lucius S. Coles | In the Circuit Court of Stephenson County in the State of Illinois of the December Term A.D. 1862 |

Be it remembered that previous to the trial of this cause the Defendants moved the Court to suppress the depositions of the Witness D. W. Stead which said depositions is hereinafter set forth and several parts thereof for the following reasons viz

| | |
|---|---|
| Ill Cent R R Co ads Lucius S. Coles | Ste Coler Court State of Ills Dec Term 1862 |

and now comes the said Defendant & moves the Court to suppress the depositions of D. W. Stead & the several parts thereof. hereinafter indicated for the following reasons to wit

1st Said depositions does not appear to have been taken before. L. D. McClintock the Officer named in the notice to take the depositions. nor does it any where appear to have been taken at the hour fixed in the notice for taking the same.

2d The 2d interrogatory or so much of it as presumes that a paper marked Exhibit A was obtained by the Witness

3d So much of the ans to Int 5 as sets up the act of a Clerk or agent of an agent of Defendant because thereof

4th So much of ans to second Int 5 as sets forth what the paper or receipt therein mentioned was given for because thereof the paper should show for only what it was given for.

5th Ans 8 to Int 8 because it attempts to Explain a patent ambiguity in a Writing

6th Ans 9 to Int 9 because it sets up an arrangement outside of this case & is irrelevant & impertinent

7th Ans 10 to Int 10 & so much thereof is irrelevant & impertinent to this case because thereof

Bright & Brawley
Defts Atty

Filed Decr 11. 1862. J W Shaffer Clk
per E R Hodges Dep Clk

which said Motions the Court overruled to which said Defendants excepted. And that said cause having been submitted to the Court for trial as per stipulations of the parties filed herein as follows Viz

Lucius S Comles
vs
The Illinois Central
Railroad Company

In the Circuit Court of Stephenson Co Ills December Term 1862

This hereby stipulated that this cause shall be submitted to the Court for trial without a Jury the Court to decide all questions as to the liability of the Defendants in this cause. and if the Court shall consider the Defendants liable then the measure of damages is to be the amount $175.66 found by the Jury in the Court below neither party waiving any right to motion of error or appeal to the Supreme Court

Bright & Bramley attys
for Defts
Fred Ingalls atty for Deff

Filed Dec 9 1862 J W Shaffer Clk
per E R Hodges Dep Clk

and said cause having come on for trial the Plaintiff to maintain the issue on his part read in evidence the deposition of Lucius C Buell the deposition of D W Stead herein before referred to as follows Viz

Lucius S. Comles
vs
The Illinois Central
Railroad Company

Before Joseph B Smith Esq
Justice of the Peace

This agreed and stipulated between said parties that the Deposition of Lucius C Buell subject to any legal objection on the ground of such Witnesses interest in

11 in event of the suit many other legal or valid objections taken before said Joseph B Smith Esq together with the original bill of lading from the Ohio & Mississippi Railroad Co "A" may be read as evidence at the trial of said cause before a Justice of the Peace or in the Circuit Court in case of appeal Defendants reserving the right to make all legal & valid objections to said deposition save as to time of taking the same

Fred C Ingalls Atty for Deft
Bright & Bramley Defts Attys

"A Received of L S Buell at the Depot of the O & M R R Co Railroad the following articles marked and numbered as below in good order to be delivered without delay in like good order (unavoidable dangers of transportation and fire only excepted) to L S Conles or assigns at Freeport Illinois he or they paying freight at the rate of customary per 100 lbs

Dated at Cincinnati this 18th day of May 1861

L S Conles
Freeport
Illinois
25¢

1 Box Dry Goods

T Leahy

Lucius S. Conles
vs.
The Illinois Central
Railroad Company

State of Illinois
Stephenson County
In Justices Court before
Joseph B Smith Justice

Deposition of Lucius S Buell a witness in the above entitled suit (taken by virtue of the stipulations of the parties hereto attached) by Joseph B Smith Esquire and Justice of the Peace of the County of Stephenson on the 2nd and

2d day of January 1862 at his Office in the City of Freeport in the County and State aforesaid in the presence of the said Plaintiff and J. O. Ingalls his Attorney and J. W. S. Brawley Attorney for the said Defendants on the part of the said Plaintiff

The said Lucius S. Buell being duly sworn deposes and says in answer to the following Interrogatories propounded to him as follows Viz

1st Interrogatory. What is your name. age occupation and place of residence.

Answer My name is Lucius S. Buell. Age Thirty five. I have been jobbing dry goods for the last seventeen years. my residence Freeport. am not in any business now. sold out in August last

2 Interrogatory. Do you know the parties to this suit? If yes. how long have you known them or either of them respectively?

Answer I have known the Plaintiff Mr Coles about twelve years. I know that there is such a Company as the Illinois Central Railroad Company.

To a question put to the said Witness on his voir dire states and says that he has no interest in the event of this suit

To further questions on his voir dire cont. If the Plaintiff fails to recover of the Railroad Company for his alleged loss will you be liable over to the Plaintiff in any way for such supposed loss. Answering says "he will not

Direct Examination by Plaintiff

3d Interrogatory. State where you resided on the 13th day of May 1861

13 Answer. At Cincinnati Ohio.

4th Interrogatory. State whether on that day you shipped a Box of Dry goods from Cincinnati to the Plaintiff. and if so state how the same was shipped. whether you took a bill of lading or receipt for the same. if so from whom did you take such receipt. Look at the paper marked A and hereto attached. State by whom it is signed and whether you ever had it in your possession. if so state how you came to receive it

Answer. I shipped a Box on that day at Cincinnati directed to the Plaintiff at Freeport Illinois. Shipped by the Ohio & Mississippi Railroad. I took a bill of lading for the same. took it from the Ohio and Mississippi Railroad Agent The bill of lading marked A is signed by T. Leahy the agent of the Ohio & Mississippi Railroad Company. I received it from T. Leahy the Agent.

5th Interrogatory. State by whom the Box was packed
Objected to by the Defendants.

Answer I packed the box myself

6th Interrogatory. State what was put into the Box which you sent to the Plaintiff and describe its contents

Answer

| | | | |
|---|---|---|---|
| One piece black silk | | Numbered | 96 |
| Two black Shawls | | No | 55 |
| One Striped figured Shawl | | No | 64 |
| One do | do | " | 45 |
| Two plain brocaded | Do | " | 63 |
| One Barege | Do | " | 1 |
| Three fancy Barege | Do | " | 2 |

| | | | |
|---|---|---|---|
| One do | do | " | 4 |
| Two White do | do | " | 61 |
| One black silk | Shawl | " | 19 |
| One do | do | " | 18 |
| One White Stella | do | " | 24 |
| Two Dozen Mufs | Pocket Handkerchief | No | 45 |
| Three do | do | " | 55 |
| Three do | do | " | 65 |
| One Dozen Ladies | do | " | 413 |
| One " " | do | " | 412 |
| One " " | do | " | 411 |
| Two Dozen Ladies | Linen Handkerchief | No | 64 |
| Two do | " " | " | 12 |
| One do | " Mourning " | " | 60 |
| One do | " " | " | 80 |
| One do | " " | " | 90 |
| One do | " " | " | 286 |
| One do | " " | " | 240 |
| Two do | " " | " | 322 |
| Two do | " " | " | 50 |
| Five do | " White " | " | 40 |
| Three do | " " | " | 90 |
| Three do | " " | " | 100 |
| One do | " " | " | 20 |
| Three do | " " | " | 130 |
| Two do | " " | " | 221 |
| One Dozen Mens | Colored " | " | 185 |
| One do | " " " | " | 205 |
| Two do | " " " | " | 195 |
| One do | " White " | " | 138 |
| Two do | " " " | " | 134 |
| Two do | " " " | " | 242 |

15

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|---|---|---|---|---|
| Three do | " | " | " | " 150 |
| Three do | " | " | " | " 126 |
| One do | " | Superfine " | " | " 4509 |
| Two do | " | " | " | " 4100 |
| Three do | Linen Shirt fronts | | | " 90 |
| Three do | do | ~~do~~ " | | " 80 |
| Four do | do | " | | " 40 |
| One do | do | " | Superfine | " 19 |
| Two do | do | " | " | " 100 |
| One Dozen | Mens Superfine Shirt fronts | | | " 60 |
| One " | do | do | | " 21 |
| Two " | do | do | | " 50 |
| Four pieces | Washington Sheeting | | | |
| Three " | Cavendish | do | | |
| Six " | Mourning prints | | | |
| Two " | Brown Drilling | | | |
| Two " | Lyman Mills Sheeting | | | |

(Foregoing answer objected to by Defs.)

7th Interrogatory. State the value of the articles mentioned by you as One Dozen Mens Colored handkerchiefs No 185 ?

Answer They are worth Four Dollars a dozen in Cincinnati

8th Interrogatory. State the value of the articles mentioned by you as One Dozen Mens Colored handkerchiefs Numbered 205 ?

Answer they are worth Seven Dollars and a half per dozen in Cincinnati

9th Interrogatory State the value of the articles mentioned by you as Two dozen Mens Colored handkerchiefs Numbered 195 ?

Answer. They are worth Six Dollars per dozen in Cincinnati

10th Interrogatory State the value of the One dozen mens White linen handkerchiefs No 38

Answer They are worth Two Dollars and a quarter a dozen in Cincinnati

11th Interrogatory. State the value of the Two dozen mens White handkerchiefs Numbered 1 Bd?

Answer They are worth One Dollar and seventy five cents per dozen at Cincinnatti

12th Interrogatory State the Value of the Two dozen Mens White handkerchiefs No 142?

Answer They are worth Two Dollars and a half per dozen in Cincinnatti

13th Interrogatory State the value of the Three dozen of Mens White handkerchiefs No 150?

Answer They are worth Three Dollars per dozen at Cincinnatti

14th Interrogatory State the value of the Three dozen mens White handkerchiefs No 126?

Answer They are worth One Dollar and Sixty cents per dozen at Cincinnatti

17 15th Interrogatory State the value of One dozen Mens Superfine White handkerchiefs No 4509

Answer They are worth Three Dollars per dozen at Cincinnatti

16th Interrogatory State the value of the Two dozen Mens Superfine White handkerchiefs No 4100?

Answer they are worth Six Dollars per dozen at Cincinnatti

17th Interrogatory State to whom these goods belonged at the time of the shipment?

Objected to by Defts

Answer They belonged to the Plaintiff at the time of shipment.

18th Interrogatory State what Orders if any you received from the Plaintiff in regard to their shipment

Objected to by Defts

Answer I was instructed to ship them by Railroad. The Bx was marked L S. Corles Freeport Ill.

Cross Interrogatories

1st Cross Interrogatory. How do you know that the goods belonged to the Plaintiff as stated in your answer to the 17th direct interrogatory herein

Answer Because I sold them to him before they were shipped

2d Cross Interrogatory. Will you not be liable or responsible to the Plaintiff in case he fails to recover of the Railroad Companies or Carriers for so much or such part of said goods as may have been lost?

(Objected to by Deft)

Answer. Having observed all instructions by Plaintiff and shipped all goods purchased as directed I will not be responsible for goods lost in transit

3rd Cross Interrogatory. By whom or by what Company did you ship the goods at Cincinnatti as stated in your answer to the 4th direct interrogatory?

Answer I shipped them on the Ohio and Mississippi Railroad at Cincinnatti

4th Cross. Interrogatory. Who or what Company if any receipted and booked the box of goods at the time it was shipped by you as stated in your answer to the 4th direct interrogatory

Answer The Agent of the Ohio and Mississippi Railroad Company receipted for said box of goods. Mr T. Leahy was acting as Agent for receiving and receipting goods for the Ohio and Mississippi Railroad Company at the time said box was shipped.

5th Cross Interrogatory. Where is the bill of lading or receipt referred to in the 4th direct interrogatory and in your answer thereto?

Answer It is attached to this deposition and marked A

6th Cross Interrogatory On your direct examination herein did the Plaintiffs Attorney hand you an invoice or bill of goods

Answer. He gave me an invoice of a bill of goods.

4th Cross Interrogatory. Did you Enumerate the articles as set forth in your answer to the 6th direct interrogatory by simply reading from said invoice of a bill of goods.

Answer. Said bill being the Original One of the box of goods in question. I Enumerated the names and number of articles therefrom knowing the invoice to be correct the same was used to refresh my memory and I read the numbers and articles from it

5th Cross Interrogatory. State how you packed the box as mentioned in your answer to the 5th interrogatory which article or articles were first packed & what next and so on to the last State specifically

Answer. By pulling the goods into the box. Cannot state which article was packed first or last. But do positively know that all articles enumerated in my answer to the Seventh direct interrogatory were packed in said box

6th Cross Interrogatory. Was there any lining between the box and the goods when packed. if so what was it

Answer. The box was lined with a piece of Washing cloth Sheeting

"Direct Examination resumed"

1st Interrogatory. State where the invoice which you State in your answer to the 4th Cross interrogatory you used to refresh your memory of the contents of the box was made. where and

under what circumstances. and how you know the list you have given in your answer to the 6th direct interrogatory is a correct list of the contents of said box.

Answer I was made on the 13th day of May 1861 from my Sales book. on which I entered the goods contained in the box as I packed them. I entered them and packed them myself and checked to make out the invoice. I read out of said Sales book and checked it back and know it to be correct calling only for the goods contained in the box in question

Cross Examination resumed.
1st Cross Interrogatory. What relation are you of any to the Plaintiffs in this suit?
Objected to by Reff
Answer. We are Brother in law

Lucius C Buell

State of Illinois
Stephenson County } ss I the subscriber a Justice of the peace of the said County do certify that the above deposition was taken by me at the time and place mentioned in the caption thereof that the said witness was first duly sworn. and that the said deposition was carefully read to the witness and signed by him
Dated this 3d day of January A.D. 1862

Joseph B Smith
Justice of the Peace

Justices fees for taking foregoing Deposition $2.00
Witness " L C Buell 3 days 1.00

21 Filed J. W. Shaffer Clk
per E. R. Hodges Dep Clk

State of Illinois
Stephenson County } Before Joseph B. Smith Esq a Justice
Lucius S. Comes } of the Peace of said County.
vs.
The Illinois Central
Railroad Company

Take notice that on Monday the Third day of February AD 1862 at the hour of Ten o'clock AM of said day before J. P. McClintock Esq a Justice of the Peace at his Office in Sandoval Illinois I shall take the deposition of D. W. Stead a witness to be Examined on the part of said Plaintiff and which said deposition will be read in Evidence at the trial of said cause. and when & where you may appear you can Examine said witness if you see proper

To the said Illinois
Central Railroad Co &c
Bright & Beardsley
their Attorneys

Fred. C. Ingalls
Atty for Plff

State of Illinois
Stephenson County } Frederic C. Ingalls of said County
being first duly sworn deposes and says that he delivered a true Copy of the within Notice to Bright & Beardsley Attorneys of the within named Illinois Central Railroad Company at their Office in Freeport on the 13th day of January AD 1862

Subscribed & Sworn to before me
this 17th day of January AD 1862
J. A. Clair
Notary Public
Seal

Fred. C. Ingalls

Exhibit A

No 202. Sand Station May 16. 1861

Received — 186 of the Ohio & Mississippi Railroad Co in good order for L S. Corles Freeport

1 Box Dry goods

Charges 1.59

200 lbs 52¢

Rutter & Co

Interrogatories to the Witness

1. Name. Age Residence & occupation &c.

2d Do you know the parties to this suit. & if so how long have you known them

3d State whether you are employed as Agent for any Rail-Road Company and if so. in what capacity. and by what Rail Road Company. and how long have you been so Employed &c.

4th State what your occupation or Employment was on the Sixteenth day of May AD 1861

5th Will you produce a paper (marked Exhibit "A" and attached hereto) and state from whence you obtained it. State whether you ever saw it before. and if so when. Do you know who signed it. if so state by whom it was signed and state if you know what was the occupation & Employment of the person who signed it at the time it was signed. and if you state that such person was then in the Employment of any person or corporation state in whose Employment he then was.

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5" State if you know for what this paper was given. by whom and to whom. State all the circumstances you know in regard to it.

6 Do you know anything in regard to the Box of Dry Goods mentioned in said paper. 6 If you know of such a box state what you know about it. State whether you received such box and if so how you received it. and if you delivered it to any person. State to whom you delivered it and what was done with it. and if you delivered such box state its condition when you received it when you delivered it. And state when these transactions took place. and in what place County and State.

7 State whether the Ohio and Mississippi Railroad forms a junction with the Illinois Central Railroad if so where at what place County and State

8 Look at the paper marked Exhibit A. and state if you know what the letters and figures "2 C 52" mean.

9 State whether there is any arrangement between the Ohio & Mississippi Railroad and the Illinois Central Railroad in regard to charges on freight which is shipped on one of the roads and passes over the other to reach its destination If you know of such arrangement state what it is

10. State if you know what is done with respect to collecting charges for freight when it is shipped on one road and passes over the other. and state if you know what is done with the money collected under such circumstances

Lucius S. Comles
vs.
Illinois Central
Railroad Company

Deposition of D. W. Stead a resident of the County of Marion and State of Illinois aged about Thirty years a Witness on the part of the Plaintiff in the above entitled suit now pending before Joseph B. Smith a Justice of the Peace in and for the County of Stephenson State of Illinois aforesaid produced sworn and examined before George D. McElmurry a Justice of the Peace in and for said County of Marion on the Third day of February A.D. 1867 at the Office of said Justice in the Town of Sandoval taken by virtue of the annexed Notice

Said Witness being first duly sworn deposeth and says as follows

Answer to the first Interrogatory as per Interrogatories annexed hereto.

My name is D. W. Stead. My age is Thirty years. Reside in Sandoval Marion County State of Illinois. Agent Ohio & Mississippi Railroad Co is my occupation

Ans See to Int second
I do not know the Plaintiff nor not much of the Defdt only at Sandoval

Ans Third to Int third
I am. as Agent Ohio & Mississippi R.R. Co. Two years and four months

Ans Fourth to Int 4th

25 On the 16th day of May 1861 I was Agent of the Ohio & Miss RR Co at Sandoval Ill.

Ans 5 to Int 5
It is produced. and I obtained it from Mr A. Meiler Receiving Clerk of E J Rutter Agent of Illinois Central R R at Sandoval. I can't admit the time it was received from said Clerk. It was signed Rutter by A Meiler. A. Meiler was Receiving Clerk of the Ill Central Railroad at Sandoval Illinois. He was employed by E J Rutter as Agt but paid by the said Ill Central Railroad

Ans to Second Int 5.
This receipt was given by said Agent of said Central RR to me for One box directed to L S. Coates directed to Freeport Ills. all I know about the delivery is that it was delivered to said Railroad in good Order

Ans 6th to Int 6th
Nothing only as above mentioned. I received it by the O & M RR from Cincinnati & delivered it to the Illinois Central RR Receiving Agent A. Meiler. I received it in good Order and delivered it in good order said agent May 16th 1861 at Sandoval Marion County State of Illinois

Ans 7th to Int 7
It does at Sandoval Marion Marion County State of Illinois

Ans 8th to Int 8th
The 5 7c means that the Ill Central R Rail road tons of Through rates is 5 7c on the One Hundred pounds

Ans 9 to Inq 9

There is such an arrangement. The arrangement is that a through rate of tariff is agreed on when freight passes over both roads.. and the last road which takes the freight pays the charges of the first Road.

Ans 10 to Inq 10.

When freight passes over the O & M Railroad and delivered to the Ill Central. the said Central Railroad agt pays me the O & M charges as in this case. they paid me $159 the remainder which they collect I do not know what they do with it. but the money I collected I send to the Treasurer of the Ohio & Mississippi Railroad

D W Sleas

State of Illinois
Marion County } I the subscriber a Justice of the Peace of the said County do certify that the above deposition was taken at the time and place mentioned in the caption hereof that the said Witness was first duly sworn. and that the said deposition was first carefully read to the Witness and signed by him.

Dated this 2d day of Feby A.D 1867

G. P. McClanahan J.P.

J P Charges for recording 1.25
Certificate 75
Swearing Wit 67
Subpoena 25
$1 81

Wit fee 1 00
Clerk certificate 35
Cons fee 25
$3 41

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The State of Illinois }
Marion County } I Dwyer Tracy Clerk of the Marion County Court for said County which is a Court of Record having a Seal do hereby certify that G. P. McElinay Esq whose name is subscribed to the foregoing Deposition was on the day of the date thereof and still is an acting Justice of the Peace within and for the said County of Marion duly commissioned and qualified to Office and as such full faith and credit are due and of right ought to be given to all his official acts as well out of as in Court

Seal

In Testimony Whereof I Dwyer Tracy Clerk of the County Court aforesaid have hereunto subscribed my name and affixed the seal of said Court at my Office in Salem on the 7th day of February A.D. 1860

Dwyer Tracy
Clerk

Filed April 4th 1860
J. W. Shaffer Clerk
per E. H. Hodges Deputy

It was admitted to be in evidence on the trial that the box described in the receipt to the Ohio & Mississippi Railroad Company attached to the deposition of the Witness Stead was delivered by the Defendant to the Plaintiff at Freeport Illinois in apparent good order. that the goods for the loss of which this action was brought were missing from the box when delivered by Defendant at Freeport to Plaintiff and that Plaintiff paid the freight on the box to Defendant

The foregoing was all the evidence in this Case

And thereupon upon said trial the Court having found the defence for the Plaintiff the Defendant moved the Court for a

new trial and in arrest of Judgment for the following reasons to wit

1st The finding was against the Law

2d The finding was against the Evidence

3d The finding was against the Law & the Evidence Which Motions the Court overruled to which the Defendant then and there Excepted and prayed that this his Bill of Exceptions might be signed sealed and made a part of the record herein and it was accordingly so done at the time of said trial

Said goods for the loss of which this action was brought herein enumerated in the paper hereto annexed being Plaintiffs declaration before the Justice

Lucius S Curtis
vs
The Illinois Central Railroad Company

Before Joseph B Smith Esquire JP

Plaintiff declares for goods lost by Defendants on their Railroad in transit as follows

1 Doz Mens Colored Handkerchiefs
1 " " " "
2 " " " "
1 " " White "
2 " " " "
2 " " " "
3 " " " "
3 " " " "
1 " " Sukufene "
2 " " " "

of the value of $100.00

Filed April 4 1862 J H Shaffer Clk
per E R Hodges Dep Clk

Benj R Sheldon

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Know all Men by these presents That We The Illinois Central Railroad Company as principal and Hiram Bright & Francis W S Brawley as Sureties are held and firmly bound unto Lucius S Comes in the penal sum of Three Hundred Dollars lawful money of the United States for the payment of which well and truly to be made We bind ourselves said Hiram Bright & Francis W S Brawley binding Their heirs and administrators jointly severally and firmly by these presents In Witness Whereof said Illinois Central Railroad Company has caused its corporate name & seal to be hereunto affixed & said Hiram Bright & Francis W S Brawley have hereunto affixed their hands & seals this Twenty seventh (27) day of December AD 1867

The Condition of the above obligation is such that whereas the said Lucius S Comes did on the Seventeenth day of December AD 1867 in the Circuit Court of Stephenson County in the State of Illinois recover a Judgment against the said Illinois Central Railroad Company for the sum of Seventy five 60/100 Dollars from which Judgment said Illinois Central Railroad Company has prayed an appeal to the Supreme Court of the State of Illinois. Now if said Illinois Central Railroad Company shall duly prosecute its said appeal and shall also pay the Judgment costs interest and damages in case the said Judgment shall be affirmed then the above Obligation to be void otherwise to remain in full force and effect

The Illinois Central Railroad Company by J M Douglas Atty in fact (Seal)
Hiram Bright (Seal)
F W S Brawley (Seal)

Filed January 16. 1863.
J. M. Shaffer Clk
per S. R. Hodges Dep.

No 6830 Lucius S. Charles vs Illinois Central RR Co — Reff Bill of Costs vs Defdt

| | |
|---|---|
| Entg appearance 15¢ Entg Cls Comp 20¢ | .35 |
| " filg Stmt 75¢ Filg Praecipe 5¢ Subpoena filg 40¢ | 1.10 |
| Oppg filg Demr 10¢ Entg funding of Comp 20¢ | .30 |
| Entg Cls Docket 20¢ Entg Judgt 25¢ Cats 15¢ Cls Fees 20¢ | .80 |
| Exr filg 45¢ Doc Fees 10¢ Shff retrn 10¢ B.C. 30 Cr Seal 35¢ | 2.30 |
| | 7.45 |
| Shff fees Robery Serving retrn Subpoena | .10 |
| Cots in Witnesses Comp | |
| J. R. Smith & J. P. | 6.55 |
| J. Nelson Comp | 2.35 |
| E. R. McDowell Comp | .15 |
| Witness D. H. Smith & N. M. Bumbell 2 days Each | 2.00 |
| " L. L. Buell $1.00 L. R. Rosebrough 50¢ | 1.50 |
| " G. F. Johnson 1.00 M. Clark 1.00 D. H. Steel | 3.00 |
| G. F. McClurans for taking Depo 1.81 Clerk Cert 60 | 2.41 |
| Jury fees paid by Reff | 1.50 |
| | $24.21 |

Defendant Bill of Costs
Filg papers from D.P. 60¢ Entg appearance 15¢ — .75
Doc Docket & Terms 20¢ Entg or filg Mo Subpoenas Depo 25¢ — .45
Entg Sub to Comp 20¢ Entg Cls Order Mo Sub Depo 20¢ — .40
" Docket to rule of Comp 20¢ Entg Mo Remittitur 20¢ — .40

31 Order Orlg Do 20¢ Entry Exceptns 20¢ Entry prayer for appeal 20¢ 60
Order allg appeal 20¢ Entry & filg Bill Exs 25¢ 45
Calg & filg appl bond 50¢ Fee Bill Exs 45¢ BC 30¢ 1.35
4.30

Transcript to Supreme Court (paid by deft) 9.00
13.30

I, J. Milton Shaffer Clerk of the Stephenson County Circuit Court State of Illinois do hereby certify that the above is a true copy from my fee book

Witness my hand and seal of said Court

S. P. Shaffer Clerk
per E. P. Hodges dep

State of Illinois
Stephenson County } ss. I, J. Milton Shaffer Clerk of the Circuit Court in and for said County do hereby certify that I have carefully compared the foregoing with the original. Transcript of the Judgment Stipulations. Bill of Exceptions & Appeal Bond on file and the Order Entered of Record in my office in a cause wherein Lucius S. Comles is Plaintiff and the Illinois Central Railroad Company are Defendants and that the same is a perfect true correct transcript from said original. and of the whole thereof

In Testimony Whereof I hereunto set my hand & affixed the Seal of said Court at the City of Freeport this 30 day of January A.D. 1862.

S. P. Shaffer Clk. Stephenson

And now comes the said Appellant & says that in the record & proceedings aforesaid and in the rendition of the Judgment aforesaid there is manifest error in this to wit

1 The court erred in refusing to suppress the deposition of D W Steele

2 The court erred in admitting improper evidence for offered by the ~~ap~~ plaintiff in the court below

The court erred in finding the issue for the plaintiff in the court below

The court erred in rendering the Judgment aforesaid in manner & form aforesaid

Glover Cook & Campbell
for Appellant

And now comes the said Lucius S. Coules by Fred" C. Ingalls his attorney and says that in the record and proceedings and in the judgment aforesaid, there is no Error. Wherefore he prays the said judgment may in all things be affirmed &c

Fred" C Ingalls
atty for L. S. Coules

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Lucius S. Combs
vs
Ill. C. R.R. Co

Transcript

Filed Apl. 15. 1863.
L. Leland
Clk.

$9.00

Supreme Court. Third Grand Division
April Term 1863

The Illinois Central Rail Road Co. appellants
vs
Lucius S. Cowles appellee
} Appeal from Stephenson

Argument for Appellee

The only points insisted on by appellants in this court are

1. That the deposition of the witness D. W. Stead, should ~~be~~ have been suppressed on the ground that the notice states it would be taken at 10 o'clock A. M. and that it does not appear that it was taken at that time

2 That there is no proof that the goods were taken from the box while in the custody of appellants — That appellants did not receipt for the missing goods.

With respect to the deposition — The notice given was to take the deposition on the 3d day of February at 10 A.M. This notice was prefixed to the deposition, and in fact forms part of it — The Justice writes the heading of the deposition, which follows the notice, stating therein that the witness was sworn, examined &c on the third day of February "by virtue of the annexed notice" In the certificate it

is stated that the deposition was taken "at the time and place mentioned in the caption thereof"—

This is sufficient evidence that the deposition was taken at the time mentioned — The court will presume that the officer followed the requirements of the law, although his statement may be general, and not mention every particular — In Ballance v. Underhill (3 Scam. 453.) a deposition was held to be admissible, although it was nowhere stated that the witness was sworn before he gave his deposition; the Court holding that it would presume that the oath was administered at the proper time —

The Justice here certifies directly under the notice that the deposition was taken "by virtue of the annexed notice" and "at the time and place mentioned" &c —

The presumption is that the officer followed the notice he thus particularly refers to. It becomes a part of the heading or "caption" of the deposition. The cases in 12 Ill 271, ~~10 Ill~~. 18 Ill 442 sustain the case in Scammon and the Court say in 18 Ill 442. that they have not adopted a technical construction, and see Curtis v. Martin 20 Ill 572.

In regard to the proof of loss of the goods.

The case cited by appellants (33 Eng S & E p 235) is not in point to sustain their position — That case decides that where a carrier ~~who~~ undertakes to deliver a package to a second carrier

the first carrier is not liable, on simple proof that the goods did not reach their destination - It is held that some proof should have been made of non delivery by the first to the second carrier, of the package - There was no proof whatever of such fact in the case -

In this case we offer the receipt of the appellants, given at Sandoval - The appellants say they did not receipt for the missing goods. - They did receipt for the box of goods <u>in good order</u>. We prove the shipment of the box at Cincinnati, containing the missing goods. We follow it to Sandoval and here it is receipted for by appellants, in good order - We claim this is amply sufficient proof of delivery - "The responsibility of a common carrier is fixed by the acceptance of the goods, whether the acceptance be in a special manner, or according to the usage of his business" Angell on Carriers §§ 140, 135, 133, 465.

Davis vs Mich South & North Ind R R Co. 22 Ill 279

The courts have uniformly adopted a liberal rule with regard to the evidence to hold a corporation liable for losses. conceding to them the right to demand a liberal compensation for risks incurred. (Angell. § 471)

The only practical redress that the appellee has, is against the appellants. He must hold the carriers at the termines of the transit, or he is otherwise practically cut off from relief - He cannot go to a foreign state and institute proceedings without incurring ruinous expense - The advantages possessed

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Illinois Central R R Co

v

Lucius S. Cowles

Argument for Appellee

Filed Apr 27, 1865

S. Lecarew

Clk

# Supreme Court of Illinois,

THIRD GRAND DIVISION.

**APRIL TERM, A. D. 1863.**

ILLINOIS CENTRAL R. R. CO.,
*vs.*
L. S. COWLES.

The deposition of D. H. Stead should have been suppressed.

It does not appear from the certificate of the magistrate that it was taken at the time mentioned in the notice. The notice was to take the deposition at 10 o'clock; the return does not show when it was taken.

*Scates Stat.*, 258 *Sec.*, 12.

This is a statutory proceeding, innovating upon the common law rules of evidence, and must be strictly complied with.

*Fleming* v. *Hollenback*, 3 *Denio*, 274,
*Richardson* v. *Gere*, 21 *Wend.*, 156.
*Jackson* v. *Hobby*, 20 *John*, 361.

Depositions are a species of evidence in suits at law altogether unknown to the common. They are, moreover, a species of evidence of most unsatisfactory character, and should always be received with the utmost caution. The Legislature have guarded with great care, and the courts have rigidly enforced all the safeguards.

*Winooski Turnpike Co.* v. *Reilley*, 8 *Verm.*, 404.
*Collins* v. *Elliott*, 1 *Harris and John*, *R.* 1.

Where notice was given of the taking of a deposition between the hours of ten and six, and certificates showed it to have been taken between the hours of eight and six, held insufficient.

*Kran* v. *Newell*, 1 *Missouri*, 742, *top paging.*

There is nothing in this cirtificate to indicate at what hour the deposition was taken, and it must affirmatively appear, from the deposition itself, that it was taken in conformity with the notice, there is an end of the question, for, in this case it does not so appear, and no presumption can make it so. The magistrate says he took it by virtue of the notice, but he don't say he took it in *pursuance* of the notice.

The box of dry goods actually delivered, fills and answers the receipt given to appellant. To recover, therefore, it is necessary for appellee to prove that the goods were in the box when defendant received it. I know that proof that goods were in the box when it left Cincinnati raises the presumption that they were in it when it arrived at Sandoval, because the usual course of proceeding is that boxes go through withont being broken open, but if the usual course of business was that boxes were broken open and contents stolen, then the presumption would not arise, and when the proof shows that the box was broken open the presumption ceases. The proof only shows that the box was broken open between Cincinnati and Freeport, and leaves it wholly uncertain on which road, and plaintiff cannot recover upon proof of a loss which is equally consistent with a loss by one company as by the other.

The suit should have been as the Ohio & Mississippi R. R. Co.

*Murschamp* v. *C. & R. I. R. R.*, 8 *Meeson and Welly*, 426.
*Watson* v. *A. N. & B. R. R Co.*, 3*d Eng. L. and E. R*, 497.
*Crouch* v. *L. & N. W. R. R. Co.*, 25 *Eng. L. and E. R*, 287, *Ill. Cen.*

There is no proof that the goods, if taken from the box at all, were taken from the box while in custody of defendant. It is true the receipt says the box was received in good order, that means in apparent good order, for the company had no right to open it, to see what was in it, and it was delivered to plaintiff in apparent good order. The defendant receipted for a box, and not for the missing goods. Nor is there any proof that the goods were in the box when received by defendant.

It is clear that the Ohio & Mississippi Co. were really responsible; the goods were shown into their possession, but not into ours.

The Ohio & Mississippi Co. could discharge themselves only by showing that they delivered the goods, as well the box to Central R. R.

There was just exactly as much proof that the goods were taken out while in the possession of the Ohio & Mississippi Company, as there was of the loss while in possession of defendant.

B. C. COOK.

Ill. Cent. R.R.

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v.

Cowdery

Appellants

Brief.

Filed May 1st 1863

L. Leland

Clerk

# SUPREME COURT.

THIRD GRAND DIVISION—APRIL TERM, 1863.

THE ILLINOIS CENTRAL RAIL ROAD COMPANY,
*Appellants,*
*vs.*
LUCIUS S. COWLES,
*Appellee.*

## Brief and Points for Appellee.

### 1.

A box of goods was shipped, at Cincinnati, by the Ohio & Missinsippi Railroad Company, directed to the Appellee, who was the owner of the goods, at Freeport, Illinois—the O. & M. R. R. Co., giving their receipt for the same. The goods were delivered to the Illinois Central Railroad Compa- by the O. & M. Co., at Sandoval, Ill., and the following receipt was given by the Ill. C. R. R. Co.:

No. 202.] SAND'L STATION, May 16, 1861.

*Received of the* OHIO & MISSISSIPPI RAIL ROAD COMPANY, *in good order, for* L. S. COWLES, Freeport,

1 *Box Dry Goods.* Charges, $1 59
300 lbs. 52c ———

BUTLER, M.

The box was delivered by the Ill. C. R. R. Co. to the Appellee at Freeport, and the goods, for which this action is brought, were found to be missing from the box, when received by Appellee.

The point made below, on the name of the Justice was, that it was G. P. McClimans in the notice, and George P. McClimans in the caption of depos^n. In regard to the time The notice, fixing it at 10 A.M. is prefixed to the depos^n and the heading or "caption" itself refers to the notice; states the depos^n was taken "by virtue of the annexed notice" on the day mentioned, and is a sufficient reference taken with the certificate and notice, to fix the time –

### 2.

The evidence clearly, ~~estables~~ establishes the foregoing facts, and the measure of damages (in case the Ill. C. R. R. Co. is held to be liable,) was agreed upon.

The objections to the deposition of the witness D. W. Stead, are not well taken.

*Curtis v. Martin*, 20 Ill. 557.
*Cole v. Choteau*, 18 Ib. 442.
*Greene v. Bledsoe*, 12 Ib. 272.

### 3.

Loss is *prima facie* evidence of negligence of a corporation.

*Angell on Carriers*, §§ 48. 202. 472.

### 4.

The case of *New Jersey Steam Navigation Company v. Merchants' Bank*, 6 Howard U. S. Reports, 344, is in point. That was an action brought by the Bank against the Navigation Company to recover the value of specie lost on the steamer Lexington. The Bank made a contract with Harnden, proprietor of an Express, to transport the specie from New-York to Boston. The Navigation Company contracted with Harnden.

The Navigation Company raised the objection that they were not liable to the Bank; that if accountable at all for the loss, they were accountable to Harnden, with whom the contract for carrying the specie was made.

In deciding the case, considering Harnden in the light of a common carrier, the Court say, (p. 380):

"The carrier," says Buller J., "is considered, in law, the agent or servant of the owner, and the possession of the carrier is the possesion of the owner, (4 T. R. 490).

Under these circumstances, the contract between Harnden and the Respondents for the transportation of the specie was, in contemplation of law, a contract between them and the libellants; and although made in his own name and without disclosing his employers at the time, a suit may be maintained directly upon it in their names.

(p. 38). In *Sims v. Bond*, 5 Barn. and Adol. 393, the Court observed that it was a well established rule of law, that when a contract not under seal is made by an agent in his own name for an undisclosed principal, either the agent or the principal may sue on it.

The same doctrine is affirmed by Baron Parke in delivering the judgment of the Court in *Higgins v. Senior*, 8 Mees. and Wels., 834, 844, in the Court of Exchequer. In that case it was held that the suit might be maintained on the contract, either in the name of the principal or agent, and that, too, although required to be in writing, by the statute of frauds.

The rule is also equally well established in this country, as may be seen by a reference to the cases of *Beebee v. Robert*, 12 Wend., 413; *Taintor v. Pendergast*, 3 Hill, 72; and *Sanderson v. Lamberton*, 6 Binney, 129.

*The last case was like the one before us. It was an action by the owners directly upon the sub-contract made by the first with the second carrier for the conveyance of the goods, in whose hands they were lost.*

The cases are numerous in which the general owner has sustained an action of tort against the wrong-doer for injuries to the property while in the hands of the bailee. The above cases show that it may be equally well sustained for a breach of contract entered into between the bailee and a third person.

*The Court look to the substantial parties in interest, with a view to avoid circuity of action.*"

FREDERIC C. INGALLS,
*for Appellee.*

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Illinois Central R. R. Co

vs

Lucius S. Cowles

Brief for Appellee

Filed Ap[illegible] 8 1863

L. S[illegible] Clk

# Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

If this road did not loose the goods who did? If deft is let off so would be the other road & who got the goods

ILLINOIS CENTRAL RAILROAD COMPANY,

vs.

LUCIUS S. COWLES.

APPEAL FROM JOE DAVIESS. Stephenson

Was in court for the jury to guess which road lost the goods? That they were lost by one or the other is undoubted.

## ABSTRACT.

Query - If the proof is clear that one of 2 parties is liable but the proof is equally balanced as to which can either be held liable?

1 Suit commenced December 24th, 1861, before Justice of the Peace. The Plaintiff filed the following claim before the Justice. Plaintiff declares for goods lost by Defendants on their railroad, in transit as follows:

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| | | | | |
|---|---|---|---|---|
| 1 | Doz. | Men's | Colored | Handkerchiefs. |
| 1 | " | " | " | " |
| 2 | " | " | " | " |
| 1 | " | " | White | " |
| 2 | " | " | " | " |
| 2 | " | " | " | " |
| 3 | " | " | " | " |
| 3 | " | " | " | " |
| 1 | " | " | Superfine | " |
| 2 | " | " | " | " |

3 Judgment for the Plaintiff, $75.66.

5 Appeal to the Circuit Court.

7 Judgment of the Justice affirmed.

9 Previous to the trial of the cause, the Defendants moved the Court to suppress the deposition of D. H. Stead, because the deposition did not appear to have been taken before G. P. McClimans, the officer named in

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the notice, nor does it appear to have been taken at the hour fixed in the same for taking the same.

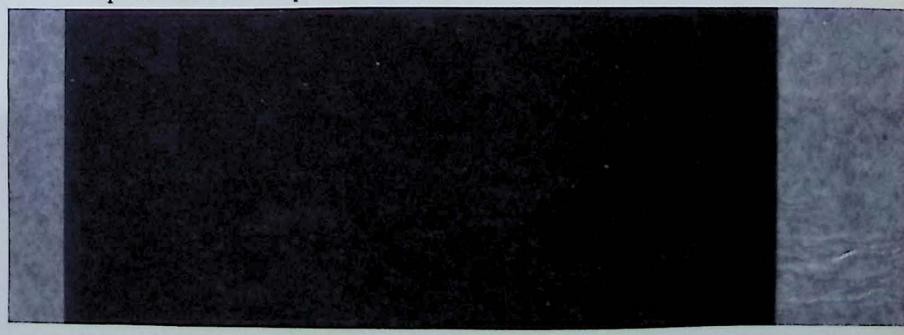
2d. The 2d interrogatory, or so much of it as presumes that a paper marked Exhibit A was obtained by the witness. 3d. So much of the ans. to int. 5 as sets up the act of a clerk or agent of an agent of Defendant because thereof. 4th. So much of ans. to said int. 5 as sets forth what the paper or receipt therein mentioned was given for, because thereof, the paper should show for only what it was given for. 5th. Ans. 8 to int. 8, because it attempted to explain a patent ambiguity in a witness.

6th. Ans. 9 to int. 9, because it sets up an arrangement outside of this case, and is irrelevant and impertinent. 7th. Ans. 10 to int. 10, or so much thereof is irrelevant and impertinent to this case because thereof.

The notice under which the deposition was taken is as follows:

Affidavit of Fredrick C. Ingalls, of service of notice on the 13th day of January, A. D. 1862.

Caption of Stead's deposition.



5th Interrogatory. Will you produce a paper, (marked Exhibit A. and attached hereto,) and state from whence you obtained it: state whether you ever saw it before, and if so, when; do you know who signed it? if so, state by whom it was signed, and state, if you know, what was the

occupation and employment of the person who signed it at the time it was signed; and if you state that such person was then in the employment of any person or corporation, state in whose employment he then was.

25 Answer. It is produced, and I obtained it from Mr. A. Wisler, receiving clerk of Mr. E. J. Buster, agent of the Illinois Central R. R., at Sandoval. It was signed Buster, by A. Wisler. A. Wisler was receiving clerk of the Illinois Central R. R. at Sandoval, Ill. He was employed by E. J. Buster, as agentee, but paid by the said Ill. Central R. R.

Butler Butler Butler Misler Misler

2d Interrogatory 5. State, if you know, for what this paper was given: by whom, and to whom: state all the circumstances you know in regard to it.

25 Answer. This receipt was given by said agent said Ill. Central R. R. to me for one box, directed to L. S. Cowles, and directed to Freeport, Ill. All I know about the delivery is, that it was delivered to the Railroad in good order.

23 Interrogatory 8. Look at the paper marked Exhibit A, and state, if you know, what the letters and figures I. C. 52 mean.

25 Answer. The 52 means that the Ill. Central Railroad proportion of through rates is 52 cts. on the 100 pounds.

23 Interrogatory 9. State whether there is any arrangement between the Ohio and Mississippi Railroad and the Illinois Central Railroad in regard to charges on freight which is shipped on one of the roads, and passes over the other to reach its destination: if so, state what the arrangement is.

26 Answer. There is such an arrangement. The arrangement is, that a through rate of tariff is agreed on when freight passes over both roads, and the last road which takes the freight pays the charges of the first road.

23 Interrogatory 10. State, if you know, what is done with respect to collecting charges for freight, where it is shipped on one road and passes over the other: what is done with the money collected under such circumstances?

26 Answer. When freight passes over the O. & M. Railroad and delivered to the Ill. Central, the said Central Railroad agent pays me the O. & M. charges, as in this case, they paid me $1.59; the remainder which they collect I do not know what they do with it. But the money I collect I send to the Treasurer of the Ohio and Mississippi Railroad.

Copy of the Exhibit attached to the deposition.

EXHIBIT A.

22 No. 202. Sand'l Station, May 16, 1861.

Received 186, of the Ohio & Mississippi Railroad Company in good order, for L. S. Cowles, Freeport, One Box Dry Goods.

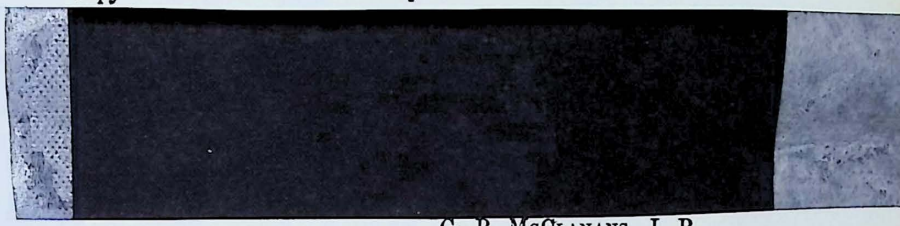
Charges, 1.59.

52c 300 lbs. 52d.

Buster, W. C.

Butler, M.

Copy of certificate attached to deposition.



R. p 26
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J. P.

G. P. McCLANANS, J. P.

10 The Court overruled the motion to suppress the deposition, and the Defendant excepted. It was stipulated that the cause should be submitted to the Court without a jury. That the Court should decide all questions as to the liability of Defendant; and if the Court shall consider the Defendant liable, then the measure of damages is to be the amount, $75.66, found by the jury in the Court below, neither party waiving any right to writ of error, or appeal to Supreme Court.

11 It was agreed that the deposition of Lucius C. Buell, subject to any legal objection on the ground of such witness' interest in the result of the suit, or any other legal objection, together with the original bill of lading from the Ohio and Mississippi Railroad Company, "A," may be read in evidence on the trial, Defendants reserving of making all legal objections to said deposition, except as to the time of making the same.

12 L. C. Buell's deposition. He says I shipped a box, on the 13th day of May, 1861, at Cincinnatti, directed to the Plaintiff at Freeport, Illinois, shipped by the Ohio & Mississippi Railroad. I took a bill of lading for the same; took it from the Ohio & Mississippi Railroad agent. The bill
13 of lading marked A is signed by Leahy, I received it from the agent. I packed the box myself; gives contents of the box.

One dozen men's colored handkerchiefs, number 185, were worth four dollars a dozen in Cincinnatti. One dozen men's colored handkerchiefs, marked 205, were worth seven dollars and a half in Cincinnatti. Two dozen colored handkerchiefs, number 195, worth six dollars a dozen in Cincinnatti. He also gives the value of the other articles.

17 I was instructed by Plaintiff to ship them by railroad. They were marked L. S. Cowles, Freeport, Illinois.

18 I shipped them on the Ohio & Mississippi Railroad, at Cincinnatti.

19 The box was lined with a piece of Washington sheeting.

20 Witness is a brother-in-law of Plaintiff.

24 D. W. Stead, in addition to the interrogatories and answers above stated, testified that he was agent for the Ohio & Mississippi Railroad Company at Sandoval. I received a box by the Ohio & Mississippi Railroad from Cincinnatti, and delivered it to the Illinois Central Railroad receiving agent, May 16, 1861, at Sandoval, Marion County, Illinois, received it in good order. The Ohio & Mississippi Railroad forms a junction with the Illinois Central Railroad at Sandoval.

27 It was admitted, on the trial, that the box described in the receipt to the Ohio & Mississippi Railroad Company attached to the deposition of witness Stead was delivered by the Defendant to the Plaintiff, at Freeport, Illinois, in apparent good order; that the goods for the loss of which this action is brought, were missing from the box when delivered by Defendant to Plaintiff, at Freeport, and that Plaintiff paid the freight on the box.

This was all of the evidence.

The Court found the issue for the Plaintiff.

28 The Defendant moved for a new trial. The motion was overruled, and the Defendant excepted.

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## POINTS MADE BY APPELLANT.

### I.

The deposition of Stead should have been suppressed. The notice stated that the deposition would be taken at 10 o'clock, A. M. It does not appear that it was taken at that time.

The suit should have been against the Ohio & Miss RR Co 8 Mees & Welby 426
Muschamp vs the L & P RR Co 8 Mees & Welby
Brown vs L & N W RR Co 25 Eng L & E 287
Walton vs G N & B RR Co 3 Eng L & E 497
Ill C RR Co vs Copeland 24 Ills 336

### II.

There is no proof that the goods, if taken from the box at all, were taken from the box while in the custody of the Defendant. It is true that the receipt says that the box was received in good order, but it was also delivered to Plaintiff in apparent good order. The Defendant did not receipt for the missing goods, nor is there any proof whatever that those goods were in the box when Defendant received it.

[redacted]

GLOVER, COOK & CAMPBELL,

*Attorneys for Appellants.*

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Ill. Cent RR

v

L. Cowles

Abstr Points

Filed April 15, 1843

L Selmes Clk