No. 12592

Supreme Court of Illinois

Ill.Cent.R.R.Co.

---

vs.

Alexander, et al

71641

Transcript

In case of

Alexander & Sansing

vs

The Ills Central R.R Company

From

Jo Davies Co Cir Court

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S12592-11

State of Illinois
Jo Daviess County } ss
Fourteenth Judicial Circuit

Pleas in the Circuit Court begun and held within and for said County of Jo Daviess, on the Third Monday in the month of October A D 1857 before the Honorable Benja R Sheldon Judge of the Fourteenth Judicial Circuit of the State of Illinois

W K Rowley Clerk
H D Beacham Prosecuting Attorney
S R Miner Sheriff

Basil W Alexander and
Robert G Sansing Partners
doing Business under the
name and style of
Alexander And Sansing

vs

The Illinois Central Rail
Road Company

} Trover

Be it remembered that heretofore to wit on the 23d day of July A D 1857 the plaintiffs above named by their Attorney filed in the office of the Clerk of the Circuit Court in and for said County their Bond for Costs Precipe and Declaration against the Defendants aforesaid. Which said Bond, Precipe and declaration are in the words and figures following to wit

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State of Illinois } In the Co Dan'l's
County of Co Daniels } County Circuit Court
August Term A.D 185[illegible]

Alexander & Dunning }
vs } In
Illinois Cen R. R Co }

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the Officers of this Court in pursuance of the Laws of this State. Dated at Galena this 21st day of June A.D. 185[illegible].

W. Weigley [L.S.]

Approved.

W. R. Rowley
Clerk of Co Daniels Co Cir Court

Endorsed

Filed July 23d 185[illegible]
W R Rowley Clk

Basil W. Alexander
Robert G. Dunning
doing business under
the name & style of

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Alexander & Dansing

/Vs

Illinois Central Rail Road Company

State of Illinois }
Do Davies County } Of the August Term 1857

The Clerk will issue Summons in the above entitled cause in an action of Trover and Conversion returnable as above, damages Twenty Seven hundred dollars.

W. Weigley
Atty for Plffs.

Endorsed

Filed July 23d 1857.

W. R. Rowley clk

State of Illinois } ss. Circuit Court of
Do Davies County } the August Term 1857.

Basil W. Alexander and Robert G. Dansing, partners doing business under the name and style of Alexander & Dansing by W. Weigley, their attorney, complain of the Illinois Central Rail Road Company, of a plea of Trespass on the case, for that whereas the said Plaintiffs, heretofore to wit, on the first day of June A.D. 1857 at Galena to wit, at

[illegible]

The County aforesaid, were lawfully
possessed as of their own property
of Eight Hundred and twenty one
(821) Sacks filled with Salt of great
value to wit. of the value of Twenty
four hundred and sixty three dol
lars lawful money of the United
States. And being so possessed the
said plaintiffs afterwards (to wit.
on the day and year aforesaid at
the County aforesaid casually lost
the said Eight hundred and
twenty one Sacks of Salt out of
their possession and the same
afterwards (to wit on the day and
year aforesaid at the County afore
said came to the possession of the
said defendant by finding. that
the said defendant well knowing
the said Sacks filled with Salt as
aforesaid to be the property of the
said plaintiffs and of right to
belong and appertain to them.
but contriving, and fraudulently
intending craftily and subtilly to
deceive and defraud the said
plaintiffs in this behalf. hath
not as yet delivered the said

CONDITIONS AND SPECIAL RATES.

Unenumerated articles will be classed with similar articles.

The TON WEIGHT is in all cases 2,000 pounds.

No article, however small, will be taken for less than twenty-five Cents, and every valuable or troublesome parcel will be charged higher, at discretion.

Articles will not be received for transportation unless properly packed in suitable casks, boxes, or packages; and each must be well and clearly marked with the name of the consignee, and of the Station where they are to be delivered, otherwise they will not be receipted for. Marking with initials ONLY, or with chalk, or on paper labels, is not sufficient for safety in transportation, and agents will not receive articles so marked, in which case no damage for loss or miscarriage will be paid.

Goods in bundles will not be considered as properly packed, and this Company will not be responsible for any loss of parts, or the whole of such packages.

When receipts are required, duplicates, ready for signing, must be furnished by the consignor.

All articles will be at the risk of the owners, at the several way stations and platforms where depot buildings have not been established by the Company, from the moment such articles are delivered as directed or marked, or, until taken into the cars — as the case may be.

This Company will not receive or carry any Bank-bills, Drafts, Notes, Deeds Contracts, or other valuable papers or writing, or be responsible for their loss.

GUNPOWDER, FRICTION MATCHES, and FIRE-WORKS, will not be taken on any terms, and if found secreted among other goods, will be forfeited or destroyed, and the consignor, in case of damages, will be held liable therefor.

When an invoice covers a variety of articles, as a lot of furniture, &c., each separate piece must be properly marked and numbered, and a bill of particulars furnished by the consignor, in duplicate, one to be receipted, the other to go with the way-bill, or they will not be received.

No article that the Agents of the Company do not consider worth the charge for Freight, at forced sale, will be taken, unless the freight on the same is prepaid to the Agent to whom it is delivered.

No allowance will be made for a deficiency of lemons or oranges in boxes, if not covered with canvass; nor for a deficiency in raisins, unless when in packages of not less than three boxes, well strapped.

All articles of freight, arriving at their place of destination, consigned to residents (and they notified within business hours), must be taken away the same day, and if consigned to non-residents, must be taken away within twenty-four hours after being unloaded from the cars — the Company reserving the right of charging storage on the same, or placing the same in store at the risk and expense of the owner, if they see fit after those stated periods.

The Company will not be responsible for damages occasioned by delays from storms, accidents, or other causes, or by decay of perishable articles, by heat or frost, to such as are affected thereby; or for damages to hidden contents of packages; or by leakage or bursting; or by reason of improper packing when received at their depot; nor will they be responsible for any property unless receipted for by a duly authorized agent; nor for a greater amount than $200 on any one package, except by special agreement, and upon the payment of extra rates.

Articles carried by the car load to be loaded by the consignor and unloaded by the consignee; otherwise, must be removed within twenty-four hours after arrival, or a charge of two dollars per day will be made for each car after that time until unloaded; or they may be unloaded on the station grounds, at the owner's expense, and be at the owner's risk.

The Company will be responsible only as Warehouse-men for property in their warehouse. The freight on all goods deliverable at points where the R. R. Company may not have a station agent, must be paid in advance at the place of shipment, and all other freight must be paid on the delivery of the goods.

Extra and heavy bulky articles chargeable at the discretion of the Company.

When articles are designed, after transportation upon this road, to be forwarded by some other Company or individual to their destination, they must be marked accordingly. This company will not be responsible for such articles after they are so delivered.

LIVE STOCK BY CAR LOAD. Horses, Cattle, and other animals will be contracted by the car load at the owner's risk only; and a car of stock will entitle the owner to pass (or one man instead of the owner) on the train with the stock to take care of it; over one and not less than five cars will entitle two men to pass; ten cars or over will entitle three men, which is the maximum number that will be passed on any train for one consignor or party, and at their own risk of personal injury from any cause whatever. If taken without a release being executed to the Company of all liability, &c. from other causes than the negligence of the Company or its employees, then first class prices will be charged, estimating each car to its full capacity, 16,000 pounds.

No. Car.

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Received, *in good order, from the Illinois Central Rail Road Company, the following Goods for* _____ *from* _____

	WEIGHT.	DOLLS.	CTS.
Expenses,			

$ _____

No. _____ _____

☞ Cash in all cases on delivery of Goods.—For conditions see back hereof.

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_____

To ILLINOIS CENTRAL RAILROAD COMPANY, Dr.

For Freight from _____

No. Car. *On* _____

	WEIGHT.	DOLLS.	CTS.
Expenses,			

Received Payment for the Company,

$ _____

No. _____ _____

Sacks filled with Salt as aforesaid or any or either of them, or any part thereof to the said plaintiffs 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 the County aforesaid converted and disposed of the said Sacks of Salt so filled with Salt as aforesaid to its own use. To the damage of the said plaintiffs of Two Thousand Seven hundred dollars. and therefor they sue &c.

W. Weigley
Atty for Plaintiffs

Endorsed filed July 23d 1857
Wm R Bowley Clerk

Upon the filing of which there issued out of the office of the Clerk of the said De Daniels County Circuit Court the following Summons to wit

State of Illinois } ss. The People of the
De Daniels County } State of Illinois
To the Sheriff of said County Greeting.
We command you to Summon
The Illinois Central Rail Road
Company to appear before the
Circuit Court of De Daniels County

at the next term to be holden at Galena on the 3d Monday of August next to answer Basil W. Alexander and Robert G. Ganseng doing business under the name & style of Alexander & Ganseng in an action of trover damages Twenty Seven hundred Dollars. And have you then there this writ. Witness. William R. Rawley Clerk of the Circuit Court of Jo Daviess County Illinois and the Seal thereof at Galena this 25th day of July A.D. 1854

Seal (Endorsed) attest W. R. Rawley Clk

Which said Summons was returned by the Sheriff of said County with the following endorsement thereon to wit. "Executed the within writ this 1st day of August A.D 1854 by delivering a true and correct copy of the same to Henry Petrie. Agent for the within named Illinois Central Rail Road Company."

S. K. Miner Sheriff
By B. Britten. Depty

And afterwards to wit on the 20th day of August A.D 1854 at the August Term A.D 1854 of said Jo Daviess

County Circuit Court in the Record of the Proceedings thereof in said Cause appears the following entry to wit.

Alexander & Dansing } Power
vs
The Illinois Central Rail Road Company

The Defendant by their atty come and file their pleas.

The Pleas referred to in the above recited entry are in the words and figures following to wit.

State of Illinois } In Circuit Court
Do Davis County } August Term A.D. 1854

Basil W. Alexander &
Robert G. Dansing partners
doing business under the
name and style of
Alexander & Dansing
vs
Illinois Central Rail Road Company.

And the said defendants by Wm McClellan their attorney come and defend the wrong & injury when &c and say that they are not guilty of the said supposed grievances above laid to their charge or any or either of them or any part thereof

in manner & form as the said plaintiffs have above thereof complained against them. And of this the said defendants put themselves upon the country &c

and the said plaintiffs doth the like

R. Ho. McClellan
Atty for Defts

W. Wegley Atty
for Pltfs.

And for a further plea in this behalf the said defendants by leave of the Court here first had & obtained according to the form of the Statute in such case made & provided. say actio non &c because they say that they are & were a long time prior to & at the time of the committing of the said several supposed grievances in said declaration mentioned a corporation duly incorporated under the laws of said State of Illinois & were at the time when &c common carriers & warehousemen in the City of Galena to wit in the County aforesaid. and these defendants aver that the goods and property in said declaration mentioned came

into the possession of these defendants in the lawful discharge of their duties as common carriers & warehousemen as aforesaid at the County aforesaid & that at the time when &c there was a large sum of money to wit the sum of Five hundred dollars due from said plaintiffs to said defendants for services rendered by said defendants to said Plffs and at their special instance and request in & about the carrying and transportation of the said goods & property and for warehouse charges upon the said goods & property while the same were in the warehouse of said defendants in said City of Galena & which said sum of money at the time when &c was & still is due & unpaid from said plaintiffs to these defendants. And defendants aver that said plaintiffs refused & still do refuse to pay the said sum of money or any part thereof to these defendants and defendants aver that they have & still have a lien upon the said goods & property & a right to retain

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the possession thereof for the payment of the said sum of money and at the time whereas they did and still do retain the possession of said property as they lawfully might for the purpose of securing payment of the said sum of money so due to them as aforesaid & which are the same supposed greviances in said declaration mentioned. and this the said defendants are ready to verify. Wherefore they pray judgment &c.

R. A. McClellan
Atty for Defts

and for a further plea in this behalf the said defts by leave of the Court say actio non &c because they say that at the time when &c & for three years prior thereto they had & were keeping a ware house in the City of Galena. to wit. in said County of Jo Daviess & receiving goods therein for hire & pay for any and all persons who might have goods transported upon the Rail Road of these defendants to wit the Illinois Central Rail Road which said Rail Road these defendants

to wit. the Illinois Central Rail Road which were then operating in said City & County under & by virtue of their charter of Incorporation granted by the Legislature of said State. and defendants further aver. That being such warehousemen & before the said time whereto to wit. on the first day of October A.D. 1856 the said goods & property in said declaration mentioned were received upon the Rail Road of the Defendants & transported thereon to said City of Galena in said County at the special request of said plaintiffs & the said goods & property on said first day of October A.D. 1856 were placed in the said warehouse of the said defendants in the care & custody of the said defts by the said plaintiffs & so remained in the said warehouse of the said defts up to the said time whereto at which last-mentioned time. There was due as warehouse charges for the storage & care & safe keeping of said goods & property to said defts from the said plaintiffs the sum

of Three hundred dollars which
has been due & unpaid & still is
due & unpaid. And these defendants
aver that as bailees of said goods &
property as aforesaid they were
entitled to retain & the possession
of said goods & property until the
said sum of money was paid &
that at the said time when & the
said plaintiffs refused to pay
the said sum of money or any part
thereof to the said defendants &
defendants did then & there Resp
& retain the possession of the said
goods & property as they lawfully
might do in the exercise of their
right of lien as aforesaid & which
are the same supposed grievances
in the said plaintiffs said dec-
laration mentioned. And this the
said defendants are ready to verify
& Wherefore Defen-
dants pray judgment if the
said plaintiffs ought to have &
maintain their aforesaid action
thereof against them &c.

R. Mc. McClellan
Atty for Defts

Endorsed

Filed Augt 20th 1857
W. L. Rowley Clk

and afterwards to wit on the 2d day of November A.D. 1857 as yet of the October term A.D. 1857 of said Do Dawes County Circuit Court in the Record of the Proceedings thereof in said cause appears the following entry to wit.

Alexander Sansing } Trover
vs
Ills Central R.R. Co } Now at this day came the Plaintiffs by their attorney and file Replications to second and third pleas. The replication referred to in the foregoing entry is in the words and figures following to wit.

Alexander Sansing } In the Circuit Court Do Dawes Co Ills
vs } of the October Term A.D. 1857.
Illinois Central R.R. Co }

And the said plaintiffs as to the plea of the said defendants by it secondly above pleaded say precludi non because they say that the said plaintiffs ought not to be barred from having & maintaining their said action against the said defendant because they say that at the time when &c there was not a large sum of money. To wit

the sum of five hundred dollars or any sum whatever due from said plaintiffs to said defendants in and about the carrying and transportation of the said goods & property and for warehouse charges upon the said goods and property while the same were in the warehouse of the said defendants and this the said plaintiffs pray may be enquired of by the County &c and def^ts do the like

R. H. McClellan atty for defts.

and for replication to the plea of the said defendant by it thirdly above pleaded the said plaintiffs say precludi non because they say that at the time when &c there was not due as warehouse charges for the storage and care & safe Keeping of said goods & property to said defendant from the said plaintiffs the sum of three hundred dollars or any sum whatever and this the said plaintiff pray may be enquired of by the County &c and defts do the like

R. H. McClellan atty for Defts.

W. Wrigley atty for Plffs

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Endorsed

Filed Nov 2d 1857

W. R. Rowley Clk

And afterwards to wit on the 10th day of November A. D. 1857 being as yet of the said October Term A. D 1857 of said Jo Daviess County Circuit Court in the Record of the proceedings thereof in said cause appears the following entry to wit.

Basil W. Alexander and Robert G. Lansing doing business under the name & style of Alexander & Lansing
vs } Trover
Ills Central Rail Road Company

Now at this day came the parties by their attorneys and upon issue joined they proceeded to empannel a Jury and after having selected Eleven Jurors further proceeding in this case is postponed until tomorrow morning.

And afterwards to wit on the 11th day of November A. D. 1857 as yet of the said October Term A. D. 1857 of said Court in the Record of the proceedings thereof in said cause appears the following entry to wit

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Basil W. Alexander and
Robert G. Lansing doing
business under the name
and style of
Alexander & Lansing
Vs
Ohio Central Rail Road Co } Trover

Now at this day came again the
parties by their attorneys and also
came the following Jurors to wit.
Oliver Marble. John McCullough John
Steif. George W. Brownell Wm Barlow
Johnathan Hentchins Thomas McDonald. Wm McKillips Thos Simpson
Henry Roberts Saml Thompson and
Robert Morrisey who were duly elected
tried and sworn and after hearing
the evidence and arguments of
Counsel retired to consider of their
verdict and after a short absence
they returned into Court with the
following verdict to wit. We Jury
find the defendants guilty and
assess the plaintiffs damages at the sum of one
Thousand Eight hundred and sev-
enty six dollars and three cents. And
the defendants by their attorney move
the Court for a new trial herein.

and afterwards to wit on the 12th day of November A.D. 1857 as yet of the October Term A.D. 1857 of said De Dawes County Circuit Court in the record of the proceedings thereof in said cause appears the following entry to wit.

Alexander & Sansing } In Error
vs
Illinois Central R.R. Co }

Now at this day comes the defendants into by their attorney and file their Motion & reasons for a new trial herein. The Motion referred to in the above recited entry is in the words & figures following to wit.

State of Illinois } In Circuit Court.
De Dawes County } October Term A.D. 1857.

Alexander & Sansing
vs
Illinois Central Rail Road Co.

And now came the said defts by McClellan & Johnson their attys & move the Court to set aside the verdict of the Jury in said cause & for a new trial herein & for cause show.

1st The verdict is contrary to law
2d The verdict is contrary to the evidence

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3d The Court excluded proper testimony from the Jury on the part of the defts.
4th The Court admitted improper evidence on the part of the Plffs.
5th The Court refused proper instructions to the Jury for the Defts
6th The Court gave improper instructions to the Jury for Plffs.
and for other good reasons &c

McClellan & Johnson
attys for Defts

Endorsed
Filed Nov 12th 1857
W. R. Ranley clk

And afterwards to wit on the 19th day of November A.D. 1857 as yet of the said October Term A.D. 1857 of said De Witt County Circuit Court in the Records of the proceedings thereof in said cause appears the following entry to wit.

David W Alexander and
Robert G. Sansing doing
business under the
name & style of
Alexander & Sansings
vs
Illinois Central R. R. Co & Trover
Now at this

day came on to be heard the motion heretofore entered by the defendants for a new trial herein which motion after argument by counsel is overruled by the Court to which ruling the defendants by their counsel excepts. It is therefore considered by the Court that the Plaintiffs have and recover of the defendants the sum of one thousand eight Hundred and seventy six dollars and Three cents so as aforesaid found & returned by the Jury in this cause together with their costs by them about their suit in this behalf expended and that execution issue against them therefor

And afterwards to wit on the 2d day of December A.D. 1857 as yet of the said October Term A.D. 1857 of said Do Davies County Circuit Court in the Record of the proceedings thereof in said cause appears the following entry To wit.

Basil W. Alexander and Robert G. Lansing doing busines under

the name and style of
Alexander Lansing
Vs
The Illinois Central Rail Road Grover
Company.

Now at this day came the defendants by their attorney and pray an appeal to the Supreme Court which is granted by the Court conditioned That they enter into & file with the Clerk of this Court an appeal Bond properly conditioned with John M. Douglass as Surety in the sum of Twenty five hundred dollars within forty days from this date. And the defendants by their attorney come & file their Bill of Exceptions which is certified by the Court.

The Bill of Exceptions filed certified by the Court in the above entitled cause is in the words and figures following to wit

State of Illinois } In Circuit Court
Jo Daviess County } Oct Term 1857
Nov 11th 1857

Basil W. Alexander & Robert G. Lansing

partners under the firm name of
Alexander & Lansing

Vs

Illinois Central Rail Road Company.
Be it Remembered that This
Cause came on To be tried This
11th day of November 1857 being
Still of Said October Term A.D. 1857
before Hon Benj. R. Sheldon &a
Judge & the plaintiffs To prove
their case offered & read the dec-
laration Pleas & replications &
rejoinders To the Court. (hereto fore inserted)
Plaintiffs Then produced George
W. Campbell as a witness who tes-
tified that he Knew The Salt
in controversy in This Suit that
he was The consignee of said Salt
& that it was the property of the
plaintiffs that there were one
Thousand Sacks of it in all 179
of which were received in good
order about The middle of
December last The balance of
it 821 Sacks came To Galena
at various times between January
1st 1857 & 1st of March 1857 on
Defendants Rail Road. The
Sacks were frozen Together

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& were broken in getting them out of the cars. Witness refused to receive these 821 sacks in good order & the Station Agent of Defendants insisted that he should. Witness proposed to put the Salt on his side of the Depot not as a delivery. but subject to the order of Defts agent. but said Agent objected. Defendants Depot is in Galena & is divided across the center. Defts occupy the East half & Witness & Mr. H. McCloskey occupy the West half equally.

Witness claimed damages on the Salt & consented to refer the same to referees on condition that the damages caused by delay in the transportation of the Salt was not included in such reference. Defendants Agent (Petrie) would not agree to this but telegraphed & corresponded with the Defendants general freight Agent in regard to it.

About 15th of last March Witness & Petrie mutually agreed to refer everything relating to

damage to the Sacks & have damage afsesed & it was refered to O. M. Ryan an W R. Wallis who afsesed damage at fifteen cents per sack. That was on Friday or Saturday. Thinks it was on Saturday. and the Witness paid the freight on the Salt. less the damages as afsesed which were deducted from the freight & the Witness & Petrie exchanged receipts. Said award of said referees was in writing & read in evidence & was in the words following.

Galena March 13/57

We the undersigned being called upon by the Unit Agent of the Ill Cen R. R. Co & Geo W. Campbell to afsess the damages on Eight hundred & twenty one (821) Sacks of Salt now lying in the Unit Depot consigned to Geo W. Campbell Galena by Alexander & Dansing. St Louis. have examined the same & afsess the damage at fifteen (15) cents pr sack which does not include the damage by delay.

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Endorsed

(Duplicate) Jas M. Ryan
W. B. Willis

On Monday Witness sent his men to remove the Salt and went over himself soon afterwards and asked Petrie why he ordered his men to remove the Salt? Petrie said he wanted a Bill for Storage & commissions which he presented. Thinks Petrie had sent same Bill over to his Store before witness went to Depot but is not certain. Witness refused to pay this Bill & Petrie withdrew it. The Bill was for $184 79/100 for Storage on 821 Sacks of Salt & commissions for advancing freight. Twenty cents per sack was charged for Storage & 2½ per cent commissions for advancing. 175 of these sacks were on Witness side of Depot. Petrie said he would not deliver the Salt till the bill was paid & Witness refused to pay it. Witness men were there ready to move the Salt.

The 175 Sacks were then removed

from Witnes side of Depot To Defendants side were Taken without the consent of Witnes This was soon after the reference To ajes damages within a few days. Witnes dont recollect the exact time. Plaintiffs counsel then asked witnes this question. What was the value of the Salt at the time you went over. Which question was objected To by Defts counsel & the objection overruled by the Court To which ruling of the Court Defts counsel then & there excepted & witnes answered. Salt was selling at $2.50 To $2.75 per Sack.

Witnes then further said. I went over & demanded the Salt That had been consigned To me by Alexander Lansing. The Salt was consigned To me by them for Sale on their account. I had no interest in it except as a commision merchant. I was then a wholesale Grocery Merchant on this side of the River & a forwarding & commision Merchant on the other side.

Witness further testified that he knew the prices for storage. It was at that time, for a large lot of this kind ten cents per sack for all the time salt was in store. That is what witness would charge. This salt came in parcels at different times. Reference was on the 13th of March & some of the salt had been in the Depot three months. Some of it not one month. Witness afterwards saw the salt in possession of defendants in their warehouse. Witness never afterwards attempted to get possession of salt & it has ever since remained in possession of the defendants.

Witness further testified that he saw the salt before the commencement of this suit & a considerable time after ~~xxxxxx~~ damages were alleged & that it was very much damaged & sacks were torn & badly damaged. Defendants counsel objected to any evidence of the condition of the salt after

the assessment of damages thereon on the ground that the damages had been paid which objection was overruled by the Court To which ruling of the Court Defts counsel then & there excepted. Witness further testified that Petrie subsequently offered to give him the salt free of charges. but he refused to receive it.

On his cross examination Witness testified that the Depot was divided by a rope running across it & by no other division. That when he went over on the Monday after the assessment for the salt that he told Petrie that he was surprised at the Bill which Petrie presented to him. That he had never seen such a one before & that he (Petrie) could not be in earnest. Petrie replied that he was & that witness could not have the salt till it was paid. Witness told him that he insisted upon having the salt. Witness cannot recollect anything else taking place at that time.

Salt ran down in price during the summer. At the middle of March it was worth not less than $2.50 per sack by the quantity.

On his examination by Plff Witness testified that navigation did not appear to affect the price of anything like after the middle of March.

Charles E. Omer was then produced as a witness for Plff & testified as follows.

He was in employ of Geo W. Campbell on the 15th of March last and had been for 2 or 3 years before. That he knew the salt in controversy. That after the damages were agreed he went & paid the freight to the depot. less the damages as agreed which were deducted from the freight. The depot agent receipted Bills for freight & witness receipted for the salt. 175 To 200 sacks of salt were then on Campbells side of Depot. balance was on company side. Campbell had told Petrie

that they might put the whole of the Salt on his side of the Depot till the damages were settled. But witness could not recollect the reply of Petrie.

Witness notified Petrie not to remove the Salt from Campbells side of Depot. That he (witness) told Petrie that he considered the whole of the Salt received although a portion of it was on Defts side of Depot. Petrie said ~~we~~ that we should not remove it Till this Bill of Charge was paid. Petrie sometime after that notified me that he was willing we should receive the Salt free from charge. This was several weeks after the damages were assessed.

The Salt was then in a much worse condition than it was when damages were assessed. It had thawed out. Defts counsel objected to all testimony in regard to condition of the salt after the damages were assessed thereon for the reason that damages had been paid. which obj'ee

tion was overruled by the Court. to which ruling of the Court Defts Counsel then & there excepted. Witness then testified that Defts wasted a great deal of the Salt in removing it. spilling it down the slide to the lower Story of the Depot. how much was wasted could not state. Witness thought sacks were more torn in that way. they put all the sacks down there.

On his cross examination Witness said. Mr Campbell said when he told Petrie to put Salt on his side of Depot. that he would not consider it as received till the damages were assessed.

John Dorain was then produced as a witness for Pltf & testified that he was a forwarding & commission Merchant in Galena in March last & that the warehouse of Defts. - that he saw Salt in dispute when it arrived & saw it about 15th of March piled

up in Depot & have seen it since. Witness then stated that the only damage that could happen to Salt whilst in Depot was in putting it down the slide into the lower story. That it was thrown down the slide without any care & roughly handled. Some of the Salt was ~~wasted~~ in this way wasted: could not say how much.

Defts counsel objected to any testimony as to damage to salt after adjournment which objection was overruled by the Court. to which ruling of the Court Defts counsel then & there excepted.

August Gager was then produced for Plffs & testified that he had worked for G. W. Campbell & tended warehouse at Depot for him & saw the Salt. Witness left the Depot week after New Year.

Geo W. Campbell was then recalled by Plffs & Plffs counsel then asked him. Did you act under the instructions of the Plffs in relation to this Salt

as their agent. Which question was objected to by dfts counsel as improper because Witness should State what he did in the matter. which objection was overruled by the Court. To which ruling of the Court Dfts counsel then & there excepted. Witness further stated that he acted in capacity of agent for the Plffs & corresponded with them in regard to the matter.
On cross examination witness said. The salt was consigned to me as a commission merchant originally.
Dfts then introduced D. M. Ryan as a witness. who testified that he had been a wholesale grocer in Galena for 12 years past that he should think salt worth about $2.00 per sack about 13th or 14th of March last.
On cross examination he said they had no salt at that time & knew of no sales in Galena but judged from the prices current in St Louis - which were $1.10

to $1.15 per sack & freight by river was 30 or 40 cents. Balance would be profit. Hardly thought River open on 13 March. Defts then read in evidence the following deposition of Henry Petrie to the Jury which had been taken by consent.

To wit;

Basil W. Alexander & Robert G. Canning doing business under the name and style of Alexander & Canning Plaintiffs

Vs

The Illinois Central Rail Road Company

Deposition of Henry Petrie taken before Wm R. Ravley Clerk of the Dist Court of Jo Daviess County Circuit Court on the 6th day of November A.D. 1854 To be used in the trial of said above entitled cause now pending in said Court.

Interrogatory 1st Were you Station Agent for the Illinois Central Rail Road Co in Galena & if so when.

Ans. I was Station Agent for said Company in Galena from 22d of Nov 1853 to 10th of August 1854.

S 12592-187

Interrogatory 2d Do you know anything about the Salt sued for in this Case.

Ans Do.

Interrogatory 3d Were you ever engaged in Warehouse business before you came to Galena.

Ans Do. was for several years.

Interrogatory 4th How long did the Salt in question lay in the warehouse of the Ills Cent R. R Co in Galena.

Ans It was received during the month of January & February last according to the best of my recollection and remained there when I left.

Inter 5th What was the storage upon said Salt worth per month.

Ans I should think ten cents per hundred for the first month. after that I should charge according to the Ware house room & the locality

Inter 6th Was the freight settled for upon this Salt.

Ans It was by Mr Campbell the Consignee

Inter 7th Was any damages on the Salt paid by Defendants.

Ans There was fifteen cents per sack for damage done to the Sacks in getting them out of the Cars The Salt was frozen very hard Crowbars &c had to be used to get them out. & the fifteen cents per sack was deducted from the transportation.

Inter 8th Did you ever make a Warehouse charge on that Salt & present the same to the Consignee of the Plaintiffs.

Ans I did

Inter 9th Was it paid.

Ans It was not.

Inter 10 What was the reason assigned?

Ans I do not recollect.

Inter 11th Was anything settled in regard to the Salt except the freight & the

damages spoken of by you.

Ans: No: It was expressly understood by Mr Campbell & myself that nothing was settled by the referees except the damage to the Sacks & Salt & Mr Campbell came in and settled the freight. & deducting the amount of the referees award from the amount of the freight.

Inter 12th Was it after this that you presented the Bill for the Warehouse Charges?

Ans I presented the bill for Warehouse charges the next day after the transportation was settled.

Inter 13th Were the Warehouse charges ever paid?

Ans Not to my knowledge by the plaintiffs

Inter 14th What was the reason that you retained the Salt.

Ans Because Mr Campbell refused to

pay the Warehouse charges.

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Inter 15 Did you afterwards ever offer to give Mr Campbell possession of said Salt before the commencement of this Suit.

Ans I was instructed by the general freight agent to deliver to Mr Campbell the Salt free from Warehouse charges. And I offered to do so free from Warehouse charges prior to the commencement of this Suit or prior to the service of process on me.

Inter 16 Was it or was it not prior to the 23d day of July last that you made this offer?

Ans I think it was prior to that time

Inter 17 What did Mr Campbell do when the offer was made? did he receive the Salt.

Ans He did not.

Inter 18 Did Mr Campbell object to the

[12592-20]

39 Warehouse charges because of the amount.

Ans. I think not on account of the amount but objected to paying warehouse charges at all.

Ques 19th Were you instructed by the defendants to charge warehouse charges at the time you first presented said bill for the same.

Ans. I had no instructions at the time that is no special instructions. I charged it because I thought it was right. Mr Campbell and myself disagreed about that & asked time of him to refer the matter to the general freight office to which he consented. And they instructed me to collect the charge. I immediately on the receipt of the instructions informed Mr Campbell of the fact. After that time I was instructed to deliver the last to Mr Campbell free from warehouse charge & offered to do so as I stated before.

(Objected to by Pltff)

Inter 20th Did the plaintiffs or their agent ever ask for said Salt after your said offer to deliver the same free from warehouse charges while you were Station Agent at Salina.

Ans They never did to my knowledge if they had they would have got it.

Cross Interrogatories by Plaintiffs

Cross Inter 1st When was the freight & damages to Sacks settled?

Ans About the 15th of March 1874.

Cross Inter 2nd Did you present to Mr Campbell your bill for the freight before said settlement?

Ans It was not our practice to present freight bills. But the practice was to give the parties notice that the goods were there, and of the amount of charges upon them at the time of the receipt of the goods which I think was done to Mr Campbell at all events he knew that the Salt was there.

Cr of Defts 3d When you give such notice do you not always include all charges upon the goods up to the time when the notice is given?

Ans We intended to do so. Such was our practice.

Cr of Defts 4th Dont you include Warehouse charges in freight bills when the latter is settled?

Objected to by Defts

Ans I think this is the only Warehouse charge I ever attempted to collect for the Rail Road Co

Cr of Defts 5th At the time you were freight agent for the Defendants was it customary to make Warehouse charges on goods received?

Ans Not at the Galena Office.

Cr of Defts 6th Did not Mr Campbell several times during the winter or Spring offer to receive the Salt and pay the charges on it if the defendants would settle the damages to the sacks?

42

Ans

Objected to by Plaintiffs as irresponsive all after the word No!

No: he refused to receive the salt at first on account of delay in transportation afterwards as I understood it abandoned any claim for damages on account of delay and set up a claim for damages to sacks at fifty cents per sack. I offered to refer it at the time to referees he refused at first but afterwards agreed to it. as before stated in the direct examination

Endorsed

H. Petrie

State of Illinois }
Jo Davies County } ss

I. W R. Rowley Clerk of the Circuit Court in and for said County hereby certify that the foregoing deposition of Henry Petrie was taken before me on this 6th day of November A.D 1857 that said witness was first duly sworn. That the foregoing Interrogatories & Cross Interrogatories and answers thereto were then written out and read to said witness and subscribed by him and he was again sworn thereto. In testimony

[12593-22]

whereof I have hereunto set my name and affixed the Seal of said Court at my Office in Galena this 6th day of Nov A. D. 1857

(Seal)

Endorsed Albert R. Rowley Clk

Defts then produced George S. Everett as a witness who testified that he had been in the employ of Defts in Galena for a year past as Clerk in Freight House & that there are printed rules on freight bills. Witness went into service of Company a year ago last August. The printed freight Bills & Rules thereon shown to Witness are the same always used by Defts - Since Witness has been in the service.

(Which receipt is hereto attached marked B.)

The bill marked "B" was then offered & read in evidence to the Jury to which the plffs counsel objected & the objection was overruled by the Court to which ruling of the Court plffs counsel then & there excepted.

George W. Campbell was then produced by Defts as a witness & testified as follows. That he had receipts of Defts for freight paid on the 179 sacks of Salt received in December which receipts he produced.

(Which said receipts are hereto attached marked "C & D")

And which receipts were read in evidence with the Rules on the back thereof to the Dmy. To the introduction of which receipts Plffs Counsel objected & which objection was overruled by the Court to which ruling of the Court Plffs Counsel then & there excepted. Witness testified that he had received perhaps a thousand of these receipts.
Witness then produced the Receipts for the freight on the 821 Sacks of Salt in controversy which were read in evidence to the introduction of which Receipts Plffs Counsel objected & the Court overruled the objection to which ruling of the Court Plffs Counsel then excepted.

(The Receipts above mentioned are hereto attached as per agreement of Counsel)

☞ Cash in all cases on delivery of Goods.—For conditions see back hereof.

Galena 16 Mar 1857

G. W. Campbell

To ILLINOIS CENTRAL RAIL ROAD COMPANY, Dr.

For Freight from Dec 9

No. Car.	On	WEIGHT.	DOLLS.	CTS.
1638	100 Bags Salt	20.000	100	00
	Expenses,			

Received Payment for the Company, $ 100.00

No. 658 J Petre agt

☞ Cash in all cases on delivery of Goods.—For conditions see back hereof.

Galena 1856

G. W. Campbell

To ILLINOIS CENTRAL RAIL ROAD COMPANY, Dr.

For Freight from Cair, St. Louis Dec 9

No. Car.	On	WEIGHT.	DOLLS.	CTS.
3 2 4	77 Bags Salt	15.400	86	90
	Expenses,			

Received Payment for the Company, $

No. 240 J Petre agt

☞ Cash in all cases on delivery of Goods.—For conditions see back hereof.

Galena 1856

G. W. Campbell

To ILLINOIS CENTRAL RAIL ROAD COMPANY, Dr.

For Freight from E. St. Louis Dec 9

No. Car.	On	WEIGHT.	DOLLS.	CTS.
1 1 6	100 Bags Salt	2 0 0 0 0	110	00
	Expenses,			

Received Payment for the Company, $

No. 251 J Petre agt

CONDITIONS AND SPECIAL RATES.

Unenumerated articles will be classed with similar articles.

The TON WEIGHT is in all cases 2,000 pounds.

No article, however small, will be taken for less than Twenty-five Cents, and every valuable or troublesome parcel will be charged higher, at discretion.

Articles will not be received for transportation unless properly packed in suitable casks, boxes, or packages; and each must be well and clearly marked with the name of the consignee, and of the Station where they are to be delivered, otherwise they will not be receipted for. Marking with initials ONLY, or with chalk, or on paper labels, is not sufficient for safety in transportation, and agents will not receive articles so marked, in which case no damage for loss or miscarriage will be paid.

Goods in bundles will not be considered as properly packed, and this Company will not be responsible for any loss of parts, or the whole of such packages.

When receipts are required, duplicates, ready for signing, must be furnished by the consignor.

All articles will be at the risk of the owners, at the several way stations and platforms where depôt buildings have not been established by the Company, from the moment such articles are delivered as directed or marked, or, until taken into the cars—as the case may be.

This Company will not receive or carry any Bank-bills, Drafts, Notes, Deeds, Contracts, or other valuable papers or writing, or be responsible for their loss.

GUNPOWDER, FRICTION MATCHES, and FIRE-WORKS, will not be taken on any terms, and if found secreted among other goods, will be forfeited or destroyed, and the consignor, in case of damages, will be held liable therefor.

When an invoice covers a variety of articles, as a lot of furniture, &c., each separate piece must be properly marked and numbered, and a bill of particulars furnished by the consignor, in duplicate, one to be receipted, the other to go with the way-bill, or they will not be received.

No article that the Agents of the Company do not consider worth the charge for Freight, at forced sale, will be taken, unless the freight on the same is prepaid to the agent to whom it is delivered.

No allowance will be made for a deficiency of lemons or oranges in boxes, if not covered with canvas; nor for a deficiency in raisins, unless when in packages of not less than three boxes, well strapped.

All articles of freight, arriving at their place of destination, consigned to residents (and they notified within business hours), must be taken away the same day, and if consigned to non-residents, must be taken away within twenty-four hours after being unloaded from the cars—the Company reserving the right of charging storage on the same, or placing the same in store at the risk and expense of the owner, if they see fit after those stated periods.

The Company will not be responsible for damages occasioned by delays from storms, accidents, or other causes, or by decay of perishable articles, by heat or frost, to such as are affected thereby; or for damages to hidden contents of packages; or by leakage or bursting; or by reason of improper packing when received at their depôt; nor will they be responsible for any property unless receipted for by a duly authorized agent; nor for a greater amount than $200 on any one package, except by special agreement, and upon the payment of extra rates.

Articles carried by the car load to be loaded by the consignor, and unloaded by the consignee; otherwise, must be removed within twenty-four hours after arrival, or a charge of two dollars per day will be made for each car after that time until unloaded; or they may be unloaded on the station grounds, at the owner's expense, and be at the owner's risk.

The Company will be responsible only as Warehouse-men for property in their warehouse.

The freight on all goods deliverable at points where the Railroad Company may not have a station agent, must be paid in advance at the place of shipment, and all other freight must be paid on the delivery of the goods.

Extra and heavy bulky articles chargeable at the discretion of the Company.

When articles are designed, after transportation upon this road, to be forwarded by some other Company or individual to their destination, they must be marked accordingly. This Company will not be responsible for such articles after they are so delivered.

LIVE STOCK BY CAR LOAD. Horses, Cattle, and other animals will be contracted by the car load at the owner's risk only; and a car of stock will entitle the owner to pass (or one man instead of the owner) on the train with the stock to take care of it; over one and not less than five cars will entitle two men to pass; ten cars or over will entitle three men, which is the maximum number that will be passed on any train for one consignor or party, and at their own risk of personal injury from any cause whatever. If taken without a release being executed to the Company of all liability, &c. from other causes than negligence of the Company or its employées, then first class prices will be charged, estimating each car to its full capacity, 16,000 pounds.

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On his cross examination Witness testified that he had never read the matter on the back of these receipts. That he had done business with defts ever since Rail Road came to Galena & never paid storage before. That this was the only charge for storage made him. That it was very common to leave goods in the Depot longer than the time named in the printed rules now shown. That he never knew a storage bill made before by Defendants. That he & defts were not particular about the line dividing their respective parts of the Depot. The company frequently had goods on his side of the line & on their side. They mutually accomodated each other in that respect. Plffs counsel then asked Witness this question Was there any [illegible] custom at the Galena Station not to charge storage by Defts. which question was objected to by Defts counsel because it was improper. The plffs having notice of the Rules

[illegible]

& the right to charge storage.
did not depend upon custom.
which objection was overruled
by the Court to which ruling
of the Court Defts Counsel then
& there excepted. and witness
answered. O think there was
no uniform custom not to charge
storage.

John Cowan was then produced as a witness for Defts & testified that when Salt was received & the weather was very cold.
Defts then offered to prove to explain delay in the transportation of the Salt. that the weather was ~~very cold~~ at the time Stormy & the Rail Roads obstructed by snows so that delay was inevitable to which testimony Plff Counsel objected which objection was sustained by the Court to which ruling of the Court Defts Counsel then excepted.

Defts then rested.

George W. Campbell was then recalled by the Plffs & asked this question by Plffs Counsel.

What was the uniform course of dealing with you by Defts when goods were left longer than the printed rules allowed Which question was objected to by Defts counsel because it was improper to show cause of dealing to vary a printed rule because the cause of dealing with him did not affect the Right to charge storage. which objection was overruled by the Court. which ruling of the Court Defts counsel then & there excepted & witness was answered it was the uniform custom not to charge storage. Witness further testified that he did not think he had ever had goods so long in Defts Depot before. On admitting evidence as to the condition of the goods after the assessment of damages objected to by Defts the Court permitted it to be given for the purpose of showing any damage Defts might have done to the salt after the said assessment of damages. telling

the Jury they should not consider any damage done to the Salt before said assessment as they had been paid for. It is agreed by counsel of the parties that said bills or receipts themselves be sent up by the Clerk with the Bill of Exceptions so the Supreme Court may see how said rules were printed on the back of them. Plff Counsel then asked the Court to give the following Instructions to the Jury-

1st If the Jury believe from the evidence that the Salt in dispute was the property of plaintiff and was by them shipped on the railroad of the defendant and consigned to the witness George W Campbell to be sold by him on commission for the plaintiffs and that the deft converted the Salt whilst in its possession then the Jury should find for the plaintiffs

2. The wrongful taking of goods is of itself a conversion and

if the Jury believe from the
evidence that the defendant
took the goods described in
the declaration wrongfully from
the possession of the plaintiffs
or their agent. then a demand
on the part of the plaintiffs
and a refusal to deliver on
the part of the defendant are
not necessary to be proved by
the plaintiffs to support this
action.

3d The value of the damages in
this action is the value of the
goods and the Jury should
they find the defendant guilty
may assess the highest value
of the goods from the time of
the conversion to the commence
ment of the suit or at any sub-
sequent period.

4th If the Jury believe from the
evidence that the plaintiffs
by their agent demanded the
salt described in the declar
ation of the defendant and
the agent of the defendant
refused to deliver it unless

one hundred and sixty four dollars and twenty cents storage and twenty dollars and fifty cents commissions for advancing were paid. and that no such bill nor any part of it was justly due to the defendant. then the Jury should find for the plaintiffs on the second and third issues in this case. all of which said Instructions ~~xxxx~~ asked by plffs counsel except the third were given by the Court to the giving of which instructions Defts by their Counsel then & there excepted.

Defendants Counsel asked the Court to instruct the Jury as follows.

1st In order to entitle the plaintiffs to recover in this case the Jury must believe from the evidence that a demand was made upon the defendants or their agent for the salt sued for. and that defts or their agent

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refused to deliver the same before the commencement of this suit provided it came rightfully into defendants possession.

2d The plaintiffs to recover must show by evidence that they were entitled to the possession of the salt sued for at the time they made the demand therefor if any such demand was made, and if the Jury believe from the evidence that the plaintiffs were not then entitled to the possession of the same they must find the defendants not guilty.

X 3d If the Jury believe from the evidence that at the time of the demand if any was made for said salt that George W. Campbell as a commission merchant was then entitled to the possession of said salt the Jury should find the defendants not guilty.

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4th If the Jury believe from the evidence that at the time the possession of the salt was demanded if any demand was made that there was a bill for Storage of said salt due on said salt and unpaid to defendants then the defendants were justifiable in retaining possession of the salt tile the Storage was paid

5th If in order to make a refusal to deliver goods upon a demand in this action effectual to charge the defendants such refusal must be absolute, amounting to a denial of the pltfs title to the possession of the salt and if the Jury believe from the evidence that no such absolute refusal in this case was made by the defendants they should find defendants not guilty

6th If the Jury believe from the evidence that when the salt was demanded if it was

54

demanded at all from the defendants Alexander Laning had not the right of the possession of the same then the Jury must find the defendants not guilty

7th On an action of trover and conversion to entitle the plaintiff to recover where the possession was originally lawful they must show as evidence of a conversion a demand by the plaintiff and a refusal by the defendants and if the Jury find from the evidence that Geo W. Campbell the consignee did demand the salt in controversy without disclosing the fact that he made the demand for the plaintiffs. This was not such a demand as would entitle the plaintiffs to recover in this form of action.

8th If the Jury find from the evidence in favor of the plaintiffs defendants are entitled to credit for the 15 cents per sack

proven to have been paid as damages assessed by the referees if such damages are proven to have been paid by defendants.

All of which said Instructions asked by Defts were given to Jury by the Court except the said third & Seventh Instructions, which the Court refused to give to which ruling of the Court Defts by their counsel then & there excepted.

The Jury then returned the following Verdict To Wit;

Basil W. Alexander and
Robert G. Dansing doing business
under the name & style of
Alexander & Dansing
Vs
Ills Central Rail Road Co

We Jury

Now at this day came again the parties by their attorney and also came the following Jurors To wit. Oliver Marble. John McGaugh. John Stiff. George W. Brownell. Wm Barbour. Jonathan Hotchkins. Thomas McDonald. Wm McKillips. Thomas Simpson Henry Robert. Samuel Thompson

and Robert Mowrey. who were duly elected tried and sworn and after hearing the evidence and arguments of counsel retired to consider of their verdict and after a short absence they returned into Court with the following verdict to wit. We the Jury find the Defendants guilty and assess the plaintiffs damages at the sum of One Thousand Eight Hundred and Seventy Six dollars and Three cents. And the Defendants by their attorneys move the Court for a new trial herein.

Upon the rendering of said verdict Defts by their Counsel moved the Court to set aside said verdict & for a new trial which motion was as follows.

State of Illinois } In Circuit Court
Davis County } Oct Term A.D. 185[illegible]

Alexander & Lansing

Vs

Illinois Central Rail Road Company

And now comes the said defts by McClellan & Johnson their attys & move the Court to set aside

the verdict of the Jury in said cause & for a new trial therein & for cause shown.

1st The verdict is contrary to Law.

2d The verdict is contrary to the evidence

3d The Court excluded proper testimony from the Jury on the part of the Defts.

4th The Court admitted improper evidence on part of the Plffs

5th The Court refused proper Instructions to the Jury for the Defts.

6th The Court gave improper Instructions to the Jury for Plffs & for other good reasons &c.

(Endorsed) McClellan & Johnson
Attys for Defts.

Filed Nov 12th 1857
W. R. Rowley Clk

And which said motion for a new trial was overruled by the Court to which ruling of the

Court Defts by their counsel thereto excepted. The Court thereupon entered the following judgment upon the verdict of the Jury.

Basil W. Alexander et
Robert G. Lansing
doing business under
the name and style of
Alexander & Lansing

Vs

The Illinois Central Rail Road Co

Now at this day came on to be heard the motion heretofore entered by the defendants for a new trial herein which motion after argument by counsel is overruled by the Court to which ruling the defendant by his counsel excepts.

It is thereupon considered by the Court that the plaintiffs have and recover of the Defendants the sum of one thousand eight hundred and seventy six dollars and three cents &c as aforesaid found and returned by the Jury in

this cause together with their costs by them about their suit in this behalf expended and that execution issue against them therefor. To which Judgment the Defts by their counsel then & there excepted.

The above is all the evidence that was offered & introduced in the trial of said cause.

The said Defendants then & there prayed that this their Bill of Exceptions might be signed and sealed and made a part of the Record herein by the Court which is accordingly done in open Court this third day of December A.D. 185[illegible]

(Endorsed) Benj. A. Sheldon Esq

Filed Dec 2d 185[illegible]

W. R. Parley Clk

And afterwards to wit on the 8th day of January A.D 1858 the said Defendants by their Attorneys filed in the Office of the Clerk of the said U.S. Circuit Court their Appeal Bond which said Bond is in the words and figures following to wit.

Know all men by these presents That we the Illinois Central Rail Road Company and John M. Douglas of the State of Illinois are held firmly bound unto Basil W. Alexander and Robert G. Ganing partners in business under the firm name of Alexander & Ganing in the penal sum of Twenty 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 administrators Successors & Assigns jointly & severally by these presents.

Witness our hands & seals

[12592-31]

this 30th day of December A.D. 1857.

The condition of the above obligation is such that whereas the said Basil W. Alexander & Robert G. Dunning partners as aforesaid did at the October Term A.D. 1857 of the Circuit Court in & for the County of De Daniels and State of Illinois recover a judgment against the above bounden Illinois Central Rail Road Company for the sum of Eighteen Hundred and Seventy Six dollars & three cents and costs of suit from which said judgment of the said Circuit Court the said Illinois Central Rail Road Company has prayed for and obtained an appeal to the Supreme Court of said State of Illinois.

Now if the said Illinois Central Rail Road Company shall duly prosecute their said appeal with effect

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and shall moreover pay the amount of the said judgment Costs Interest and damages rendered and to be rendered therein. in case the said judgment shall be affirmed in the said Supreme Court. then the above obligation to be void otherwise to remain in full force and virtue.

(Endorsed) The Illinois Central R R Co
by W. H. Osborn.
President

John M. Douglass Seal

Filed 8 day 1858
W. R. Rowley Clk

[1958-13]

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State of Illinois
St Francis County } ss I W R Rowley Clerk
of the Circuit Court in and
for said County in the State aforesaid
hereby certify the foregoing to be a true
and Correct Transcript of the Record and
proceedings of said Circuit Court together
with the Bill of Exceptions as certified
by the Court in the above entitled Cause
of Alexander Lansing vs The Illinois
Central Rail Road Company
In testimony whereof I have
hereunto set my name and
affixed the seal of said Court
at my office in Helena this
13th day of January A D 1858
Attest W R Rowley Clerk

Fees Transcript $26.81
Certificate and seal .35
$27.16

Paid by Defts
W R Rowley Clk

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The Ill. Cen. R.R. Co

vs

Alexander Lansing

Record

Filed April 16, 1855

S. Leland

Clerk

The Illinois Central Railroad Company
v
Alexander & Lansing } Appeal from Jo Daviess —

Brief for Appellants —

This was an action of Trover brought by Appellees against the Appellant for eight hundred and twenty one sacks of salt — Declaration in the usual form —
1st Plea Gen: Issue —
2d Plea That Defendant was a common carrier & warehouseman, and as such received the salt in question, & at the time when &c a large sum was due the R R Co. for transportation, & also a large sum as warehouse charges, which sum the plaintiffs refused to pay & defts retained possession &c
3d Plea: That Defts had a lien upon the salt in question, as warehousemen, for storage at the time when &c —
General Replication denying that any sum was due either for freight or storage & Issues thereon —

The facts as shown by the evidence were, that Alexander & Lansing

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of St Louis shipped by the Railroad of Cliff. to Geo W Campbell of Galena 1000. sacks of salt, 179. were received in good order in December '56. The balance 821. sacks arrived at Galena at various times between the first of January and the 15th of March '57. The sacks were frozen together in the cars & were somewhat broken in unloading, & the Consignee refused to receive them, The Railroad Depot was divided by a rope across the centre & one half of it was occupied by the R.R. Co. & the other half by the Consignee & one Mc Blasky. The Consignee claimed damages on the salt, which the R.R. Co. by their agent refused to allow. Afterward on the 13th of March '57 - which was Friday, everything relating to the damage of the salt was by agreement of parties left to referees, who assessed the damages at 15 cents per sack. this amount was then deducted from the freight & the balance paid by the consignee - On the Monday following the Consignee went to remove the salt & the agent of the R.R. Co. presented

him a bill of 20 cents per sack, for storage on the salt, this the consignee refused to pay, not on the ground that the charges were too high, but objected to paying any charges whatever for the storage — The agent of the company at that time refused to deliver the salt until the storage was paid, but afterward before the commencement of this suit, offered the salt to the consignee free of charge the consignee refused to receive it —

Upon this evidence the jury found for the Pltff below assessed the damages at $1876.03 — The Defts below then moved for a new trial on the ground that the verdict was not warranted by the evidence — Motion overruled by the court —

The question befor this court is whether the issue upon the third Plea was sustained by the evidence was there not some sum due the Company for storage on said salt? If there was any sum due, however small it may have been, the issue on that plea should have been found for the Defendants

[125 92-95]

The facts show a transportation of goods by the R. R. Co. on deposit in their warehouse, of which the Consignee had knowledge, but did not receive or remove the goods within a reasonable time thereafter but allowed them to remain in the warehouse of the company for a long time, alledging that he ought to be allowed a deduction from the freight on account of damage done to the goods, a deduction was afterward made on the Friday the 13th of March & the balance of the freight then paid by the Consignee, but there was no effort made by him to remove the goods untill the succeeding Monday and this when the goods had only to be moved from one side of the Depot to the other, and the Consignee knew or ought to have known that that the company's rules were to charge storage unless the goods were removed the same day when consigned to a ~~person~~ residents: for the Consignee himself swears that he had received as many as a thousand receipts from the Company, on every one of which

were printed the rules of the company. When the charge for storage was presented to the Consignee he refused to pay any part of it & therefore the goods were retained in the possession of the Company.

We insist that the rule of law is, that when goods have been unloaded from the cars & placed in the warehouse of the Company ready for delivery & the consignee has knowledge of the fact, that if he does not then remove them in a reasonable time, ~~that then the same will be said~~ the Company may subject him to pay warehouse charges upon the goods, either by causing them to be stored in some other warehouse or by keeping them in his own.

In the original contract to carry the goods, there was an implied contract to store for a reasonable time only, and it is the duty of the consignee, as soon as he has knowledge of the arrival of the goods, to remove them within such reasonable time or in default he will be chargeable with storage. This view is sustained by the opinion of the Court in Norway Plains Co. v Boston & M. R.R. Co 1. Gray 263. The Court there say "The Contract assumed by the R. R. Co. is, that they will carry the goods safely to the place of destination & there discharge them on the platform & then & there deliver them to the

consignee, or party entitled to receive them, if he is there ready to take them forthwith; or if the consignee is not there ready to take them, then to place them securely & keep them safely a reasonable time, ready to be delivered when called for" —

And in the case of Thomas vs The Boston & P. R.R. Co. 10. Met. 472. the Court say "When suitable warehouses are provided and the goods, which are not called for on their arrival at the place of destination, are unloaded & seperated from the goods of other persons and stored safely in such warehouses or Depots, the duty of the proprietors as common carriers is ended, they have done all they agreed to do, they have transported the goods safely to the place of delivery, have put them in a safe and proper place for the consignee to take them away, and he can take them at any reasonable time" —

And in McKenny vs the R.R. Co 4. Hearrington the Court say "The business in which they (the R.R. Co) were engaged required them to have a warehouse, if they had none of their own, they were bound to find one, the costs & expenses of the storage of goods is a proper subject of charge against the owner or consignee, until, after notice given, he comes and takes them away" —

See also Moses v R.R. Co 32. N.H. 523.
Smith v Nashua & L.R.R. 7. Foster 86.
15. Johns 39.
8. Jaunt 83.
7. Cowen 497.
8. Jaunt 443.
Garside v Trent & Mersey N. Co 4. T.R. 581.
Hyde v Same 5. T.R. 389.
2. Stark 461.
12. Johns 232.
McCall & J. 136.
3. Dana 91.
17 Wend 305.
26. Wend 591.
2. Mich 538.
10. Barb 612.
14. Geo 277.

It may be contended that the fact of the goods having been damaged, excused the Consignee from taking them until such damage was assessed and allowed, and therefore the Pltffs below were not bound to pay warehouse charges on the salt until the 13th of March at any rate, we think this is not the law.
If the goods were damaged the owner could maintain his action against the R.R. Company recover the damage shown, and he would not be excused from receiving the goods & paying the freight thereon.
In the case of The Chicago & R.I.R.R. Co vs Warren 16. Ill 502. C.J. Scates in delivering the opinion of the Court says:
"I do not pretend that every failure to carry safely and in like good order as received, will subject the Carrier to a liability for the full value, and compel him to answer as a purchaser. Nor is a Shipper

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bound to take any and every remnant of his goods, in whatever condition it may be identified and offered to him, short of total destruction. There is a medium defining their mutual rights in this respect".

In the case at bar the damages assessed upon the salt was 15 cents per sack, while the value of the salt was shown by the evidence to be $2.50 to $2.75 per sack. This can not be such a failure to carry safely as would subject the carrier to a liability for the full value of the goods, and compel him to take them as purchaser.

So in Secrist v. Griffith 2 Kernan 509. where there was delay in transportation & consequent deterioration in value of the goods, the Court say "there was in this case inexcusable delay in the transportation & indoubtedly entitled the plaintiffs to all real damages sustained by him, but it does not follow that the plaintiff had the right to refuse & abandon the property & recover its full value".

See also 5. Richardson 462.
23. Wend 306. McGee v. J. 129.

If then the consignee could not refuse to receive the goods in question on account of the trifling damage done them in the course of carriage he was certainly bound to receive

them within a reasonable time after he has knowledge that they have arrived and are ready for him - and if he does not so receive them, he must be subject to pay the reasonable storage after such reasonable time has elapsed -

If this view of the Law is correct the R. R. Company plainly had a lien upon the salt in question for storage The evidence shows that the goods were arriving at different times between the 1st of January and the 1st of March 1859 - and that no attempt whatever was made to remove them until the 16th of March thereafter, Was not this a very unreasonable time for the goods to be left in charge of the carrier under his original contract to carry? It seems so to us, especially when it is considered that the consignee had knowledge of the arrival & storage of the goods at the time & only had to remove them from one side of the warehouse to the other If this was unreasonable time then certainly the Company had the legal right to charge storage for the safe keeping of the goods & had the right to retain possession of them until it was paid - They might certainly have caused the goods to be stored in some other warehouse & solicited the owner to pay the charges

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therefor - This is the well settled doctrine both in this country and in England as will appear by a consultation of the numerous authorities above cited - If they could have charged the consignee with the storage by placing the goods in some other warehouse why not when they retain them in their own for precisely the same purpose & more especially when the printed rule of the Company declares that they will charge storage on the goods of residents when not removed the same day of their arrival & the consignee by his own statement had received at least 1000 of those rules -

If the carrier delivers goods which have been carried by him, without the freight being paid, he loses his lien upon the goods. Will it be held that he must subject himself to the inconvenience of storing large quantities of goods free of charge in order to protect himself against the loss of his freight? Can a consignee by refusing to pay freight get his goods stored free and that in consequence of his own default? And if a warehouseman, after a protracted storage occasioned by the default of the Consignee, claims pay for the storage & refuses to deliver the goods until it is paid, Can he be sued in trover & charged with the value of the goods

That is precisely this case -

If it should be considered by the Court that the Company were not entitled to storage up to the time when the damages were assessed, the 13th of March still we insist that they are entitled to it after that time —

The assessment took place on Friday the damage was then allowed and the freight paid, but no attempt was made to remove the goods until the Monday following & this when they only had to be moved from one side of the Depot to the other, occupied by the Consignee, and when the consignee must have known that the rule of the company was to charge storage on the goods of residents not removed the same day —

If it can be considered that the R.R. Company were bound to store the goods free up to the 13th of March, they could not certainly be bound to store them any longer without the legal right to storage — The Consignee might have taken them away the same day, if he had chosen so to do & this would have been a reasonable time for so doing, and it is all the time the law gives him, he must pay the reasonable warehouse charge for the time intervening between the day of assessment, Friday & the day of the attempted removal, Monday —

£12592-39

It may be contended that this is but a small amount that the bill for storage rendered was a very unreasonable one. The issue on the third Plea was that there was not any sum due for storage, and if any sum however small was legally due the defendants then the Plff replication to the 3rd Plea did not sustain them, 3rd Plea and the issue thereon ought to have been found for the ~~plaintiff~~ defendants. And it is plain we think, that there was some sum due for storage, Suppose that one month, instead of two days, had elapsed after the consignee was bound to remove the goods, would it in that case have been pretended that the Rk. Company had not the right to charge the storage or retain the goods if it was not paid? certainly not. Why then are they not bound to pay the storage for the two days which would have constituted a part of the month, if it had been allowed to elapse? by no proper rule of Law can they be released from their liability so to do.

It can make no difference whatever whether the sum found due for the storage be great or small, if 25 cents were legally due then the issues on the 3rd Plea should have

been found for the Defendant & when the Jury found otherwise the Court should have allowed the motion for a new trial &

If the first position contended for by Appellants is correct, that they were entitled to charge storage from the time of the arrival of the goods or after a reasonable time for removing them had elapsed, until they were finally attempted to be removed, then the bill for storage presented to the consignee was not an unreasonable one & even if it was that would not excuse the Consignee from paying ~~any~~ such portion of it as was just & proper - The consignee was bound to tender the amount of storage reasonably due, whether the same was for three months or three days storage before he could demand possession of the goods - We think there was some amount due either for the whole time the goods were stored or for the time they were stored after the as-

$1259 on 407

assumit was made and that
therfor the issues on the third
Plea should have bun found
for the Defendants below —

Glover Brooks
Attys for Appellant

Supreme Court - 3d Division - April Term 1858

The Ill. Cent. R. R. Co.
vs.
Alexander & Lansing
} Appeal from Jo Daviess

141.

1st The first question objected to by defendants, was, What was the value of the salt at the time you went over?

This was at the time the agent of the defendants below refused to deliver the salt & removed the 175 sacks to their side of the depot & insisted upon their lien for warehouse charges. But even if it were before or after the conversion, it was evidence tending to show the value at the time of conversion.

(1259-42)

2d The Objection to the damaged
Condition of the Salt after the award,
was properly overruled, especially as the
Court stated to the jury that the damage
done before the award was not to be
considered - only that after the award.
The evidence of Duer shows that the
Salt was damaged after the award - and
such injury would be ~~would be~~ a
reason why Plaintiffs should not
receive it, & tended to prove a misuse
that would amount to a conversion -
Whether sufficient or not is not material -

3d- The question to witness Campbell, was also objected to by defendants - Did you act under the instructions of the plaintiffs in relation to this sale as their agent? The objection was, that the witness should state what he did in the matter. This can hardly be said to be stating a conclusion instead of facts from which a conclusion may be drawn. That he was agent was a fact. To state all the acts witness did for the jury to infer from them whether he was the agent, would consume time improperly. Could it not be proved that a man was a minister without having his prayers & sermons repeated to the jury? The form may be leading, but no more than necessary to call the witness's attention to the subject. No harm could have been done by the leading form, & the objection was not placed on that ground.

Greenup vs Stoker 3 Gilm. 211.

12592-4d

4th "What was the uniform course of dealing with you by defendants when goods were left longer than the printed rules allowed?" was another question objected to by defendants.

This was competent & bore on the question whether there was really a claim for storage, or whether it was an unfounded claim made without authority by the agents.

5th The dependant's 3d instruction was properly refused, because, if Campbell was entitled to the possession as a commission merchant, his right of possession was as an agent for his principal, & it was the principal's right of possession.

If Campbell instead of being an agent to sell on commission, was in possession as a purchaser, then he should undoubtedly have brought the action - but not when he was a mere agent in possession of the plff's salt. Angell on Carriers Sec. 493.

5 Gilman 599.

[12592-44]

6th The 7th instruction is not law for two reasons -

1st It was not necessary that Campbell should show his authority, unless the refusal to deliver was placed on the ground of his want of it.

Wall vs Potter 2 Mason 77.

2d The defendants already knew it - & if so, a disclosure was unnecessary. The Company knew who the Consignee was & also that Campbell was doing a Commission business.

The award, which was before the demand, recites that the salt was consigned by Alexander & Lansing to Campbell. The instruction should, in either view, have contained the additional statement "if the defendant did not already know it" or some equivalent expression.

7th The verdict is not against the evidence. It was a question of fact for the jury. Whether there was any claim for warehouse charges & freight. The evidence is conclusive that transportation charges were paid, & there was evidence tending to show that they had no valid claim for Storage; but even if they had, they waived the claim after the Conversion, & before Suit. Having once been guilty of a conversion the plaintiffs were under no obligation to take the goods back after they had been damaged in addition to the damage settled by the award. And if it may be said, that if they had a claim at the time, there could be no conversion by refusing to deliver till it was paid, the fact

that they afterwards consented to a delivery without payment of the charges, is evidence tending to show they had none at the time they claimed to retain for that reason.

The jury having found the property in plaintiffs, the conversion & the ~~non-existence~~ non-existence of the claim for storage, upon evidence at least strong enough not to require the Court to set it aside, the judgment should be affirmed.

Leland & Leland
for Appellees

The Illinois Central R. R. Co
v. 141 = 158
Alexander & Lansing

Argument
for
Appellants

Filed May 22. 1874
C. Leland
Clk

Glover & Cook

141.-158

Ill. Cent. R.R. Co.
vs
Alexander & Lansing

Brief
of
Appellees

Filed May 22. 1858
S. Leland
Clk

141=15-8

Ill. Central Rail Road Company

vs

David W. Alexander et al

Opinion

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1858

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Reversed