

No. 12866

Supreme Court of Illinois

Michigan S.& N.Ind.R.R.Co.

vs.

Myer

71641  7

~~45~~ 45

John Hayes

45

Alb. Soc. & Soc. Ind.

1850

12866

1859

Hayes

United States of America } Pleas, before the Honorable George Manum
STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof
begun and held at the Court House in the City of Chicago, in said County, on the

Tenth Monday, (being the twenty second day) of
June in the year of our Lord one thousand eight hundred and
fifty seven and of the Independence of the said United States the
Eight Miss permanently to notice & the order of the Judge of
said Court.

Present, Honorable George Manum Judge of the 7th Judicial }
Circuit of the State of Illinois. }

Charles Haven States Attorney.

John S. Wilson Sheriff of Cook County.

Attest, Wm L. Church Clerk.

Be it remembered that heretofore to wit - on the 13th day of August, in the year of our Lord, one thousand, eight hundred, and fifty six, there was filed in the office of the clerk of the court aforesaid, a certain precept, which is in the words and figures following, to wit -

State of Illinois }
Cook County } ss.

To the clerk of the Circuit Court of
Cook County -

Sir,

Please issue summons in favor
of John Meyer, plaintiff, against the Michigan
Southern & Northern Indiana Railroad Company,
defendants in action, of assumpsit - damages, six
hundred dollars -

Respectfully

Yours

Asaz & Von Leden

Plffs Attys

And afterwards to wit, on the day and
year last aforesaid, there was issued out of the
office of the clerk aforesaid, and under the seal
of said Court, the Peoples writ of summons, direct-
ed to the Sheriff of Cook County, to execute, and
dotted in the words and figures following, to wit -

State of Illinois }
County of Cook } ss.

The People of the State of Illinois,
to the Coroner acting Sheriff of said County, Greeting—
We command you that you summon The
Michigan, Southern and Northern Indiana Rail
Road Company, if it shall be found in your County,
personally to be and appear before the Circuit Court
of Cook County, on the first day of the next term
thereof, to be holden at the Court House in ^{the city of} Chicago,
in said County, on the Fourth Monday of October
next, to answer unto John Meyer, in a plea of trespass
on the case on promise, to the damage of the said
plaintiff, as is said in the sum of six hundred
Dollars—

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



Witness Louis D. Hoard, Clerk of
our said Court, and the seal thereof,
at the city of Chicago aforesaid, this
Eighteenth day of August. A. D. 1856.

L. D. Hoard

Clerk—

And afterwards, to wit, on the 26th day
of August, in the year last aforesaid, said writ
was returned into the Court aforesaid, by said
Sheriff endorsed as follows, to wit—

Leaving a copy of this writ with George

3. W. Gray, agent of Michigan Southern, and Northern Indiana Rail Road, ~~case~~ Co.

The 26th day of August 1856. Fees—^{Service}—, 50. Copy 50. Mile
5. Return 10— 1.15. Paid by plaintiff's attorney—

Josh. Beach, Coroner, and Ex officio acting Sheriff.

By S. C. Lamm, Deputy—

And afterwards, to wit, on the 16th day of October, in the year last aforesaid, the said Plaintiff, by his attorney, filed in the office of the clerk of the Court aforesaid, his certain declaration, which is in the words and figures following, to wit—

State of Illinois)

Cook County ss.

Circuit Court Cook County.

October Term A.D. 1856.

The Michigan Southern, and Northern Indiana Rail Road Company, were summoned to answer John Meyer, of a plea of assumpsit, and thereupon, John Meyer, by Edward G. Asay and Charles von Boden, his attorneys, comes and complains

That whereas the said defendants before and at the time of the making of their said promise and undertaking hereinafter next mentioned, were common carriers of goods and chattels for freight, and of passengers, for fare from certain place to wit, from Cleveland via Toledo, to a certain

place, to wit, Chicago, to wit at the City of Chicago- And the said defendants being such carriers as aforesaid, the said plaintiff heretofore to wit, on or about the 4th day of May, A. D. 1855. at Cleveland aforesaid, at the special instance and request of the said defendants, caused to be delivered to the said defendants, so being such carriers as aforesaid, certain goods and chattels being and containing the baggage of the said plaintiff, to wit, one trunk, marked John Meyer, Chicago, Illinois, containing personal property of the said plaintiff, one package marked John Meyer, Chicago Illinois, containing personal property of the said plaintiff and one bundle, marked John Meyer, Chicago, Illinois, containing personal property of the said plaintiff of great value, to wit, of four hundred nineteen dollars, fifty nine cents, to be taken care of, and safely and securely carried and conveyed by the said defendants as such carriers as aforesaid- from Cleveland aforesaid, to the city of Chicago, and there, to wit at the city of Chicago, to be safely and securely delivered by the said defendants, for the said plaintiff, and in consideration thereof, and of certain reward to the said defendants in that behalf, the said defendants being such carriers as aforesaid, then and there undertook and faithfully promised the said plaintiff to take care of the said goods and chattels, and safely and securely to carry and convey the same

and safely and securely to deliver the same at the city of Chicago, for the said plaintiff - and although the said defendants as such carriers as aforesaid, then and there had and received the said goods and purposes chattels for the purposes aforesaid, yet the said defendants not regarding their duty as such carriers, nor their said promise and undertaking so made as aforesaid, but contriving and fraudulently intending craftily and subtly to deceive and injure the said plaintiff in this behalf, had not taken care of the said goods and chattels, or safely and securely carried or conveyed the same from Cleveland aforesaid, to the City of Chicago, nor had there, to wit, at the City of Chicago, aforesaid, safely and securely delivered the same for the said plaintiff, but on the contrary thereof, the said defendants being such carriers as aforesaid, so carelessly and negligently behaved and conducted themselves with respect to the said goods and chattels aforesaid, that by and through the mere carelessness, negligence and improper conduct of the said defendants, and their servants, in this behalf, the said goods and chattels being of the value aforesaid, afterwards became and were wholly lost, to the said plaintiff, to the damage of the said plaintiff, of six hundred dollars.

And whereas also the said defendants being such carriers as aforesaid, the said plaintiff heretofore, to wit, on or about the 4th day of May,

A. D. 1853. at Cleveland aforesaid, at the special instance and request of the said defendants, so being such carriers as aforesaid, certain goods and chattels, being and containing the baggage of the said plaintiff, to wit one trunk marked "John Meyer" "Chicago", Illinois, containing personal property of the said plaintiff, one package marked John Meyer, Chicago, Illinois, containing personal property of the said plaintiff. One bundle marked John Meyers Chicago, Illinois, containing personal property of the said plaintiff, and one Box marked John Meyer, Chicago, Illinois, containing personal property of the said plaintiff, of great value, to wit of the value of five hundred dollars, to be taken care of and safely and securely delivered by the said defendants for, the said plaintiff, and in consideration of thereof, and of certain reward to the said defendants in that behalf, the defendants being such carriers as aforesaid, then and there undertook, and faithfully promised the said plaintiff, to take care of the said goods and chattels, and safely and securely to carry and convey the same, and safely and securely to deliver the same at the city of Chicago, for the said plaintiff, and although the said defendants, as such carriers as aforesaid, then and there had and received the said goods and chattels for the purpose aforesaid, yet the said defendants, not regarding their duty as such carriers, nor their said promise and

undertaking so made as aforesaid, but contriving and fraudulently intending craftily and subtly to deceive and injure the said plaintiff in this behalf, had not taken care of the said goods and chattels, excepting of one Box, or safely and securely carried or conveyed the same, excepting the said Box, from Cleveland aforesaid, to the city of Chicago aforesaid - nor had there, to wit, at the city of Chicago aforesaid, safely and securely delivered the same, excepting the said Box, for the plaintiff, but on the contrary thereof the said defendants being such carriers as aforesaid, so carelessly and negligently behaved and conducted themselves with respect to the said goods and chattels aforesaid, that by and through the mere carelessness, negligence, and improper conduct of the said defendants, and their servants, in this behalf, the said goods and chattels being of the value aforesaid, were wholly lost to the said plaintiff -

And whereas also afterwards to wit, on the day and year aforesaid, at Cleveland aforesaid, in consideration that the said plaintiff at the special instance and request of the said defendants, had them and there caused to be delivered to the said defendants, divers other goods and chattels, to wit, goods and chattels of the like number, quantity, quality, description and value as those in the said first Count mentioned, of the said plaintiff, to

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be taken care of, and safely and securely carried
and conveyed by the said defendant to Chicago
aforesaid, and there to wit, at Chicago aforesaid,
to be delivered by the said defendants for the said
plaintiff, for certain reward to the said defendants,
they, the defendants, undertook, and then and
there faithfully promised the said plaintiff, to
take care of the ^{said} last mentioned goods and chattels,
and safely and securely to carry and convey the
same to Chicago aforesaid, and there, to wit, at
Chicago aforesaid, to deliver the same for the
said plaintiff, in a reasonable time then next following.
And although the said defendants had then and
there had and received the said last mentioned
goods and chattels, for the purpose aforesaid, and
although a reasonable for the carriage, conveyance
and delivery aforesaid, hath long since elapsed,
yet the said defendants, not regarding their said
last mentioned promise and undertaking, but
contriving and intending to injure and defraud
the said plaintiff, in this behalf, did not, nor
would, within such reasonable time, as aforesaid,
or at any time afterwards, although often request-
ed so to do, safely and securely carry and convey
the said last mentioned goods and chattels,
to Chicago aforesaid, nor there, to wit, at Chicago
aforesaid, deliver the same for the said plaintiff-
but hath hitherto neglected and refused so to do,
whereby the said goods and chattels last mentioned,

being of the value aforesaid, have been and are wholly lost to the said plaintiff, to wit at Chicago aforesaid, in the state of Illinois aforesaid.

And whereas also heretofore, to wit, in or about the fourth day of May, in the year of our Lord, one thousand, eight hundred ~~five~~ and fifty five, at Cleveland aforesaid, in the state of Ohio aforesaid, in consideration that the said defendants, at their special instance and request, then had the care and custody of divers goods and chattels of the like number, quantity, quality, description and value as those in the said first count mentioned, they, the defendants undertook, and then and there promised the said plaintiff, to take due and proper care thereof, whilst the said defendants had the care and custody of the same - yet the said defendants, not regarding their said promise and undertaking, but contriving and intending to injure and defraud the said plaintiff, in this behalf, whilst the said defendants so had the care and custody of the said goods and chattels, took so little, and such bad and improper care thereof, that the same, afterwards, to wit, on the day and year aforesaid, at Chicago aforesaid, became and were greatly damaged, and injured, and wholly lost to the said plaintiff.

And ~~that~~ also, for that whereas the said plaintiff heretofore, to wit, on or about the

fourth day of May, in the year of our Lord, one thousand, eight hundred and fifty five, was lawfully possessed, as of his own property, of certain goods and chattels, to wit, one trunk - one package, one bundle containing respectively personal property of the plaintiff, of great value, to wit, of the value of four hundred and nineteen dollars, and fifty four cents - and being so possessed, the said plaintiff, on the day and year last above mentioned, casually lost the said goods and chattels out of his possession, and the same afterwards, to wit, on the day and year last aforesaid, came to the possession of the said defendants, by spending - yet the said defendants well knowing the said goods and chattels to be the property of the plaintiff, and of right to belong and appertain to him, but contriving, and fraudulently intending craftily and subtly to deceive and defraud the said plaintiff, in this behalf, hath not as yet delivered the said goods and chattels, or any or either of them, or, any part thereof, to the said plaintiff, although often requested so to do, and hath hitherto wholly refused so to do, and afterwards, to wit, on the day and year aforesaid, at Chicago aforesaid, converted and disposed of the said goods and chattels, to their own use, to the plaintiffs damage of sixteen hundred dollars, and therefore he brings his suit, &c.

Asay & Bon Loden

Plffs Atty

And afterwards, to wit, on the 30th day of October, in the year last aforesaid, the said defendant, by its attorney, filed in the office of the clerk of the Court aforesaid, its certain Pleas, verified by affidavit, which said Pleas and affidavit, are in the words and figures following, to wit

Cook County
Circuit Court

John Meyer

vs

The Michigan Southern &
Northern Indiana
Rail Road Company

And the said Defendants, by N. B. Judd, their Attorney, come and defend the wrong and injury when &c. And say that they did not promise a undertake in manner and form as the said plaintiff hath above complained, thereof, against them, and of this, the said defendants put themselves upon the country &c.

N. B. Judd

Defendants Atty.

State of Illinois }
Cook County } ss.

George M. Gray, being duly sworn, doth depose and say that he is the agent of the Defendants mentioned in the above en-

titled cause, and that he believes that said Defendants have a good defence to said suit upon the merits—

Subscribed and sworn to
before me, this 30th day
of October, 1856.

L. D. Hoard
Clerk

Geo. M. Gray.

And afterwards, to wit, on the 12th day of November, in the year last aforesaid, the said Plaintiff filed in said Court, his certain affidavit, which is in the words and figures following—

In the Cook County Circuit Court.

John Meyer

as Plaintiff,

The Michigan Southern
and Northern Indiana
Rail Road Company

Defendants

John Meyer, of the city of Chicago, in the county of Cook, plaintiff, in this cause, maketh oath, and saith that this suit is brought against the said Defendants, in an action on the case upon promises, that venue is laid in the said county of Cook, in the State of Illinois, and that issue has been joined in the said cause, and further that William Daily, of the city of Cleveland, in the state of Ohio, is as Deponent believes,

and is advised by Counsel, a Material Witness,
for this Depoent, and, ^{that} without the benefit of
whose testimony this Depoent cannot safely pro-
ceed to the Trial of this Cause.

Sworn before me, at the city
of Chicago, in the County of Cook,
this 12th day of November, A.D. 1856

L. D. Hoard
Clerk

John Whayne

And afterwards, to wit, on the 18th day of
September December, in the year last aforesaid,
the said defendant, by its attorney, filed in said
Court, its certain motion, which is in the words and
figures following, to wit-

M. L. & Mr. Ind. J.

R. R. Co.

ads

John Meyer

Cook C. Circuit

Court. Nov. Term 1856.

The defendant in above
entitled cause, moves the Court, to suppress the
deposition of William Daily, filed herein, on part
of plaintiff - Because,

1st The Deposition does not show on its face
that any notice was given to the defendant, or
its attorney.

Second - The Deposition is not taken in accordance
with the instructions herein contained, the Im-

interrogatories not being inserted before each answer thereto—

Third— The whole testimony and exhibit annexed thereto, are irrelevant, incompetent and inadmissible—

Fourth— The Deposition is in other respects, irregular and insufficient—

Chas. B. Judd.

Defts Atty—

And afterwards, to wit, on the day and year last aforesaid, the said defendant by its said attorney, filed its certain other motion, in said Court, which is in the words and figures following to wit—

Michigan Sou. & }
N. Ind. R. R. Co }
ads }
John Meyer. }

Cook Co Circuit Court.

Nov. Term A.D. 1856.

We hereby move on the part of the defendant for a rule on the plaintiff to file a Bill of Particulars, herein, and for a continuance of the case for want of said Bill of Particulars, till the next ^{ensuing} ~~following~~ term of this Court.

Chas. B. Judd.

Defts Atty—

And afterwards, to wit, at the November term of said court, to wit, December 18th A.D. 1856, the following, among other proceedings in said court, were had and entered of record, to wit—

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John Meyer	}	Asst.
vs		
The Michigan Southern		
& Northern Indiana Rail Road Company		

And now comes the said defendant, by Judd and Winston, its attorneys, and files their motion for a continuance of this cause, for the reason that the said plaintiff failed to file his bill of particulars— and also their further motion to suppress the deposition of William Daily, filed herein, to be read in evidence on the trial of this cause—

And afterwards, to wit, at the term of said court last aforesaid, to wit, December 29th A.D. 1856, the following, among other proceedings, in said court, were had and entered of record, to wit—

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John Meyer	}	Asst.
vs		
Michigan Southern & Northern		
Indiana Rail Road Company		

And now again come the said parties, by their attorneys, and the said Defendant by its attorney withdraws its motion to suppress depositions taken and filed in this

cause, and here in open court waives all exceptions thereto, whereupon by agreement, this cause stands continued to the next term of court—

And afterwards, to wit, at the April term of said court, to wit, May 9th A. D. 1857. the following among other proceedings in said court, were had and entered of record, to wit—

383. John Meyer }
vs } apt.
The Michigan Southern & Northern
Indiana Rail Road Company }

This day come the said parties, by their attorneys, and were being joined herein, ordered that a jury come, whereupon come the jurors of a jury, of good and lawful men, to wit—

Peter Braeken	Charles Gibson	Thumblie Kent
Frank Loomis	Alexander Jones	E. G. Reynolds
A. H. Gray	J. B. Gale	A. S. Lasure
H. G. Hazen	J. Maine	W. Hellman.

who being duly sworn, elected, tried and sworn, well and truly to try the issue joined aforesaid, after hearing the evidence adduced, arguments of counsel, and instructions of the court, retire to consider of their verdict, and afterwards come into court and say, we the jury find the issues for the plaintiff, and assess his damages herein to the sum of Four hundred Dollars.

Whereupon said defendant moves the court

for a new trial of this cause, And afterwards to
wit, on the 9th day of July, in the year last afo-
said, the said defendant filed in the court, afoir-
said, its motion for a new trial of this cause, which
is in the words and figures following, to wit:-

Michigan Southern & }	Cook Co Circuit Court.
Northern Indiana }	
R. R. Co }	
ads }	
John Meyer }	

And now comes the said
defendant, and moves for a new trial in said
case, Because

1st The verdict is contrary to the Evidence -

2nd That the instructions are not applicable to
~~Asked~~ the facts proved -

3rd The Court erred in refusing Defendants' instruct-
ions as asked -

4th That the modifications of the Defendants
instructions by the Court, were wrong, being based
upon a supposition of a state of facts, which was
not proved -

H. H. Winston

Defts Atty

And afterwards, to wit, at the June Special
Term of said Court, to wit, July 11th A.D. 1857. the
following among other proceedings in said Court,
were had and entered of record to wit -

John Meyer

as

appt.

The Michigan Southern & Northern
Indiana Rail Road Company }

This day come the said parties by their attorneys, and the court having heard Counsel, on the said defendants motion for a new trial of this cause, and being fully advised in the premises, overrules the same, on condition that the said plaintiff remit ~~one Hundred twenty~~ Eight^{and} $\frac{47}{100}$ Dollars, of the verdict so obtained against the said defendant in this cause - Whereupon the said plaintiff comes, and here in open court, freely remits ~~one Hundred twenty~~ Eight^{and} $\frac{47}{100}$ Dollars, from the verdict aforesaid, and consents to take judgment, for the sum of Two Hundred and seventy one Dollars, fifty three cents

Whereupon it is considered that the said Plaintiff do have and recover of the said defendant, his damages of Two Hundred and seventy one Dollars and fifty three cents in form aforesaid, together with his costs and charges, by him in this behalf expended, and have execution therefor.

Whereupon the said defendant prays an appeal to the Supreme Court, of the State of Illinois, which is granted on condition that it file its bond within ten days, in the penal sum of Five hundred Dollars, with W. B. Judd as surety, conditioned according to law, together with

its bill of exceptions.

And afterwards, to wit, of the term of said court last aforesaid, to wit, July 15th 1857. The following, among other proceedings, in said court, were had and entered of record, to wit-

John Meyer

vs

The Mich. Sou &
Nor. Indiana Rail Road Co

} apt.

Ordered, on motion of defendant's attorney, that the time for filing its appeal bond herein be extended twenty days from today-
And afterwards to wit, on the 25th day of July, in the year last aforesaid, the said defendant filed in the office of the clerk of the Court aforesaid, its certain appeal bond, which is in the words and figures following to wit-

Know all men by these Presents that we, the Michigan Southern and Northern Indiana Rail Road Company, and Norman B. Judd, of the city of Chicago, and State of Illinois, are held and firmly bound unto John Meyer, in the penal sum of Five hundred Dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents, Witness our hands and seals this day of July A

D. 1857.

The condition of this obligation, is such, that whereas the said John Meyer did, on the 9th day of May, 1857. in the Cook County Circuit Court, before the Honorable George Manierre, Judge of said Court, recover a judgment against the above bounden, The Michigan Southern and Northern Indiana Rail Road Company, for the sum of two hundred and twenty one ^{and} 53/100 th Dollars, Damages, and Dollars, Costs, from which judgment, the said, The Michigan Southern and Northern Indiana Rail Road Company has taken an appeal to the Supreme Court of the State of Illinois,

Now if the said, The Michigan Southern and Northern Indiana Rail Road Company shall prosecute its appeal with effect & in case the judgment aforesaid shall be affirmed, shall pay the same and whatever costs and damages the said Supreme Court shall adjudge against it, then the above obligation to be void, otherwise to remain in full force and effect.

The Michigan Southern and
Northern Indiana R. R. Company

By Edwin C. Litchfield

President

N. B. Judt (Seal)



And heretofore, to wit, on the 18th day of July, in the year last aforesaid, and of the term of said court last aforesaid, the said defendant by its attorney filed its certain bill of exceptions in said court, which bill is in the words and figures following, to wit:

John Meyers	}	Circuit Court of
vs	}	Cook County-
Michigan Southern &	}	April Term.
Northern Indiana R.R. Co	}	A. D. 1887.

Afterwards to wit, on the day, and at the place within contained before the Hon^{ble} George Manierre, Judge of the Seventh Judicial Circuit, comes, as well the said plaintiff, by his attorney as the said defendant by its attorneys, and the jurors of the jury, whereof mention is within made, being called, likewise come, and after being elected, tried and sworn, to try the several issues within joined, the counsel for the plaintiff offered in evidence, the Deposition of William Daily, to the reading of which deposition, said defendant by its counsel, objected, and moved to exclude the same, for its irrelevancy, all other objections being waived - which objection and motion was then and there overruled by the Court, and the Deposition was decided by said Judge, to be admissible, and was thereupon read in evidence - to which decision and ruling of the said Judge, said defendant did then and

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there except.

State of Illinois }
County of Cook } ss.

The People of the State of Illinois -
To E. J. Estep

Whereas it has been represented to us, that William Taiz of the City of Cleveland, in the State of Ohio, is a material witness in a certain cause now depending in our Circuit Court, in and for the county of Cook, aforesaid, between John Myers, Plaintiff, and the Michigan Southern and Northern Indiana Rail Road Company, Defendants, and that the said witness resides at Cleveland, aforesaid, without the said State of Illinois; and that his personal attendance cannot be procured at the trial of the said cause - Now know ye that we, in confidence of your prudence and fidelity, have appointed you Commissioner, to examine the said witness, and do therefore authorize and require you to cause the said witness to come before you at such time and place, as you may therefore designate and appoint; and diligently to examine the said witness, on the oath or affirmation of the said witness, by you first duly in that behalf administered, and faithfully to take the deposition of the said witness, upon all interrogatories enclosed with, or attached to, these presents, both on the part of the said plaintiff, and of the said defendant, and none others - and the same when thus taken, together with this Commission,

and the said Interrogatories, to certify, into our said Circuit Court, with the least possible delay.



Witness, Louis D. Howard, Clerk of
our said Court, and seal thereof,
at Chicago in said county, this
twenty ninth day of November A.D.
1856.

L. D. Howard,
Clerk.

In the Cook County Circuit Court.

Given A.D. 1856.

John Meyer

as Plaintiff

The Michigan Southern
& Northern Indiana
Rail Road Company

Defendants

Interrogatories to be
administered to William
Daily of the
City of Cleveland, in the
State of Ohio, a witness to be
produced, sworn, and examined in a case now
pending in the Cook County Circuit Court. Wherein
in the above named John Meyer, is Plaintiff, and
the Michigan Southern and Northern Indiana
Rail Road Company, are Defendants, on the
part and behalf of the said plaintiffs. Before
E. J. Eslep, of the City of Cleveland, in the State of
Ohio, under, and by virtue of a commission here-
unto annexed.

Interrogatory 1st

What is your name, and occupation, and

where is your place of residence?

Second-

In what business capacity, or employment, were you engaged, on or about the Fourteenth day of June, in the year of our Lord, one thousand, eight hundred and fifty five?

Interrogatory Third-

Do you know the parties-Plaintiff and Defendants, in the title of these Interrogatories, named, or either and which of them, and how long have you known them, or either and which of them?

Fourth-

Look upon the "paper writing" or Certificate dated "Cleveland, June 25th 1855" and signed "Wm Daily," Baggage Master. C. & P. R. R. Cleveland, Ohio, and now produced and shown unto you, at this time of your examination, which said paper writing is marked ~~A~~ and answer if you are acquainted with the handwriting, and why such certificate was given to John Meyer, therein mentioned and named, and if acquainted, by the handwriting, by whom was it written, when and where?

Fifth-

Look upon the "paper writings", Marked B. & C. respectively- the first, marked B, purporting to be a letter addressed by "Wm Daily," Baggage Master, C. & P. R. R. Cleveland, to an Employee of the

Michigan Southern and Northern Indiana
Rail Road Company, at Chicago - relative to certain
luggage of one Mr. Meyer - and the second marked
C. purporting to be a Telegraph Communication - Dated
Toledo May 9th 1855. relative to certain "things", and
addressed to "John Meyer", and signed by "Wm Daily"
with the addition of "C. & P. Railroad" - and state
what you know respecting them respectively - to
what "Luggage" and "things" they allude, and the
cause of such letter and Telegraph Communication
having been written and sent as aforesaid -

Interrogatory Sixth -

State all you know respecting said Baggage
of said Meyer - If ever in your possession, care
or Keeping, and if so, at what time, and what dis-
posal you made thereof, and by what authority you
received and disposed of the same -

Seventh -

If an Employee of the Cleveland and Putnam
Rail Road Company, State how long you have been
engaged in the service of said company, and in
what capacity employed -

On the Cook County Circuit Court, the
Deposition of William Daily, of the County of
Cuyahoga, and State of Ohio, a witness of lawful age,
produced, sworn and examined upon his corporal
oath, on the Fourth day of December, in the year
of our Lord, one thousand, eight hundred and fifty

say, at the office of Mason & Estep, in city of Cleveland, County & State aforesaid, to me, E. J. Estep, a Commissioner duly appointed by a *Verdunne Potestatum*, a commission issued out of the clerk's office of the Cook County Circuit Court, in the State of Illinois bearing Teste in the name of Louis T. Heard, Esq. Clerk of the said Circuit Court, with the seal of said Court affixed thereto, and to me directed as such Commissioner, for the examination of the said William Dail, a witness in a certain suit and matter in controversy now pending, and undetermined in the said Circuit Court, wherein John Meyer is Plaintiff, and the Michigan Southern and Northern Indiana Rail Road Company is Defendant, in behalf of the said Plaintiff, upon the interrogatories enclosed with the said Commission, and ~~and~~ upon none others, The said William Dail, being first duly sworn by me, as a witness in the said cause previous to the commencement of his examination to testify the truth, whole truth, and nothing but the truth, in relation to the matters in controversy between the said Plaintiff and Defendant, and in answer to the said interrogatories, testified and deposed as follows-

To the First Interrogatory, this Deponent saith,

My name is William Dail, I am baggage master for the Cleveland & Pittsburgh Rail Road Company, at their depot in Cleveland Ohio - and I reside in

the city of Cleveland, County of Cuyahoga, and State of Ohio-

To the Second Interrogatory, Deponent saith,

During the entire month of June, 1855. I was station baggage Master for the Cleveland and Pittsburgh Rail Road Company, at the City of Cleveland.

To the Third Interrogatory, Deponent saith,

I am not acquainted particularly with the plaintiff, John Myers. I have seen him at the depot in Cleveland. I know there is a Railroad called the Michigan Southern and Northern Indiana Rail Road, which I suppose to be Defendant.

To the Fourth Interrogatory, Deponent saith-

Exhibit "A" signed Wm Daily, and dated June 25th, 1855. now shown me, and which is referred to in said Fourth Interrogatory, is in my handwriting. It was written by me at the Cleveland depot, on the day it bears date, Mr. Myers was here at that time in search of his baggage, which he claimed had been lost. I told him that it was double checked for Chicago, and had been forwarded to that place. He then wanted me to give him a certificate, or written statement of the facts, to show to the Michigan Southern and Northern Indiana Rail Road, that it was so checked and forwarded, and for this purpose, and at his request, the certificate marked "A", and signed by me, and which is hereto attached, was given to him.

To the Fifth Interrogatory, Deponent saith-

The papers marked B & C. referred to in this Interrogatory, and now shown me, are both in relation to certain baggage, or luggage claimed to have been lost, Exhibit "B." is a letter written by me, to the then Baggage Master of the Michigan Southern and Northern Indiana Rail Road Company, at Chicago, whose name I think was Cochran. Exhibit "C." is a Telegraph reply, to a dispatch received by me, from Mr. Meyer, enquiring about his baggage, which is now ^{I have no knowledge of where it is -} probably destroyed. The luggage consisted of two or more chests, such as European emigrants usually carry with them. The letter of Exhibit "B.", was written in answer to a letter from the baggage master of the defendant, at Chicago, making enquiries in relation to Mr. Meyer's property, or luggage, as I now think.

The luggage claimed by Mr. Meyer, which he was in search of, was forwarded to Chicago, from the depot of the Cleveland and Pittsburgh Rail Road Company, at Cleveland, as stated in said telegraph dispatch, marked Exhibit C.

To the sixth Interrogatory, Dependent saith,

The baggage claimed by Mr. Meyer, and which is referred to in the said Exhibit, was in my possession in May, 1855. It came in on the train from Pittsburgh, and was unclaimed at the depot. My Meyer went on without claiming it, it was in my keeping and care a short time, probably not more than one day, Mr. Meyer

telegraphed from Toledo, enquiring about it, and I then sent it on, checked to Chicago. Mr. Meyer, as I understood it, waited at Toledo, expecting it to come to him at that place, which was the occasion of the telegraph herewith marked C. I received it in the course of my employment, at the Depot, and forwarded it, upon receiving the telegraphic dispatch from Mr. Meyer, directing me so to do.

To the Seventh Interrogatory, Depoent saith,

I am an employee of the Cleveland and Pittsburgh Rail Road Company. I have been engaged in its service, nearly six years. For about three and a half years, I was baggage master on a passenger train, and for the last two years I have been station baggage Master at Cleveland.

And further Depoent saith not.

Wm Daily.

The State of Ohio
Cuyahoga County ss.

J. E. J. Estep, of the City of Cleveland, County of Cuyahoga, and State of Ohio, a Commissioner duly appointed to take the Deposition of the said William Daily, a witness, whose name is subscribed to the foregoing deposition - do hereby certify that previous to the commencement of the examination of the said William Daily, as a witness in the said suit between the said John Meyer, Plaintiff, and the said Michigan

Southern and Northern Indiana Rail Road Company, Defendant, he was duly sworn by me as such Commissioner, to testify the truth, the whole truth, and nothing but the truth, in relation to the matters in controversy between the said John Meyer, Plaintiff, and the said Michigan Southern and Northern Indiana Rail Road Company, Defendant, so far as he should be interrogated concerning the same. That the said deposition was taken at the office of Mason and Estep, (of which firm, I am a member) in the City of Cleveland, County of Cuyahoga, and State of Ohio, on the 4th day of December, A. D. 1856. and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness, and that thereupon the same was signed by the said witness, he having been first duly sworn by me as hereinbefore stated, at the place, and on the day and year last aforesaid.

E. J. Estep.

Commissioner

Fees, witness 75.

Commissioner 5.00

\$5.75

Exhibit referred to in the fourth interrogatory and answered thereto, and by me attached to the deposition,

E. J. Estep

Commissioner

Cleveland June 25th 1855.

This is to certify that I send Mr. John Meyer's Baggage to Chicago, in the month of May Last. The baggage was lost by him, at Cleveland, on his way from New York to Chicago. The baggage was Double checked, for Chicago, from this place. on or about the middle of May.

Attn Daily.

Baggage Master

C & P. R. R.

Cleveland

Ohio

Cleveland June 14th 1855.

Dear Sir,

I have Received some five or six Letters, about that Luggage of Mr. Meyer. I supposed that he had it long ago. It was double checked, and sent to Chicago, four or five ^{weeks} ~~months~~ ago, if it has not got to Chicago yet, it must be at Toledo.

Yours Respectfully

Exhibit "C" referred to in interrogatory fifth, and the answer thereto.

E. J. Estep,

Commissioner.

Ohio, Indiana and Illinois Telegraph Company

All messages strictly confidential

Toledo May 9th 1855.

The following message was received from Cleveland

Dated 9th 1855.

John Meyer.

Sent your things to Chicago, two days ago-

Wm Daily

C. & P. Railroad

The Plaintiff then introduced as witness, Henry Farmer, who being duly sworn, testified as follows - I know the plaintiff, John Meyer - I don't know defendant - I went with plaintiff to agent's office on Dearborn Street near Randolph, and he asked about the goods - Mrs. Meyer went and asked about the goods, their chests, &c. There was a gentleman there, and he said that the goods were burnt - This gentleman was standing behind the table - I don't notice him here. He was walking behind the counter, not saying anything in particular - ~~She~~ asked if anything was found out about the things, and he said no, nothing found, it is burnt - Meyer came here the 16th May, 1855. He, at the office, answered to the question, and said nothing more - that I know of - Cross examination -

I live on the West side, have been here two years, have been in the milk business - went to the office of defendant's agent, in August, 1855. Don't know who the other man was that I did not talk to - Am particular that the gentleman in the office answered as I have stated - She asked if her things, chests, beds, boxes &c.

had been found yet, and he said no, they have been burnt. I have never seen the goods myself. He said nothing about having seen the goods.

The plaintiff then introduced as witness, E. Delbit Robinson, who being duly sworn, testified as follows. I reside in Chicago - in May 1855. I was in the city, and employed by defendant - for two years I have been, and am now in their employ. I recognize Mrs. Meyer, I am in defendant's office, under the Tremont House, Dearborn Street. She (Mrs. Meyer) enquired for some baggage several times all along in the summer of 1855. She was there frequently.

Cross examination.

I never made any such statements as last witness testified to. I recollect of Mrs. Meyers coming with the witness. I never knew the baggage was burnt, or that it was in possession of the company, and I could not have made the answer. All I said was, that we had made enquiry after the baggage, I was all this time making an effort to find the baggage. She was in six or eight times to see about the baggage. I don't know that the baggage was even in defendant's possession. I have made frequent enquiries about the baggage, at our depot at Toledo, but could never hear anything of it. I gave instructions to the baggage master to look out for it, and

frequently made enquiries ^{about} of it. ~~about~~ ^{of} ~~them~~ ^{them}. I have been over four years in the employment of defendant's company, I wrote about the baggage at request of Mrs. Myers, I had no personal knowledge about the baggage being in possession of defendant. Plaintiff and Mrs. M. appeared my bed at one time, cried, and said it was all they had. Toledo is the Eastern terminus of the defendant's road. From that place east, the Cleveland and Toledo Rail Road runs, it is ~~now~~ an independent Corporation. Defendant has no agent in Cleveland to receive baggage that I know of. Re-examination.

I know Mrs. Myers. I had a conversation with her in presence of the witness. It was in regard to finding baggage. At that time I may have talked to her about her losing it. There may have been other parts of her conversation that I do not remember. The defendant's check baggage over the Cleveland and Toledo Road to Cleveland and Buffalo. I can only speak of baggage. I have no knowledge of the freight. My impression is that goods are shipped from Cleveland for Chicago, over the Cleveland and Toledo road, and on reaching Toledo, the charges are paid by the Defendant's Co., who collect the whole ^{here} when baggage is mislaid, we put two checks on it for its destination. The object, to designate it as stray baggage, and secure extra care.

The plaintiff then introduced Collins Wright who being sworn, testified as follows. I know Mrs.

Myers. I saw plaintiff get one box from Defendants depots. I was not at depot myself. Here the plaintiff's counsel called John Myers, who being sworn, testified as follows. I am plaintiff in this suit. The defendant, by its counsel, here objected to the witness testifying in his own case. First - Because he had ^{not} established the fact of delivery of his baggage to the defendant's company, and secondly objected to witness stating contents of baggage, because said contents are not specifically set out in C.P. The said objections of Defendant were then and there overruled, by the Court, and exceptions taken by Defendant. The Court then, on motion of defendant's counsel, struck out the last count in the C.P. in being in error, John Myers, the plaintiff, on other objection being interposed, then testified as follows. I had a trunk and two boxes, which contained the following named articles, worth the respective sums set opposite to each of them -

Contents of the Trunk

1 Trunk	\$4.00
1 Wooden double Shawl	16.50
1 Black silk Mantilla	7.10
1 Brown Muslin Delaine Dress,	9.00
2 Calico Dress	6.75
6. Seven Women Shirts	6.00
1 Sewing box with contents	7.00
1. Clock	6.00
3. Window Sheets	7.50

	2 Silk Corsets	3.00
	1 Black Silk Waistcoat	6.00
	1 White Linen do	1.25
	1 pair Wollen Pants,	5.12
	1 " Linen do	2.25
	1 " Wollen do	3.19
	2 1/2 yds Summ cloth for Pants,	1.72
	1 yd Black do	1.00
x	2 Boxes containing cuts Sugar	
x	Spole and Tumblers	3.12
x	1 dozen Knives and forks	
	and spoons,	3.00
x	50 Cupping Cups (glass)	5.75
x	36 Do Do Tin	3.60

\$107.09

Account Brought Forward \$107.09

x	5 Bedsteads,	3.00
x	3 Tablecloths & 1 Bureau covers,	1.75
x	4 Pillow cases,	1.00
	1 Gold Breastpin	5.75
	1 gold finger ring	6.00
	1 do do	4.50
	1 Silk Mantilla	2.50
	1 Lot of Silks	3.50
	3 yds of Alapauca	2.75
	8 yds Calico,	1.00
	3 do Muslin de laine	.75
	1 Bible annotated by Saugherbeck	

	Germania Some Religious Books.	18.00
	100 Segars,	2.00
X	Surgical Instruments	30.00
X	3 Box Powch	6.00
Y	2 Pictures	1.50
	1 Woolen Under Shirt.	1.25
X.	Different Things	8.00

Contents of Package

X	1 Horse Hair Mattress,	16.00
X	1 Feather Bed,	11.00
X	2 Pillows	6.00
X	1 Horse Hair Cushion	3.00
	2 Coats	3.25
	2 Petticoats	3.50
	1 Gun	21.00

Account Brought forward \$272.09

	1 Coat, Pants, Waistcoat,	36.25
	1 Alapacca Coat,	3.25
	1 Winters Waistcoat,	2.50
	1 Gun Trapsal.	2.00
X	Kitchen Utensils	6.00
	1 pr Wooden Shoes	2.50
	1 Pipe	1.25
	1 Box Hair Oge.	2.00
	2 lbs Shaving soap	1.75
X	1 Hatchet & Saw,	2.00
	1 Clothes Brush,	1.00

x	3 Bed Quilts,	332 44
		5.10
x	1 Blanket,	2.00
x	3 Straw Mattresses	3.00
	3 Mattresses	3.00
x	1 Hammock	.25
x	2 Clothes Lines	.50
	2 Bonnets	6.75
	3 Silk Bonnets	6.25
	2 Straw do	5.00
	11/2 doz Pocket Handkerchiefs	4.00
	3 silk do	1.50
	1 Pair Tongue	1.50

Contents of the small bundle,

5 Shirts,	5.00
2 yds Linen,	3.75
12 " Muslin	1.50

Account Brought forward,

18 yds Calico,	1.25
Calico Dresses,	2.00
4 yds Pants & Jackets,	6.00
15 yds Linen for Towels,	4.50
2 doz. Shirts	3.00
2 yds Sleeves,	1.25
36 yds Stockings	7.75
Night-Dresses,	3.00
1 Linen Bag,	1.12
1 Strap	2.00
1 Double Towel	.75

413.48

and worth in all the sum of \$ — The Court thereupon excluded from the jury, all the articles in said Exhibit marked thus, (X) as not coming legally within the description of baggage. The articles thus excluded being valued at \$

The whole of plaintiff's own testimony was objected to on the grounds above stated. — The objections were overruled by the Court, and exception was then and there taken by defendant's counsel, to the said rulings of the Court. The defendant then moved by its counsel, to strike out all the testimony in the case, because there had been no proof of the contract as alleged in the Plea. which motion was then and there overruled by the Court, and exception taken.

The Plaintiff here rested, and the Defendant called George M. Gray, who being duly sworn, testified as follows. I am agent of Defendant's Company, and have been for five years in that employment. Defendant's road runs between Chicago and Toledo. Toledo is the Eastern terminus, and Chicago, the Western. The Cleveland and Toledo Railroad runs East from Toledo. The Defendant has no other than a business connection with that Company. We run to and from them, giving them business, and taking business from them, both passengers and freight. The Defendant has no agent in Cleveland for receiving baggage. The Baggage Master at Cleveland, whose deposition has been read, is not authorized to receive baggage for the

40
Defendant. Should say that he is not subject to their orders. He is not an employee of the company. I know nothing of this baggage having been in the possession of the defendant. I have made inquiries for it, and written for it. In my absence, Mr. Robinson acts for me. Cross examination.

I am general agent of defendant's Company, at Chicago. By that, I mean I look after their business generally. I don't know William Daily may have had some letters from him. I made inquiries because Mrs. Myers came to my office in great distress. I enquired at the Depot, and wrote to Cleveland. Don't know of ^{long} having been found on premises. Know nothing of baggage being burnt at time of fire in 1855. We receive baggage here, and check thro' to Buffalo. We check to various points, to Buffalo and Cleveland &c. All stray baggage is sent in ordinary course of business of the defendant, from Cleveland. Stray baggage is distinguished by double checks. We never received baggage checked from the Cleveland and Pittsburgh Company, through to this place. In that direction, we check to Cleveland, and deliver our stuff to the Toledo and Cleveland and Toledo company, at Toledo. I never offered to settle with Mrs. Myers, by way of compensation. I have offered her \$30. I wrote a receipt, it was not a written acknowledgement of any claim. Do not remem

be the exact wording of the receipt. I think it was simply a receipt of \$30, on account of charity - she claiming damage on account of lost baggage - at that time, I had no knowledge of the goods having been received by the company, or that any part of the goods were found on the premises. We are in the habit of giving sums frequently for charity, we use the word charity in such cases -
Re-examination -

We never receive baggage checked through from the Cleveland and Pittsburgh R. R. Co. We have a business connection with that company. The baggage man of the Toledo and Cleveland R. R. Co, is in the habit of going on trains of Cleveland and Pittsburgh Co, and checking baggage for points East and West. Defendant never undertakes to carry baggage beyond the line of its road. We charge baggage and passengers at Toledo. I never knew the cause of the fire which consumed our passenger Depot two years ago -
Cross. Ex -

We check baggage through to Cleveland and Buffalo - and so advertise in the papers. This is offered as an inducement to travellers - Emigrant goods generally come and are deposited at freight Depot - Passenger baggage comes to Passenger Depot. It was Passenger Depot that was burned - Emigrant baggage comes sometimes double checked. Plain "liffe's might be considered Emigrant baggage. If it

"came double checked, then it would have come to
 "Passengers Depot. No further or other evidence was
 offered, or introduced in said cause, either by
 said plaintiff or said defendant, and the cause
 was here rested. No Instructions were offered or
 given on the part of the plaintiff, in said cause.
 But said Defendant, by its counsel, asked the
 Court, to give the following Instructions, to wit:-
 "1st "Unless the jury believe that the plaintiff"
 "has established by evidence a delivery of the goods"
 "sued for, to the defendant's road, then you will"
 "find for the defendant - and it is no evidence"
 "tending to show such delivery, that the goods were"
 "delivered at Cleveland, to the Cleveland and Toledo"
 "Rail Road, double checked - for Chicago" - which
 said Instruction was then and there refused,
 by the Court, as offered, but was amended by said
 Judge, by adding after the word Chicago, in said
 Instruction, the words as follows - "Unless they shall
 find that the same was so delivered, checked in"
 "the usual course of business - between the roads,"
 "and that there was such a course of business"
 To which refusal by said Judge to give said
 Instruction as asked for, and to the Instruction
 as amended and given, said defendant by its
 counsel did then and there except.
 "2nd "If the jury believe that the plaintiff has"
 "not shown that the goods sued for, were shipped"
 "on the defendant's road, as freight, and paid for

"as such, or to be paid for as freight when delivered -
"then the defendant is not liable, unless you believe
"that the plaintiff was a passenger on defendant's
"road - and the goods sued for was his personal
"baggage, and accompanied him as such." Which
Instruction was then and there given by said
Court -

3rd "That in order to a recovery against the De-
"fendant, in this cause, the jury must find from
"the evidence, that the defendant undertook to
"carry the goods in question, from Cleveland to
"Chicago, and it is not in accordance with the
"case alleged, in the declaration, to find that de-
"fendant undertook to carry from Toledo to Chicago,
"and if they so find the contract to be, they will
"find for the defendant" ^{there given by said court, as asked by defendant} which instruction was then &

4th "That in the absence of a special contract,
"the defendant will not be presumed to ^{contract to} carry from
"a point beyond the terminus of their road."

Which Instruction was also given by said Court -
5th "That if the jury believe from the evidence that
"the defendant's road extends only from Chicago to
"Toledo, and that there is a distinct road extend-
"ing from Toledo to Cleveland, with which the De-
"fendant has no connexion, then the law is for
"the Defendant - which instruction was refused
"as asked for by the Court, but was amended by
"the Court, by adding to the above, after the word de-
"fendant, the words, "unless the jury shall find

"that Defendants, in the course of their business,
 "contracted with plaintiff to carry the goods in
 "question" - to which refusal to give said instruction
 as asked, and to said instruction as given, said
 defendant by its counsel, did then and there except
 6th "That the Defendant is not responsible for
 "the contract of the Cleveland and Toledo Road,
 "if said roads are distinct corporations, unless the
 "two roads are shown to be connected by contract
 "and engagement between themselves, to act as
 "agents for each other" - which instruction was
 refused by said Court, to be given as asked, but
 was amended by said Judge, by adding thereto, after
 the word "other", the words, "or have agents mutually
 "employed to make contracts for each other of the
 "kind set forth in the declaration" - to which refu-
 sal of said Court to give said instruction as asked,
 for, by Defendant, and the giving of the instruc-
 tion as amended, said defendant by its counsel
 did then and there except

7th "Unless the jury believe from the evidence that
 "the goods sued for in this case or some portion
 "of them, were the personal baggage of the plaintiff,
 "and accompanied him as baggage, then they
 "will find for the defendant" - which instruction
 was then and there given by the Court -

8th "That if the jury believe from the evidence
 that the Defendant's Road extends only from
 Chicago to Toledo, and that there is another dis-

45th line railroad extending from Toledo to Cleveland,
and that the plaintiff delivered the goods in
question, to the latter road, evidence that the same
"were not received at Chicago, is not sufficient to
"charge the defendant, without proof that the same
"were in fact delivered from the Cleveland and Toledo
"Rail Road, to the Defendant's road, and the bur-
"den of proving such delivery is upon the plaintiff -
which instruction was refused by the Court, as
asked, but was amended by the said Judge by
adding thereto, after the word "plaintiff," the words
"But if the jury shall find that the baggage was
"received by the Toledo and Cleveland Rail Road, and
"was checked from Cleveland to Chicago in the usual
"course of business, over the deft's road, then this
"is proper evidence for the consideration of the jury,
"in determining whether the goods in question were
"delivered to the defendant" - to which refusal by
said Court, to give said instruction as asked, for by
defendant, and to the giving said instruction as
amended, said defendant by its counsel, did
then and there except.

9th " That unless the jury find that the defend-
"ants contracted to carry the goods in question from
"Cleveland to Chicago, the law is with the Defendant"
Which instruction was then and there given
by the Court.

And thereupon a verdict was rendered by said
jury, in favor of said plaintiff, for the sum of \$400

Damages, and costs— a motion for new trial was thereupon made, by said defendant, through its counsel, which said motion was then and there overruled, on condition that the plaintiff should consent to have judgment entered for the sum of

Dollars, which said plaintiff did then and there consent to have done, and the decision of said judge, in overruling said motion for new trial, was then and there excepted to by said defendant, by its said counsel— And because none of said objections and exceptions so offered and made to the decisions and opinions of said judge, and to the instructions herein excepted to, do appear upon the record of said trial, therefore on the prayer of the said defendant, by its counsel, the said judge hath to this Bill of Exceptions, set his hand and seal according to the Statute in such case made and provided, this day of July A D. 1857.

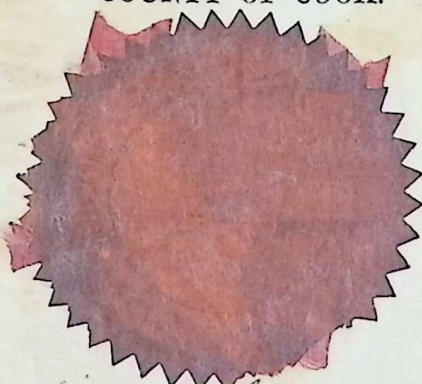
George Manlius (seal)
Judge of 7th Judicial
Circuit, Ills.

Approved

Capt Von Boden

Plffs Atty

State of Illinois, }
COUNTY OF COOK. } S. S.



I, WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of All the papers filed & proceedings had
and entries of Record
in a certain cause lately pending in said Court on the
Common Law side thereof, wherein John Meyer
was plaintiff and

the Michigan South & North Rail Road Co defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this twenty first day of April A. D. 1858

Wm L Church
35

Wm L Church

Clerk.

Michigan Southern & Northern Indiana R.R. } Supreme Court
Company } Error to Cook
or }
John Meyer.

And now comes the said Appellant by Tidd & Winston its attorneys and assigns the following issues to us the proceeding and decisions of the Court below to wit—

First the Court erred in not excluding from the consideration of the Jury the deposition of William Daily the same being entirely irrelevant to the issues made.

Second. The Court erred in permitting John Meyer the plaintiff below to testify in the case. No delivery of the baggage having been previously proved and there being no preliminary proof that the contents of said baggage could not have been established by other proof.

Third The Court erred in not directing a non suit, there being no evidence of a contract as alleged in the Declaration

over

Fourth The Verdict is contrary to the evidence.

Fifth The Instructions as given are not applicable to the facts as proved.

Sixth The Court erred in refusing the Defendants (below) instructions as asked -

Seventh The Modifications of the Defendants instructions by the Court were wrong, being based upon a supposition of a state of facts which were not proved.

Eighth The Court erred in not granting a new trial in the case.

Wherefore the appellant prays that the judgment below may be reversed and the case remanded.

Judd & Weston
Atty. for Appellant

In the Supreme Court,
Michigan Southern and
Northern Indiana Railroad Company

vs
John Meyer

And now on this
19th day of April A D 1887 comes the
said John Meyer Appellant and says
that there is not any error &c

George H. Crocker
Defendant's Attorney

And now comes the said Appellant and
says that in the record & proceedings
aforesaid and in the rendition of the
Judgment aforesaid there is no error
error in this Court

- 1st The Court erred in admitting the deposition
of William Bailey
- 2 The Court erred in allowing the plaintiff
to give the testimony which he gave
in the cause
- 3 The Court erred in refusing to give
the several instructions asked by defendant
(which were qualified) as they were asked
- 4th The Court ~~also~~ erred in qualifying

The instructions of defendant which were
qualified severally

4th The court erred in overruling defendants
motion for new trial

5th The court erred in rendering the Judgment
aforesaid in manner & form aforesaid
Ludd & Co
for appellant

John Meyers

no 45

Mech. Son. & Nor. Ins. Co.

Received

File 2 April 22, 1858
Leland
Oct 18

A. B. Jones

Due for Record \$10.25

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7	5 75
3 12	10 50
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first

As to the first error assigned by Appellant that Court erred in admitting William Daily testimony, the only objection was on the score of relevancy. I claim that ~~the~~ testimony of Daily which shows that the baggage in question was shipped from Cleveland to Chicago double checked, ^{to ensure extra care} certainly tends to show that the Defendants received the same, or tends to show the course of business that the Defendant was pursuing with C & P R Co. as to having baggage over defendant road, checked over other roads & their own by agents of other roads, and certainly any evidence tending to prove the issue is relevant.

Second.

As to the second error assigned that Court erred in admitting Plffs testimony, Plff had proved the shipment of the goods from Cleveland double checked to Chicago, by Daily. He proved by Henry Camas that the agent of Defendants said the goods had been burnt; that passenger depot at Chicago had been burned was proved by Geo M. Bray. Thus plaintiff had proved a prima facie case, and his own testimony as to the contents of the lost baggage became admissible. He had also proved that one of the boxes had been received by Plff at Dft Depot.

Third

As to the third Error assigned the Plaintiff had proved sufficient to entitle him to have the jury decide upon the case. It is true that Robinson denied that he had made the statements testified to by Henry Cammeyer, ^{about the goods being burned} but it is peculiarly the province of the jury to decide where witnesses conflict in statements, apart from the probability that Cammeyer would be more apt to remember that one, in an office doing a large and varied business

Fourth.

I can see no error in any of the instructions, and from the points made by Appellants the qualifying the first instruction seems to be the only error in instruction insisted upon, and it certainly seems to me that if "the goods were delivered at Cleveland for Chicago & checked in the usual course of business between the roads" that it is evidence tending and strongly tending to show a delivery to the Defendant.

Wherefore claiming that there was evidence sufficient for the jury to decide upon, I most respectfully submit that there is no error appearing on the record, and ask that the Judgment may be affirmed

George C. Crocker
Attorney for Appellee

Supreme Court

Mich Soc & Mr Ed M

vs. 45-152

John Meyers

Filed May 19. 1859
L. Leland
Clerk

Respect

George A. Lovett
attorney for appellee

STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, 1859.

MICH. S. & N. I. R. R. CO. }
vs. } *Appeal from Cook County.*
JOHN MEYRES. }

The only evidence of the delivery of the baggage, in this case, is the evidence of Daily, who testified that he sent the baggage from Cleveland west double checked for Chicago. The defendant's road extended east only to Toledo. It is not pretended that Daily was in any manner authorized to act for the defendant. There is no testimony tending at all to show that he was; and Gray swears positively that he was not.

Page 39 of Record.

There is no proof that that baggage ever passed Toledo, or ever came into possession of defendant's agents.

The testimony of the plaintiff was improperly received to prove the contents of the baggage:

1. Because it had not been proved that the baggage had ever come into the possession of defendant.

Snow *vs.* The Eastern R. R., 12 Metc. 44.

Clark *vs.* Spence, 10 Watts R. 335.

1 Greenl. Ev. 453 and note.

Pierce Am. Railway Law, 502, 505.

Redfield on Railways, 310, 311, and Note.

Blanchard *vs.* Isaacs, 3 Barb. S. C. R., 349.

2 Kent. Com., 294.

Packard *vs.* Getman, 6 Cow., 757.

The plaintiff ought not to have been allowed to have testified in relation to the clock, finger rings, cigars, and books. The clock was not baggage. \$18 worth of books could not be considered baggage.

10 Watts, 336.

Bingham *vs.* Rogers, 6 Watts & S., 500.

The qualifications to the defendant's instructions were all wrong, because they were not founded upon the testimony. The 1st instruction ought to have been given as asked. There is nothing in the record tending to show that Daily, at Cleveland, was authorized to receive baggage for defendants.

The qualification to the 5th instruction was wrong, because there is no proof in the case that Daily was authorized to act for defendants.

And for this reason the qualification to the 6th instruction was also wrong.

It is clear that from these instructions the jury must have inferred something which was not in the proof, or they would not have rendered a verdict against the defendant without the slightest actual proof that the baggage was ever received by defendant.

B. C. COOK, for Appellee.

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M. S. & N. O. R. R. Co

is
John Meyers

Brief of appellants

STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, 1859.

MICH. S. & N. I. R. R. CO. }
vs. } *Appeal from Cook County.*
JOHN MEYRES. }

The only evidence of the delivery of the baggage, in this case, is the evidence of Daily, who testified that he sent the baggage from Cleveland west double checked for Chicago. The defendant's road extended east only to Toledo. It is not pretended that Daily was in any manner authorized to act for the defendant. There is no testimony tending at all to show that he was; and Gray swears positively that he was not.

Page 39 of Record.

There is no proof that that baggage ever passed Toledo, or ever came into possession of defendant's agents.

The testimony of the plaintiff was improperly received to prove the contents of the baggage :

1. Because it had not been proved that the baggage had ever come into the possession of defendant.

Snow *vs.* The Eastern R. R., 12 Metc. 44.

Clark *vs.* Spence, 10 Watts R. 335.

1 Greenl. Ev. 455 and note.

Pierce Am. Railway Law, 502, 505.

Redfield on Railways, 310, 311, and Note.

Blanchard *vs.* Isaacs, 3 Barb. S. C. R., 349.

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B. C. COOK, for Appellee

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R. R. Co & Myers
appellants vs