

No. 12621

Supreme Court of Illinois

Porter..

vs.

Chicago & Rock Island R.R.Co.

71641  7

Porter

Wm. R. d. R.

188

Porter

58

262

(58)

Samuel S. Porter } Supreme Court
 plaintiff in Error } Minor's
 The Chicago & Rock Island } April Term 1887
 Rail Road Company }
 Defendant in Error }

And now comes the said
 plaintiff in Error. and says
 that there is manifest error
 in the Record and proceedings
 of which the following is an
 abstract in this to-wit
 1st The Circuit Court erred
 in rendering judgment against
 the plaintiff and in favor
 of said defendant upon
 the evidence and issues
 before said Circuit Court.
 Wherefore he prays that
 the said judgment be
 reversed and the said
 Cause remanded.

Mary J. Smith
 for plff

Be it Remembered that heretofore to wit on the twentieth day of February in the year of our Lord one thousand eight hundred and fifty seven there was filed in the office of the Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois ^{a declaration} which with the precept for summons thereto attached is in the words and figures following to wit:

Declaration Samuel S. Porter

vs
Chicago & Rock Island
Rail Road Company

Peoria Circuit Court for the
February Special Term A.D. 1857
Assumpsit, Damages \$6000.00.

State of Illinois }
Peoria County } ss Samuel S. Porter, plaintiff in the above entitled
cause complains of the Chicago and Rock Island Rail Road Company
in a plea of trespass on the case on promises. For that whereas the
said Rail Road Company, before and at the time of the making of
their promises & undertaking hereinafter next mentioned were common
carriers of goods and merchandize for hire in and by certain rail road
cars from Peoria in the County of Peoria and State of Illinois to
Chicago in the County of Cook and State aforesaid, and being such
carriers as aforesaid, the said plaintiff by his agents Richard S.
Uphike Jun. and George W. Uphike (doing business by the name and
style of Uphike & Co) heretofore to wit on the ninth day of August
A.D. 1856 at the County of Peoria and State of Illinois at the special
request of the defendants aforesaid caused to be delivered to them
the said defendants to being such carriers as aforesaid at the County
and State aforesaid certain to wit 89 sacks, containing certain

goods and chattels to wit twelve hundred bushels of corn and also
certain to wit three hundred and forty sacks containing certain other
goods and merchandize to wit, nine hundred bushels of wheat of the said
plaintiff then in good order and well conditioned and of great value
to wit of the value of \$3000.00, of lawful money of the United States
to be taken care of and safely and securely carried and conveyed by the
said defendants as such carriers as aforesaid in and by the said rail
road cars from Peoria aforesaid to Chicago aforesaid, and there to wit
at Chicago aforesaid to be safely and securely delivered in the like good
order and well conditioned to the assignees of the said plaintiff to wit
to Bra. V. Munn, Richard G. Gill and George L. Scott doing business
by the name and style of Munn Gill & Co at Chicago aforesaid, and in
consideration thereof and of certain freight and reward to wit seventeen
cents for hundred pounds to be paid by said plaintiff to said de-
fendants in that behalf they the said defendants then and there under
took and faithfully promised the said plaintiff to take care of
and safely and securely carry and convey & deliver the said goods and
chattels without delay as aforesaid to said Munn Gill & Co, and
although the said defendants so being such carriers as aforesaid then
and there had and received the said goods and chattels to be carried
and conveyed and delivered as aforesaid and although a reasonable
time for the carrying ^{conveying} and delivering of the said goods and chattels hath
long since elapsed and although the said plaintiff is and has always
been ready & willing to pay the said freight and charges as aforesaid
yet the said defendants so being such carriers as aforesaid not regard-
ing their said promises and undertakings, but contriving &c to deceive
and defraud the said plaintiff in this behalf did not nor would take
care, and safely and securely carry and convey the said goods and
chattels so received by them as aforesaid from Peoria aforesaid to
Chicago aforesaid, and there to wit at Chicago aforesaid safely or secure-
ly deliver the same to the assigns of the said plaintiff to wit to
Munn Gill & Co, but on the contrary they the said defendants so
being such carriers as aforesaid have not delivered the said goods and
chattels nor any part thereof although often requested so to do, but to
deliver the said goods and chattels have hitherto wholly neglected
and refused.

And whereas also heretofore to wit on the day & year afore-
said at the County and State aforesaid in consideration that the



said plaintiff at the special request of the said defendants, had them and there caused to be delivered to them the said defendants divers other goods and chattels to wit four hundred & eighty nine sacks, containing twelve hundred bushels of corn and also certain other to wit; three hundred and forty sacks, containing nine hundred bushels of wheat in good order of great value to wit of the value of \$ 3000.00 to be delivered in like good order to the assigns of said plaintiff to wit to Ira G. Munn, Richard P. Gill and George L. Scott doing business by the name and style of Munn Gill & Co. at Chicago station for certain freight to wit seventeen cents per hundred pounds to be paid by said plaintiff or his said assigns to said defendants in that behalf. The said defendants undertook and faithfully promised to deliver the said last mentioned goods and chattels in good order to the assigns of said plaintiff to wit to said Munn Gill & Co. at Chicago station aforesaid and although the said defendants then and there had and received the said goods and chattels for the purposes aforesaid, and although the said plaintiff and his assigns are and always have been ready and willing to pay the said freight on above mentioned goods & chattels on delivery as aforesaid, yet the said defendants not regarding their duty in that behalf nor their said promise and undertaking, but contriving & to ~~do~~ deceive and defraud said plaintiff in this behalf not delivered the said goods and chattels ~~nor any part thereof~~ nor any part thereof although a reasonable time for so doing has long since elapsed & although often requested so to do but to deliver the same have hitherto wholly neglected and refused.

And also for that whereas the said defendants before & at the time of the making of their promise & undertaking hereinafter next mentioned were common carriers of goods and merchandise for hire in and by certain rail road cars from Peoria in the County of Peoria and State of Illinois to Chicago in the County of Cook & State aforesaid, and the said defendants being such carriers as aforesaid the said plaintiff by his agents the aforesaid Richard P. Updike Junr & George W. Updike doing business by the name and style of Updike & Co. heretofore to wit on the eleventh day of August A.D. 1856 at the County of Peoria & State of Illinois at the special request of the defendants aforesaid caused to be delivered to them the said defendants so being such carriers as aforesaid at the County and State aforesaid certain to wit, six hundred and forty sacks containing certain goods and chattels to wit sixteen hundred bushels

of wheat of the said plaintiff then in good order and well conditioned
of great value to wit of the value of \$ 2000.00 of lawful money of the
United States to be taken care of and safely and securely carried and
conveyed by the said defendants as such carriers as aforesaid in and by
the said Rail Road cars from Peoria aforesaid to Chicago aforesaid and
there to wit at Chicago aforesaid to be safely and securely delivered in
like good order and well conditioned to the assigns of the said plain-
tiff to wit to Jno. H. Munn Richard T. Gill & George L. Scott doing
business by the name and style of Munn Gill & Co at Chicago aforesaid
and in consideration thereof and of certain freight and reward to be paid
by said plaintiff to said defendants in that behalf they the said
defendants then & there undertook and faithfully promised the said
plaintiff to take care of and safely and securely convey and deliver the
said goods and chattels as aforesaid and although the said defendants
so being such carriers as aforesaid then and there had and received the
said goods and chattels for the purposes aforesaid and although a
reasonable time for the carrying conveying and delivering of the said
goods and chattels as aforesaid hath long since elapsed & although the
said plaintiff is and has always been ready and willing to pay the
said freight and reward as aforesaid yet the said defendants so being
such carriers as aforesaid not regarding their said promises and
undertakings but contriving &c to deceive and defraud the said
plaintiff in this behalf did not nor would take care of and safely
and securely carry and convey the said goods and chattels so received
by them as aforesaid from Peoria aforesaid to Chicago aforesaid and
there to wit at Chicago aforesaid ~~on~~ safely and securely deliver the
same to the assigns of the said plaintiff to wit to said Munn Gill
& Co but on the contrary they the said defendants so being such carriers
as aforesaid have not delivered the said goods and chattels nor any
part thereof although often requested so to do but to deliver the same
have hitherto wholly neglected and refused.

And also whereas heretofore to wit on the day and year last
aforesaid in consideration that the said plaintiff at the special request
of the said defendants had then and there caused to be delivered to them
the said defendants divers other goods and merchandises to wit ^{certainly to wit:} six
hundred and forty sacks containing certain goods and chattels to wit:
sixteen hundred bushels of wheat then in good order to be delivered
in like good order to the assigns of said plaintiff to wit to Jno. H. Munn

George L. Scott & Richard T. Gill, doing business by the name & style of Mann Gill & Co at Chicago Station for freight at a certain rate to wit at the rate of seventeen cents per hundred pounds to be paid by said plaintiff or his assigns to the said defendants in that behalf the said defendants undertook and faithfully promised to deliver the said goods and chattels in good order to the assigns of said plaintiff to wit to said Mann Gill & Co at Chicago Station aforesaid and although the said defendants then and there had and received the said goods and for the purposes aforesaid and although the said plaintiff and his assigns are and always have been ready and willing to pay the said freight on above mentioned goods and merchandise on delivery as aforesaid, yet the said defendants not regarding their duty in that behalf nor their last mentioned promises and undertakings but contriving &c to deceive and defraud the said plaintiff in this behalf, have not delivered said goods and chattels nor any part thereof though a reasonable time for so doing has long since elapsed & although often requested so to do, but to deliver the same hath hitherto wholly neglected and refused. To the damage of said plaintiff of six thousand dollars and thereupon he brings suit &c

By Manning & Merriman
Attys for plaintiff

Samuel S. Porter

The Chicago & Rock Island
Rail Road Company

Peoria Circuit Court
Term AD 1857
Assumpsit damages \$6000.00

The clerk of the Circuit will cause
Summons to issue to defendants in above entitled cause returnable
according to law
Feb'y 19th 1857.

Manning & Merriman
Attys for plaintiff

And thereupon on the 21st day of February AD 1857 the clerk of said Court issued out of the said Court under the seal thereof a summons directed to the Sheriff of Peoria County to serve which is in the words and figures following to wit:

The People of the State of Illinois To the Sheriff of Peoria County
Greeting: We command you to summon the Peoria and Oklawaha
Rail Road Company if it may be found in your County to appear
before our Circuit Court on the first day of the term thereof to be held

Summons

at Peoria within and for the said County of Peoria on the first Monday of March next then and there in our said Court to answer unto Samuel Porter of a plea of trespass on the case upon promises to his damage six thousand dollars as he says and make return of this writ with an endorsement of the time ^{and manner} of serving the same, on or before the first day of the term of the said Court to be held as aforesaid. Witness Enoch P. Sloan, Clerk of our said Court and the seal thereof at Peoria this 21st day of February in the year of our Lord one thousand eight hundred and fifty seven
Enoch P. Sloan, Clerk

Which Summons was afterwards returned by the said Sheriff endorsed as follows to wit:

Return

Served the within Summons on N. B. Curtiss Post and Henry Kelle Secretary of the P. & O. R.R. Co. by reading to them this writ this 25th day of February 1857
B. W. Smith Sheriff
E. Smith Jr. D. L.

Whereupon on the 2nd day of March A.D. 1857 the Clerk of said Court issued out of said Court another Summons under the seal of said Court ~~which~~ directed to the Sheriff of Peoria County to serve, which is in the words and figures following to wit:

Summons

The People of the State of Illinois to the Sheriff of Peoria County Greeting: We command you to summon the Chicago and Rock Island Road Company if it may be found in your County to appear before our Circuit Court on the first day of the term thereof to be held at Peoria within and for the said County of Peoria on the second Monday of May next then and there in our said Court to answer unto Samuel Porter of a plea of trespass on the case upon promises to his damage six thousand dollars as he says and make return of this writ with an endorsement of the time and manner of serving the same on or before the first day of the term of the said Court to be held as aforesaid. Witness Enoch P. Sloan, Clerk of our said Court and the seal thereof at Peoria this 2nd day of March in the year of our Lord one thousand eight hundred and fifty seven
Enoch P. Sloan, Clerk

Which Summons was afterwards returned by the said Sheriff endorsed as follows to wit:

Return

Served on Thompson the agent of the within named Rail Road by

reading the same to him March 2, 1857
F. W. Smith Sheriff

Proceedings at a term of the Circuit Court began and held at the Court house in the City of Peoria in and for the County of Peoria and State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty seven it being the second day of said month Present the Honorable Elisha H. Powell Judge of the sixteenth Judicial Circuit in the State of Illinois, Francis W. Smith Sheriff and Enock P. Ryan Clerk to wit:

Wednesday March 4th A.D. 1857
Samuel S. Porter

vs Assumpsit
Chicago & Rock Island
Rail Road Company

By agreement of parties herein, this cause is continued

~~And afterwards to wit on the 18th day of May A.D. 1857 the defendant by its attorneys filed in the Clerk's office of said Court its plea in this cause which is in the words and figures following to wit:~~
Plea Samuel S. Porter

vs In the Circuit Court of Peoria County
Chicago and Rock Island May Term 1857
Rail Road Company

And now comes the defendant and for plea says that said defendant did not assume & promise in name & form as stated in said plaintiffs declaration & of this said defendant puts itself upon the country & c.

~~Peuple & Pratt for def~~
Tiff doth the like
Manning & Merriam }

And thereupon on the 26th day of March A.D. 1857 the Clerk of the said Court issued out of the said Court & under the seal thereof a summons directed to the Sheriff of Peoria County to serve, which is in words and figures following to wit:

Summons
[122-5]

The People of the State of Illinois To the Sheriff of Peoria County Greeting We command you to summon The Chicago & Rock Island

Rail Road Company if it may be found in your County to appear before our Circuit Court on the first day of the term thereof to be held at Peoria, within and for the County of Peoria on the second Monday of May next then and there in our said Court to answer unto Samuel S. Porter of a plea of trespass assumptit to his damage six hundred dollars as he says and make return of this writ with an endorsement of the time and manner of serving the same on or before the first day of the term of the said Court to be held as aforesaid.

Read Witness Enoch S. Sloan, clerk of our said Court and the seal thereof at Peoria this 26th day of March in the year of our Lord one thousand eight hundred and fifty seven Enoch S. Sloan clerk

Which summons was afterwards returned by the said Sheriff endorsed as follows to wit:

Return

" I served the within Summons on Thompson agent of for the Chicago & R. I. R. Road Company by reading to him the same & also gave him a true copy of the same this 26th day of March 1857

B. W. Smith Sheriff
by E. Smith dr. D. S.

And thereupon to wit on the 18th day of May A.D. 1857 the defendant by its attorneys filed in the Clerks office of said Court its plea in this cause which is in the words and figures following to wit:

Plea

Samuel S. Porter

vs
Chicago & Rock Island
Rail Road Company }

In the Circuit Court
of Peoria County
May Term 1857

And now comes the defendant and for plea says that said defendant did not assume & promise in manner & form as stated in said plaintiffs declaration & of this said defendant puts itself upon the Country &c

Off with the like
Hanning & Meriman }

Purple & Pratt for deft.

Proceedings in the Circuit Court at a term thereof began and held at the Court house in the City of Peoria in and for the County of Peoria

and State of Illinois on the second Monday of May in the year of our Lord one thousand eight hundred and fifty seven it being the eleventh day of said month. Present the Honorable Elihu N. Powell, Judge of the 11th Judicial Circuit in said State, Francis W. Smith Sheriff and Esquire P. Sloan clerk to wit:

Wednesday May 27th A D 1857
Samuel S. Porter

vs
Chicago & Rock Island
Rail Road Company

By agreement of parties this cause is continued.

And afterwards to wit on the 18th day of November A D 1857 the following depositions were by order of Court opened and filed in the clerks office of said Court to wit:

Depositions State of Illinois }
Cook County } is Depositions of Richard T. Gill, Thomas D. Winter,
John Corrick, Joseph Jones ex. l. W. Bidwell, Elhanan W. Thomas,
Thomas D. Sammisson & Charles L. Epps, taken in pursuance of the annexed agreement at the office of Saml. W. Fuller in Chicago, County and State aforesaid on the days severally named as the days of taking the same in the several depositions hereinafter named to be read in evidence in two suits pending in the Circuit Court of Peoria County State of Illinois in one of which S. S. Porter is plaintiff and the Chicago & Rock Island Rail Road Company is defendant and in the other W. C. Bailwin & J. L. Merriam are plaintiffs and the Chicago & Rock Island Rail Road Company is defendant. I further certify that all said depositions were taken between the hours of ten o'clock A. M. and five o'clock P. M. of the several days of taking the same, that at each time of taking Saml. W. Fuller appeared as counsel for plaintiff and Cadd & Winstone as counsel for defendant and that previous to his examination each witness was by me sworn to testify the truth in relation to the matter in controversy in said suits so far as he might be interrogated.

Deposition of Richard T. Gill who being duly sworn answers and says in answer to the first interrogatory,

First Interrogatory: What is your name, age, residence and occupation, and if a member of any firm, state the style of such firm, the business and where carried on and how long.

Answer. My name is Richard T. Gill age forty years, place of residence Chicago, my occupation is commission business, I am a member of the firm of Mann Gill & Co of Chicago Ills. a firm doing a produce & commission business in Chicago. The firm was established in July eighteen hundred and fifty six.

Second Interrogatory. State whether or not the firm of Mann Gill & Co were the consignees of freight transported by the Chicago & Rock Island Rail Road Company in the month of August 1856 on the cars numbered as follows 616-206-660-272-468-698-296-282-140. If yes attach the bills of lading therefor or copies of the same if in your possession also in what capacity the said firm of Mann Gill & Co were acting as consignees & on whose account the same was shipped, and also state what or not you received from the said rail road company, ^{the said property} or any portion of the same & how much and on whose account & from which of said cars the same was received and in what condition the same was received and also what understandings or arrangement with said Rail Road Company.

Answer. We the firm of Mann Gill & Co were the consignees of cars No 206, 660 & 698 shipped from Peoria Ills Aug. 9, 1856 the two former contained wheat & the latter corn as per bill of lading hereto attached marked exhibit No 1. Also of 3 cars of wheat in cars Nos. 468, 616 & 294 dated Peoria Ills Aug. 11th 1856 as per bill of lading hereto annexed marked exhibit No 2. Also of one car of wheat in car No 140, dated Peoria Ills Aug 11, 1856 as per bill of lading hereto annexed marked exhibit No 3. All the above numbered cars except No 140 (which car was shipped on account of W. C. Baldwin & Co of Peoria) were shipped on account of L. S. Foster of Peoria by Uptake & Co of Peoria; the cars were shipped to us as agents for the consignees. We received part of the grain in a damaged condition from the fire. Sept 14, 1857. Adjourned examination for two weeks from this date by consent of parties.

Chicago Oct. 20, 1857. Deposition of Richard T. Gill continued by consent of all parties.

In addition to the answer above written to the second interrogatory said Gill further answers as follows to wit;

That the firm of Munn, Gill & Co. were the consignees of cars No. 296 & 282 shipped from Peoria Ills Aug. 7th 1856, both of said cars containing corn and shipped by Updike & Co. as per bill of lading hereto annexed marked exhibit No 4. the cars were shipped as their contents for S. S. Porter of Pekin, and the corn was received on a part thereof in a damaged condition. Car No 273 was shipped by Updike & Co. for S. S. Porter of Pekin and contained wheat. He knows that it was shipped from the notice received from the agent of the Chicago & Rock Island Rail Road Company and from the bill of lading which he has lost as said part of the wheat from this car was received in a damaged condition caused by fire. We received on account of W. C. Baldwin & Co. one hundred & fourteen (114) bushels of Red wheat and sold the same for one hundred & thirty six dollars & eighty cents. We received on account of S. S. Porter four hundred and thirty five (435) bushels of Red wheat and two hundred and sixty seven and a half (267 1/2) bushels of white wheat and sold the same for five hundred and eighty three dollars & thirty five cents; also eight hundred and twenty ⁴⁰/₅₆ (820 ⁴⁰/₅₆) bushels of corn and sold the same for three hundred & thirty six dollars & thirty nine cents, these sales were made during the said month of August. We received the grain upon the understanding or arrangement that we should take it - and do the best we could with it; the arrangement was made with the said rail road company through Mr. Tracy the Superintendant and Mr. Babcock the General freight agent of the said Rail Road Company.

Third Interrogatory. State whether said firm of Munn, Gill & Co. received any notice from said Rail Road Company of the arrival of said cars & freight, if so state when said notices were received, and if written notices attach the same to your deposition.

Answer. We received the following notices hereto annexed marked Exhibits 5, 6, 7, 8 & 9 and probably received the same on the respective days of which they bear date.

Fourth Interrogatory. State whether or not you as & for said firm of Munn, Gill & Co. had in the month of August 1856 or prior thereto made any agreement with said Rail Road Company as to the place of delivery of grain transported by them consigned to your house & if so what was that agreement & when made.

Answer. When we first commenced receiving grain from said Rail Road I went down and gave directions to Mr. Jones the local freight agent to have all grain received for us by said Company to be delivered at Hunt & Wheelers elevator & warehouse. And subsequently

gave directions to have certain car loads delivered on the track, but only such cars as were particularly specified. This arrangement was about the first of July 1856.

8th Interrogatory. Did you or said firm of Munn, Gell & Co. ever receive from said Rail Road Company any portion of the grain specified in the bills of lading issued upon the cars mentioned in Interrogatory 2, except as mentioned in your answer to said Interrogatory.

Answer. To this interrogatory we answer that they did not receive any grain except as stated in his answer to second interrogatory.

9th Interrogatory. Was William Thomas in the employ of said Munn, Gell & Co. in August 1856 & if so in what capacity.

Answer. He was employed as teamster to do overhauling we might want.

10th Interrogatory. What was the value of wheat & corn per bushel on the 12th or 13th days of August 1856 and your means of knowledge.

Answer. Spring wheat was worth one Dollar per bushel, Red winter wheat was worth one dollar and thirty cents per bushel, White winter wheat was worth one dollar and forty cents per bushel and corn was worth forty five cents per bushel delivered free. My means of knowledge were derived from sales made by us at Chicago on those days.

Did you or any of your firm to your knowledge send directions to defendants by said Charles H. Bell to deliver the delivery of freight consigned to your firm.

Answer. We only recollect that we did not send any general instructions but may have sent special instructions.

Cross Interrogatories

First: Was the notice referred to in the answer to the 4th fourth direct interrogatory given in writing to Jones and did you subsequently ever give any other notice to Jones or any agent of the defendant or order Thomas to do so in relation to the delivery of grain, or did any one of your firm give such notice to your knowledge.

Answer. My impression is that there was no written notice given and no other notice was subsequently given by Thomas or by any member of our firm to any knowledge. We did sometimes receive grain from the same house in bags without making objections to it subsequent to the time of the notice.

Second. Was one Charles H. Ball in the employ of Mann Gill & Co. in the month of August 1856 & if in what capacity.

Answer: He was in our employ as an out door clerk,

Re: amination direct,

State whether or not the man Thomas herein before named had any authority from you or any of your firm to give directions to the depot about the delivery of grain and what was the extent of his authority?

Answer: He had no general ~~etc~~ authority and his business was to do hauling as wanted as requested

Oct. 20th 1857.

R. T. Gill

Peoria Ill. August 9th 1856. Received in good order from Uptake & Co to be forwarded by the Peoria & Bureau Valley Rail Road the following articles to be delivered in like good order to Mann Gill & Co at Chicago station he or they paying freight at the rate of 17cts a hundred pounds

Marks:	Articles	Weight
asf	3 car loads wheat No cars	206: 660
	1 do " Corn "	698
S. Porter	Charges \$ 118.00	
Exhibit No 1.	Thompson	

Peoria Ill. August 11, 1856. Received in good order from Uptake & Co to be forwarded by the Peoria & Bureau Valley Rail Road the following articles to be delivered in like good order to Mann Gill & Co at Chicago station he or they paying freight at the rate of 17^{cts} per hundred pounds.

Marks	Articles	Weight
S. C. Porter	3 cars wheat No	468: 616: 294
Ellen	Chg. \$ 19.50	Ent: 800
	Thompson	

Exhibit No 2

Peoria Ill. Aug 11th 1856. Received of W. C. Boitwin & Co. in good order by P & B. V. R.R. the following articles marked and numbered as per margin, to be delivered without delay in like good order to assigns, they paying freight and charges as noted below.

Mark	No	Articles	weight	Price charges.
Munn Gill & Co		1 car load wheat	No 110	Mo & W. R.R.
Chicago	out	consisting of		
	"W. L. & Co"	136 cks white	267 ²⁶ / ₆₀	
	"W. L. & Co"	28 cks red	59 ⁵⁷ / ₆₀	
ap	W. L. Baird & Co.	supposed to be		
Exhibit No 3.				Thompson

Pecoria Station Aug. 4th 1856. Received of Uplike & Co for Munn Gill & Co 2 cars corn @ 296^p 282^c to be forwarded by the Chicago and Rock Island Rail Road Company to Chicago station only, subject freight and the regulations of the Company.

Exhibit No 4. J. R. Thompson Agent Washburn

Exhibit 5.
 Freight Depot Chicago & Rock Island R. R. Chicago station August 13th 1856.
 Mess Munn Gill & Co.

There is at this depot consigned to you from Pecoria Station the following subject to \$ — charges on delivery

3 cars corn
 2 " wheat

cks { 588
 { 76 } T. L. Runo & Co
 { 102 }

cks { 272 } Burnett
 { 412 } P. G. Foster

Weight
 Rail Road charges
 Back charges paid
 Total

 \$ _____
 \$ _____
 \$ _____

Please send for above immediately

J. Son. Jr. Agent.

(Ex. 6)
 Freight Depot Chicago & Rock Island R. R. Chicago Station Aug. 11, 1856. Mess Munn Gill & Co. There is at this Depot consigned to you from Pecoria station the following subject to \$ — charges on delivery.

2 cars wheat
1 9 corn

Order
206 Buant
660 Buant
698 Buant

Weight

Rail Road charges

Back charges paid

Total

Please send for above immediately

(Ex. 7)

J. Jones Jr. Agent

Freight Depot Chicago & Rock Island R.R.

Chicago Station Aug. 9th 1856. Mess. Munn Gill & Co.

There is at this depot consigned to you from Peoria station the following subject to \$ — charges on delivery

296

282

Order

2 cars corn Buant

Weight

Rail Road charges

Back charges paid

Total

Please send for above immediately

(Ex. 8.)

Jones Agent.

Freight Depot Chicago & Rock Island R.R.

Chicago station Aug. 11. 1856

Mess. Munn Gill & Co. There is at this depot consigned to you from Peoria station the following subject to \$ — charges on delivery:

1 car wheat

169 11

140

W. C. Babin & Co.

Buant.

Weight

Rail Road charges

Back charges paid

Total

Please send for above immediately

(Ex. 9)

J. Jones Jr. Agent

Freight Depot Chicago & Rock Island R.R. Chicago Station
Aug. 11, 1856 Mess. Munn Gill & Co.

There is at this Depot consigned to you from Peoria Station the following subject to \$ —

charges on delivery:
3 cars wheat

468	{	Burnt	{	Weight
616		Burnt		
394		Burnt		
		55. Boxes		Rail Road charges \$
				Back charges paid
				Total \$

Please send for above immediately
J. Jones for Agent

Deposition of J. Jones Esq. who being duly sworn answers
and says in answer to the first interrogatory
First Interrogatory. What is your business and how long have you been
engaged at it.

Answer. I am local freight agent for the defendant and have acted
as such since July 1st 1854.

Second Interrogatory. Do you recollect a fire which occurred in the
year 1856 which burned up the Rail Road Co's warehouse or Depot
and the contents thereof, if so what time said fire occurred and what
was the probable cause of it.

Answer. It occurred on the night of the thirteenth of August 1856
and was caused by the heat from the fire on the opposite side of the street
which consumed the Rock Island House & the freight depot of the
Michigan Southern & Western Indiana Rail Road Co.

Third Interrogatory. Do you recollect anything about the grain
of the plaintiffs referred to in the second direct interrogatory propounded
to the witness Gill (which interrogatory you have just heard read)
if so state what time the grain arrived at the Depot of the defendant
what time notices were sent to Munro Gill & Co. the consignees, what
time the grain was unloaded and what afterwards became of it.

Answer. I know that the cars specified were billed to Munro Gill & Co.
The grain arrived a few days prior to the fire, I do not know personally
when notices were sent, but the clerk whose business it was to make
out notices had orders from me to notify parties immediately upon the
arrival of the way bill. I know & nothing about the unloading
except by reference to the tally book. And whatever of the grain was
in the house was burned or damaged by the water.

Cross examination

First Cross Interrogatory. Are or are not the notices of the arrival of plaintiffs goods attached to Gills deposition numbered exhibits 5, 6, 7, 8 & 9 in your handwriting or signed by you or had you or not any personal knowledge that the cars referred to in said notices had actually arrived at the defendants depot at the date thereof.

Answer. The notices are not in my handwriting nor signed by me. I cannot say that they had arrived or not.

Second Cross Interrogatory. Was it or not the custom of the defendant at and about the time of the fire referred to in your deposition to give notice to consignees of the arrival of freight for them prior to its actual arrival.

Answer. The custom was to notify parties that we had freight billed to them. It was the custom to notify ^{the parties} the arrival of the way bills without reference to whether the freight had arrived or not.

Third Cross Interrogatory. Had you any personal knowledge of the time of the actual arrival of the cars referred to in the notices and are you the person whose name purports to be signed to said notices.

Answer. I had no personal knowledge of the arrival of the cars. I am the person.

Direct resumed.

Did you authorize the clerk to make the notices in that way and to sign your name in that way.

Answer. I did.

Chicago Oct. 20th 1857

J. Jones Jr.

Oct. 20th 1857. Adjourned till ten o'clock A.M. of October 21st 1857 by consent of all parties.

Chicago October 21st 1857. Met pursuant to adjournment. Deposition of Thomas D. Winter, who being duly sworn answers and says in answer to the first Interrogatory.

First Interrogatory. What is your name and what was your business in August 1856.

Answer. My name is Thomas D. Winter. I was employed as clerk in the local freight office of the defendant in Chicago.

Second Interrogatory. Will you please look at the exhibits No. 5, 6, 7, 8 & 9 annexed to the deposition of Richard T. Gill and state in whose handwriting they are, and if in yours, when you made them and by what authority.

Answer. Exhibits No. 5, 6, 8 & 9 were made by me in my

handwriting and on the days on which they bear date and were made by me from authority given by Joseph Jones Esq. local freight agent

Cross Interrogatory

Had you any personal knowledge of the time when the cars mentioned in the exhibits or notices actually arrived at Chicago.

Answer: I don't know

October 31st 1857

J. D. Winter

Deposition of John Corniskey, who being duly sworn answers and signs in answer to the first interrogatory.

First Interrogatory: What is your name and what is your business and how long have you been engaged in it.

Answer: My name is John Corniskey. My business is delivery clerk in the office of the defendant in Chicago, in the office delivery of in freight I have been engaged in the employ of the company since July 1854.

Second Interrogatory: Do you recollect about the freight contained in the cars mentioned in the second interrogatory to the witness Richard P. Gill, which you have heard read and which arrived in the month of August 1856, if so will you state what time in said month said freight was unloaded from said cars.

Answer: I recollect the circumstances and know that all the cars mentioned in said second interrogatory with the exception of car No 282 were unloaded on the 12th & 13th days of August 1856.

Third Interrogatory: Will you state whether at that time it was or not the invariable rule of the company to have cars unloaded soon after their arrival, and if so how soon after.

Answer: It was the rule to have them unloaded as quick as they possibly could be after their arrival.

The last preceding question and answer objected to by plaintiffs counsel

Fourth Interrogatory: Do you know whether there was any exception to the rule in relation to these cars.

Answer: There was not, it was right the opposite, the wheat had been unloaded from those cars and I had urged Mr. Thomas the drayman or teamster for Alumn Gill & Co to haul away the grain. He has pleaded that his teams were so much employed that he could not get it away as quick as I wanted it.

Question & answer objected to by plaintiffs counsel
Fifth Interrogatory: Did you previously to the 13th of August 1866 and about that time have any directions from this Mr Thomas, in relation to the place of unloading the grain consigned to Mann Gill & Co or to state the language what he said to you so as to give it fully.

Answer. I did have directions, Thomas told me that Mann Gill & Co had given him orders to have all the grain that arrived in bags for them unloaded at the companies freight depot, until further orders. He also stated as I could understand him at the time that Mann Gill & Co had a ware house of their own, that they thereby saved storage by hauling the grain to it in preference to having it unloaded at the Elevator.

This last question and answer objected to by plaintiffs counsel.
Cross examination

First Cross Interrogatory: What were your means of knowledge of knowing when the cars consigned to Mann Gill & Co actually arrived at defendants depot at Chicago.

Answer: My knowledge is that I saw them unloaded

Second Cross Interrogatory. How do you know how the cars arrived on any given day or what cars arrived on any given day.

Answer: It was my business to know every thing that was in the house in order to be able to inform the consignees whether their stuff had been unloaded or not.

Third cross interrogatory: Did you keep any memorandum or register of the date of the arrival of the cars consigned to Mann Gill & Co.

Answer: I did not keep any date of their arrival

Fourth Cross Interrogatory. Did you keep any register or memorandum of the date of unloading the cars consigned to Mann Gill & Co if you produce it, that it may be attached to your deposition.

Answer. I did not keep the date, I did not unload the cars. The date was kept by the other clerk who was the unloading tally clerk.

Fifth cross interrogatory. Did you see these cars when they arrived.

Answer: I could not say.

Sixth cross Interrogatory. Do you know or not whether the were all unloaded before the fire

Answer: I do know that they were all unloaded before the fire

they were unloaded on the 12th & 13th of August 1856 with the exception of car No 282 of which car I had no knowledge.

Seventh cross interrogatory. Have you any distinct positive recollection of your own, without reference to any memoranda made or kept by any other person of the exact time of the arrival and unloading of the cars consigned to Mann, Gill & Co.

Answer: I have no positive recollection of their arrival but I have positive knowledge of the cars being unloaded and the grain laying in the depot on the night of the fire.

Eighth cross interrogatory: State the proportions of wheat and of corn in these cars

Answer. My impression is that there was but one car of corn, there might have been two, but I could not exactly say or testify to that positively.

Chicago Oct. 31st 1857

John Coniskey

Deposition of L. H. Bidwell who being duly sworn answers and says in answer to the first Interrogatory.

First Interrogatory: What is your name and what was your occupation in August 1856.

My name is L. H. Bidwell and my occupation in August 1856 was that of in freight clerk in the defendants office in Chicago.

Second Interrogatory: Examine Exhibit A attached to Mann, Gill's deposition and state in whose hand writing the same is, and if in yours state by what authority and when you made it.

Answer. It is in my handwriting and was made August 9th 1856 by authority of Mr. Jones the local freight agent.

Cross Examination.

Do you know of your own knowledge that the cars referred to in said notice had actually arrived at that date.

Answer: I do not I had no way of ascertaining except by the way bill and I could not swear positively that they had.

Chicago Oct. 31st 1857

L. H. Bidwell

Oct. 21. 1857. Adjourned over by consent of all parties till November 2nd 1857.

Chicago November 2nd 1857. Met pursuant to adjournment
Deposition of Ebenezer W. Thomas, who being duly sworn answers

and says in answer to the first Interrogatory:

First Interrogatory: What is your name & were you or not in the employ of Munn Gill & Co in August 1856, if so in what capacity.

Answer: My name is Elisha W. Thomas, I live in Chicago Illinois on Cress Street, between Morgan & Carpenter streets. In August 1856 I kept teams designated as grain teams. I was in the employ of Munn Gill & Co in August 1856 employed to haul grain by the bushel.

Second Interrogatory: Were you or not furnished by said Munn Gill & Co with the following numbered cars of the Chicago & Rock Island Rail Road Company to wit: 272, 256, 666, 616, 468, 394, 698, 296, 282, 140, in the month of August 1856 & if so for what purpose & when were you so furnished with the numbers of said cars.

Answer: They Munn Gill & Co did not furnish me with any of those numbered cars in August 1856.

Third Interrogatory: State whether or not you called for the grain transported on said cars at the depot of said rail road company in Chicago if so when you first called for the same & how many times & whether you received the same for said Munn Gill & Co & if not state the reasons why the same were not received, fully and particularly.

Answer: I called for the grain transported in car numbered 394 and received it on the morning of the 13th of August 1856 for Munn Gill & Co, and I did not call for the others for the reason that I had no notice that they were there till after three o'clock P.M. of the 13th of August 1856.

Fourth Interrogatory: Did you or not have any notice of the arrival of the cars mentioned in question No second at defendants depot, if so when, from whom, and what do you know of the time of their arrival at the depot.

Answer: I had notice of the arrival of car No 394. I had the notice of the arrival on the 12th of August 1856. And of 666 272 and 140 - notice of the last three I received on the 13th of August 1856 after three o'clock in the afternoon. I received notice from John Lemiskey the defendants check clerk. All that I know about the time of their arrival is at the time I received notice.

Fifth Interrogatory: Did you or not call for cars consigned to Munn Gill & Co on the 9th, 10th, 11th, 12th or 13th of August 1856 and did you or not haul away the & loading of all which had arrived.

Answer: I called for cars consigned to Munn, Gill & Co on the 9th 11th 12th & 13th days of August 1856. I hauled away all that had arrived up to the evening of the 12th except part contained in car 212 - that I had any knowledge of being there. I hauled away part contained in cars Nos. 394 & 212 on the 13th of August 1856.

Sixth Interrogatory: Did you or not decline receiving and hauling away any loading of which you had notice from defendant, had arrived for Munn, Gill & Co.

Answer: I never did.

Seventh Interrogatory: At what time on the 13th of August 1856 did you stop hauling away grain.

Answer: It was between eight & nine o'clock on the morning of the (13th) thirteenth of August 1856, when we had to stop hauling and received another load about four o'clock in the afternoon of the same day.

Eighth Interrogatory: Was or was not any grain at the depot of defendants consigned to Munn, Gill & Co, when you stopped hauling and if yes, why did you not haul it away?

Answer: There was one car in the depot car 212, I did not haul the grain away, because it could not be delivered to me.

Ninth Interrogatory: Was it or not customary for defendants to give consignees notice of the arrival of cars before they had actually arrived?

Answer: It was customary.

Tenth Interrogatory: Do you or not know that the depot of defendant was on the 9th 10th 11th 12th & 13th of August 1856 so blockaded as to hinder the delivery of freight consigned to Munn, Gill & Co & for that reason it was not delivered to them?

Answer: I know it was very much blockaded during those times and caused delay and especially on the morning of the 13th of August 1856.

Cross Examination

First Cross Interrogatory: Were you a partner of the firm of Munn, Gill & Co in August 1856, or had you any interest in their business aside from your business as transporter.

Answer: None at all.

Second Cross Interrogatory: Did you ever order or request any agent

or clerk of defendants to unload any of their grain at the freight house instead of White & Wheeler & if so when & by authority of whom?

Answer: I requested something of the kind I think, but am not quite certain and the request was objected to by a clerk in defendants office. It was about the 11th of August 1856, I made the request by the authority of Mr. Gill.

Third Cross Interrogatory: Was there a person in the employ of Mann Gill & Co in August 1856 by the name of Charles G. Ball & if so, in what capacity?

Answer: I don't know.

Fourth Cross Interrogatory: Do you know that the cars 616, 206, 660, 242, 468, 698, 296, 140, 282 were not unloaded on or before the 11th of August 1856?

Answer: I don't know any such thing.

Fifth Cross Interrogatory: Were the notices of the arrival of the cars referred to by you in your answer to the fourth Interrogatory in writing if so produce them.

Answer: They were not in writing.

Sixth Cross Interrogatory: Were you in August 1856 the only person in the employ of Mann Gill & Co, who was authorized to receive notices of arrival of cars sent to them, and might not the notices referred to by you have been sent to some other person connected with said firm?

Answer: I was not the only person and these notices might have been sent to other persons.

Seventh Cross Interrogatory: Do you know that the notices referred to in the fourth interrogatory were not sent on the days when they bear date?

Answer: I do not know.

Eighth Cross Interrogatory: Were you ever present when the out door clerk of Mann Gill & Co or any other person in their employ gave any notice defendant about delivering grain consigned to them at the defendants depot? If an agent of ~~defendants~~ Depot & if so who gave such notice and when was it given & what was the purport of it?

Answer: I was present when such notice was given. It was the out door clerk who gave it. I think it was about the 11th of Aug. 1856, but I am not certain of the date. I don't know the purport of that notice except that after the notice was given I received grain in bags at the defendants depot in Chicago.

Direct resumed.

Were you employed by Mann Gill & Co in any other capacity than that of transfer and did they or not give you written orders for the

delivery of cars to you at defendants depot?

Answer. I was never employed by them in any other capacity than that of teamster; they did frequently give me written orders but not for these cars or on this occasion.

Chicago Nov. 2nd 1857

Elhanan W. Thomas.

November 2nd 1857. Deposition of Thomas D. Jamieson who being duly sworn answers & says in answer to the first Interrogatory.

First Interrogatory. What is your name and what was your business in August 1856?

Answer. My name is Thomas D. Jamieson age 29. My occupation in August 1856 was to mark all freight cars that came in on the defendants Rail Road to Chicago.

Second Interrogatory. Did you ever receive any order or direction of any agent of Munn Gill & Co. in relation to delivery of grain consigned to them? If so when & from whom did you receive such order & what was its purport & was it verbal or in writing & if in writing what has become of it?

Answer. I received an order from Mr. Thomas about the 8th or 9th of August 1856 in writing signed by Munn Gill & Co. the purport of it was to put in five cars of grain in bags into the depot. Two days afterwards I received a verbal notice from Charles H. Ball in presence of Mr. Thomas to put all the grain that arrived in bags for Munn Gill & Co. in the depot, the reason he gave was that they Munn Gill & Co. had a warehouse of their own and it would not cost them so much to haul it as it would to store it at Flint & Wheelers.

This last question & answer objected to by plaintiffs attorney.

Third Interrogatory. Who was the Charles H. Ball referred to by you in your last answer?

Answer. He was clerk or agent for Munn Gill & Co. and he was the person who gave all the orders except one given by Mr. Gill.

Chicago Nov. 2nd 1857

Thos. D. Jamieson

November 2nd 1857. Deposition of Charles L. Epps who being duly sworn answers and says in answer to the first interrogatory

First Interrogatory. What is your name and what was your business in August 1856.

Answer. My name is Charles L. Epps. I was Check clerk

in August 1856 in the defendants Depot at Chicago.

Second Interrogatory: Will you state if you know when the cars mentioned in the second Interrogatory to witness Gill were unloaded?

Answer: The cars Nos. 66, 206, 468, 698 were unloaded on the 12th & cars Nos. 660, 272, 296 and 141s were unloaded on the 13th days of August 1856

Chicago Nov. 2nd 1857

Chas. L. Epps;

State of Illinois

Cook County } W. J. John Forsyth, a Notary Public in and for the
South Chicago } town of South Chicago in the said County and
State aforesaid, do hereby certify, that the preceding depositions of Richard
D. Gill, Joseph Jones & Thomas D. Winter, John Boniskey, C. H. Bidwell
Elhanen W. Thomas, Thomas D. Jamieson & Charles L. Epps, were
taken by me on the 14th day of Sept. 1857, 30th & 31st days of October
1857 & on the 2nd day of November 1857 at the office of J. W. Fuller
in said Chicago, that said deponents were sworn by me in the manner
stated in the caption to these depositions, and the same were signed
by them in my presence and that the exhibits attached to said Gills
deposition are the ones shown to said deponent and referred to by
him and the others, Given under my hand and notarial seal at
Chicago this second day of November A D 1857
John Forsyth, Notary Public.

Proceedings in the Circuit Court at a term thereof began and held in
the Court house in the City and County of Peoria in and for said
County and State of Illinois, on the third Monday of November in the
year of our Lord one thousand eight hundred and fifty seven it being
the sixteenth day of said month. Present the Honorable Elisha H.
Powell Judge of the sixteenth Judicial Circuit in the State of Illinois
to wit:

Saturday December 12th A D 1857

Samuel S. Carter

vs

Assumpsit

Chicago & Rock Island
Rail Road Company

is continued

By agreement of parties this cause

And afterwards to wit on the 9th day of March A.D. 1858 the following deposition was opened under General order of Court and filed in the clerk's office of said Circuit Court in words and figures following to wit:

Samuel S. Porter
vs
Chicago & Rock Island
Rail Road Co } Peoria Circuit Court

William C. Baldwin
Amos L. Merriman

vs
The Chicago & Rock Island
Rail Road Company }

It is agreed that depositions of witnesses may be taken in the first of said causes at the office of N. B. Judd in Chicago Ills. on the 23rd day of February next or on any subsequent day & that the depositions so taken may be read in evidence in both of said causes without exception as to manner of taking the same.

Dated Feby 19, 1858

Wanning & Merriman per seiff
Tupile & Pratt, Defts attys.

Samuel S. Porter

vs
Chicago & Rock Island
Rail Road Company } Peoria Circuit Court.

The deposition of Elhanan W. Thomas of the City of Chicago, County of Cook and State of Illinois, a witness of lawful age produced, sworn and examined upon his corporal oath on the fourth day of March 1858 at the office of N. B. Judd in the City County and State aforesaid by me Lewis H. Davis a Notary Public in & for the City of Chicago pursuant and according to a stipulation or agreement hereto attached for the examination of the said Elhanan W. Thomas a witness in a certain suit and matter in controversy now pending and undetermined in the said Peoria Circuit Court wherein Samuel S. Porter is plaintiff and Chicago and Rock Island Rail Road Company is defendant in behalf of the said plaintiff, as well upon the cross interrogatories of the defendant as the interrogatories of the plaintiff.

The said Elhanan W. Thomas

being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff and defendant so far as he should be interrogated testified and deposed as follows:

My name is Elhanan W. Thomas, Reside in Chicago. My deposition has been taken in this suit before - In August 1856 I was grain teamster (among others) for Messrs. Mann Gill & Co. I had four or five teams in employ at the time. I was authorized to receive grain at the depot for them and was accustomed to draw it away, when any was there without any special orders from them. I went around to the different ware houses every day to see if there was any grain received for any of my customers, and visited among others the Rock Island depot and would get notice from the check clerk if there was any thing there for delivery. I was at the Rock Island depot on the morning of the 13th August 1856. Mann Gill & Co. had on the morning of the 13th August cars No. 394 & 212 which laid over from the 12th, which my teams went after the morning of the 13th. I hauled away the car No 394 - the car 212 I could not get at. - I went back to the depot in the afternoon about 3 o'clock. Only took one team with me in the afternoon at that time the check clerk gave me notice of the arrival of cars 660 - 140, 272 - and were ready for delivery - at that time they closed the depot at 6 o'clock. It was not in my power to haul the grain during that afternoon, because my teams were scattered over the city on other business. There is a side track of the Rock Island road runs into Flint & Wheelers ware house, I went with the one team referred to for the purpose of hauling away car 212, having no notice of any other being there at that time.

E. W. Thomas,

Subscribed & sworn to before me this 24th day of March 1858

Lea

Lewis H. Davis

Notary Public.

I Lewis H. Davis of the County of Cook & State of Illinois, a Notary Public in and for the City of Chicago in said County & State being duly qualified to take the deposition of the said Elhanan W. Thomas, a witness whose name is subscribed to the foregoing deposition do hereby certify that previous to the commencement of the examination of the said witness in the suit between the said Samuel S. Porter plaintiff and the Chicago & Rock Island Rail Road defendant he was duly sworn by me to testify to the truth in relation to the matters in controversy

between the said plaintiff and the said defendant so far as he should be interrogated concerning the same that the said deposition was taken at the office of N. B. Wadd in the City of Chicago County of Cook and State of Ills on the 11th day of March A. D. 1858, and that after said deposition was taken by me as aforesaid, his answers as written down were read over to the said witnesses and that thereupon the same was signed and sworn to by the said deponent Elhanan W. Thomas before me - the oath being administered by me, at the place and on the day and year last aforesaid. In witness whereof I have hereunto set my hand and seal this fourth day of March 1858.

Lewis W. Davis, Notary Public

And thereupon on the 18th day of March there was filed in the Clerk's office of said Court an affidavit & exhibits thereto attached in words and figures following to wit:

George W. Updike being first duly sworn deposes and says that in August 1856 he was member of the firm of Updike & Co of Peoria Commission merchants that on 9th day of August 1856 said firm of Updike & Co shipped by the Peoria & Bureau Valley & Chicago & Rock Island Rail Road Company a quantity of wheat on cars No 286 & 668 & one car load of corn on car No 698 as per bill of lading hereto attached marked "A" - Also on same day 2 car loads of corn on cars Nos. 296 & 282 as per copy bill of lading hereto attached marked "B" and on the 11th day of August 1856 they shipped per same Rail Road Company one car load of wheat on car No 275 as per bill of lading hereto attached marked "C" and on the same day three car loads of wheat on cars No 468, 616 & 394 as per bill of lading hereto attached marked "D" all of which wheat & corn was the property of Samuel S. Porter & was shipped to Messrs. Meum Gill & Co as consignees of said Porter for sale on account of said Porter, that the number of sacks shipped in said cars averaged as deponent recollects one hundred and fifty sacks per car, and the quantity of wheat & corn in each sack averaged about two bushel and a peck

G. W. Updike

Subscribed & sworn to before me
this 18th day of March 1858
E. P. Sloan, clk }

"A"

Peoria Ill. August 9th 1856. Received in good order from Updike & Co. to be forwarded by the Peoria & Bureau Valley Rail Road the following articles to be delivered in like good order to Munn Gill & Co at Chicago station he or they paying freight at the rate of 17 cents per hundred pounds.

Marks.	Articles	Weight
G. S. Porter	2 car loads wheat No car	206" 660
Pekin	1 do " Corn "	698. Out ^{Wm}

Thompson
Charges \$ 118⁰⁰

"B"

Peoria August 9th 1856. Received in good order from Updike & Co. to be forwarded by the Peoria & Bureau Valley Rail Road the following articles to be delivered in like good order to Munn Gill & Co at Chicago station he or they paying freight at the rate of 17 cts a hundred pounds

2 carloads Corn No cars 296" 282

Thompson

"C"

Peoria Ill. August 11th 1856. Received in good order from Updike & Co. to be forwarded by the Peoria & Bureau Valley Rail Road the following articles to be delivered in like good order to Munn Gill & Co at Chicago station he or they paying freight at the rate of 17 c a hundred pounds.

Marks	Articles	Weight
T. C. Reeves & Co	Three cars corn 588" 76" 102	Out ^{Wm}
Pekin	Two do wheat 272" 412	
G. S. Porter	Car No 588 part wheat and part corn	

Washburn

"D"

Peoria Ill. August 11th 1856. Received in good order from Updike & Co. to be forwarded by the Peoria & Bureau Valley Rail Road the following articles to be delivered in like good order to Munn Gill & Co at Chicago station he or they paying freight at the rate of 17 c a hundred pounds.

Marks	Articles	Weight
G. S. Porter	3 cars wheat No 468" 616" 398	

Chgs. \$ 19.50 Thompson

And thereupon on the same day there was filed in the Clerk's office of said Court an agreement between the parties to this suit which is in the words and figures following to wit:

Agreement
vs.
Chicago & Rock Island
Rail Road Company } Circuit Court of Peoria County
March Term A.D. 1858.

William C. Baldwin
Amos L. Merriman.

vs.
Chicago & Rock Island
Rail Road Company } Circuit Court of Peoria County
March Term A.D. 1858

The following facts are admitted and agreed to in the above entitled causes and need not be proved on the trial of said causes or either of them to wit:

1st. That by the charter of the defendant it is not permitted to change storage on goods in its warehouses, after such goods are delivered at the place of destination of the same.

2nd. That it is not the custom of defendant to change storage on goods or property shipped and transported by it, but that after such goods have been kept a reasonable time after the same have been carried to the place of destination, then the defendant is accustomed to take such goods to other warehouses and store the same there for the benefit of the owners or consignees.

3. That the property sent by W. C. Baldwin & Co in car No was the property of plaintiffs Baldwin & Merriman.

4. That Ouly S. Thompson was agent for defendants at times of signing bills of lading.

Manning & Merriman for plffs
Purfe & Pratt for defts.

Proceedings at a term of the Circuit Court began and held in the Court house in the City of Peoria in and for the County of Peoria and State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty eight it being the first day of said month. Present the Honorable Elihu V. Powell Judge of the eighteenth Judicial Circuit in said State to wit

Saturday March 20th 1858
Samuel S. Porter

vs.

Assumpit

Chicago & Rock Island
Rail Road Company

This day came the plaintiff by Messinger
his attorney and the defendant by Ball its attorney and waived trial by
jury and agree that the Court may render judgment for the defendant pro
forma. Therefore it is considered by the Court that the said Chicago and
Rock Island Rail Road Company have and recover of the said Samuel
S. Porter its costs and charges by it about their defense in this behalf expended
and that execution issue therefor. By agreement of the parties the defendant
waives an appeal to the Supreme Court of this state, which is allowed
without bond.

And thereupon on the 20th day of March A.D. 1858 there was
filed in the Clerk's office of said Court a bill of exceptions which is in
the words and figures following to wit:

Bill of
Exceptions

" Samuel S. Porter

vs.
Chicago & Rock Island
Rail Road Company.

Be it Remembered that at the March
term of the Peoria Circuit Court this cause came on to a hearing upon the
issues joined in the cause and the plaintiff to maintain the issues and
his part read the depositions of Richard T. Gill and Elnathan W. Thomas
which are as follows.

" Deposition of Richard T. Gill who being duly sworn answers and
says in answer to the first interrogatory.

First interrogatory: What is your name age residence and
occupation, and if a member of any firm state the style of such firm, the
business and where carried on and how long?

Answer: My name is Richard T. Gill, age forty years, place of
residence Chicago, my occupation is commission business. I am a
member of the firm of Messrs Gill & Co. of Chicago Ill. a firm doing
a produce & Commission business in Chicago. The firm was established
in July eighteen hundred and fifty six.

Second Interrogatory: State whether or not the firm of Messrs
Gill & Co. were the consignees of freight transported by the Chicago and
Rock Island Rail Road Company in the month of August 1856 on the

cars numbered as follows 666-206-660-272-468-698-296-282-140
If you attach the bills of lading therefor or copies of the same if in your
possession; also in what capacity the said firm of Munn Gill & Co were
acting as consignees & on whose account the same was shipped and also state
whether or not you received from the said Rail Road Company the said
property or any portion of the same and how much and on whose account
& from which of said cars the same was received & in what condition the
same was received, and upon what understanding or arrangement with
said Rail Road Company.

Answer: We, the firm of Munn Gill & Co were the consignees of
cars No. 206, 660, & 698 shipped from Peoria Ills Aug 9, 1856, the two
former contained wheat & the latter corn as per bill of lading hereto at-
tached marked exhibit No 1. Also of 3 cars of wheat in cars Nos 468,
667 & 394, dated Peoria Ills. Aug 11th 1856 as per bill of lading hereto an-
nexed marked exhibit No 2. Also of one car of wheat in car No 140 -
dated Peoria Ills. Aug 11, 1856 as per bill of lading hereto annexed marked
exhibit No 3. All the above numbered cars except No 140 (which car
was shipped on account of W. L. Bolvin & Co of Peoria) were shipped
on account of L. S. Porter of Pekin, by Updike & Co of Peoria; the cars
were shipped to us as agents for the consignors. we received part of
the grain in a damaged condition from the fire.

Sept. 14, 1857. adjourned examination for two weeks from
this date by consent of parties.

Chicago Oct. 20, 1857. Deposition of Richard T. Gill continued
by consent of all parties.

In addition to the answer above written to the
second interrogatory said Gill further answers as follows to wit:
That the firm of Munn Gill & Co were the consignees of cars Nos. 296
& 282, shipped from Peoria Ills. Aug. 7th 1856, both of said cars contain-
ing corn and shipped by Updike & Co as per bill of lading hereto annexed
marked exhibit No 4. the cars were shipped or their contents for
L. S. Porter of Pekin, and the corn was received or a part thereof in a
damaged condition. Car No 272 was shipped by Updike & Co for
L. S. Porter of Pekin and contained wheat. He knows that it was
shipped from the notice received from the agent of the Chicago & Rock
Island Rail Road Company and from the bill of lading which he has
lost or mislaid; part of the wheat from this car was received in a
damaged condition caused by fire. He received on account of.

W. C. Boivin & Co One hundred and fourteen (114) bushels of Red wheat and sold the same for one hundred & thirty six dollars and eighty cents. We received on account of R. L. Porter, four hundred and thirty five (435) bushels of Red wheat and two hundred and sixty seven and a half (267½) bushels of white wheat, and sold the same for five hundred and eighty three dollars & thirty five cents; also eight hundred and twenty ⁴⁰/₁₀₀ (820 ⁴⁰/₁₀₀) bushels of corn and sold the same for three hundred & thirty six dollars & thirty nine cents, these sales were made during the said month of August. We received the grain upon the understanding or arrangement that we should take it and do the best we could with it; the arrangement was made with the said rail road company through Merriam, the Superintendent and Mr. Babcock the General freight agent of said Rail Road company.

Third Interrogatory: State whether said firm of Meunier Gell & Co received any ~~thing~~ ^{notice} noticed from said Rail road company of the arrival of said cars & freight. If so, state when said notices were received and if written ^{notices} attach the same to your deposition.

Answer: We received the following notices hereto annexed marked Exhibits 5, 6, 7, 8 & 9 and probably received the same on the respective days of which they bear date.

Fourth Interrogatory: State whether or not you as for said firm of Meunier Gell & Co had in the month of August 1856 or prior thereto made any agreement with said Rail Road company as to the place of delivery or grain transported by them consigned to your house & if so what was that agreement & when made.

Answer: When we first commenced receiving grain from said Rail Road I went down and gave directions to Mr. Jones, the local freight agent, to have all grain received for us by said company to be delivered at Flint & Wheelers elevator & ware house; and subsequently gave directions to have certain car loads delivered on the track but only such cars as were particularly specified. This arrangement was about the first of July 1856.

Fifth Interrogatory: Did you or said firm of Meunier Gell & Co ever receive from said Rail Road company any portion of the grain specified in the Bills of lading issued upon the cars mentioned in Interrogatory 2, except as mentioned in your answer to said Interrogatory.

Answer: To this interrogatory he answers that they did not receive any grain except as stated in his answer to second interrogatory.

Sixth Interrogatory: Was William Thomas in the employ of said Mann & Gillette in August 1856 & if so in what capacity?

Answer: He was employed as teamster to do any hauling we might want.

Seventh Interrogatory: What was the value of wheat & corn per bushel on the 12th & 13th days of August 1856 and your means of knowledge.

Answer: Spring wheat was worth one dollar per bushel Red winter wheat was worth one dollar and thirty cents per bushel & white winter wheat was worth one dollar and forty cents per bushel and corn was worth forty five cents per bushel delivered free. My means of knowledge were derived from sales made by us at Chicago on those days.

Did you or any of your firm send to your knowledge and directions to defendant by Charles W. Ball respecting the delivery of freight consigned to your firm.

Answer: My recollection is that I did not send any general instructions but may have sent some particular instructions.

Cross Interrogatories

First: Was the notice referred to in the answer to the 4th fourth direct Interrogatory given in writing to Jones and did you subsequently ever give any other notice to Jones or any agent of the defendant or order Thomas to do so in relation to the delivery of grain or did any one of your firm give such notice to your knowledge.

Answer: My impression is that there was no written notice given and no other notice was subsequently given by Thomas or by any member of our firm to any knowledge, we did sometimes receive grain from the same house in bags without making objections to it subsequent to the time of the notice.

Second: Was one Charles W. Ball in the employ of Mann & Gillette in the month of August 1856 & if so in what capacity.

Answer: He was in our employ as an out door clerk.

Reexamination direct.

State whether or not the man Thomas hereinbefore named had any authority from you or any of your firm to give directions to the defendant about

the delivery of grain and what was the extent of his authority?
Answer: He had no general authority and his business was to do hauling
as transporter as requested.

Oct. 30th 1857

R. T. Gill

Peoria Ill. August 9th 1856. Received in good order from Updike & Co
to be forwarded by the Peoria & Bureau Valley Rail Road the following articles
to be delivered in like good order to Munson Gill & Co at Chicago Station, he
or they paying freight at the rate of 17 cts a hundred pounds.

Mark	Articles	Weight
ap	2 car loads wheat No. cars	206 1/2 600.
L. C. Co	1 do " corn "	69 8

Charges \$ 118.00

Thompson

Exhibit No 1

Peoria Ill. August 11th 1856. Received in good order from Updike
& Co to be forwarded by the Peoria & Bureau Valley Rail Road the following
articles to be delivered in like good order to Munson Gill & Co at Chicago
Station, he or they paying freight at the rate of 17 c per hundred pounds.

Mark	Articles	Weight
	3 car wheat No 468 1/2	616 1/2 294.

J. L. Porter

Dup

Ent Wm.

Exhibit
No 2

Thompson

Peoria Ill. Aug. 11th 1856. Received of W. B. Boilvin & Co in good order
by P & B. V. R. R. the following articles marked and numbered as per
margin, to be delivered without delay in like good order to assigns, they
paying freight and charges as noted below.

Mark	No	Articles	Weight	Price	Charges
Munson Gill & Co		1 car load wheat No 140			167 W. B. R.
Chicago	Chk.	consisting of			
	W. B. & Co	136 shs white	267 3/4	60	
	W. B. & Co	28 shs red	59 5/8	60	

ap W. B. Boilvin & Co

Supposed to be

Exhibit No 3

Thompson

Peoria Station Aug. 7th 1856. Received of Updike & Co for Munson
Gill & Co 2 cars corn # 296 1/2 282 1/2 to be forwarded by the

Chicago and Rock Island Rail Road Company to Chicago station only.
subject freight and the regulations of the Company

Exhibit No 4

G. P. Thompson Agent

Washburn

Exhibit 5

Freight Depot, Chicago & Rock Island R.R. Chicago station August 12, 1856
Messrs. Mann, Gill & Co. There is at this depot consigned to you from
Peoria Station, the following subject to \$ — charges on delivery

3 cars corn
2 " wheat

588
96
102

272
412

Weight
Rail Road charges \$ —
Back charges paid —
Total \$ —

Please send for above immediately

J. Jones Jr. Agent.

Ex 6.

Freight Depot Chicago & Rock Island R.R. Chicago station Aug. 11, 1856
Messrs. Mann, Gill & Co. There is at this depot consigned to you from
Peoria Station the following, subject to \$ — charges on delivery.

2 cars wheat
1 do corn

206
660
698

Weight
Rail Road charges \$ —
Back charges paid —
Total \$ —

Please send for above immediately

J. Jones Jr. Agent

Ex 7

Freight Depot, Chicago & Rock Island R.R. Chicago station Aug 9,
1856. Mr. Mann, Gill & Co. There is at this Depot consigned to you
from Peoria station the following subject to \$ — charges on delivery:

296 } 2 cars corn.
282 }
Car

Weight _____
Rail Road charges \$ _____
Back charges paid _____
Total \$ _____

Please send for above immediately Jones Agent.

Ex 8

Bright Depot Chicago & Rock Island R.R. Chicago station Aug 11, 1856. Mess. Mann Gill & Co. There is at this Depot, consigned to you from Peoria Station the following, subject to \$ _____ charges on delivery
1 car wheat

M & W

100

Weight _____
Rail Road charges \$ _____
Back charges paid _____
Total \$ _____

Please sent for above immediately J. Jones Jr. Agent

Ex 9

Bright Depot Chicago & Rock Island R.R. Chicago station Aug 11, 1856. Mess. Mann Gill & Co. There is at this depot, consigned to you from Peoria Station, the following subject to \$ _____ charges on delivery
2 cars Wheat

468
616
394

Weight _____
Rail Road charges \$ _____
Back charges paid _____
Total \$ _____

Please sent for above immediately J. Jones Jr. Agent

Deposition of Elhann W. Thomas who being duly sworn answers and says in answer to the first Interrogatory.

First Interrogatory: What is your name & were you or not in the employ of Mann Gill & Co. in August 1856. If so in what capacity.

Answer: My name is Elhann W. Thomas, I live in Chicago Illinois, on Owen street, between Morgan & Carpenter streets. In August

1856 I kept teams designated as grain teams. I was in the employ of Munn, Gill & Co. in August 1856, ^{employed} to haul grain by the bushels.

Second Interrogatory: Were you or not furnished by said Munn, Gill & Co. with the following numbered cars of the Chicago & Rock Island Rail Road Company to wit: 272-206-660-616-468-394-698-296-282-140- in the month of August 1856 & if so for what purpose & when were you so furnished with the numbers of said cars.

Answer: They, Munn, Gill & Co. did not furnish me with any of these numbered cars in August 1856.

Third Interrogatory: State whether or not you called for the grain transported on said cars at the depot of said Rail Road Company in Chicago, if so when you first called for the same & how many times & whether you received the same for said Munn, Gill & Co. & if not state the reasons why the same were not received fully and particularly.

Answer: I called for the grain transported in car numbered 394 and received it on the morning of the 13th of August 1856 for Munn, Gill & Co. and I did not call for the others for the reason that I had no notice that they were there till after three o'clock P.M. of the 13th of August 1856.

Fourth Interrogatory: Did you or not have any notice of the arrival of the cars mentioned in question No. second at defendant's depot & if so when, from whom, and what do you know of the time of their arrival at the depot.

Answer: I had notice of the arrival of car No 394, I had the notice of the arrival on the 12th of August 1856, and of 660, 272 and 140 notice of the last three I received on the 13th of August 1856 after three o'clock in the afternoon. I received notice from John Comisky the depot and check clerk, all that I know about the time of their arrival is at the time I received notice.

Fifth Interrogatory: Did you or not call for cars consigned to Munn, Gill & Co. on the 9th 10th 11th 12th & 13th of August 1856, and did you or not haul away the loading of all which had arrived?

Answer: I called for cars consigned to Munn, Gill & Co. on the 9th 11th 12th & 13th days of August 1856. I hauled away all that had arrived up to the evening of the 12th except part contained in car 212. That I had any knowledge of being there, I hauled away part contained in cars No: 394 & 212 on the 13th of August 1856.

Sixth Interrogatory: Did you or not decline, receiving and hauling ^{away} any loading of which you had notice from defendant

had arrived for Munro Gill & Co.

Answer: I never did.

Seventh Interrogatory: At what time of the 13th of August 1856 did you stop hauling away grain.

Answer: It was between eight & nine o'clock on the morning of the 13th, thirteenth of August 1856, when we had to stop hauling and received another load about four o'clock in the afternoon of the same day.

Eighth Interrogatory: Was or was not any grain at the depot of defendants consigned to Munro Gill & Co, when you stopped hauling and if yes, why did you not haul it away?

Answer: There was one car in the depot car 212, I did not haul the grain away because it could not be delivered to me.

Ninth Interrogatory: Was it or not customary for defendants to give consignees notice of the arrival of cars before they had actually arrived?

Answer: It was customary.

Tenth Interrogatory: Do you or not know that the depot of defendant was on the 9th 10th 11th 12th & 13th of August 1856 so blockaded as to hinder the delivery of freight consigned to Munro Gill & Co & for that reason it was not delivered to them?

Answer: I know it was very much blockaded during those times and caused delay and especially on the morning of the 13th of August 1856.

Cross Examination.

First Cross Interrogatory: Were you a partner of the firm of Munro Gill & Co in August 1856, or had you any interest in their business aside from your business as teamster?

Answer: None at all.

Second Cross Interrogatory: Did you ever order or request any agent or clerk of defendants, to unload any of their grain at their freight house instead of Mint & Wheelers & if so, when & by authority of whom?

Answer: I requested something of the kind I think but am not quite certain and the request was objected to by a clerk in defendants office. It was about the 11th of August 1856. I made the request by the authority of Mr. Gill.

Third Cross Interrogatory: Was there a person in the employ of Munro Gill & Co in August 1856 by the name of Charles H. Ball & if so in what capacity?

Answer: I don't know.

Fourth cross Interrogatory: Do you know that the cars 616, 206, 660, 272, 468, 698, 296, 140, 282, were not unloaded on or before the 12th of August 1856.

Answer: I don't know any such thing.

Fifth cross Interrogatory: Were the notices of the arrival of the cars referred to by you in your answer to the fourth interrogatory in writing, if so produce them?

Answer: They were not in writing.

Sixth cross Interrogatory: Were you in August 1856 the only person in the employ of Munro Gill & Co, who was authorized to receive notices of arrival of cars sent to them and might not the notices referred to by you have been sent to some other person, connected with said firm?

Answer: I was not the only person and these notices might have been sent to other persons.

Seventh cross interrogatory: Do you know that the notices referred to in the fourth interrogatory were not sent on the days when they bear date?

Answer: I do not know.

Eighth cross Interrogatory: Were you ever present when the out door clerk of Munro Gill & Co or any other person in their employ gave any notice to an agent of defendant about delivering grain consigned to them at the Companys depot, & if so who gave such notice and when was it given & what was the purport of it?

Answer: I was present when such notice was given. It was the out door clerk who gave it. I think it was about the 11th of Aug 1856 but I am not certain of the date. I don't know the purport of that notice except that after the notice was given I received grain in bags at the defendants depot in Chicago.

Direct resumed

Were you employed by Munro Gill & Co in any other capacity than that of teamster and did they or not give you written orders for the delivery of cars to you at defendants depot?

Answer: I was never employed by them in any other capacity than that of teamster, they did frequently give me written orders but not for these cars or on this occasion.

Chicago Nov. 2nd 1857

Edmund W. Thomas.

Samuel L. Porter

vs
Chicago & Rock Island
Rail Road Co.

} Peoria Circuit Court.

William C. Baird
Amos L. Merriman

vs
The Chicago & Rock Island
Rail Road Company

} It is agreed that depositions of witnesses
may be taken in the first of said causes at the office of N. B. Judd in
Chicago Ill. on the 23^d day of February next or on any subsequent day
& that the depositions so taken may be read in evidence in both of said
causes without exceptions as to the manner of taking the same.

Dated Feby 19th 1858.

Manning & Merriman for plff.
Purples & Pratt Defts attys.

Samuel L. Porter

vs
Chicago & Rock Island
Rail Road Company

} Peoria Circuit Court

The deposition of Elhanan W. Thomas of the
City of Chicago, County of Cook and State of Illinois a witness of lawful
age produced sworn and examined upon his corporal oath on the fourth
day of March 1858 at the office of N. B. Judd in the City County & State
aforesaid by James Lewis H. Davis a Notary Public in and for the City of Chicago
pursuant and according to a stipulation or agreement hereto attached for the
examination of the said Elhanan W. Thomas a witness in a certain suit
and matter in controversy now pending and undetermined in the said
Peoria Circuit Court wherein Samuel L. Porter is plaintiff and Chicago
and Rock Island Rail Road Company is defendant in behalf of the
said plaintiff as well upon the cross interrogatories of the defendant as
the interrogatories of the plaintiff. The said Elhanan W. Thomas
being first duly sworn by and as a witness in the said cause previous to
the commencement of his examination to testify the truth as well on the
part of the plaintiff as the defendant in relation to the matters in con-
troversy between the said plaintiff and defendant so far as he should
be interrogated, testified and deposed as follows:

My name is Elhanan W. Thomas, reside in Chicago. My depo-
sition has been taken in this suit before in August 1856, I was

grain teamster (among others) for Messrs Hann Gill & Co, I had four or five teams in employ at the time. I was authorized to receive grain at the depot for them and was accustomed to draw it away when any was there without any special orders from them; I went around to the different warehouses every day to see if there was any grain received for any of my customers and visited among others the Rock Island Depot, and would get notice from the black clerks if there was anything there for delivery.

I was at the Rock Island Depot on the morning of the 13th August 1856 Hann Gill & Co had on the morning of the 13th August cars Nos 394 & 212 which laid over from the 12th which my teams went after the morning of the 13th. I hauled away the car No 394, the car 212 I couldnt get at. I went back to the depot in the afternoon about 2 o'clock. Only took one team with me in the afternoon, at that time the black clerks gave me notice of the arrival of cars 660, 1410, 212 and were ready for delivery at that time they closed the Depot at 6 o'clock, it was not in my power to haul the grain during that afternoon because my teams were scattered over the city in other business, there is a side track of the Rock Island road runs into Plant & Wheelers warehouse, I went with the one team referred to for the purpose of hauling away car 212 having no notice of any other being there at that time. E. W. Thomas, Subscribed & sworn to before me this 24th day of March 1858

Dea^d Lewis H. Davis, Notary Public
I, Lewis H. Davis of the County of Cook & State of Illinois, a Notary Public in and for the City of Chicago in said County & State being duly qualified to take the deposition of the said Elhanan W. Thomas, a witness whose name is subscribed to the foregoing deposition do hereby certify that previous to the commencement of the examination of the said witness in the suit between the said Samuel L. Carter plaintiff and the Chicago & Rock Island Rail Road defendant he was duly sworn by me to testify to the truth in relation to the matters in controversy between the said plaintiff and the said defendant so far as he should be interrogated concerning the same, that the said deposition was taken at the office of J. B. Cude in the City of Chicago County of Cook and State of Ills. on the 24th day of March A.D. 1858 and that after said deposition was taken by me as aforesaid, his answers as written down were read over to the said witness, and that thereupon the same were signed and sworn to by the said deponent Elhanan W. Thomas

before me, the oath being administered by me at the place and on the day and year last aforesaid. In witness whereof I have hereunto set my hand and seal this fourth day of March 1858

Lewis H. Davis, Notary Public.

Plaintiff also read in evidence the affidavit of George W. Updike, which is as follows:

"A"

Peoria Ill. August 9th 1856, Received in good order from Updike & Co to be forwarded by the Peoria & Bureau Valley Rail Road the following articles to be delivered in like good order to Munn Gill & Co. at Chicago station he or they paying freight at the rate of 17 cents per hundred pounds.

Marks	Articles	Weight
	2 car loads wheat	No. car. 206' 660
	1 do " corn	" " 698
	Charges \$ 118 ⁰⁰	

Cont^g Mm.

Peoria August 9th 1856, Received in good order from Updike & Co to be forwarded by the Peoria & Bureau valley Rail Road the following articles to be delivered in like good order to Munn Gill & Co. at Chicago station he or they paying freight at the rate of 17 cts a hundred pounds.

	1 car load corn	No cars. 296' 282
--	-----------------	-------------------

At
S. L. Porter

"B" Thompson

Peoria Ill. August 11th 1856, Received in good order from Updike & Co to be forwarded by the Peoria & Bureau Valley Rail Road the following articles to be delivered in like good order to Munn Gill & Co at Chicago station he or they paying freight at the rate of 17 c a hundred pounds.

Marks	Articles	Weight
	Three cars corn	588' 76' 102
	Two do wheat	272' 412.
	car No 588 part wheat & part corn	

Cont^g Mm

"C"

Peoria Ill. August 11th 1856, Received in good order from Updike & Co to be forwarded by the Peoria & Bureau Valley Rail Road the following articles to be delivered in like good order to Munn Gill & Co at Chicago station he or they paying freight at the rate of 17 c

per a hundred pounds.

Marks

Articles

Weight

3 cars wheat No 468, 616, 294.

vs.

S. Porter.

chd. \$ 17.50.

George W. Updike being duly sworn deposes & says that in August 1856 he was a member of the firm of Updike & Co of Peoria Commission merchants that on 9th day of August 1856 said firm of Updike & Co shipped by the Peoria & Bureau & Chicago & Rock Island Rail Road Company a quantity of wheat on cars No 206 & 668 & one car ~~load~~ ^{load} of corn on car No 698 as per bill of lading hereto attached marked "A" also on same day 2 car loads of corn on cars Nos. 296 & 282 as per copy Bill of lading hereto attached marked "B" and on the 11th day of August 1856 they shipped per same rail road company one car load of wheat on car No 272 as per bill of lading hereto attached marked "C" and on the same day three car loads of wheat on cars No 468, 616, & 294 as per bill of lading hereto attached marked "D" all of which wheat & corn was the property of Samuel S. Porter & was shipped to Messrs Abner Gills & Co as consignees of said Porter, that the number of sacks shipped in said cars averaged as deponent recollects one hundred and sixty sacks per car, and the quantity of wheat & corn in each sack averaged about two bushels and a peck

G. W. Updike

Subscribed & sworn to
before me this 18th day
of March 1858

E. P. Sloan clk

Charles H. Ball testified as follows:

Boitwin & Co

as
C. & R. J. R. R. Co

Porter

vs.

Same

Charles H. Ball, I was in the employment of Abner Gills & Co of Chicago Illinois as forwarding coal and receiving freight bills in August 1856, I was in the employ in July 1856 and until after the 13 day of August 1856. The Chicago C. & R. R. Co

when I went in to the service of Munn Gill & Co over in the habit of delivering grain for Munn Gill & Co at the ware house of Flint & Wheeler. The said warehouse is situate on the bank of the river and a side track runs up to the ware house. The Rock R. Co. continued to deliver grain in the same way during the time I was in the employment of Munn Gill & Co except in some cases where orders were given to the contrary. There was an order given to the switch agent to switch off certain cars to the depot containing white wheat. This was about the first of August 1856. The cars containing the wheat came in on the C & R I. R.R. track and I think the wheat belonged to a man by the name of Mitchell. I do not remember of any orders being given as to cars coming from Peoria. As agent of Munn Gill & Co. I never gave any general order for the delivery of grain that came in Baggs to the be delivered at the depot. I had no authority only what I received from Munn Gill & Co as the general receiving freight clerk and their only clerk in this business.

The following facts were agreed upon by plaintiff and defendants:

Samuel L. Foster	} In Circuit Court of Peoria County March Term A.D. 1858
vs Chicago & Rock Island Rail Road Company	

William C. Baird	} In Circuit Court of Peoria County March Term A.D. 1858
James L. Merriman	
vs Chicago & Rock Island Rail Road Company	

The following facts are admitted and agreed to in the above entitled causes and need not to be proved on the trial of said causes or either of them to wit:

1st. That by the charter of the defendant it is not permitted to charge storage for goods in its warehouses after such goods are delivered at the place of destination of the same.

2nd. That it is not the custom of defendant to charge storage on goods or property shipped and transported by it, but that after such goods have been kept a reasonable time after the same have been carried to the place of destination, then the defendant is accustomed to take such goods to other warehouses and store the same there for the benefit of the owners or consignees.

3rd. That the property sent by W. C. Bailwin & Co. in car 140 was the property of plaintiffs Bailwin & Merriman.

4. That Only L. Thompson was agent for defendants at times of signing bills of lading.
Manning & Merriman for plaintiffs
Purcell & Pratt for Defs.

The defendant then read in evidence the depositions of Thomas D. Winter, John Bonisky, Joseph Jones Jr. & H. Bidwell, Thomas G. Jamison and Charles L. Epps, which are as follows:

" Chicago October 31st 1857. Met pursuant to adjournment.

Deposition of Thomas D. Winter, who being duly sworn answers and says in answer to the first interrogatory.

First Interrogatory: What is your name and what was your business in August 1856.

Answer: My name is Thomas D. Winter, I was employed as clerk in the local freight office of the defendant in Chicago.

Second Interrogatory. Will you please look at the exhibits Nos. 5, 6, 7, 8 & 9 annexed to the deposition of Richard T. Gill and state in whose handwriting they are, and if in yours, when you made them and by what authority.

Answer: Exhibits Nos. 5, 6, 8 & 9 were made by me in my handwriting and on the days on which they bear date and were made by me from authority given by Joseph Jones Jr. local freight agent.

Cross Interrogatory.

Had you any personal knowledge of the time when the cars mentioned in the exhibits or notices actually arrived at Chicago.

Answer. I don't know.

October 31st 1857

T. D. Winter

Deposition of John Bonisky, who being duly sworn answers and says in answer to the first Interrogatory.

First Interrogatory: What is your name and what is your business and how long have you been engaged in it.

Answer: My name is John Bonisky. My business is delivery clerk in the office of the defendant in Chicago in the office delivery of in freight I have been engaged in the employ of the company since early 1854.

Second Interrogatory. Do you recollect about the freight contained in the cars mentioned in the second interrogatory to the witness Richard T. Gill

which you have heard read, and which arrived in the month of August 1856. I fear will you state what time in said month said freight was unloaded from said cars.

Answer: I recollect the circumstances and know that all the cars mentioned in said second interrogatory with the exception of car No 222, were unloaded on the 12th & 13th days of August 1856.

Third Interrogatory: Will you state whether at that time it was or not the invariable rule of the company to have cars unloaded soon after their arrival and if so, how soon after.

Answer: It was the rule to have them unloaded as quick as they possibly could be after their arrival.

The last preceding question and answer objected to by plaintiffs counsel

Fourth Interrogatory: Do you know whether there was any exception to the rule in relation to these cars.

Answer: There was not, it was right the opposite, the wheat had been unloaded from these cars and I had urged Mr Thomas the drayman or transfer for Munn Gill & Co to haul away the grain. He had pleaded that ^{his team were so much employed} that he could not get it away as quick as I wanted it.

Question & answer objected to by plaintiffs counsel.

Fifth Interrogatory: Did you previous to the 13th of August 1856 and about that time have any directions from this Mr. Thomas in relation to the place of unloading the grain consigned to Munn Gill & Co, if so state the language what he said to you so as to give it fully.

Answer: I did have directions Thomas told me that Munn Gill & Co had given him orders to have all the grain that arrived in bags for them unloaded at the company's freight depot until further orders. He also stated as I could understand him at the time that Munn Gill & Co had a warehouse of their own, that they thereby saved storage by hauling the grain to it in preference to having it unloaded at the Elevator.

This last question and answer objected to by plaintiffs counsel.

First Cross Interrogatory: What were your means of knowledge of knowing when the cars consigned to Munn Gill & Co actually arrived at defendants depot at Chicago.

Answer: My knowledge is that I saw them unloaded.

Second Cross Interrogatory: How do you know how the cars arrived on any given day or what cars arrived on any given day.

Answer: It was my business to know every thing that was

in the house in order to be able to inform the consignees whether their stuff has been unloaded or not.

Third cross interrogatory: Did you keep any memorandum or register of the date of the arrival of the cars consigned to Wm. Gill & Co.

Answer: I did not keep any date of their arrival.

Fourth cross interrogatory: Did you keep any register or memorandum of the date of unloading the cars consigned to Wm. Gill & Co. if you produce it that it may be attached to your deposition.

Answer: I did not keep the date, I did not unload the cars, the date was kept by the other clerk who was the unloading tally clerk.

Fifth cross interrogatory: Did you see these cars when they arrived?

Answer: I could not say.

Sixth cross interrogatory: Do you ^{or not} know whether they were all unloaded before the fire.

Answer: I do know that they were all unloaded before the fire, they were unloaded on the 12th & 13th of August 1856. with the exception of car No 282 of which car I had no knowledge.

Seventh cross interrogatory: Have you any ~~distinct~~ distinct positive recollection of your own without reference to any memoranda made or kept by any other person of the exact time of the arrival and unloading of the cars consigned to Wm. Gill & Co.

Answer: I have no positive recollection of their arrival but I have positive knowledge of the cars being unloaded and the grain laying in the depot on the night of the fire.

Eighth cross interrogatory. State the proportions of wheat and of corn in these cars.

Answer: My impression is that there was but one car of corn there might have been two but I could not exactly say or testify to that positively.

Chicago Oct. 31st 1857

John Corniskey

Deposition of J. Jones Jr. who being duly sworn answers and says in answer to the first Interrogatory.

First Interrogatory. What is your business and how long have you been engaged at it.

Answer: I am local freight agent for the defendant and have acted as such since July A.D. 1854.

Second Interrogatory: Do you recollect a fire which occurred in the year 1856 which burned up the Rail Road (coal) warehouse or Depot and the contents thereof if so what time said fire occurred, and what was the probable cause of it.

Answer: It occurred on the night of the thirteenth of August 1856 and was caused by the heat from the fire on the opposite side of the street which consumed the Rock Island House & the freight depot of the Michigan Southern & Northern Indiana Rail Road Co.

Third Interrogatory: Do you recollect anything about the grain of the plaintiffs referred to in the second direct interrogatory propounded propounded to the witness Gill (which interrogatory you have just read) if so, state what time the grain arrived at the depot of the defendant what time notices were sent to Alumn Gill & Co. the consignees, what time the grain was unloaded and what afterwards became of it?

Answer: I know that the cars specified were billed to Alumn Gill & Co. The grain arrived a few days prior to the fire. I do not know personally when notices were sent, but the clerk whose business it was to make out notices had orders from me to notify parties immediately upon the arrival of the way bill. I know nothing about the unloading except by reference to the tally book, and whatever of the grain was in the house was burned or damaged by the water.

Cross Examination

First Cross Interrogatory: Are or are not the notices of the arrival of plaintiffs grain attached to Gills deposition numbered exhibits 5, 6, 7, 8 & 9 in your handwriting or signed by you or had you or not any personal knowledge that the cars referred to in said notices had actually arrived at the defendants depot at the date thereof?

Answer: The notices are not in my handwriting nor signed by me. I cannot say that they had arrived or not.

Second Cross Interrogatory: Was it or not the custom of the defendants at and about the time of the fire referred to in your deposition to give notices to consignees of the arrival of freight for them prior to its actual arrival?

Answer: The custom was to notify parties that we had freight billed to them. It was the custom to notify upon the arrival of the way bill, without reference to whether the freight had arrived or not.

Third Cross Interrogatory: Had you any personal knowledge of the time of the actual arrival of the cars referred to in the notices, and are you the person whose name purports to be signed to said notices?

Answer: I had no personal knowledge of the arrival of the cars. I am the person.

Direct resumed

Did you authorize the clerk to make the notices in that way and to sign

your name in that way.
Answer: I did.
Chicago Oct. 30th 1857

J. Jones, Jr.

Deposition of C. H. Bidwell, who being duly sworn answers and says in answer to the first interrogatory:

First Interrogatory: What is your name and what was your occupation my name is C. H. Bidwell and my occupation in August 1856 was that of a freight clerk in the defendants office in Chicago.

Second Interrogatory: Examine Exhibit No. 7, attached to Mr. Gills deposition and state in what whose handwriting the same is, and if in yours state by what authority and when you made it.

Answer: It is in my handwriting, and was made August 9th 1856, by authority of Mr. Jones the local freight agent.

Cross Examination.

Do you know of your own knowledge that the cars referred to in said notice had actually arrived at that date?

Answer: I do not. I had no way of ascertaining except by the very bill and I could not swear positively that they had.

Chicago Oct. 31st 1857

C. H. Bidwell

November 2nd 1857, Deposition of Thomas O. Jamieson who being duly sworn answers and says to the first interrogatory:

First Interrogatory: What is your name and what was your business in August 1856?

Answer: My name is Thomas O. Jamieson age 29 - my occupation in August 1856 was to mark all freight cars that came in on the defendants rail road to Chicago.

Second Interrogatory: Did you ever receive any order or direction of any agent of Messrs. Gill & Co. in relation to delivery of grain consigned to them. If so when & from whom did you receive such order & what was its purport & was it verbal or in writing & if in writing, what has become of it?

Answer: I received an order from Mr. Thomas about the 8th or 9th of August 1856 in writing signed by Messrs. Gill & Co.; the purport of it was to put in five cars of grain in bags into the depot - Two days afterwards I received a verbal notice from Charles H. Ball in presence of Mr. Thomas to put all the grain arrived in bags for Messrs. Gill & Co. in the depot; the reason he gave was that they, Messrs. Gill & Co. had a warehouse of their own and it would not cost them so much to haul it as it would to store it at

T. Hunt & Wheeler.

This last question & answer objected to by plaintiffs attorney.

Third Interrogatory: Who was the Charles H. Ball referred to in your last answer.

Answer: He was check agent for Munn Hill & Co and he was the person who gave all the orders except one given by Mess Gill.
Chicago Nov. 2nd 1857
Thos. D. Jamieson

November 2nd 1857. Deposition of Charles L. Epps, who being duly sworn answers and says in answer to the first interrogatory.

First Interrogatory: What is your name and what was your business in August 1856.

Answer: My name is Charles L. Epps. I was check clerk in August 1856 in the defendants depot at Chicago.

Second Interrogatory: Will you state if you know when the cars mentioned in the second interrogatory to witness Gill were unloaded?

Answer: The cars Nos 616, 206, 468, 698 were unloaded on the 12th & cars Nos 660, 272, 296 and 140 were unloaded on the 13th days of August 1856.
Chicago Nov. 2nd 1857.
Chas. L. Epps.

This was all the evidence in the case. The Court thereupon rendered judgment in favor of the said defendant and against the said plaintiff then and there excepted and prayed that his bill of exceptions be signed and sealed as part of the record in said cause which is accordingly done.
E. N. Powell

State of Illinois }
Peoria County } ss I, Brock P. Sloan, clerk of the Circuit Court of the County of Peoria in the State of Illinois do hereby certify that the foregoing is a true & correct transcript of papers filed in my office & of the proceedings of our said Court in a certain cause wherein Samuel Porter is plaintiff & Cynawka Rail Road is defendant.

Given under my hand & seal of the said Court at my office in Peoria this 5th day of April in the year one thousand eight hundred & fifty eight.

Brock Sloan, clerk

Amos S. Porter
1888
aff in Enn

The Chicago Hook
Island Rail Road
aff in Enn

Filed April 11 1888
L. L. L. L.
all

\$ 4.50

Recd 24 ⁵⁰/₁₀₀ of Merriman & Manning fees for making
recd for Supreme Court C. J. Loran, CCh

Samuel S. Porter
vs
The Chicago & Rock Island
Rail Road Company } In the Supreme Court
of Illinois. Third
Division.
April Term 1858.

Argument of Plaintiffs Counsel.

The evidence in this case shows that plaintiff shipped over the defendants Road nine car loads of wheat and corn in the month of August 1856. consigned to Munn Gill & Co, Chicago as commission merchants for sale on account of plaintiffs; that printed notices of the arrival of said cars were sent to Munn Gill & Co as follows, of cars 296 & 282. August 9th. of cars 468, 616, 394, 206, 660 & 698, Aug. 11th. And of car 272 Aug. 13. 1856. — That these notices were sent immediately upon the arrival of the ~~way~~ way bills as was the custom of defendants without any reference to the fact, or without any knowledge on the part of those sending the notices whether the cars, containing the freight had arrived or not; so that in point of fact these notices were no notices of the arrival of the freight, and only that the freight was on the way and was expected. And the evidence of Charles Epps

one of the defendants witnesses shows that none of the said freight actually arrived at the depot until the 12th day of August when four of the car loads of which Munn & Co had received notice on the day previous arrived; and on the 13th August three car loads arrived, one of which notice had been sent on the 9th August; one on the 11th August and one on the 13th August, leaving unaccounted for, one car load No. 282, of which notice was sent August 9th and Car No. 394 of which notice was sent on 11th August.

The fact however that the custom of the defendants was, as was followed in this case, to send the notices of the arrival ~~thereof~~ of the freight before the arrival thereof destroyed the validity and effect of such notices, and the parties were not bound to pay any attention to them, and probably did not, as the fact of their arrival would depend upon contingencies.

We therefore conclude with saying that the consignees received no notice of the arrival of said cars, except what they received in another manner than by means of those

printed notices. What other notice was received of the arrival of said grain?

It appears from the testimony of E. H. Thomas that he was the teamster for Munir Gile & Co and as such teamster he visited with his teams (several in number) the defendants depot every day for the purpose of hauling away any grain that may have arrived for his employers; that he received notice from the check clerk in the depot if there was any thing there for delivery; that as usual on the morning of the 13th August he visited the depot and not being able to get a portion of one car load; he returned in the afternoon after 3 o'clock with one team to haul away the balance of said car load which had remained over from the morning - that he was then notified of the arrival of two cars No. 660 & 272. - that it was not in his power to haul away the grain from those cars that afternoon for reason that the depot closed at six o'clock, and his teams were scattered over the city on other business, and he would not have been able to get them to the

depot before the hour of closing. - that those were the only cars of which he received any notice.

The said consignees Munn Gill & Co therefore received no notice of the arrival of any of the cars except two No. 660 & 272. And of those they received notice too late in the day to remove the grain on that day.

A common carrier whether by land or water must on delivery of the goods at the ~~place of destination~~ Dock, if by water, or at the depot if by rail-road must give notice to the owner or consignee, and give him a reasonable time after such notice to take them away.

Mich Cut. RR's vs Hard	2	Gibbs	538
Crawford vs Clarke.	15	Ills.	474.
Astrucan vs Brown	15	Johus.	39
Pice vs Powell	3.	Comst.	322.
Gibson vs Culver	17	Meud.	305
Gist vs Newton	1	Denio	45
Eagh vs White	6	Phaton	505
Murchaup. vs Lancaster RR's.	8	Mues & H.	421
Demott vs Sarany	14	Meud.	225

The cases above cited are with the exception of the Case in 2 Gibbs 538. and of the last ^{two} Cases, cases of carriage by water, and in those cases it is well settled that a delivery at the dock in order to relieve the owners of the boat from their liability as common carriers must be accompanied with notice to the owner or consignee, giving him reasonable time to get the freight. The case in 2 Gibbs 538. is a case nearly parallel with the case at bar. Where grain had been shipped over the rail-road and put into the depot and burned the night after its arrival. The Court held the Rail Road Company liable as common carriers and sustained the doctrine above.

At common law a carrier was bound to deliver the goods intrusted to his care at the place of business of the consignee, and exemption from personal and actual delivery was based upon the nature of their business and of the impossibility of making actual delivery without the employment of other

means of conveyance than such as they were provided with.

The same rule and the same reason may govern in the case of Rail Roads. - they have their fixed places of running, their depots and stations and are not bound to employ any other means of ~~conveyance~~ conveyance to make a delivery to their consignees, but this does not relieve them from the necessity of delivering the goods entrusted to their care to the consignees, either actually or constructively. Notice to the consignees of the arrival of the freight, allowing him a reasonable time to get it away is the least that can be required of them. Shall less be required of rail-roads than of Steam-boats? - The principle of the law is the same in both cases, and both boats and rail-road companies ought to be held strictly accountable for goods entrusted to their care until the owner has had an opportunity of taking possession of them.

But aside from the question of notice, the evidence

in this case shows the following state of facts.

That about the first of July 1856, Gill of the ^{firm of} said, Munn Gill & Co directed the defendants to deliver all grain that came consigned to them at the warehouse of Hunt & Wheeler, which warehouse was on their railroad track; and that in conformity with such instructions they did so deliver the grain until about the time the grain of plaintiff was sent to Chicago, with the exception of certain specified car loads, although Gill testifies that they had received grain at the depot since the order was given without objection; - and Gill testifies that he never countermanded said order or gave no different orders except in one instance, which was as to certain specified car loads.

Ball the clerk of Munn Gill & Co testifies to the same facts, and states that he never gave any orders different from those of Gill and never gave any orders concerning the grain except in one instance

where he had a special order from his principals to have five cars, not the cars of plaintiffs, delivered at the depot, and that he had no authority to give any such order. The defendant attempted to prove that the order to deliver grain at Flint & Wheeler's warehouse was countermanded, and proved by testimony that Thomas had told him that Munn Bill & Co had given him orders to have all grain that arrived in bags to be delivered at the depot, but this was properly objected to, as Thomas was employed only in the capacity of teamster and had no authority to give any such orders. Thomas testified on this point that he had given an order to have some grain delivered at depot, which request was objected to by a clerk in defendants office, and about the same time the Clerk of Munn Bill & Co (Mr. Ball) gave some directions about delivering grain at depot, but what the notice was he did not know only that after that he received some grain in bags at the depot. This all undoubtedly refers to the five cars from Alton which were

to be delivered at the depot; but the general instructions still remained in force, and it was the duty of defendant to deliver the grain at the place designated in accordance with the instructions which they acted under for more than a month, unless those instructions had been countermanded, of which there is no proof.

In the case of *Dixon v. Dunham* 14 Ill. 324. this court decided that unless there is a custom shown well established, - the carrier must deliver his freight at the place of business of the consignee or at the place designated by the consignee if such place is accessible to the carrier. And this is a reasonable rule, if the boat or car is loaded with freight for the consignee, as in the case at bar, the entire cars were loaded with the freight of plaintiff.

The evidence shows the custom to the contrary was not well established, but that the custom had been to deliver the grain at the place of designation

It is contended that the responsibility of a carrier by rail-road ends with the trip, and that they are only responsible as warehousemen from the moment of the change of the goods from the cars to the warehouse.

This doctrine is not only contrary to all the principles of law as applicable to common carriers, but if established would be dangerous to the interests of the whole community. For if the rail-road companies are relieved from the necessity of notifying their consignees or owners of the arrival of freight, it would beget a degree of carelessness in the care of goods and they might allow them to remain in the warehouses, accumulating charges and going to decay, until at last the warehouseman will sell the same to pay charges and the owner entirely lose his property. There is not in law nor in principle any difference in the liability of carriers by rail-roads or by water.

Our Supreme Court say in case of the *Chicago & Rock Island*

Rail Road Company vs Warren 16 Ill
304 that the responsibility of a common
carrier does not end or change into
that of a Warehouseman by mere
delivery at the depot of the Rail-
road. There must be an actual or
legal constructive delivery to the
owner or consignee or to a ware-
houseman for storage

See also. 2. Gibbs 538

6 Wharton 505

8 Wms & W. 421.

In the case at bar it is admitted
that the defendants are precluded
by their Charter from charging storage
on goods in their warehouses, and
that it was the custom with them
to remove any goods that may
have been kept a reasonable
time for the owners to get them
away to other warehouses. The
law thereby preventing them from
acting in any other capacity than
as common carriers, by preventing
them to receive storage as ware-
housemen

It was proven by
defendant that eight of the

said car loads were put in the
depot and that on the night
of the 13th August 1856 were
destroyed by fire, what became
of the other car loads is not shown

Manning & Merriam
Atty's for Appellant

⁸⁰
J. S. Porter 1888

¹⁰
G. & H. A. R. R. Lee

Agreement of
Plaintiffs Counsel

Filed May 6, 1888

J. S. Porter
Att'y

SAMUEL S. PORTER,
APPELLANT,
vs.
THE CHICAGO & ROCK ISLAND RAIL-
ROAD COMPANY,
APPELLEES.

SUPREME COURT,
THIRD GRAND DIVISION OF ILLI-
NOIS.
APRIL TERM, 1858.

This was a suit commenced in the Peoria Circuit Court, at February Term, 1857, by Appellant against Appellees, upon certain Bills of Lading or Railroad Receipts for wheat and corn shipped by plaintiff from Peoria over the defendants' road to Munn, Gill & Co., of Chicago.

The case was tried March term, 1858, before E. N. Powell, Judge, without a jury.

The evidence showed that the plaintiff, by Updike & Co., sent over the defendants' railroad, on the eleventh and ninth days of August, 1856, five car loads of wheat and four car loads of corn, each car containing 160 sacks at 2½ bushels per sack, consigned to Munn, Gill & Co., of Chicago, who were Commission Merchants and agents of plaintiff for the sale of the grain, and that the said Updike & Co. received from the Company receipts similar to the following:

PEORIA, ILL., August 11th, 1856.

Received in good order, from Updike & Co., to be forwarded by the Peoria & Bureau Valley Railroad, the following articles, to be delivered in like good order to Munn, Gill & Co., at Chicago Station, he or they paying freight at the rate of 17c a hundred pounds.

Marks,
Acct. S. S. Porter.

Articles,
3 Cars Wheat, No. 468, 616, 394.
D. S. THOMPSON.

That Munn, Gill & Co. received from defendants, upon the understanding or arrangement with them that they should so receive it and do the best they could with it, 435 bushels red wheat and 267½ white wheat, and sold the same for \$583 35, and 320 40-56 bushels corn, which was sold for \$336 39, on account of the above shipments. That spring wheat was worth \$1 per bushel, red winter wheat \$1 30, and white winter wheat \$1 40 per bushel. That the balance of said grain was destroyed by fire on the night of the 13th August, 1856, in the depot of said Company in Chicago.

R. T. Gill, one of the firm of Munn, Gill & Co., testified that they received August 9, 1856, printed notice of the arrival of cars 296 and 282, August 11, 1856, like notices of arrival of cars 468, 616, 394, 206, 660, 698, and August 13, 1856, similar notice of car 272. That about the 1st July, 1856, witness directed defendants, by Mr. Jones, the local freight agent, to have all grain received for them to be delivered at Flint & Wheeler's warehouse; and subsequently gave directions to have certain car loads delivered on the track, but only such cars as were particularly specified. On cross-examination witness stated there was no written notice given to Jones, and no other notice was given by Thomas or by any member of said firm to his knowledge, and that they did sometimes receive grain from the warehouse

in bags without objection subsequent to the time of the notice, and that Charles H. Ball was in their employ as out-door clerk, and that Thomas had no general authority to give directions—his business was to do hauling as teamster, as requested.

E. W. Thomas, teamster for Munn, Gill & Co., testified he went around every day to the depot to see if there was any grain to haul away, and would get notice from the check clerk if there was anything for delivery. That he was at the depot on morning of 13th August, 1856, to haul away two car loads for Munn, Gill & Co., and not being able to get the grain from one car he returned in the afternoon after three o'clock with one team to haul away that car load, and was then notified of the arrival of cars 660 and 272. That the depot closed at 6 o'clock, and that it was not in his power to haul away more grain that afternoon, as his teams were scattered over the city. That there is a side track of the Rock Island Railroad running into Flint & Wheeler's warehouse. That witness was employed in no other capacity by Munn, Gill & Co. than as teamster. Did not call for any other car loads, as he had received no notice of any other cars having arrived. On cross-examination witness testified that he thought he requested defendants to deliver some grain at their freight house about 11th August, 1856, by authority of Mr. Gill, which request was objected to by a clerk in defendants' office. That the defendants might have sent notices to other persons. Was present when the out-door clerk of Munn, Gill & Co., about 11th August, gave some notice about delivering grain at depot, but knows nothing of purport of notice, but after that witness received some grain in bags from depot for Munn, Gill & Co.

Charles H. Ball testified that he went into the employ of Munn, Gill & Co. in July, 1856. That the defendants at that time were in the habit of delivering grain for Munn, Gill & Co. at Flint & Wheeler's warehouse, and so continued, except in some cases when orders were given to the contrary. There was an order given to switch off certain cars containing white wheat to the depot about 1st August, which I think belonged to Mr. Mitchell. Don't know of any orders being given as to any grain from Peoria. I never gave any general orders to deliver grain in bags at the depot. I had no authority only what I received from Munn, Gill & Co., as general receiving agent.

The following facts were agreed upon: 1st, That by the charter of the defendant they were not permitted to charge storage on goods in their warehouses, after such goods were delivered at place of destination. 2d, That it is not the custom of defendants to charge storage on goods transported by it, but that after such goods have been kept a reasonable time the same have been carried to other warehouses. 3d, That Duty S. Thompson was defendants agent at time of signing the bills of lading.

Thomas D. Winter's deposition was read by defendants, who testified that some of the printed notices sent to Munn, Gill & Co., as testified by Gill, were made by himself from authority from Joseph Jones, local freight agent—that he had no personal knowledge when the cars specified in the notices actually arrived in Chicago.

John Comisky testified that the cars, with exception of car 282, were unloaded at the depot in Chicago on the 12th and 13th August, 1856, and that it was the custom of the company to have the cars unloaded as quickly as possible after arrival; and in relation to these cars I urged Thomas the teamster to haul away the grain. Also Thomas had told witness that Munn, Gill & Co. had given him orders to have all grain that came in bags un-

loaded at the depot, until further orders. This evidence was objected to by plaintiff. This witness on cross-examination stated that he kept no memoranda of dates of arrival of the cars, but knows that they were in the depot on the night of the fire.

J. Jones, Jr., testified that he was local freight agent at Chicago of defendants, that the depot at Chicago was burned on night of 13th August, 1856, caused by the heat from buildings opposite. The grain in the cars named arrived a few days before the fire; don't know when notices were sent, but the clerk whose business it was to send notices had orders to notify parties immediately upon arrival of way bills, and it was the custom so to notify them without reference to whether the freight had arrived or not. I had no personal knowledge of the arrival of the cars, or whether or not unloaded.

C. H. Bidwell testified to the sending one of the notices referred to by Gill, by authority of Jones; had no way of ascertaining about arrival of the cars except by the way bills.

Thomas D. Jamieson testified that about 8th or 9th August, 1856, he received a written order from Munn, Gill & Co. to put in five cars of grain in bags in depot; two days afterwards Charles H. Ball gave me verbal notice to put all grain in bags for Munn, Gill & Co. in depot, as they had a warehouse of their own and could haul it cheaper than to store at Flint & Wheeler's.

Charles L. Epps testified that cars No. 616, 206, 468 and 698 were unloaded on the 12th, and cars 660, 272 and 296 on the 13th August.

This was all the evidence upon which the judge rendered judgment for the defendant, to which rendering the plaintiff excepted, and assigns the following errors upon the record.

1st—The court erred in rendering judgment against the plaintiff and for the defendant upon the evidence before him.

MANNING & MERRIMAN,
Attorneys for Appellant.

188
Sam^l. S. Porter
vs
O & R. S. R. R Co

Filed Apr 21, 1888
L Leland
Clerk

Samuel L. Porter

vs
The Chicago and
Rock Island Rail Road Co

} Supreme Court
}

Argument of Defendant.

Unless I misapprehend this case judging from the abstracts, there is no disputed question of law in it.

The entire controversy is narrowed down to the simple question of facts, whether when on the night of the 13th August 1856 the Defendants depot house was accidentally burned with the Grain in it, the Plaintiffs Consignor or agent had had notice of the arrival of the grain, and whether the car had been un-
loaded ~~and~~ ^{or grain} ready for delivery at the place appointed or agreed upon between the Defendants and the Plaintiffs Consignor or their agents.

If the Defendant had a right or was authorized or directed by the Consignor or their agents to deliver the grain at their depot, then as soon as notice

was given of the arrival of the cars at the depot, the Plaintiff should have proceeded immediately to take the grain away — and the liabilities of the defendants as Common Carriers would cease, and they would only be liable for gross negligence, or as bailees without hire. Certainly they could not be liable to any greater extent than non-housemen.

The Cars were all unloaded on the 12 & 13th Except 282 — The Evidence does not show when this was unloaded or whether it was at all or not — Nor does it seem to me to be material whether any of them were or not unloaded — But the strong probability is ~~in favor of~~ in as much as notice of the arrival of this car was given on the 9th Aug. that it was unloaded before the rest.

The abstract shows that the grain was sent over the Road on the 9th & 11th Aug. & 13 Aug. 1856 as follows.

Cars 296 Aug. 9. 1856
 282. " " "
 468 Aug 11. 1856
 616 " " "
 394 " " "
 206 " " "
 660 " " "
 698 " " "
 272 Aug 13. 1856.

These Plaintiffs assigned received printed
 notices of the arrival of 296 & 282 on
 on the 9th Aug. and of 468, 616, 394,
 206, 660 698. Aug. 11. 1856. and 272.
 Aug. 13th 1856. If the Abstract is a true
 one—(and I have not examined the
 records;) there is no direct evidence, ex-
 cept what may be inferred from the no-
 tice given, when the grain arrived at
 Chicago. It was unloaded except one
 car on the 12th & 13th Aug.

If the Consignees received the notices
 they were bound to send for the grain
 and if they neglected to do so, the
 presumption here, especially after the
 finding below, will be that it all

had arrived before the Notice was given.

If I understand the law correctly it is - That if a Rail Road Company contract to deliver goods at their depot at any particular place, that when they arrive there and give notice that the goods are ready for the Consignee; As soon as the Notice is given, their liability as Carriers ceases, and from that time, they are only bound to take such care of the property, as a prudent man would do with his own.

The Case of Thomas V. Boston & Providence R.R. Co
10 Met. 472.

is the leading case upon this question and fully sustains the position assumed.

If the Contract was to deliver this grain at their own depot in Chicago, it is complied with the moment the Notice is given of its arrival, in the same manner, and to the same extent as though the same had been deposited in a warehouse - and Notice given.

If there is any conflict of testimony in relation to the time the grain arrived at Chicago, and the time when the notices were given, or to whom they were given, and the authority of the parties to whom they were given to accept or receive them - The weight of testimony is on the side of the Defendants in each particular.

The questions of fact, were fairly submitted to the Court, and this Court will not disturb the finding upon any grounds, other than those on which ~~it~~ would set aside the verdict of a Jury.

By the finding of the Court upon the Evidence, the Contract was that the goods were to be delivered at the depot, they had all arrived there, most of the cars - (all but one) & probably that were unladen, the Plaintiffs through their Counsel & their servants and agents had notice of the arrival of the grain and were requested to take it away - all but one car before the 12th and that on the 13th the day of its arrival

They took reasonable Care of, and
used Ordinary Diligence in relation
to the property

No fault or blame is attributable
to them. By mere accident the grain
together with their depot house and
a vast amount of other property be-
longing to them and others was des-
troyed by fire on the night of the
13th August 1856.

Under such circumstances, it would
be a hard and unjust law which
would compel the defendant to respond
in damages for the accidental des-
truction of the Plaintiff's property.

The Council would refer the case to the written
arguments filed for Defts in the following cases
submitted at this term involving the same points

~~12192~~ 211 Richards et als.
vs

Michigan Southern & N. T. R.R Co
Davis et als.

121 339 vs

Dame

180
Porter 188-80

CR.I. R.R.C.

Argument

Purple

Filed May 6, 1888

L. Leland
olk