

No. 12503

Supreme Court of Illinois

C.B. & Q. R. R. Co.

vs.

Coleman.

State of Illinois
Cook County ss.

Plas before the Honorable
John M. Wilson Judge of the Cook County
Court of Common Pleas, holding the Circuit
Court of said County of Cook at the request
of the Honorable Buckner S. Morris Judge
of the Seventh Judicial Circuit (who is un-
able to hold his said Circuit Court on account
of sickness) at a term of said Circuit Court
begun & held at the Court House in Chicago
in said County on the first Monday being
the seventh day) of May in the year of our Lord
one thousand eight hundred and fifty five
and of the Independence of the United States
the Seventy ninth

Present The Hon. John M. Wilson Judge of
the Cook County Court of Common Pleas
(Daniel McIlroy States Attorney
James Andrew Sheriff of Cook County
Attest

Louis C. Hoard Clerk of the Circuit Court
of Cook County

Be it remembered that heretofore to wit
on the nineteenth day of April in the year of
our Lord one thousand eight hundred and
fifty five there was filed in the office of the

Clerk of the Circuit Court in and for the County of Cook in said State of Illinois a certain bond (security for costs) which is in the words & figures following, to wit

State of Illinois
Cook County Circuit Court }
John Coleman et al

vs.

The Chicago, Burlington &
Quincy Railroad Company
late The Chicago & South Western
Railroad Company, formerly
The Chicago & Aurora Railroad
Company— et al

Action of Assumps-
it
Damages \$10,000

Cook County, ss. I do hereby enter myself as security for costs in this cause, and acknowledge myself bound to pay or cause to be paid, all costs which may accrue in this action, either to the opposite party, or to any of the officers of this Court, in pursuance of the laws of this State
Dated this 19th. day of April 1855

Charles B. Waite seal

Afterwards and on the same day (to wit, April 19th. A. D. 1855) there issued out of the office aforesaid & under the seal of said Court the People's writ of summons directed

to the Sheriff of said County and clothed in the words & figures following to wit,

State of Illinois }
County of Cook } ss.

The People of the State of Illinois,
to the Sheriff of said County, Greeting:

We command you that you summon
The Chicago Burlington and Quincy Rail
Road Company, the Chicago & South
Western Rail Road Company, formerly the
Chicago & Aurora Rail Road Company and
the Central Military Tract Rail Road Compa
ny if they shall be found in your County, per
sonally to be and appear before the Circuit Court
of Cook County, on the first day of the next term
thereof, to be holden at the Court House in
Chicago, in said County on the first Monday
of May next, to answer unto John Coleman,
James Coleman and Andrew Coleman in
a plea of Trespass on the case on promises
to the damage of the said Plaintiffs as is
said in the sum of Ten thousand dollars
And have you then and there this
writ with an endorsement thereon
in what manner you shall
have executed the same.



Witness, Louis D. Hoard, Clerk
of our said Court and the seal
thereof, at Chicago aforesaid
this nineteenth day of April
A. D. 1855

L. D. Hoard Clerk

And afterwards, to wit, on the day &
year last aforesaid there was also filed in the
office of the Clerk aforesaid a certain de-
claration which is in the words & figures
following, to wit,

Circuit Court of Cook County
May Term, A. D. 1855

John Coleman, James Coleman and
Andrew Coleman, plaintiffs in this suit
by Brackett & Wain their Attorneys Complain
of the Chicago, Burlington and Quincy
Railroad Company, late the Chicago & South
Western Railroad Company, formerly the
Chicago and Aurora Railroad Company
and the Central Military Tract Railroad
Company, defendants, in a plea of trespass on
the Case on promises. For that whereas the
said plaintiffs, before and at the time of
the making of the promise and undertaking

herein mentioned, were owners and proprietors of a certain Steamboat, moved and propelled by Steam called the "Caleb Cope," by them used and employed in carrying and transporting passengers and freight on the waters of the Mississippi River, and being such owners and proprietors of the said Steamboat, they the said plaintiffs heretofore, to wit, on or about the first day of November, in the year of our Lord Eighteen Hundred and Fifty Four at the City of Rock Island, in the County of Rock Island and State of Illinois, by a certain agreement then and there made, between the said plaintiffs and the said defendants, promised and agreed to carry and transport in said boat, from the said City of Rock Island in the State of Illinois to a point on the Illinois shore opposite, the City of Burlington in the State of Iowa, twelve hundred tons of iron rails and eight hundred tons of iron chains and spikes as freight before the close of navigation of the Mississippi River, at the rate of six Dollars per ton, and the said defendants in consideration thereof, then and there undertook and faithfully promised to deliver for transportation, to the said plaintiffs on the wharf, at Rock Island aforesaid, said twelve hundred tons of iron rails, and eight hundred

sons of iron chains and spikes, as freight, to be carried on the said Steamboat from the said City of Rock Island to the said point on the Illinois shore opposite said City of Burlington, before the close of navigation of the said Mississippi River and the said defendants, in consideration as aforesaid, then and there promised to pay to the said plaintiffs the said sum of six dollars per ton, for the carrying of said freight as aforesaid, so soon as the transportation thereof should be completed. And the said defendants, in consideration as aforesaid then and there further promised that the said plaintiffs should have the sole and exclusive right and privilege to carry the said freight from the said City of Rock Island to the said point on the Illinois shore opposite said City of Burlington, for the price herein stated. And the said agreement being so made, afterwards to wit, on the first day of November aforesaid at Rock Island aforesaid, in consideration thereof, and that the said plaintiffs at the special instance and request of the said defendants, had then and there undertaken and faithfully promised the said defendants to perform and fulfil the said agreement, in all things on the said plaintiffs part and behalf to be per-

formed and fulfilled, they the said defendants undertook, and then and there faithfully promised the said plaintiffs to perform & fulfil the said agreement in all things on the said defendants part and behalf to be performed and fulfilled — And the said agreement being so made, afterwards, to wit, on the day and year aforesaid, at Rock Island aforesaid the said plaintiffs carried on their said Steamboat all the iron rails, and iron chains and spikes furnished to them by the said defendants, to wit, Eighty-eight & $\frac{26}{100}$ tons of iron rails and sixteen tons of iron chains and spikes, which the said plaintiffs in pursuance of said contract carried from Rock Island to the said point opposite said City of Burlington as aforesaid. And the said plaintiffs have always been ready and willing to carry and transport on the said Steamboat the whole of said freight for said defendants according to said agreement, and for the purpose of performing the said agreement on their part, the said plaintiffs with their said Steamboat, attended and held themselves in readiness, at Rock Island aforesaid, to transport and carry the said freight from Rock Island aforesaid to the said point opposite the said City of Burlington aforesaid

before the close of navigation, on said Mississippi
 River, and then and there notified the said de-
 fendants of their readiness and willingness to
 perform the said agreement on their part, and
 requested them to furnish for transportation the
 said freight, according to said agreement; and
 for the purpose of performing the said agree-
 ment on their part, the said plaintiffs kept
 their said boat in waiting for a long time, in
 the month of November aforesaid, at Rock Island
 aforesaid, of which the said defendants had
 notice. Yet the said plaintiffs in fact say, that
 the said defendants, contriving and wrongfully
 intending to injure the said plaintiffs did
 not nor would perform the said agreement on
 their part, though often requested so to do, and
 did not nor would, though often requested so
 to do, perform their said promise and under-
 taking; and the said defendants did not nor
 would furnish the said twelve hundred
 tons of iron rails and the said eight hundred
 tons of iron chains and spikes for said plaintiffs
 to carry, according to said agreement, but on the
 contrary have hitherto wholly neglected and
 refused to furnish any of said freight, except
 the aforesaid amount of eighty eight & ²⁶/₁₀₀
 tons of iron rails and sixteen tons of iron
 chains and spikes which were carried by

the plaintiffs as aforesaid. - And the said defendants, further disregarding the said agreement and their said promise and undertaking, afterwards to wit, on the day and year aforesaid at Rock Island aforesaid, did not nor would permit or suffer the said plaintiffs to proceed to complete said work, and then & there wholly prevented and hindered them from so doing, by failing to furnish said iron rails and said iron chains and spikes for said plaintiffs to carry as freight as aforesaid. And the said defendants further disregarding the said agreement, and their said promise and undertaking did not nor would give the said plaintiffs the sole and exclusive right and privilege to carry and transport the said twelve hundred tons of iron rails and the said eight hundred tons of iron chains and spikes for the price aforesaid, and according to the said agreement, but on the contrary the said defendants employed other persons to carry a portion of said iron rails and of said iron chains and spikes which said plaintiffs contracted to carry. And the said defendants did not nor would pay to the said plaintiffs the said sum of six dollars per ton for carrying said freight, but to pay the same, or any part thereof, except the sum

of \$625 ⁵/₁₀₀, the said defendants have hitherto
 wholly neglected and refused - Whereby the said
 plaintiffs have lost and been deprived of the prof-
 its which they otherwise might and would have
 derived and acquired from the performance
 and completion of said contract, to wit, at the
 time and place aforesaid. And whereby the
 said plaintiffs were deprived of the said sum
 of six dollars per ton for said two thousand
 tons which they would have received accord-
 ing to said contract. And whereby the said
 plaintiffs were obliged to expend a large sum
 of money, to wit, the sum of Five Thousand
 Dollars, for wages of men employed for the
 purpose of loading and unloading, and
 assisting in the carriage of said freight and
 of managing ^{and manning} said boat during the time in
 which said boat was kept waiting as aforesaid
 and for the furnishing of said boat, and for
 provisions for the said men so employed as
 aforesaid, during the time aforesaid. And
 whereby the said plaintiffs were obliged to per-
 form a large amount of service for the said de-
 fendants, and were for a long time thrown
 out of employment, and for a long time lost
 the use of said boat to wit, for the space of
 six weeks and during the time of the princi-
 pal part of the fall trade at the time aforesaid

at Rock Island aforesaid —

And whereas also heretofore, to wit, on the day and year aforesaid, at Rock Island aforesaid, to wit, at Chicago, in the County of Cook and State of Illinois, the said plaintiffs, they being then and there the owners and proprietors of a certain Steamboat called the "Calib Cope," by them used and employed in carrying and transporting passengers and freight on the waters of the Mississippi River, and of the barges belonging and pertaining to said boat, by a certain agreement then and there made, between the said plaintiffs and the said defendants, promised and agreed to carry and transport, on said boat and barges, using such other boats and barges as should or might be and become necessary, twelve hundred tons of iron rails and eight hundred tons of iron chains and spikes as freight from the said City of Rock Island to a point on the Illinois River opposite the said City of Burlington, before the close of navigation of the said Mississippi River for the season, to wit, for the fall of A. D. 1854 at the rate of six dollars per ton, and the said defendants in consideration of the said promise and agreement of the said plaintiffs, then and there undertook and faithfully promised

to deliver to the said plaintiffs, on the wharf of said river at Rock Island aforesaid, said twelve hundred tons of iron rails and said eight hundred tons of iron chains and spikes, as freight, to be carried on the said Steamboat or Steamboats and barge, from the said City of Rock Island in the State of Illinois to the said point opposite said City of Burlington in the State of Iowa before the close of navigation of the said river as aforesaid; and the said defendants, in consideration as aforesaid, then and there promised to pay to the said plaintiffs, the said sum of six dollars per ton, for the carrying of said freight as aforesaid so soon as the transportation thereof should be completed. — And the said defendants, in consideration as aforesaid then and there further promised that the said plaintiffs should have the sole and exclusive right and privilege to carry the said freight from the said Rock Island to the said point opposite said City of Burlington, for the price herein stated. And the said agreement being so made, afterwards, to wit, on the first day of November aforesaid, at Rock Island aforesaid, to wit, at Chicago aforesaid in consideration thereof, and that the said plaintiffs at the special instance and request of the said defendants, had then and there undertaken, and faithfully promised the

said defendants to perform and fulfil the said agreement, in all things on the said plaintiffs part and behalf to be performed and fulfilled they the said defendants undertook, and then and there faithfully promised the said plaintiffs to perform and fulfil the said agreement in all things on the said defendants part and behalf to be performed and fulfilled. And the said agreement being so made, afterwards, to wit, on the day and year aforesaid, at Rock Island aforesaid, the said plaintiffs carried on their said steamboat and barges, all the iron rails and all the iron chains and spikes furnished to them by the said defendants, to wit, eighty eight & 26/100 tons of iron rails and sixteen tons of iron chains and spikes from said City of Rock Island to said point opposite said City of Burlington in pursuance of said contract. And the said plaintiffs have always been ready and willing to carry and transport on the said steamboat and barges the whole of said freight for said defendants according to said agreement, and have always been ready and willing, in case said boat and barges of the said plaintiffs should not be sufficient for the carrying of said freight, according to said contract to employ and procure such other boats and barges as should be necessary,

for that purpose. And for the purpose of performing the said agreement and promise on their part, the said plaintiffs with their steamboat and barges, attended and held themselves in readiness at Rock Island aforesaid to transport and carry the said freight from Rock Island aforesaid to the said point opposite said City of Burlington aforesaid, before the close of navigation on said Mississippi River, for the said season, according to the said contract, and then and there notified the said defendants of their readiness and willingness to perform the said agreement and promise on their part, and requested the said defendants to furnish and deliver for transportation the said freight according to the said agreement; and for the purpose of performing the said agreement on their part, the said plaintiffs kept their said boat and barges in waiting for a long time in the month of November aforesaid, and afterwards, to wit, at Rock Island aforesaid, of which the said defendants had notice. Yet the said plaintiffs in fact say, that the said defendants, contriving and wrongfully intending to injure the said plaintiffs, did not nor would perform the said agreement, on their part, though often requested so to do, and did not nor would, though often requested so to do

perform their said promise and undertaking, and the said defendants did not nor would furnish or deliver the said twelve hundred tons of iron rails, and the said eight hundred tons of iron chains and spikes for said plaintiffs to carry, according to said agreement, but on the contrary have hitherto wholly neglected and refused to furnish or deliver ^{amount of} any of said freight except the aforesaid eighty eight & $\frac{26}{100}$ tons of iron rails and sixteen tons of iron chains and spikes, which were carried by the plaintiffs as aforesaid. And the said defendants further disregarding the said agreement and their said promise and undertaking, afterwards, to wit, on the day and year aforesaid, at Rock Island aforesaid, did not nor would permit or suffer the said plaintiffs to proceed to complete said work and then and there wholly prevented and hindered them from so doing, by failing to furnish or deliver said iron rails and said iron chains and spikes for said plaintiffs to carry as freight as aforesaid. And the said defendants did not nor would give the said plaintiffs the sole and exclusive right and privilege to carry and transport the said twelve hundred tons of iron rails and the said eight hundred tons of iron chains and spikes

for the price aforesaid and according to the said agreement, but on the contrary the said defendants employed and procured other persons to carry a portion of said iron rails and said iron chains and spikes which said plaintiffs had contracted to carry. And the said defendants did not nor would pay to the said plaintiffs the said sum of six dollars per ton for carrying said freight, but to pay the same or any part thereof, except the sum of \$625⁰⁰/₁₀₀ the said defendants have hitherto wholly neglected and refused. Whereby the said plaintiffs have lost and been deprived of the profits which they otherwise might and would have derived and acquired from the performance and completion of said contract, to wit, at the time and place aforesaid. And whereby the said plaintiffs were deprived of the said sum of six dollars per ton for said two thousand tons which they would have received, according to said contract, And whereby the said plaintiffs were obliged to expend a large sum of money, to wit, the sum of Five Thousand Dollars, for wages of men employed for the purpose of loading and unloading and assisting in the carriage of said freight, and of manning and managing said boat and barges during the time in which they were kept waiting as aforesaid.

and for the furnishing of said boat, and for provisions for the said men so employed, as aforesaid, during the time aforesaid. And whereby the said plaintiffs were obliged to perform a large amount of service for the said defendants, and were for a long time thrown out of employment, and for a long time lost the use of said boat, to wit, for the space of eight weeks, at the time aforesaid, at Rock Island aforesaid. — To the damage of the said plaintiffs of Ten Thousand Dollars, and therefore they bring their suit &c.

Brackett & Waite
Attorneys for Plaintiffs

And afterwards, to wit on the 27th. day of April in the year last aforesaid the said Sheriff returned to the office of said Clerk the said summons heretofore issued in this cause with an endorsement thereon in the words and figures following, to wit,

Served by reading and delivering copies thereof to Chas. F. Hammond Superintendent and Amos T. Hall Secretary of the Chicago Burlington & Quincy Rail Road Company
The 27th. day of April 1855
Jes

2 services	1.00
2 copies	1.00
2 miles	.10
1 return	10
	<u>82.20</u>

James Andrew Sheriff
by F. L. Buckley Deputy

And afterwards, to wit, on the 11th. day
of May come the said defendants by their
attornies and file in the office of the Clerk
aforesaid their certain plea in this cause
which is in the words & figures following to wit

State of Illinois
The Circuit Court of }
Cook County } Of the Term of May in
the year of our Lord
One thousand Eight
hundred & fifty five

The Chicago Burlington & Quincy
Rail Road Company - late the
Chicago & South Western Rail
Road Company - formerly the
Chicago & Aurora Rail Road
Company - And the Central
Military Tract Rail Road
Company

ads

John Coleman, James
Coleman & Andrew Coleman

And the said defendants by Sedgwick & Walker their Attorneys come & defend the wrong & injury when &c. and say that they did not undertake or promise in manner & form as the said plaintiffs have above thereof complained against them and of this they the said defendants put themselves upon the Country &c.

Sedgwick & Walker
Attys. for Defs.

State of Illinois
Cook County ss.

James N. Walker of said County being duly sworn deposes and says that he is one of the Attorneys of the defendants named in the above entitled cause and makes this affidavit for and on behalf of said defendants. And this deponent says that the said defendants have a good defense upon the merits to the plaintiffs action in this cause as this deponent verily believes and further says not Sworn & subscribed before me this 11th day of May 1855

J. N. Walker
L. D. Flood
Clerk

And afterwards, to wit, on the 23^d day of October in the year last aforesaid the same being one of the days of the October vacation term of our said Circuit Court, the following order was made and entered of record in this cause to wit,

John Coleman et al

vs

The Chicago Burlington
& Quincy Rail Road Company et al

} asst.

On motion it is ordered that the plaintiffs herein have leave to amend their declaration filed here in, at their own costs.

And afterwards, to wit, on the 28th day of November in the year last aforesaid a certain stipulation was filed in this cause which is in the words & figures following, to wit,

John Coleman et al

vs

Chicago & Burlington &
Quincy Rail Road Company &c

} Assumpsit

} Nov. Term 1885

It is agreed that this case shall not be tried previous to Tuesday, the 18th of December next, and that it shall then be taken up if reached.

on the docket

Nov. 27. 1855

Chas B. Waite
Atty. for Plff.
Seagwick & Walker
attys. for Defl.

And afterwards, to wit, on the 21st. day of
December in the year last aforesaid the
same being one of the days of the regular
November Term of our said Circuit Court
for said year A.D. 1855 & this cause having
been regularly adjourned from term to term
until the present term, the following among
other proceedings were had and entered of
record in said Court in this cause, to wit,

John Coleman, James Coleman
& Andrew Coleman

vs.

The Chicago, Burlington &
Quincy Rail Road Company
late The Chicago & South Western
Rail Road Company, formerly
The Chicago & Aurora Rail
Road Company & The Central
Military Tract Rail Road
Company

asst

This day come the said

plaintiffs by Brackett & White their attorneys
and the said defendants by Sedgwick & Walker
their attorneys also come and issue being joined
it is ordered that a jury come, and thereupon
comes the jurors of a jury of good and lawful
men to wit, William Sawyer, Asa Fitch, Sam-
uel Nyles, G. G. Chilote, J. W. Irwin, James
Campbell, Benjamin Marshall, George
N. French, H. L. Smith, Austin Flines, W.
B. Wightman and Thomas Hill who being
duly elected, tried & sworn well & truly to
try the issue joined between the parties ac-
cording to law and the evidence and they
hearing a portion of the testimony addu-
ced are allowed to separate & the further
hearing of this cause is postponed until
to-morrow morning

And afterwards, to wit, on the
22^d day of the month & year last afore-
said & being as yet of said November
Term aforesaid the following further
proceedings were had & entered of record
in said Court in this cause to wit,

John Coleman, James
Coleman & Andrew Coleman

The Chicago, Burlington &
Quincy Rail Road Company
late The Chicago & South Western
Rail Road Company, formerly
The Chicago & Aurora Rail Road
Company, & The Central
Military Tract Rail Road
Company } asst.

This day again come the said parties by their attorneys and the Jurors of the Jury also come and they having heard all the testimony as well on the part of the plaintiff as on that of the defendant, and the arguments of counsel and the instructions of the Court thereon, retire under charge of an officer of the Court to consider of their verdict, and thereupon by agreement of the parties and their counsel it is ordered that when the Jury shall have agreed upon their verdict they may reduce the same to writing seal and deliver it to the Clerk of this Court and separate to meet the Court on Monday morning at the opening thereof.

And afterwards, to wit, on the twenty fourth day of the month & year last aforesaid, it being as yet of the said November term of said Court the following

among other proceedings were had & entered of record in said Court in this cause, to wit,

John Coleman, James Coleman &
Andrew Coleman

vs.

The Chicago, Burlington & Quincy Rail
Road Company, late the Chicago & South
Western Rail Road Company, formerly
the Chicago & Aurora Rail Road Company
& the Central Military Tract Rail Road Company

ass.

This day again come the said parties
by their Attorneys, & the Jurors aforesaid also come into
Court & say we the Jury find for the plaintiffs and
assess their damages at the sum of Five thousand
& three hundred & sixty four dollars.

Wherefore the
said defendants by their Attorneys aforesaid enter
their motion for a new trial of this cause.

And afterwards, to wit, on the seventh day of
January A. D. 1856, it being as yet of the November
Term of said Court for the year A. D. 1855 the follow-
ing among other proceedings were had in said
Court & entered of record in this cause, to wit,

John Coleman, James Coleman
& Andrew Coleman

vs.

The Chicago, Burlington & Quincy Rail
Road Company, late the Chicago & South
Western Rail Road Company, formerly
the Chicago & Aurora Rail Road Company
& the Central Military Trail Rail Road Company

ass.

This day again come the said
parties by their Attorneys and the Court having
heard the argument of counsel on the motion of
a new trial of this cause and being fully advised
thereon, orders that the same be overruled and
that judgment thereon be entered, to which ruling
of the Court the said Defendants by their Counsel
except —

§ 5364, " " Thereupon it is considered that the said
plaintiffs do have & recover of the said defendants
their damages of Five thousand three hundred
& sixty four dollars by the Jury aforesaid assessed
together with their costs and charges by them
about their suit herein expended & have execu-
tion therefor —

Afterwards, And on the day and year
last aforesaid (to wit January 7th AD 1856)
the said defendants filed in the office of
the Clerk of the Court aforesaid their
certain Bill of exceptions in this cause,
which is in the words and figures following
to wit;

State of Illinois }
Cook County } Of the Term of in the
Circuit Court } year of our Lord one Thousand
Eight hundred & Fifty five

The Chicago, Burlington & Quincy
Rail Road Company, late the Chicago &
South Western Rail Road Company
formerly the Chicago & Aurora Rail
Road Company & the Central
Military Tract Rail Road Company
ads
John Coleman, James Coleman
& Andrew Coleman

Cook County ss.

Be it remembered that on the
Term of May in the year of our Lord one Thousand
Eight hundred & fifty five, came the said John
Coleman, James Coleman & Andrew Coleman by
Brackett & White, their Attorneys, into the said
Cook County Circuit Court before the Judge thereof
& impleaded the said Chicago, Burlington & Quincy
Rail Road Company, late the Chicago & South
Western Rail Road Company, formerly the Chicago
& Aurora Rail Road Company & the Central Mil-
itary Tract Rail Road Company, in a certain
plea of trespass on the case on promises on which

the said John Coleman, James Coleman & Andrew Coleman declared against the said defendants in the words & figures following, that is to say—

{ Circuit Court of Cook County
 { May Term A.D. 1855

John Coleman, James Coleman & Andrew Coleman plaintiffs in this suit by Brackett & Waite their attorneys Complain of the Chicago, Burlington & Quincy Rail Road Company, late the Chicago & South Western Rail Road Company, formerly the Chicago & Aurora Rail Road Company & the Central Military Tract Rail Road Company Defendants in a plea of trespass on the case on promises. For that whereas the said Plaintiffs before & at the time of making the promise & undertaking herein mentioned, were owners & proprietors of a certain Steam Boat, moved & propelled by steam, called the "Caleb Cope" by them used & employed in carrying & transporting passengers & freight on the waters of the Mississippi River & being such owners & proprietors of said Steamboat, they the said plaintiffs, heretofore, to wit, on or about the first day of November in the year of our Lord Eighteen hundred & fifty four, at the City of Rock Island, in

the County of Rock Island & State of Illinois, by
a certain agreement then & there made between
the said plaintiffs & the said defendants, promised
& agreed to carry & transport in said boat from
the said City of Rock Island in the State of Illinois
to a point on the Illinois shore opposite the City
of Burlington in the State of Iowa, Twelve Hun-
dred tons of iron rails & eight hundred tons
of iron chains & spikes as freight before the close
of navigation of the Mississippi River, at the
rate of six dollars per ton, & the said defend-
ants in consideration thereof then & there under-
took & faithfully promised to deliver for trans-
portation, to the said plaintiffs on the wharf
at Rock Island aforesaid said twelve hundred
tons of iron rails & eight hundred tons of iron
chains & spikes as freight to be carried on the
said Steam Boat from the said City of Rock
Island to the said point on the Illinois shore
opposite said City of Burlington before the
close of navigation of the said Mississippi
River, & the said Defendants in considera-
tion as aforesaid then & there promised to
pay to the said plaintiffs the said sum of
six dollars per ton for the carrying of said freight
as aforesaid so soon as transportation thereof should
be completed - and the said defendants in
consideration as aforesaid, then & there further

promised that the said plaintiffs should have
 the sole & exclusive right & privilege to carry the said
 freight from the said City of Rock Island to the
 said point on the Illinois shore opposite said
 City of Burlington for the price herein stated &
 the said agreement being so made afterwards,
 to wit, on the first day of November aforesaid, at
 Rock Island aforesaid in consideration there-
 of, & that the said plaintiffs, at the special in-
 stance & request of the said Defendants had then
 & there undertaken & faithfully promised the said
 Defendants to perform & fulfil the said agree-
 ment in all things on the said plaintiffs part
 & behalf to be performed & fulfilled, they the said
 defendants undertook & then & there faithfully
 promised the said plaintiffs to perform &
 fulfil the said agreement ~~xxx~~ in all things
 on the said defendants part & behalf to be
 performed & fulfilled. And the said agree-
 ment being so made, afterwards, to wit, on the
 day & year aforesaid, at Rock Island aforesaid,
 The said plaintiffs carried on their said Steam
 boat all the iron rails & iron chains & spikes fur-
 nished to them by the said defendants, to wit,
 Eighty eight $2\frac{1}{100}$ tons of iron rails & sixteen tons
 of iron chains & spikes which the said plaintiffs
 in pursuance of said contract carried from
 Rock Island to the said point opposite said

City of Burlington as aforesaid. And the said Plaintiffs have always been ready & willing to carry & transport on the said Steamboat the whole of said freight for said defendants according to said agreement, & for the purpose of performing said agreement on their part, the said plaintiffs with their said Steamboat attended & held themselves in readiness at Rock Island aforesaid to transport & carry the said freight from Rock Island aforesaid to the said point opposite said City of Burlington aforesaid, before the close of navigation on said Mississippi River & then & there notified the said defendants of their readiness & willingness to perform the said agreement on their part & requested them to furnish for transportation the said freight according to the said agreement & for the purpose of performing the said agreement on their part the said plaintiffs kept their said boat in waiting for a long time in the month of November aforesaid, at Rock Island aforesaid of which the said defendants had notice - Yet the said plaintiffs in fact say that the said defendants, contriving & wrongfully intending to injure the said plaintiffs did not nor would perform the said agreement on their part though often requested so to do & did not nor would though often requested so to do perform their said promise & undertaking - & the said defendants did not nor would furnish

the said twelve hundred tons of iron rails & the said
 eight hundred tons of iron chains & spikes for said
 plaintiffs to carry according to said agreement
 but on the contrary have hitherto wholly neglected
 & refused to furnish ^{any} of said freight except the
 aforesaid amount of eight eight & $\frac{24}{100}$ tons of iron
 rails & sixteen tons of iron chains & spikes which
 were carried by the plaintiffs aforesaid, & the
 said defendants further disregarding the said
 agreement & their said promise & undertaking,
 afterwards, to wit, on or about the day & year afo-
 said, at Rock Island aforesaid, did not nor
 would permit or suffer the said plaintiffs
 to proceed to complete said work & then & there
 wholly prevented & hindered them from so do-
 ing by failing to furnish said iron rails & iron
 chains & spikes for said plaintiffs to carry as freight
 as aforesaid. And the said defendants fur-
 ther disregarding the said agreement & their said
 promise & undertaking did not nor would give
 the said plaintiffs the sole & exclusive right &
 privilege to carry & transport the said twelve
 hundred tons of iron rails & the said eight
 hundred tons of iron chains & spikes for the
 price aforesaid & according to the said agree-
 ment but on the contrary the said defendants
 employed other persons to carry a portion of said
 iron rails & of said iron chains & spikes which

said plaintiffs contracted to carry. And the said defendants did not nor would pay to the said plaintiffs the said sum of six dollars per ton for carrying said freight but to pay the same or any part thereof except the sum of \$625³/₄ 100 the said defendants have hitherto wholly neglected and refused. Whereby the said plaintiffs have lost & been deprived of the profit which they otherwise might & would have derived & acquired from the performance & completion of said contract, to wit, at the time & place aforesaid. — And whereby the said plaintiffs were deprived of the said sum of six dollars per ton for said two thousand tons which they would have received according to said contract & whereby the said plaintiffs were obliged to expend a large sum of money, to wit, the sum of Five thousand dollars for wages of men employed for the purpose of loading & unloading & assisting in the carriage of said freight & of managing & manning said boat during the time in which said boat was kept waiting as aforesaid, & for the furnishing of said boat & for provisions for the said men so employed as aforesaid during the time aforesaid. — And whereby the said plaintiffs were obliged to perform a large amount of service for the said defendants & were for a long time thrown out of employment & for a long time lost the use of said boat, to wit, for the space of six weeks & during the time of the principal

part of the fall trade at the time aforesaid at Rock Island aforesaid

(2nd Count)

But whereas also heretofore, to wit, on the day & year aforesaid, at Rock Island aforesaid, to wit, at Chicago in the County of Cook & State of Illinois, the said plaintiffs they being then & there the owners & proprietors of a certain Steamboat called the "Calib Cope," by them used & employed in carrying & transporting passengers & freight on the waters of the Mississippi River & of the barges belonging & appertaining to said Boat by a certain agreement then & there made between the said plaintiffs & the said defendants, promised & agreed to carry & transport on said Boat & barges using such other boats & barges as should & might be & become necessary, twelve hundred tons of iron rails & eight hundred tons of iron chains & spikes as freight from the said City of Rock Island to a point on the Illinois River opposite the said City of Burlington, before the close of navigation of the said Mississippi River for the season, to wit, for the fall of A. D. 1854, at the rate of six dollars per ton, & the said defendants in consideration of the said promise & agreement of the said plaintiffs then & there undertook & faithfully promised to deliver to the said plaintiffs on the wharf of said River at Rock Island aforesaid said twelve hundred tons of iron rails & said eight

hundred tons of iron chains & spikes as freight,
to be carried on the said steamboat or steamboats
& barges from the said City of Rock Island in the
State of Illinois to the said point opposite the
said City of Burlington in the State of Iowa before
the close of navigation of the said River as afore-
said - And the said defendants, in consid-
eration as aforesaid then & there promised to
pay the said plaintiffs the said sum of six
dollars per ton for the carrying of said freight
as aforesaid so soon as the transportation thereof
should be completed - And the said defend-
ants in consideration as aforesaid, then &
there further promised that the said plaintiffs
should have the sole & exclusive right & privi-
lege to carry the said freight from the said
Rock Island to the said point opposite said
City of Burlington for the price herein stated.
And the said agreement being so made after-
wards, to wit, on the first day of November afo-
said, at Rock Island aforesaid, to wit, at Chicago afo-
said in consideration thereof & that the said plain-
tiffs at the special instance & request of the said de-
fendants had then & there undertaken & faithfully
promised the said defendants to perform & ful-
fil the said agreement in all things on the said
plaintiffs part & behalf to be performed & fulfilled
they the said defendants undertook & then & there

faithfully promised the said plaintiffs to perform
& fulfil said agreement in all things on the said
defendants part & behalf to be performed & fulfilled

And the said agreement being so made after-
wards to wit, on the day & year aforesaid at Rock
Island aforesaid the said plaintiffs carried
on their said steamboat & barges all the iron
rails & all the iron chains & spikes furnished
to them by the said defendants, to wit, Eighty
eight ²⁶/₁₀₀ tons of iron rails & sixteen tons of
iron chains & spikes from said City of Rock
Island to said point opposite said City
of Burlington in pursuance of said contract
And the said plaintiffs have always been
ready & willing to carry & transport on the said
Steamboat & barges the whole of said freight
for said defendants according to said agree-
ment & have always been ready & willing, in
case said Boat & barges of the said plaintiffs
should not be sufficient for the carrying of
said freight according to said contract to
employ & procure such other boats & barges
as should be necessary for that purpose. - And
for the purpose of performing the said agree-
ment & promise on their part, the said
plaintiffs with their steamboat & barges at-
tended & held themselves in readiness at
Rock Island aforesaid to transport & carry

said freight from Rock Island aforesaid to the said
point opposite said City of Burlington aforesaid be-
fore the close of navigation on said Mississippi River
for the said season according to the said contract
& then & there notified the said defendants of their
readiness & willingness to perform the said agreement
& promise on their part & requested the said defend-
ants to furnish & deliver for transportation the said
freight according to the said agreement, & for the pur-
pose of performing the said agreement on their part
the said plaintiffs kept their said boat & barges in
waiting for a long time in the month of November
aforesaid & afterwards, to wit, at Rock Island afo-
resaid of which the said defendants had notice - Yet
the said plaintiffs in fact say that the said defend-
ants contriving & wrongfully intending to injure
the said plaintiffs did not nor would perform the
said agreement, on their part though often requested
so to do - & did not nor would, though often requested
so to do, perform the said promise & undertaking
& the said defendants did not nor would furnish
or deliver the said twelve hundred tons of iron rails
& the said eight hundred tons of iron chains & spikes
for said plaintiffs to carry according to said
agreement, but on the contrary have hitherto wholly
neglected & refused to furnish or deliver any of
said freight except the aforesaid amount of eighty
eight & $\frac{26}{100}$ tons of iron rails & sixteen tons of iron

chains & spikes which were carried by the plaintiffs as aforesaid - But the said defendants further disregarding the said agreement & their said promise & undertaking afterwards, to wit, on the day & year aforesaid, at Rock Island aforesaid, did not nor would permit or suffer the said plaintiffs to proceed to complete said work & then & there wholly prevented & hindered them from so doing by failing to furnish or deliver said iron rails & said iron chains & spikes for said plaintiffs to carry as freight as aforesaid. And the said defendants did not nor would give the said plaintiffs the sole & exclusive right & privilege to carry & transport the said twelve hundred tons of iron rails & the said eight hundred tons of iron chains & spikes for the price aforesaid & according to the said agreement, but on the contrary the said defendants employed & procured other persons to carry a portion of said iron rails & said iron chains & spikes which said plaintiffs had contracted to carry - And the said defendants did not nor would pay to the said plaintiffs the said sum of six dollars per ton for carrying said freight, but to pay the same or any part thereof except the sum of \$625 ⁵⁶/₁₀₀ the said defendants have hitherto wholly neglected & refused - Whereby the said plaintiffs have lost & been deprived of the profits which they otherwise might & would have derived & acquired from the performance & completion of said contract, to wit, at the time &

place aforesaid. — And whereby the said plaintiffs were deprived of the said sum of six dollars per ton for said two thousand tons which they would have received according to said contract — And whereby the said plaintiffs were obliged to expend a large sum of money, to wit, the sum of five thousand Dollars for wages of men employed for the purpose of loading & unloading & assisting in the carriage of said freight & of manning & managing said boat & barges during the time in which they were kept waiting as aforesaid & for the furnishing of said boat & for provisions for the said men so employed as aforesaid during the time aforesaid. — And whereby the said plaintiffs were obliged to perform a large amount of service for the said defendants & were for a long time thrown out of employment & for a long time lost the use of said boat, to wit, for the space of eight weeks at the time aforesaid at Rock Island aforesaid — To the damage of the said plaintiffs of ten thousand dollars & therefore they bring their suit
cc. (Signed) Brackett & Waite
Attorneys for Plffs.

And issue was therefore joined by the said defendants, by Sedgwick & Walker their Attorneys pleading to said declaration in the words & figures following, that is to say,

State of Illinois

The Circuit Court of }
Cook County

Of the Term of May in the year
of our Lord one thousand
eight hundred & fifty five.

The Chicago, Burlington & Quincy Rail Road
Company, late the Chicago & South Western
Rail Road Company, - formerly the Chicago &
Aurora Rail Road Company & the Central
Military Tract Rail Road Company

and

John Coleman, James Coleman & Andrew Coleman

And the said defendants by Sedgwick &
Walker their Attorneys come & defend the wrong &
injury when &c. & say that they did not undertake
or promise in manner & form as the said plain-
tiffs have above thereof complained against them
& of this they the said defendants put themselves
upon the Country &c.

(Signed) Sedgwick & Walker
Attys. for Deft.

State of Illinois
Cook County ss:

James M. Walker of said
County being duly sworn deposes & says that
he is one of the Attorneys of the defendants named

in the above entitled cause & makes this affidavit
for & on behalf of said defendants — And this depo-
nent says that the said defendants have a good
defense upon the merits to the plaintiffs action in
the above entitled cause as this deponent verily
believes & further says not.

(Signed) James M. Walker

And afterwards, to wit, at the November Term
of said Court, at a session thereof held at the Court
House in the City of Chicago in said County of Cook
on the Twenty first day of December in the year of our
Lord one thousand eight hundred & fifty five before
the Honorable George Manierre Judge of said
Court, the aforesaid issue so joined between the
said parties aforesaid, came on to be tried by
a jury of the County aforesaid for that purpose
duly empannelled & sworn, at which days
came there as well the said plaintiffs by their
Attorney C. B. Waite, the name of said Brackett
as Attorney ceases, being nominally withdrawn,
as the said defendants by their attorneys aforesaid
& the Jury so empannelled & sworn as aforesaid
also came & were there & there in due manner
chosen & sworn to try the said issue — And
upon the trial of that issue the counsel for
the said plaintiff to maintain & prove the
issue on their part gave in evidence the deposi-

mons of Mathew Dabzell, John W. Williams, Levi Williams, John H. Allison & John H. Langley which are in the words & figures following respectively - that is to say -

Circuit Court of Cook County

May Term A.D. 1855

John Coleman et al

vs.

The Chicago, Burlington &
Quincy Rail Road Company
and others

} assumpsit

Copy of interrogatories to be put to Mathew Dabzell, John W. Williams, Levi Williams & John H. Allison, witnesses, residing at or near Davenport, in the State of Iowa, whose depositions are about to be taken to be used in behalf of the plaintiffs, on the trial of the above entitled suit,

Interrogatory 1st Are you acquainted with the parties to this suit, or either of them? If yes, how long have you been acquainted with him, or them?

Interrogatory 2nd Were you ever employed on the Steamboat "Caleb Cope?" If yes, how long & in what capacity? And where was said boat then running?

Interrogatory 3rd Do you know any thing about the plaintiffs ever agreeing to carry freight for defendants? If yes, what was the agreement, how much & what kind of freight was to be carried, between what places, and for what sum or price? When was the contract made & when & how was the carrying to be done? And where was the freight to be delivered? State all the facts & circumstances fully & at large.

Interrogatory 4th If you say any such contract was made, was or was not any freight carried by the plaintiffs in pursuance of said contract? If yes, what, where & how much? And how were plaintiffs paid for carrying the same? State fully & at large.

Interrogatory 5th If you say a contract was made & that defendants were to furnish freight, for plaintiffs to carry, state whether defendants furnished the freight which they agreed to furnish, If they did not, wherein & to how great an extent did they fail to do so? Did or did not the plaintiffs carry according to the contract, all the freight which was furnished them by the defendants?

Interrogatory 6th If you say a contract was made & the defendants were to furnish freight as afore

said, did or did not the plaintiffs hold themselves in readiness to carry the freight? If yes, when, where & for how long a time? & did or did not the defendants know that the plaintiffs thus held themselves ready?

Interrogatory 7th If any such contract was made who were the owners of the Steamboat at that time? Has the ownership of said boat changed at any time since? If yes, in what manner?

Interrogatory 8th What were the expenses of running the said Steamboat "Caleb Cope" per day? How many hands were employed & at what price & how often could a trip be made?

Interrogatory 9th If you have stated that a contract was made & that defendants failed to furnish the freight, or any part thereof, were or were not the plaintiffs damaged by the failure of the Defendants to deliver said freight? If yes, what was the amount of damage in your opinion? & how caused & state fully & at large -

Interrogatory 10th If you have stated that a contract was made, do you know of any facts or circumstances showing that special damage was sustained by the plaintiffs by reason of the failure of the defendants to furnish the freight?

If yes, what were they? State fully & at large —

Interrogatory 11th If a contract was made, was or was not the price to be paid a reasonable one, & was or was not the carrying worth the price to be paid for it?

Interrogatory 12th If you say a contract was made did or did not the defendants employ any other person or persons to carry freight during the time set for the performance of said contract? If yes, who were employed, what freight was carried & where & state fully.

Interrogatory 13th If you know of any other matter or thing, to the interest of the plaintiffs in this suit. State the same as fully as if you were particularly requested thereto.

Additional Interrogatories to be put to John W. Williams, Levi Williams & John H. Allison in behalf of the plaintiffs.

Interrogatory 14th Where was the Steamboat "Caleb Cope" during the months of November & December 1854? & what was she doing? State fully & at large.

Interrogatory 2nd (Do you know any thing about the said Steamboat "Caleb Cope" being held in readiness during said month of November or afterwards to carry freight in pursuance of any contract made or said to have been made with the defendants? If yes, when, where & how long? State fully.

Interrogatory 3rd (Do you know anything about the conductors or managers of the Steamboat "Caleb Cope" refusing to take freight from others on account of a contract made or said to have been made with the defendants? If yes, what, when & where? & what amount would have been received for said freight if it had been taken? State fully.

To Messrs Leagwick & Walker, Attys. at law
50 Dearborn St. Chicago -

Gent.

On Monday the 21st,
day of May instant at 2. O. Clock P. M. I shall
sue out from the office of the Clerk of the Circuit
Court of Cook County, a commission directed
to William Dodson Esq. of Davenport in the
County of Scott & State of Iowa, as commissioner
to take the depositions of the foregoing named
witnesses Mathew Dabell, John W. Williams
Levi Williams & John H. Allison upon the
foregoing interrogatories on the part of the plaintiffs

When & where you can appear & file cross-interrogatories, if you see proper

Yours Respectfully
(Signed) Brackett & Waite
for Plffs.

Chicago May 11. 1855

(Here follows affidavit of service)

Cross-interrogatories to be put to Matthew Dabell, John W. Williams, Levi Williams & John H. Allison

1st If in answer to the first interrogatory you say that you are acquainted with the parties to this suit or either of them - State which of said parties you are acquainted with & give the names of each party -

2nd If in answer to the third interrogatory you say that you know anything about the plaintiffs agreeing to carry freight for defendants - State who you mean by defendants - Who were the parties to such agreement? Who made the contract for employing the Caleb Cope - & what authority had the person making such agreement to act for the defendants? State all you know as to such authority. Was the agreement in writing? If so

47
set forth a copy thereof if you are able to do so - & if not
then state fully & particularly the terms thereof.

3rd If in answer to the sixth interrogatory you
say that the defendants knew that the plaintiffs
held themselves ready to carry freight - state how
you know that the defendants had such knowledge.

Cross-interrogatories to the additional inter-
rogatories to be put to John W. Williams, Levi
Williams & John H. Allison.

1st If you answer the 2nd additional interrog-
atory in the affirmative state all you know in
reference to the terms of said contract - Who
made it? What authority had the person making
it to act for the defendants? If you say such con-
tract was made by the defendants state who you
mean by the defendants & give the names thereof.

2nd If you answer the 3rd additional interrog-
atory in the affirmative state whether you testi-
fy from your own knowledge or from infor-
mation derived from others & from whom
such information was derived.

(Signed) Seagwick & Walker
Attys. for Defs.

Mathew Dabell to the several interrogatories deposes as follows —

(1) Answer to the first Interrogatory
I am acquainted with the plaintiffs only & have been acquainted with them about four or five years

(2) Answer to the second Interrogatory
I was employed on the Steamboat "Caleb Cope" in the fall & part of the winter of A. D. 1854 for about four months as Clerk — Said Boat was then running from Rock Island Ills. to Burlington & Montrose in Iowa —

(3) Answer to the third Interrogatory
I do — the agreement was that plaintiffs were to carry two thousand tons of Rail Road Rails Chains & spikes from Rock Island Illinois to opposite Burlington Iowa for the price of six dollars per ton — the contract was made on or about the 20th day of November last, the carrying was to be done during the said fall & Winter of A. D. 1854 — during the Boating season before the close of navigation — the freight was to be delivered on the Steamboat landing at Rock Island to the said plaintiffs' Steamboat "Caleb Cope" — Mr. J. H. Langley of Rock Island Illinois came over to Davenport where the said Steamboat was lying & said he had two thousand tons of Rail Road Rails chains &

spikes that was to be shipped to Burlington & wanted to know what ^{we} would carry it for - Plaintiffs told him that they would carry it for six dollars a ton. He said that he should have it - agreed to the terms. When the said Steamboat went over to Rock Island on the next day a Mr. Fayweather who I was informed was the agent for the Defendants, came on board & stated that he agreed to the contract Langley had made & that Langley was authorised to make it & wanted to know if plaintiffs would carry some of the freight that trip & urged plaintiffs to take with them a Barge load - As plaintiffs agent told him that we could not take any that trip but would be back to Rock Island on the Tuesday night following & would then take a full load - Fayweather assented to this & agreed that we should have a full load on our return & the balance of the two thousand tons was to be ready for the plaintiffs each trip & to be furnished as fast as plaintiffs could take it.

21

Answer to the fourth Interrogatory
Some of the freight was carried by plaintiffs in pursuance of the contract, the nature, amount & time in which the same was carried I do not, of my own knowledge know but from the Books of said Steamboat Caleb Cope there

seems to have been about one hundred & five tons carried on or about the 12th or 15th of November 1834. Plaintiffs were paid by a draft on a Mr. Jay the President, or a Mr. Hall superintendent of the Rail Road, for which the freight was carried drawn by a Mr. Thielson of Burlington the agent of Defendants.

5 Answer to fifth Interrogatory
(Defendants did not furnish Plffs with the freight which they agreed to furnish & failed to do so in the whole amount except about one hundred & five tons as stated in my answer to the fourth interrogatory — Plaintiffs carried all the freight which was furnished them by the defendants according to the contract.

6 Answer to sixth Interrogatory
Plaintiffs did hold themselves in readiness to carry the freight at Rock Island, from the time the contract was made until the close of navigation. Jay & weather, the agent of the defendants, knew that plaintiffs held themselves thus in readiness. —

7 Answer to seventh Interrogatory
Captain John Coleman, James Coleman & Andrew Coleman were the owners of the Steam boat at the time the contract was made — there has been no change in the ownership of said Boat since that time.

8

Answer to Eighth Interrogatory

The expenses of running the Boat were about two hundred & twenty five dollars a day - about thirty five or forty hands were employed including crew & officers - average wages of all about two & one half dollars a day for each man - a trip could be made about every four days.

The answer of the witness Dalzell to the Eighth Interrogatory was objected to by the Counsel for the Defendants - the objection overruled & the ruling of the Court thereon then & there accepted to by the Counsel for the Defendants.

9

Answer to the ninth Interrogatory

Plaintiffs were damaged by the failure, in my opinion the amount of damage was fully ten thousand dollars if not more & was caused by said failure of defendants to deliver the freight to plaintiffs according to the contract & Plaintiffs refusing to ^{take or} carry other freight, considering themselves bound by the contract made with Defendants.

10

Answer to tenth Interrogatory

Monroe

Plaintiffs suffered special damage by their not being able to carry for their old customers, being obliged to refuse all freight which was offered on account of the contract made with the plaintiff - On one occasion Plaintiffs were offered by other parties a trip on which two

thousand could be made but had to refuse on account of the contract made with Defendants & several other instances which I do not recollect particularly about

(The answer of the witness Dalzell to the tenth interrogatory objected to by the counsel for Defendants - objection overruled & the ruling of the Court then & there excepted to by Defendants counsel)

11 Answer to the eleventh interrogatory
The price to be paid was a reasonable one but I consider it too low - the carrying was fully worth the price agreed to be paid for it.

12 Answer to the twelfth interrogatory
I know nothing about the matters in this question inquired of

13 Answer to thirteenth interrogatory
I know of nothing except that during the season in which the freight was to be carried wood & all kinds of Boat supplies were very high & that plaintiffs expenses in running the said Boat were fully \$225 a day as before stated.
(Signed) Mathew Dalzell

Mathew Dalzell to the several cross-interrogatories on the part of the Defendants deposes as follows

1 Answer to first cross-interrogatory

I am acquainted with John Coleman, James Coleman & Andrew Coleman.

2

Answer to second cross-interrogatory
I mean by the Defendants the Rail Road which at the time of the contract was called the Chicago & Aurora Rail Road & Central Military Tract Rail Road - the parties who made the agreement with Plaintiffs were J. H. Langley in the first place & afterwards one Fayreweather who said he was agent for the railroad. ~~When~~ ^{Mr} Fayreweather then said he was agent for the railroad. I do not know ^{under} what authority he was acting except that the freight bill for the amount Plaintiffs carried according to the contract, when presented was paid by Draft in the manner stated in my answer to the fourth interrogatory. The agreement was not in writing - the terms were to be six dollars per ton for carrying two thousand tons Rail Road Rails, Chains & spikes from Rock Island to opposite Burlington from the time of the contract until navigation closed.

3

Answer to the third cross-interrogatory
By their agent Mr. Fayreweather as I stated in my answer

(Signed) Mathew Dabell

John W. Williams to the several interrogatories
deposes as follows

(1) Answer to first interrogatory
I am only acquainted with plaintiffs - have
known them about twenty years.

(2) Answer to second interrogatory
I was during the boating season of A.D. 1854
about six months as mate - said boat was then
running in the early part of the season to Saint
Paul & afterwards from Rock Island to Maquoketa
& Burlington -

(3) Answer to third interrogatory
I heard of a contract being made with plaintiffs
about the 1st November 1854 to carry two thousand
tons Rail Road iron from Rock Island to
opposite Burlington, but do not, of my own
knowledge know the terms exactly - One
Fagnewether told me the Caleb Cope was
engaged by him to carry all the Rail Road
freight & that it was to be furnished as fast as
the Boat could take it

(The answer of John W. Williams
to the above third interrogatory was object-
ed to - objection sustained & the answer
excluded)

4 Answer to fourth interrogatory
Plaintiffs only carried a small quantity of
Rail Road freight through the Boating season

55
+
(Don't know the exact amount or if it was according to any contract - Don't know how plaintiffs were paid for carrying the freight. +

5 Answer to fifth interrogatory

(Don't know anything about this question except that Plaintiffs carried all the Rail Road freight which was furnished to them - that the freight was not furnished in the manner Tagreweather agreed to furnish it - not more than about one hundred tons were furnished

6 Answer to sixth interrogatory

They always were ready to receive the freight & carry it after the contract was said to have been made at the Steamboat landing at Rock Island from the time of the contract until the close of navigation - Tagreweather knew that the Plaintiffs were ready to carry the freight, the Plaintiffs having several times asked him to furnish them the freight according to the contract

7 Answer to seventh interrogatory

John Coleman, James Coleman & Andrew Coleman were the owners at the time of the contract. The ownership of the boat has not changed since that time

8 Answer to eighth interrogatory

I do not know the exact amount of the Boat's expenses per day - there were between thirty five & forty deck hands who were paid \$40 a month each

the mate was paid \$50, per month & the other of
fiers I do not know what they were getting - two
trips could be made each week -

(This answer of John W. Williams to
the eighth interrogatory was objected to by counsel
for Defendants - objection overruled by the Court
& the ruling of the Court excepted to by counsel for
Defendants)

9 Answer to ninth interrogatory
Yes, the Plaintiffs by the failure of the delivery of
the freight were much damaged - amount of
damage was in my opinion over ten thousand
dollars as Plaintiffs could have made that amount
& more by carrying freight for old customers - the
damage was caused by Plaintiffs refusing all other
freight & the season being a very busy one Plaintiffs
could have got as much as they wanted of other
freight but could not take it on account of the
contract for this Rail Road Iron.

10 Answer to tenth interrogatory
I know of no particulars except that of Plaintiffs
being several times asked to carry other freight
but refused to take it as they said they had this
contract to attend to & Fayweather promised
to keep us going so the boat could not take other
freight

11 Answer to Eleventh interrogatory
The price was a reasonable one & the carrying

of such freight was well worth the amount to be paid

Answer to twelfth interrogatory

After the contract was made when we went to Rock Island to commence on the Rail Road freight we saw the Steam Boat Jenny Lind loading on the Rail Road freight - Captain John Coleman & I asked Fayweather what the Jenny was taking the iron for - Fayweather then stopped the Jenny from loading & said that he had contracted with the Caleb Cope to carry the iron - the Jenny had then a load on a lighter - the freight was Rail Road freight & was carried to opposite Burlington - I do not know who employed the Jenny Lind to take the freight -

Answer to thirteenth interrogatory

When the Caleb Cope was waiting at Rock Island for the freight Fayweather told the Captain several times that the freight would be on without delay that he was expecting it every train & urged the Captain to wait saying that he would have enough of freight to keep him going. Fayweather urged Captain Coleman to wait from day to day to wait for the freight & said there would soon be enough.

The answer of John W. Williams to the thirteenth interrogatory was objected to by Counsel for Defendants - objection overruled by the Court & the ruling of the Court excepted to by

Counsel for Defendants.

John W. Williams to the additional Interrogatories answers as follows—

1 Answer to first additional Interrogatory
The Caleb Cope was running from Rock Island to Burlington during November & December 1854 carrying a small portion of Rail Road iron on two trips & the balance of the time waiting at Rock Island for the Rail Road freight.

2 Answer to second additional Interrogatory
The Caleb Cope was in readiness during said month of November & until the close of navigation to carry Rail Road freight according to a contract said to have been made with Defendants— the Boat was waiting at Rock Island & as I before said until the close of navigation.

(The answer of John W. Williams to the second additional interrogatory was objected to by Counsel for Defendants, the objection overruled by the Court & the ruling of the Court excepted to by the Counsel for Defendants.)

3 Answer to third additional Interrogatory
I do know about Captain Coleman refusing to take freight from others on account of the said contract with Defendants— freight of about enough for a big trip was refused from the Steamboat Wisconsin & on several occasions which I do not recollect particularly about, from other parties— I

do not know what amount would have been received for the freight refused but more than would keep the Boat busy was refused -

x (The answer of John W. Williams to the third additional interrogatory was objected to by Counsel for Defendants, the objection overruled by the Court & the ruling of the Court excepted to by the Counsel for (Defendants))

(Signed) John W. Williams

John W. Williams to the several Cross-interrogatories on the part of the Defendants deposes as follows

1 Answer to first Cross-interrogatory
I am acquainted with John Coleman, James Coleman & Andrew Coleman.

2 Answer to second Cross-interrogatory
I mean the Rail Road Company for whom Fayweather made the contract. Don't know the parties to the agreement - Fayweather said to me that he made the contract for employing the Caleb Cope, (Don't know what authority he had - Don't know if the agreement was in writing - Cannot set forth a copy thereof - Cannot state terms more particularly than I have heretofore done.

3 Answer to third Cross-interrogatory
Fayweather who acted as agent for the Rail Road Company knew as I stated when answering

John W. Williams to the several Cross-interrogatories to the additional interrogatories deposes as follows —

1 Answer to first Cross-interrogatory to additional interrogatories

All I know is that Fayweather told me he had contracted with the Caleb Cope to carry all the Rail Road freight — Don't know what authority he had.

2 Answer to second Cross-interrogatory to additional interrogatories —

I have in my answer testified from my own knowledge

(Signed) John W. Williams
Subscribed & sworn to before me this 5th June
A.D. 1855

(Signed) William Dooley
Commissioner

Levi Williams to the several interrogatories deposes as follows —

1 Answer to first interrogatory

I know the plaintiffs & have known them twenty years.

2 Answer to second interrogatory

I was employed on said Boat during the boating season of 1854 for about six months as carpenter — The Boat was running during

the season to different places. We made one trip to St. Paul & one to Galena & the latter end of the season was running from Rock Island to Burlington —

3

Answer to third interrogatory

I do, the agreement was to carry Rail Road iron for six dollars a ton between Rock Island & opposite Burlington — think the contract was made about the first of November last — the carrying was to be done before the close of navigation & as soon as the Boat could be got ready to take the freight — It was to be delivered opposite Burlington

4

Answer to fourth interrogatory

Part of the freight was carried, about one hundred tons I think early in said month of November — Don't know how Plaintiffs were paid for carrying the freight

5

Answer to fifth interrogatory

Defendants did not furnish all the freight which they agreed to — only about one hundred tons were furnished — Plaintiffs carried all the Rail Road freight which was furnished to them.

6

Answer to sixth Interrogatory

Plaintiffs were always ready to take the freight at Rock Island from early in November until the close of navigation — Defendants knew that Plaintiffs held themselves ready to take the freight.

Answer to seventh interrogatory

John Coleman, James Coleman & Andrew Coleman were the owners of the Boat when the contract was made. The ownership has not changed since.

8

Answer to eighth interrogatory

Do not know the expenses of running the Caleb Cope per day - Don't know how many hands were employed or at what price, except that I heard the Captain direct the mate to hire a large crew to handle the Rail Road freight, about thirty five or forty men I think - a trip could be made in about four days -

(The answer of Levi Williams to the eighth interrogatory was objected to by Counsel for Defendants - the objection overruled by the Court & the ruling of the Court excepted to by Counsel for Defendants.)

+ 9

Answer to ninth interrogatory

They were - the way boating was that season, I think the damage was about ten thousand dollars & was caused by not getting the Rail Road freight & having to refuse other freight.

10

Answer to tenth interrogatory

I do - the damage was caused by the Rail Road freight not coming on & the boat being obliged to refuse other freight - The Boat refused to take a large lot of freight from the Steamer Wisconsin & also refused freight at Rock Island & several other places & the Boat being waiting nearly all

the balance of the season at Rock Island for the Rail Road freight caused the damage.

(The answer of Levi Williams to the 10th interrogatory was objected to by Counsel for Defendants - the objection overruled by the Court & the ruling of the Court excepted to by Counsel for Defendants)

11 Answer to eleventh interrogatory
The price was a reasonable one enough for that season - the carrying was worth the price to be paid.

12 Answer to twelfth interrogatory
At one time I saw the Jenny Lind, after the contract, with a lighter load of Rail Road freight. I suppose Defendants employed the Jenny to carry it - the freight was carried by her from Rock Island to opposite Burlington - The freight consisted of Rail Road iron.

13 Answer to thirteenth interrogatory
After the contract was made the balance of the season was the best time to make money & it was a great loss to Plffs. to be idle with the Boat & we could not take other freight on account of the Rail Road contract - at several times during the season after the contract I heard Jaynewather tell plaintiffs to wait for the Rail Road freight, as he was expecting it on every train. The expenses of running a Boat were

very heavy that season.

(The answer of Levi Williams to the thirteenth interrogatory was objected to by Counsel for Defendants, the objection overruled by the Court & the ruling of the Court excepted to by Counsel for (Defendants).)

Levi Williams to additional Interrogatories answers as follows —

Answer to first additional interrogatory

- 1 Part of the time for two trips the Boat was running from Rock Island to Burlington with a little of the Rail Road freight & the balance of the time the Boat was waiting at Rock Island for the Rail Road iron to come on.

- 2 Answer to second additional interrogatory
Yes, during said month of November & until season closed the Boat was always ready to take the freight in agreement with the contract made with Fagunweather, the Rail Road Company's Agent. She was ready at Rock Island during the whole of that part of the season.

(The answer of Levi Williams to the second additional interrogatory objected to by Counsel for Defendants, the objection overruled by the Court & the ruling of the Court excepted to by Counsel for (Defendants).)

65
3 Answer to third additional interrogatory
Yes, I do. The Boat refused to take freight at Monks
& most of the towns along the river. I do not know
the amount she would receive for taking it, but
she could have got enough to keep her busy all the
fall

(The answer of Levi Williams to the third
additional interrogatory was objected to by Coun-
sel for Defendants, the objection overruled by the
Court & the ruling of the Court excepted to by Coun-
sel for Defendants)

(Signed) Levi Williams

Levi Williams to the several Cross-interroga-
tories on the part of the Defendants, deposes as
follows —

1 Answer to first Cross-interrogatory
I am acquainted with the Plaintiffs, John
Coleman, James Coleman & Andrew Coleman
only.

2 Answer to second Cross-interrogatory
I mean the Rail Road Company that Fayre-
weather made the contract for — Fayreweather
made the contract, don't know what authority
he had to ~~do it~~ ^{act}. The agreement was not in writ-
ing that I know of — the terms of the agreement
were six dollars a ton for carrying Rail Road
iron from Rock Island to opposite Burlington

as I was informed & I don't know further about the terms of the contract.

3

Answer to third Cross-interrogatory
Fayweather, who acted as agent for Defendants knew that the Boat was always ready.

Levi Williams to the several Cross-interrogatories to the additional interrogatories deposes as follows—

1

Answer to first Cross-interrogatory to additional Interrogatories

The contract said to have been made with Defendants was to carry Rail Road iron from Rock Island to opposite Burlington for six dollars a ton during the months of November & December 1854 as fast as the Boat could take it— that is all I know about the contract— Fayweather made the contract. Do not know what authority he had to act— I mean by Defendants the Rail Road Companies which Fayweather acted for

2

Answer to second Cross-interrogatory to additional interrogatories

I have in the answer testified from my own knowledge

(Signed) Levi Williams
Subscribed & sworn to before me this 5th day of June A. D. 1855

(Signed) William Doolan
Commissioner

67
0 John H. Allison to the several Interrogatories
deposes as follows —

1 Answer to first interrogatory

I know the Plaintiffs only — have known them about
three years.

2 Answer to the second interrogatory

I was employed on the Boat from about 25th August
1854 until the close of navigation that year — I was
employed as engineer — the Boat was at that time
running from Mahone to Rock Island Galena &
Dubuque & after the contract for the Rail Road
Iron she went from Rock Island to Burlington

3 Answer to third interrogatory

I do. The agreement was as I heard a Mr. Fayre
weather & the clerk of the Boat Caleb Cope talking
about, to carry twelve hundred tons of Rail Road
iron & some chains & spikes (I don't know how
much) from Rock Island to the landing oppo-
site Burlington, for six dollars a ton, the con-
tract was made some time in the month of No-
vember last, the ~~2nd~~^{2nd} day I think. The carrying
was to be done by the Caleb Cope during the run-
ning season. The freight was to be delivered at
Rock Island as fast as the Boat could take it,

(The answer of John H. Allison to the third
Interrogatory was objected to by Counsel for Defend-
ants, the objection overruled by the Court & the
ruling of the Court excepted to by Counsel for
Defendants.)

4

Answer to fourth interrogatory

There was part of a load carried by plaintiffs for two trips, Rail Road iron was carried after the contract was made early in the month of November last, Don't know the amount carried, Don't know how plaintiffs were paid for carrying the freight,

5

Answer to fifth interrogatory

They did not. Don't know to what extent they failed. Very little freight was furnished - Plaintiffs carried according to the contract all the freight which was furnished them by Defendants.

6

Answer to sixth interrogatory

The Plaintiffs held themselves in readiness to carry the freight from the time the contract was made until the close of navigation at Rock Island Illinois. Defendants knew that Plaintiffs were ready to take it

7

Answer to seventh interrogatory

John Coleman, James Coleman & Andrew Coleman were the owners of the Caleb Cope when the contract was made - the ownership of the Boat has not since then changed to my knowledge

8

Answer to eighth interrogatory

Don't know the expense of running the Boat - had a full crew but don't know how many hands were employed nor at what price - a trip could be made in four days.

9

Answer to ninth interrogatory

Plaintiffs were damaged by not getting the freight from Defendants - the amount of damage I say is eight or ten thousand dollars & was caused by neglect of the Defendants to fulfil the contract & the Boat being obliged to lay idle under heavy expenses most of the season.

10 Answer to the tenth interrogatory I do. - the boat might have been doing a good business carrying other freight - the season was a brisk one & plaintiffs had to refuse all other freight on account of the contract.

(The answer of John H. Allison to the tenth interrogatory was objected to by Counsel for Defendants, the objection overruled by the Court & the ruling of the Court excepted to by Counsel for Defendants.)

11 Answer to eleventh Interrogatory The price was very reasonable - the carrying was worth the price to be paid for it.

12 Answer to twelfth Interrogatory After the contract was made the Steamer Jenny Lind took a lighter load of the Rail Road freight - Rail Road iron was carried from Rock Island to opposite Burlington - I believe the freight was what the Caleb Cope was to have - Don't know who employed the Jenny Lind to take it.

13 Answer to thirteenth Interrogatory

When the contract was made the Captain & Clerk agreed to be back on the Tuesday following. The Boat did get back on said Tuesday at 2.00 clock P. M. The Caleb Cope was well calculated for carrying freight - Had two new Barges, each could carry one hundred & fifty tons - had a large crew hired on purpose to handle the Rail Road iron. At the time the Jenny Lind took a lighter load of the freight Fayweather told Captain Coleman that he would have plenty of freight on to keep the Caleb Cope going - Wages & all boat supplies were very high that season & it was very expensive to keep a boat running.

John H. Allison to additional Interrogatories answers as follows -

1 Answer to first additional interrogatory
She was running from Rock Island to Burlington when there was any Rail Road freight to carry - the rest of the time until the close of navigation she was lying at Rock Island waiting for the Rail Road freight.

2 Answer to second additional Interrogatory
Yes, I do. After the contract until the close of navigation, at Rock Island.

3 Answer to third additional interrogatory -
Yes, I know that they would not take any other freight after this contract - Don't know what amount would have been received for the freight so refused if it had been taken.
(Signed) John H. Allison

John H. Allison to the several Cross-interrogatories on the part of the Defendants deposes as follows—

1 Answer to first Cross-interrogatory

I am acquainted with plaintiffs only, John Coleman James Coleman & Andrew Coleman.

2 Answer to second Cross-interrogatory

I mean the Rail Road Company which Fayweather made the contract for — Fayweather & Captain Coleman were the parties — Fayweather made the contract — Don't know what authority he had to act Do not know if agreement was in writing — the terms were to carry twelve hundred tons of Rail Road iron & several tons of chains & spikes from Rock Island to the landing opposite Burlington for six dollars a ton, the freight was to be carried by plaintiffs & to be furnished as fast as the boat could take it.

3 Answer to third Cross-interrogatory

Fayweather was there around the Boat & kept telling the Captain to hold on & wait for the Rail Road freight

John H. Allison to the several Cross-interrogatories to the additional interrogatories on the part of the Defendants deposes as follows—

1 Answer to first Cross-interrogatory to additional interrogatories

All I know is that Fayweather agreed to furnish the Caleb Cope with twelve hundred tons

of Rail Road Iron & several tons of chains & spikes
I dont know how much - to be carried from Rock
Island to the landing opposite Burlington for
six dollars a ton, freight to be furnished as fast as
the Boat could take it - Dont know what authority
Fayweather had to act for Defendants - I mean
by Defendants the Rail Road Company for whom
Fayweather acted -

2 Answer to second Cross-interrogatory to
additional Interrogatories.

I have testified from my own knowledge.

(Signed) John H. Allison
Subscribed & Sworn to before me this 5th June
A.D. 1855

(Signed) William Doolan
Commissioner

State of Iowa }
County of Scott } I William Doolan of the County
of Scott & State of Iowa, a Commis-
sioner duly appointed to take the deposition of the said
Mathew Dalzell, John W. Williams, ^{Levi Williams} & John H. Allison
witnesses whose names are ^{subscribed} ~~produced~~ to the foregoing
depositions, do hereby certify that previous to the com-
mencement of the examination of the said Mathew
Dalzell, John W. Williams, Levi Williams & John
H. Allison as witnesses in said suit between the
said John Coleman, James Coleman & Andrew Coleman

Plaintiffs & the said The Chicago Burlington &
 Quincy Rail Road Company, late the Chicago & South
 Western Rail Road Company, formerly the Chicago
 & Aurora Rail Road Company & the Central Military
 Tract Rail Road Company Defendants, they were duly
 sworn by me as such Commissioner to testify the truth
 in relation to the matters in controversy between the said
 John Coleman, James Coleman & Andrew Coleman
 Plaintiffs & the said - The Chicago, Burlington &
 Quincy Rail Road Company, late the Chicago & South
 Western Rail Road Company, formerly the Chicago &
 Aurora Rail Road Company & the Central Military
 Tract Rail Road Company, Defendants so far as they
 should be interrogated concerning the same. - that the
 depositions were taken at the office of Messrs Cook &
 Dillon in the City of Davenport in the County of Scott
 & State of Iowa on the fifth day of June A. D. 1855: &
 that after said depositions were taken by me as afore
 said the interrogatories & answers thereto as written
 down were read over to the said witnesses & that there
 upon the same were signed & sworn to by the said
 deponents Mathew Dalsell, John W. Williams,
 Levi Williams & John H. Allison before me, the
 oath being administered by me as such commissioner
 at the place & on the day & year last aforesaid.

Signed William Doolan
 Commissioner

Commissioner's fees — — — — —	\$15 " "
Witnesses fees for one days — — — — —	
Attendance each Matthew Sabell \$1 " "	
John W. Williams \$1 " " Levi Williams \$1 " "	} 4 " "
John H. Allison \$1 " "	
Postage \$0,30 — — — — —	30
	\$19,30

Deposition of John H. Laingley a witness produced examined & sworn before the undersigned Robert H. Andrews a Commissioner selected & appointed for the purpose of taking the testimony of the said witness at the office of Doctor Brackett & Bulkley in the City of Rock Island County of Rock Island in the State of Illinois at the hour of two O'clock P.M. of Saturday the twenty sixth day of May in the year of our Lord one thousand eight hundred & fifty five to be used in evidence in a certain cause now pending in the Cook County Circuit of its May Term A.D. 1855 wherein John Coleman, James Coleman & Andrew Coleman are plaintiffs & the Chicago, Burlington & Quincy Rail Road Company, late the Chicago & South Western Rail Road Company, formerly the Chicago & Aurora Rail Road Company & the Central Military Tract Rail Road Company are Defendants on the part & behalf of said plaintiffs the said parties being present by their Counsel.

John H. Laingley being duly sworn by me deposeth & saith in answer to the following interrogatories, to wit,

Interrogatory 1st — Are you acquainted with the parties plaintiffs & defendants in this suit, or either of them? If so, How long have you known them, or either of them?

Answer 1st — I am acquainted with the plaintiffs — I have been acquainted with them seven or eight years, I am not acquainted with the Defendants.

Interrogatory 2nd — Do you know of the existence of a Corporation known as the Chicago, Burlington & Quincy Rail Road Company?

Answer 2nd — I do not.

Interrogatory 3rd — Do you or have you heretofore known of the existence of a Corporation known as the Chicago & South Western Rail Road Company?
Objected to as irrelevant — not sued.

Answer 3rd — I do not — have not.

Interrogatory 4th — Do you or have you heretofore known of the existence of a Corporation known as the Chicago & Aurora Rail Road Company?
Objected to — as above.

Answer 4 — I do.

Interrogatory 5th Has the name of said Corporation been changed to your knowledge?

Objected to. Cannot prove change in this way.

Answer 5th It has not been changed within my knowledge.

Interrogatory 6th Do you know of a person by the name of Fayweather, who on, or about the first of November 1854 acted as the agent of the said Chicago & Aurora Rail Road Company & the Central Military Tract Rail Road Company, or either of them?

Objected to — Leading, incompetent, irrelevant —

Answer — I know a man by the name of Fayweather — He acted in the capacity of assistant or agent of the Central Military Tract Rail Road Company & not of the Chicago & Aurora Rail Road Company.

Interrogatory 7th Please state the name of said Fayweather in full or as fully as you can?

Answer 7 — It was either James H. or John H. as I think it was James H.

Interrogatory 8th Do you know of any contract made by said Fayweather with the Plaintiffs in this suit, or either of them in relation to freighting

If you answer yes, state fully such contract, the time when made & the capacity in which said Fayweather professed to act in regard to such contract.³

Objected to - cannot inquire about contract not made with plaintiff - Professions of Fayweather not competent to establish agency.

Question interposed by Counsel for Defendants before answering the above question -

If any contract was made between Fayweather & the Plaintiffs, or either of them, was the same in writing? (Objected to by Counsel for plaintiff)

Answered was not in writing -

Answer 8th

There was an arrangement made in relation to freighting by said Fayweather with John Coleman one of the plaintiffs - The bargain was that the said Coleman should take twelve hundred & perhaps two thousand tons of Rail Road rails, spikes & chains to Burlington, Iowa from Rock Island Illinois, for which he was to receive the sum of six dollars per ton on delivery of the same at the Steamboat landing opposite Burlington, Iowa, in Illinois. This was during the month of November, in the early part of November A. D. 1854. I refer to the time when the contract was made. They were to be delivered before the close of navigation, opposite Burlington. Fayweather was acting as agent or assistant adviser

of the said Central Military Tract Rail Road Company.

Interrogatory 9th At the making of the contract referred to by you in the answer to interrogatory 8th who did said John Coleman profess to be acting for?

Objection to asking for Declarations of Plaintiffs—

Answer 9. Steamer Caleb Cope & owners.

Interrogatory 10th Was said John Coleman a party principal to said Contract?

Answer 10. He was.

Interrogatory 11th Was said John Coleman a part owner of said Steamer Caleb Cope at the time of the making of said contract, & who were the other owners of said Steamer at that time?

Answer — I believe he was & his two sons.

Interrogatory 12th What were the names of the two sons of the said John Coleman referred to in your last answer?

Answer 12. James & Andrew Coleman.

Interrogatory 13th Was the contract referred to by

you in your answer to interrogatory 8th completed & fully made by the parties thereto in your presence & hearing?

Objected to - leading & incompetent & must ask what was done - not whether a contract was completed -

Answer - It was closed in my presence & hearing.

Interrogatory 14th At what time or times was said Central Military Tract Rail Road Company to deliver said Rails, spikes & chains for shipment by Plaintiffs?

Objection - no evidence that they were to furnish them at all - not their contract.

Answer 14 - I don't know.

Interrogatory 15th Did said Fayweather in the making of said contract profess to act as the agent of said Military Tract Rail Road Company?

Objected - leading & incompetent

Answer 15 - He was acting in that capacity.

Interrogatory 16th At what time or times did said Fayweather, as such agent agree to have

said Rails, chains & spikes ready for shipment?

Objected to - Question assumes that he was agent.

Answer 16 - On the return of the said Steamer Caleb Cope to Rock Island -

Interrogatory 17th Where was the Caleb Cope at the time of making said contract & where was she expected to return from?

Answer 17 - She was lying here, at the landing at Rock Island - She was expected to return from Montrose.

Interrogatory 18th Were said Rails, chains & spikes ready for shipment on the return of said Steamer Caleb Cope from Montrose to Rock Island?

Answer 18 - They were.

Interrogatory 19th What do you understand by ready for shipment in your reply to the last interrogatory?

Answer 19 - On the landing & ready to go on board

Interrogatory 20th Were said rails, chains & spikes ready for shipment on the return of said Caleb Cope from Montrose to Rock Island?

Answer 20 - Those on hand were ready for shipment -

Interrogatory 21st How many were on hand &

ready for shipment at that time?

Answer 21- At that time, on her return, there was about fifteen tons.

Interrogatory 22nd Was fifteen tons a boat load for said Caleb Cope & her Barges?

Answer 22 It is not.

Interrogatory 23- How many tons of iron could be properly shipped on the said Caleb Cope and her barges?

Question objected to-

Ans. 23. About Three hundred Tons.

Interrogatory 24th How many Barges did the Caleb Cope carry at that time?

Answer - Two.

Interrogatory 25th Was said Caleb Cope delayed on her first trip in freighting said Rails &c. by the non-arrival of said Rails, spikes & chains at Rock Island? (Objected to)

Answer 25 She was about two days.

Interrogatory 26th On the subsequent trip of said Caleb Cope in freighting said Rails, spikes & chains in the navigation season of 1854 was said Boat delayed by the non-arrival of said

freight at Rock Island? (Objected to)

Answer 26 The was delayed.

Interrogatory 27th - State the time of such delay as near as you can?

Answer 27 - About two weeks.

Interrogatory 28th Was said Fayweather present at such delays of said Boat at Rock Island & did he request the same? State fully.

(Objected to - Declarations of Fayweather not competent)

Answer 28 - He was here a part of the time - He encouraged her to get freight - to remain for freight.

Interrogatory 29th For what freight did he encourage her to remain? (Objected to)

Answer 29 - For Rail Road Rails, spikes & chains.

Interrogatory 30th How much of said Rails, spikes & chains were furnished to Plaintiffs for shipment at Rock Island during the navigation season in the latter part of the year 1854, & how much did plaintiffs ship? (Objected to)

Answer 30 - About 120 Tons.

Cross-examination -

1st In your answer to the 6th - 8th & 15th direct Interrogatories you say that the said Fayweather was acting as the agent of the Central Military Tract Rail Road Company - Will you now state whether of your own knowledge he had any authority from said Central Military Tract Rail Road Company so to act? - And if yea - where, from whom & at what time did you acquire such knowledge?

Objected to by Counsel for Plffs. for the reason that the inquiry assumes that witness had stated he, Fayweather was agent of said Military Tract Central R. R. Co. whereas witness states he professed so to act.

Answer - 1 - I have no positive knowledge that he had any such authority. He was acting in that capacity - & that is all I know about it.

2nd Do you, of your own knowledge know whether the said Fayweather at the time of the making of the contract mentioned in your examination in chief, had any authority from the Central Military Tract Rail Road Company to make any contract or contracts for or on behalf of said Company? If yea - State your means of knowledge.

Answer 2^d I do not know that he had any such authority.

Cross-Interrogatory 3^d At what place & time was the arrangement between Fayreweather & the said John Coleman mentioned in your examination in chief, made & who were present at the time of making such arrangement - State fully -

Answer 3. The arrangement was first made between John Coleman & myself at Davenport Iowa, at which time the proposition was accepted by said Coleman to carry said freights at six dollars per ton - On the return trip of said Boat the contract was talked over by said Coleman & J. H. Fayreweather - at the first conversation there were present, John Coleman, James Coleman, Matthew Dabell, clerk of the Boat & myself - at the last conversation there were present John Coleman, J. H. Fayreweather & myself during a part of the conversation. It was about the first of November that the first conversation was had - the last conversation was about the fifth.

Cross-interrogatory 4th Did Fayreweather in the arrangement mentioned in your examination in chief, promise or agree to furnish more than 1200 tons of Rail Road Rails, spikes & chains to the said John Coleman to be carried

from Rock Island to the point opposite Burlington?
 Answer — He stated positively there would be
 twelve hundred tons & about two thousand in-
 cluding spikes & chains —

Cross-interrogatory 5th Do you know except
 from the statements of the plaintiffs who were at
 the time of the making of such arrangement the
 owners of the Steam Boat Caleb Cope?

Answer 5 — I do not except from remarks of
 others.

Cross-interrogatory 6th Do you know, aside
 from the statements of the plaintiffs in this
 suit, whether or not the said John Coleman in
 the making of such arrangement was acting for
 any other persons except himself?

Answer 6 — I have no reason for knowing — I do
 not.

Cross-interrogatory 7th Did said Fayreweather
 profess in making such arrangement to be acting
 for any other parties other than the Central Mili-
 tary Tract Rail Road Company?

Answer 7 — He did not.

Cross-interrogatory 8th In your answer to the
 13th interrogatory^{to} what conversation do you
 refer, to the first or second as mentioned in your

Cross-examination?

Answer & — To the first.

Reexamination by Plffs. Counsel,
Interrogatory 1st. After the first conversation
referred to by you in your cross-examination, res-
pecting said contract for freighting Rails &c. did
the said John Coleman & said Hayne weather get
together & ratify such contract? If you answer yea,
state whether this was at the time of the second
conversation referred to by you —

Answer 1 — On the second conversation they
did get together & ratify the first.

Interrogatory by Counsel for Defendants

Did you hear the whole of the last conversa-
tion referred to by you

Answer. I did not.

(Signed) John H. Langley
(Certificate of Commissioner follows.)

And the Counsel for the said plaintiffs further to maintain & prove the issue on their part introduced as a witness one William Brackett who testified as follows in substance —

Witness knows Amos F. Hall. He was acting as agent of, or superintendant of one of the Defendants as witness understood. Witness had an interview with him in reference to the plaintiffs claim — the claim was against the Central Military Tract Rail Road Company & the Chicago and Aurora Rail Road Company.

Questions by the Counsel for the Plaintiffs —

What did Mr Hall say in reference to the matter
This question & the answer thereto & all pretended declarations of Mr. Amos F. Hall were then & there objected to by the Counsel for the defendants for the reason that they are mere hearsay testimony & that Mr. Hall himself is a competent witness — which objection was overruled by the Court & the decision of the Court thereon then & there accepted to by the Counsel for the Defendants.

Witness states that Hall said that he had paid the draft for the iron transported — Said he did not know much about the claim — told ^{to see Mr. Jay about the matter} told ^{sole witness} witness where Mr. Jay's office was — that it was on Dearborn Street.

Jayweather was here called sworn & examined as a witness by the plaintiffs and

testified in substance as follows —

I know James F. Jay — Do not know what office he holds except from hearsay — the office of the Chicago, Burlington & Quincy Rail Road Company is in Michigan Avenue — never transacted any business with James F. Jay — Amos T. Hall is the Treasurer of the Chicago, Burlington & Quincy Rail Road Company — Do not know how long he has been Treasurer — Has been Treasurer since last Spring.

The Counsel for the plaintiffs thereupon resumed the examination of the witness Brackett who testified further in substance as follows

Hall said he was not authorised to settle any claim against the Company — Hall was in the Rail Road office of the Chicago Burlington & Quincy Rail Road Company — It was on the North side — there was a sign over the door — the office was in a building of the Galena & Chicago Union Rail Road Company — Hall or Jay said in reference to the freight — a portion of it had been brought back from Rock Island to Chicago on account of the price of freight but that he did not pretend to know much about the matter.

The Counsel for the Defendants then & there & before the same was given in evidence objected to any & all declarations of Amos T. Hall being

given in evidence to the jury for the reason that they were hearsay testimony & that Hall was a competent witness - Which objections were then & there overruled by the Court & the decision of the Court thereon excepted to by the Counsel for the defendants.

Witness then went to the office of Mr. Jay. His office was on Pearlman St. - it was a Rail Road office there was a sign over the door, I think, indicating what kind of an office it was - It was the office of the Central Military Tract Rail Road Company, or of the Chicago & Aurora Rail Road Company - Mr. Jay was behind a counter or table - the office contained books & papers which I saw -

Question by the Counsel for the plaintiffs - Did you at that time have a conversation with Mr. Jay in reference to the plaintiffs claim - if so state what that conversation was & what did Mr. Jay say in reference to the claim?

This question & the answer thereto & all declarations of James F. Jay were then & there objected to by the Counsel for the Defendants for the reason that they are mere hearsay testimony and Mr. Jay himself is a competent witness - The objection overruled by the Court & the decision of the Court therein was then & there excepted to by the Counsel for the Defendants -

Witness had a conversation with Jay - It was last February - Jay stated that the matter

had been settled & that Coleman had been paid for his services - Jay told witness that Fayweather had been sent by him or employed by him on behalf of both Companies to have the Rail Road iron & some other freight taken down the River from Rock Island to Burlington or opposite Burlington that as soon as he heard that Fayweather was paying six dollars per ton he wrote Fayweather or telegraphed him also that he should send no more iron - that Coleman had been paid for all the freight he had carried and that they had settled the whole matter - I (witness) asked Jay distinctly whether Fayweather was employed & was acting for both these defendants - He (Jay) said he was - Mr. Jay professed to be acting as president for one or both of these companies, I think.

On the Cross-examination by the Counsel for the defendants the said Brackett testified in substance as follows -

Jay did not tell me that Mr. Fayweather was not authorised to make any such contract, as I remember. The conversation lasted five or ten minutes - Jay stated that Fayweather was authorised by the defendants to make the contract - Did not state that he did not authorise him to make the contract declared on, as I remember. Jay or Hall stated that a part of the freight was brought

back from Rock Island - Jay did not state that Fayweather was authorised to arrange for any particular amount of freight, but was authorised to get the Rail Road freight down the River - That Fayweather was authorised to superintend getting the freight down the river,

Jay did not state that the plaintiffs could have no such claim, as I recollect - Did not state that the claim was preposterous & no use to talk about it as I remember -

On his reexamination the witness Brackets stated -

That Mr. Jay stated that the plaintiffs were paid by a check drawn by Thilson on Mr. Hall.

And the said Counsel for the said plaintiffs further - to maintain & prove the issue on their part introduced as a witness James F. Jay who being duly sworn in the cause testified -

That he was and had been for the year past the President of the Chicago, Burlington & Quincy Rail Road Company - That he is not President of the Central Military Tract Rail Road Company - That Mr. Brooks is President of that road -

And thereupon the said defendants to prove & maintain their issue in this suit, by

• Their said Counsel introduced the said witness James Fayweather who testified in substance as follows —

Know the plaintiffs — Was employed by Colonel Warren to get some iron down the river from Rock Island to Burlington — Colonel Warren was a director in the Peoria & Cymaker Rail Road Company — I had a conversation with Coleman in reference to the iron Colonel Warren told me there was some 1200 tons of iron and eight or ten tons of chains & spikes — I was employed by the Peoria & Cymaker Rail Road Company — I Received all my directions from them — Settled with them — was paid by them — Was not employed by the defendants or either of them — Was not authorised by them or either of them to make the contract — Never served Mr. Jay till after that time — Never was employed never was employed by either of the defendants in any business till after that time I settled with Colonel Warren — Gave him the certificate of the amount of freight carried The freight carried was paid for by Thirlson's order or draft on Hall. Thirlson was in the employ & acting for the Peoria & Cymaker Rail Road Company & the Missouri Rail Road Company.

On his cross-examination by the plaintiffs Counsel the witness Fayweather testified in substance that the ice did not prevent the plaintiffs from fulfilling the contract. There were about eight tons of chains & spikes and about one thousand or twelve hundred tons of iron — Jay telegraphed me that he should send no more iron down the river.

Colonel Warren resides at Burlington — I will not state that at the time I made the arrangement I said anything about Colonel Warren or the Peoria & Cynaker Rail Road Company — No man ever asked me for whom I was acting — I told Coleman to wait for I expected the freight down — Was in Rock Island four or five days after that — Do not think I said there a week — Not ten days from the beginning probably — I was there about two weeks in all — I told Coleman to wait — Do not think I said I encouraged him to wait — I think there was no iron there — J. H. Langley is a Commission Merchant at Rock Island — Langley was merely a friend of mine — I got him to see about boats — I will not swear that I never did any business for the Central Military Tract Rail Road Company — On the 28th of November 1854 I went to Michigan &

took charge of an engine down on the road
never did any business for them previous to
that time - I have done some business for
the Chicago, Burlington & Quincy Rail Road
Company since last April - I agreed to pay
them 30 cents per hundred for carrying the
iron - I think I was in Burlington at the time
I stated - I went down there during these
negotiations - I did not think I disappointed
them - I made no statements -

Reexamined by Defts. Counsel -

I wrote to Mr. Jay to know whether there was
any more iron coming? I did this at the request
of Col. Warren - There was no more iron com-
ing - never had any conversation with any
other officer of the Defendants -

The Counsel for the Defendants further
to maintain & prove the issue on his part called
James F. Jay as a witness who testified in
substance as follows - that he does not know
Wm. Brockett - Has an office on Dearborn
Street in this City - It is not a Rail Road office
& never has been - There is no sign over the door
of my office except my name - It is only writ-
ten on paper - There is no counter in the office
A man came to my office last spring to see
me about this claim - I think it was Mr. Wm.
Brockett - The conversation was very short

I think I said. it is no use talking about the matter
 The claim is perfectly preposterous - Did not tell
 him that Fayweather was employed by the Defend
 ants or either of them - Did not tell him that
 Fayweather was authorised to make a contract
 I stated that I never authorised him to make
 any such contract - He, Fayweather was not
 employed by the defendants or either of them
 to my knowledge to get the freight down the
 River - Fayweather was not authorised by
 the defendants or either of them to make the
 contract declared upon - Had no authority
 from any other officer of either of the Compa
 nies to my knowledge - Fayweather was em
 ployed, as I supposed, by Col. Warren to get
 the freight down the River - The defendants
 were to furnish the iron & charge the same to
 the Peoria & Cynaker Rail Road Company &
 that Road. To get it down the River &
 defendants to pay the expenses. I telegraphed to
 Fayweather that I should send no more iron
 I thought six dollars too much to pay. The
 iron did not arrive at Chicago. It was frozen
 up on the Lake - The foregoing being the
 substance of all the testimony in the cause
 & the said parties having closed their testi
 mony the said Judge then & there delivered
 his opinion to the jury aforesaid & the jury

aforesaid thereupon afterwards, to wit, on the 24th day of December gave their verdict for the said plaintiffs & five thousand three hundred & seventy three dollars damages & thereupon the said Counsel for the said Defendants moved the Court for a new trial & assigned for reasons for a new trial—

1st That the Court erred in allowing the plaintiffs to give in evidence to the Jury, the pretended statements of James F. Fay, by the witness William Brockett in reference to the pretended contract & that Fayweather had authority from the Defendants to make the same.

2nd That the Court erred in allowing the plaintiff to give in evidence, by the witness Brockett the declarations of Amos F. Hall the Treasurer of the Chicago Burlington & Quincy Rail Road Company in reference to Fayweather's authority to make the contract.

3rd That the verdict is against the evidence in the case—

Which said motion was then & there submitted to the Court for its opinion thereon & by the said Court held under advisement until the seventh day of January

A. D. 1856 & on the said last mentioned day over-
 ruled by the said Court - And the opinion of the
 said Court in overruling the said motion
 for a new trial was then & there excepted to
 by the said Counsel for the said Defendants
 And thereupon the said George Manierre
 Judge of the said Circuit Court at the request
 of the said Counsel for the said Defendants
 did sign & seal this Bill of Exceptions on
 the said seventh day of January A. D. 1856
 it being as yet of the said November Term of
 the said Cook County Circuit Court

George Manierre Seal
 Judge of 7th Judicial
 Circuit, Illinois

It is hereby stipulated and agreed that we
 have examined & settled this Bill of Exceptions
 and consent that it may be signed in its present
 form and as now settled -

C. B. Waite Atty. for Plffs
 Seagwick & Walker
 Atty. for Defs.

State of Illinois }
Cook County } ss.

I Louis D. Hoard, Clerk
of the Cook County Circuit Court in & for said County do
hereby certify, that the above and foregoing is a true full and
perfect transcript of all the papers filed in this office,
together with all the proceedings had and entered of record
in our said Court in the foregoing entitled cause

Y
In Witness whereof I have hereunto
set my hand and affixed the seal of
said Court at Chicago this seventh
day of May A. D. 1856.
L. D. Hoard
Clerk



Book Wm. G. B. B.

191

Chas. Burdett R.R.C.

— ads —

John Coleman

Robert Chap. B.

File 3 June 20 1817

S. Le Land

Clark

File 3 May 8 1817

S. Le Land

State of Illinois }
Supreme Court } Of the July Term AD. 1856

The Chicago Burlington & Quincy Rail Road
Company & the Central Military Tract Rail Road
Company - Plfs in Error.

vs

John Coleman, James Coleman, & Andrew Coleman
Defts in Error.

Brief and Arguments of Counsel for Plaintiffs in
Error

There are a number of errors assigned but we
shall notice but two or three of them on this argu-
ment - And the first error to which we shall call
the attention of the Court will be found in the
4th & 8th Assignment of errors and relate to the
admissibility of the pretended declaration of Amos
S. Hall & James H. Joy - Our attention will be more
especially confined to the question of the admissibility
of the declarations of James H. Joy which are set forth
at length in the 8th Assignment of Errors as the rule
which will exclude them will also exclude
those of Amos S. Hall -

That Hayweather made the
contract declared upon in this case is perhaps
well enough proved, but all the evidence there is
to show that the plaintiffs in error had anything to
do with it or that Hayweather had any authority

from Complainants in error to make the same is found in the pretended declarations of Hall & Joy -

The sole object ~~of~~ of introducing this evidence was to show that Hayreweather was the agent of & was acting for the Complainants in error in making the contract -

It appears from the testimony in the case that Joy at the time of the making these pretended declarations was the President of the Chicago Burlington and Quincy Rail Road Company, and was therefore at the time an agent of that Company - But there is not one particle of evidence in the case to show that Joy was then or at any other time an agent of or that he had any thing to do with the Central Military Tract Rail Road Company -

It also appears from the record sent up that the contract declared upon was made by Hayreweather about the first of November A.D. 1854 and that these pretended declarations of Joy were not made till sometime in March or April A.D. 1855 - for several reasons therefore the Court erred in permitting the declarations of Joy to be given in evidence to the Jury by the plaintiffs below on the trial of the cause - And
1st Because they are not the best evidence in the case - Mr. Joy himself was a competent witness this must be conceded for he was produced

and sworn by the ^{Plaintiffs} ~~complainants~~ on the trial
of the case in the Court below -

If the Object of these declarations was to
prove a fact Mr. Joy himself was the proper
person to prove it by - His testimony given in
by himself under Oath is certainly better evidence
than his declarations without Oath coming to the
jury through the ~~medium~~ of a third person -
If these declarations of Joy contain an acknowl-
edgment of Authority from the plffs in error to
Paymaster to make the Contract declared up-
on, the rehearsal of these declarations by the
witness before the jury is assuredly not as good
evidence of such Authority as proof of the fact
by Joy himself. These declarations were made
many months subsequent to the making of the
Contract, and at best these ~~declarations~~ are
but hearsay and secondary evidence and
should not be received so long as better evidence
of the facts sought to be established exists, as
was certainly true in this case - Such is the
rule laid down by Judge Washington in
Blight vs Ashley & al. Peters L.R. 21 -
Wood vs Black 24 Pick. 39

2^d - A corporation acts by its agents & servants
and can act in no other way - and if, ^{any verbal} Joy made
admissions or declarations are made they are
the declarations & admissions of the agents and
servants of the corporation and not of the

Corporation itself - for a Corporation being a fictitious body without soul or the power of speech can make no such declarations or admissions - Jay could not have been anything more than an agent & in that capacity made those declarations, if he made them at all -

"The declarations & admissions of the agent of a Corporation stand upon the same footing with those of the agent of an individual - To bind the principal they must be within the scope of the authority conferred to the agent and must accompany the act - or contract which he is authorised to do or make"

Argel & A. on Corp. ^{See 309} ~~Page 349~~ and Cases there cited ~~1 Hill 572~~

To make the declarations or admission of an Agent of an individual valid, they must be made by the Agent while acting within the scope of his authority and about the same subject matter in respect to which he is authorised to act - they must ^{be} also made by the Agent while doing the act or making the contract so as to become & constitute a part of the res gesta -

But if not made at the very time of the contract but upon an other occasion - or if they do not concern the subject matter of the contract, but some other matter, they do not bind the principal

and cannot be evidence -

A reference to a few of the leading Authorities will show this to be the well established rule -

On 1 Greenf. v. ^{See 113} ~~page 140~~ it is said that "When the acts of the Agent will bind the principal, then his representations, declarations and admissions respecting the subject matter will also bind him, if made at the same time and constituting part of the res gestae - They are then in the nature of original evidence, the declaration or admission being the ultimate fact to be proved & not an admission of some other fact

Phil. & Am on Evid. 402

1 Phil. Evid. 381

So also in Story on Agency ^{See 134} ~~page 150~~ it is said that "When the acts of the Agent will bind the principal then his representations, declarations, and admissions respecting the subject matter will bind him if made at the same time and constitute a part of the res gestae"

But they do not bind the principal if not made at the very time of the contract, but upon some other occasion, or if they do not concern the subject matter of the contract, but some other matter in no degree belonging to the res gestae"

Story on Agency ^{See 136} ~~pages 140, 150, 155~~

Peto vs Hague 5 Esp. R. 135

Hobbs vs Hawke id 72. 74

Ally and vs Gibson 2 Camp. 536

§114 An authority to make an admission is not necessarily implied from an authority previously given in respect to the thing to which the admission relates

1 Greenl Eo §113 & §114

Paley on Agency

254

2^d. Starkie Ev.

60

~~Stewart v. Wills & Wills 191~~

In *Stiles vs Great Western Rail Road Company* Corporation 8 Metc. 44 the declarations of the Engineer of the Company ~~were~~^{were} admitted to prove that the Company had employed the plaintiff to supply the powder, for which suit was brought. This was the only point in the case - and Mr. Justice held that such declarations were not within the rule.

In *Wood vs Black* above cited Mr. Justice in delivering the opinion of the Court says - "It is true that the acknowledgement of the agent can never be evidence against his principal, his declarations are only received when they are a part of the negotiation & because being a part of the transaction they are necessary to the proper understanding of it. Subsequent declarations are mere hearsay

Patthorp vs Finch 2, Esp. R. 511

Langham vs Allnutt 4 Sam. 519

As⁴. vs - ~~Mack vs McDowell 5 Binnay 195~~

Seeds vs Mar. In. Co 2 Wheaton 380

In *Shallhimer vs Brunkerhoff* 4 Wend. 396⁷ in reference to a settlement, Mr. Justice says, "Teller might be considered the agent of the plaintiff and all that he did or said on that occasion might properly be received in evidence, but what

"he said at an other time though it related to the
"same transaction was not admissible in testimony
Starkie on Ev. 4 part 423

So also in the same Court in the Case of Hubbard
" v. Elmer 7. Wend 446 - Nelson Justice says "The
"Judge erred in admitting the subsequent admissions
"of the Agent, that he had given the defendant liberty
"to cut and carry away the timber - If the Agent
"possessed the Authority to give such licence - evidence
"of his declarations subsequent to the time of the
"making of the Contract was inadmissible -

Phil. Ev. 76

So in Pennsylvania - in the Case of Bettram
" v. Benson 6 W. N. P. 45 - Ch. J. Dallas says "It is
"not true that where an agency is established, the
"declarations of an Agent are admitted in
"evidence merely because they are his declara-
"tions - they are only evidence when they form
"a part of the Contract entered into by the Agent
"on ~~the~~ behalf of his principal And in that single
"case they become admissible "

6 W. N. P. 489
~~4 Sergt. & W. 317~~

" " " 199-267

4 Randle 294

In Haven v. Brown & Green. R. 354, it is held
"that, Subsequent declarations of a general agent
"touching a Contract he has entered into in the
"Name of his principal, being made to a stranger
"cannot be used to affect the rights of the principal "

In the 13 Conn R. 173 in the Case of the Fairfield County Turnpike vs Thorp it is said that the rule is well settled that the confessions of an agent are not evidence against his principal although his declarations accompanying his acts may be admitted as a part of the res gestae.

Hartford Books & Heat 3 Day 494

In the English Courts it was long since settled that the mere declarations or admissions of an agent are not competent to affect the principal.

In Fairlee vs Hastings 10 Vesey 123 - it is held that when what the agent acting within the scope of his authority has said constitutes the agreement of the principal, or when his representations are the inducement to the agreement then such declarations and admissions are competent - So also in reference to acts done, the words which accompany those acts are admissible, but except in one or the other of these ways what is said by ^{an agent} ~~the agent~~ cannot be evidence against his principal -

When the declarations of the agent are mere narrative or communications to the witness in the course of conversations they are not admissible

~~Danvers v. Atty 7 East. 367~~

4 Conn. R. 511. 519

8 Bingham. 451.

But the rule in reference to the admissibility of this kind of evidence was fully established in the

The following are
authorities relied
on as supporting
the same view
of the proposition
maintained by us

9 Cecil. 424
11 Gillet John 28
12 " " 454
7 Harv & John 104
13 Barb. 246
5 Espin 135
" " 72
1 Peters C.C.R. 197
6 Wall. 285
13 Kelly's R. (Ct) 573
2 Atkin Obli. 248

Case of Walterman Et al vs Paul et al when it is held
by Chief Justice Treat delivering the Opinion of the
Court, "that Statements of an Agent Made to a stranger
to a transaction at another time & after the transaction
was concluded are not admissible to affect his prin-
cipal"

" Ill Rep. " 648

These authorities in our view establish ~~this~~
~~that~~ beyond controversy -

- 1st That the declarations & Admissions of an Agent
of a Corporation stand upon the same footing
as those of the Agent of an individual -
- 2^d That the naked declarations or admissions
of an Agent are mere hearsay & can never be used
to affect the principal - that they are admissible
only when they constitute part of the res gestae, and
are themselves facts -
- 3^d That to make the declarations or admissions of
an Agent admissible to affect the principal in reference
to a contract, they must be made by the agent while
acting within the scope of his authority - they must
be in reference to the subject matter of the contract
and be made at the very time of the making of
the contract -

Do the pretended declarations of Jory given in
evidence to the jury by the witness Mackell
fall within the rule as established by these au-
thorities - clearly not -

It will be recollected that the sole object of

this evidence was to show that Gaynewether was authorized by the plaintiffs in Nov to make the contract declared upon -

It will also be recollected that this Contract was made at Rock Island about the first of Novem-
ber 1854, and the pretended admissions were made by Joy in Chicago in March or April 1855. They cer-
tainly then do not & cannot be within the rule -
As we have already said they are at best the mere
naked declarations or admissions of an agent not
made at the time of the making the Contract, but at
another time, and a long time after the making of
the same, and are therefore but hearsay testimony
and could not be used to affect the defendants
below -

These pretended statements did not constitute
"an inducement to the agreement" nor in any way
influence the plaintiffs below in making the
Contract, for they were not made till four months
afterwards, and are therefore not admissible on
that ground - Nor can they ^{be received} ~~be received~~ as consti-
tuting the agreement of the principal, for they were
not made at the same place or time of the Contract
nor by the person who made the same - Nor were they
made to the plaintiffs below but to an entire stranger -
Nor can they be received as a part of the res. gestae.
The Contract was made by Gaynewether with Cole-
man's at Rock Island the first of November 1854

^{of pretended}
These declarations were made by Joy to Brackett an
entire stranger to the transaction in Chicago in
March or April 1855 - ~~they are therefore no part~~
~~of the "res gesta", and are in no way connected~~
~~with the making of the contract -~~

~~The simple fact that these declarations were~~
~~made at another time & long after the making the~~
~~contract, to an entire stranger, & not by the agent~~
~~whom the plaintiffs claim made the contract on the~~
~~part of the defendants, is sufficient to show that they~~
~~are not competent in the case -~~

Proof of an admission of Joy an agent made four
months after the contract is made that Gayner rather
had authority to make the contract declared upon, is
by no means proof of the fact that he had such au-
thority - And to receive such testimony is to violate
a long & well established rule of law, that hearsay
testimony is not to be received - If Gayner rather
had such authority (which we deny) that fact must
be established like any other fact in the case, by some
one who knows it of his own knowledge -

This very case shows the danger of receiving such
declarations -

Mr. Joy was called as a witness by the plaintiffs in
the court below, and if Gayner rather had the authority
claimed for him & that fact was within the knowledge
of Mr. Joy, it should have been proved by him - and then
would have been legal testimony, the best evidence in

the case - but instead of doing this the Plaintiffs
sought to establish the fact by introducing William
Bruckett one of the attorneys of the plaintiffs
to testify to some pretended admissions of Joy which
Joy distinctly and unequivocally & denies ever
having made - & Mr. Joy's testimony is fully corrobor-
ated by the testimony of Sayre & others who says
he had no authority from plaintiffs in error, but
was hired & paid by, and received his instructions
from Col. Warren of the Peoria & Oquaka R. R. Co.

There is still an other reason why the
declarations of Joy could not be received -

The evidence shows that Joy was President
of the Chicago & Aurora Rail Road Company or
of the Chicago Burlington & Quincy Rail Road Company
but there is no evidence at all that he was then or
at any other time an officer or agent of the Central
Military Tract Rail Road Company, and until
it was known that he was the agent of the
latter company certainly his declarations,
if otherwise competent, could not be received
to affect them - So far as the Central Military
Tract Rail Road Company is concerned Mr. Joy
had no more to do with them, and could bind
it by his declarations no more than it would be
bound by acts or declarations of any ~~other~~
~~stranger~~ ~~who~~ ~~usually~~ ~~has~~ ~~to~~ ~~do~~ ~~with~~ ~~the~~
~~case~~

It may be said that Joy acted as president of the Chicago Burlington & Quincy Rail Road Company, so far as that Company at least ~~is~~ concerned, ~~was~~ are ~~thoised~~ to settle ~~any~~ question that might arise relative to the execution of the pretended contract & therefore, ^{that} what he said at that time is to be used as evidence against the defendants or against the Burlington Company at all events -

62
The answer to this is - that these pretended admissions or statements were not ^{intended} ~~intended~~ for the purpose of explaining elucidating or establishing any fact or Circumstance relative to the matter in hand at the time the statements or admissions were ^{known to have been} made, which was the settlement of the rights of the plaintiffs under the contract, (provided any such contract ever existed) but for the sole purpose of establishing a fact claimed to have existed four months before, and that is, that Hayner then had authority from the Company to make the contract declared upon.

These pretended statements therefore become mere narration of what formerly existed, or communications to a stranger in the course of conversation and are therefore clearly ~~not~~ inadmissible as appears from the rule in Gaile v. Hastings above cited.

If the Authorities ~~now~~ ^{we} here cited therefore be good law then the Court erred in permitting the pretended declarations of Joy & Hall to be given in

evidence to the jury on the trial in the court below -

The next Allegation of Error which we notice is found in the fifth Assignment of Errors in relation to the testimony of the witness John H. Allison -

The testimony objected to was as follows, "The Agreement was as I heard a Mr. Gayweather & the Clerk of the boat Caleb Hope talking about, to carry twelve hundred tons of Rail Road Iron & some chains and spikes (I don't know how many) from Rock Island to the landing opposite Burlington for six dollars a ton - The contract was made sometime in the month of November last the 2^d day I think -

This testimony was certainly incompetent - This is not a conversation between the plaintiffs & defendants nor between the plaintiffs & Gayweather, but between Gayweather & some other man - a stranger & from the evidence we do not know what his name is - He certainly had no authority to speak in this matter, nor can either of the parties to this suit be bound by any remarks or declarations made by him, This is simply hearsay testimony of a conversation between strangers to this suit and no ~~one~~ one can for a moment doubt its incompetency.

The next Alleged Error which we notice is raised by the 2^d Assignment of Errors and relates to the answers of the witnesses Matthew Dabzel Levi Williams & John W. Williams to the tenth interrogatory

in reference to the Special damage sustained by the plaintiffs & the Opinion of the witnesses as to the Amount of Damage & the Amount the boat might have made had it not been for this pretended Contract -

These witnesses were allowed to give in evidence to the Jury their Opinions not only as to the special damage suffered by the plaintiffs below, and the Cause of such damage but also their Opinion as to the Amount the boat could have made had it not been for the Bail contract and as to the damage suffered by the plaintiffs -

The Admission of this evidence was a clear violation of a well established rule of Law that a Witness can testify only to facts and his Opinion is not to be given, for it is the Opinion of the Jury on the testimony which forms the verdict & decides the Case - This point is so clear that we shall do nothing more than refer to a few authorities in point

Seagrave vs. Damages				589
Dorville	vs. Eddy	7	Bark	75
Hanger	vs. Edmunds	4	"	256
Giles	vs. O'Toole	"	"	261
Fish	vs. Dodge	4	Demio	311

The last Allegation of error which we shall notice is in the 9th Assignment, wherein it is Alledged that the Court Erred in overruling the motion for a new trial

The reasons assigned for a new trial as appears from the record are -

- 1st That the Court erred in admitting declarations of Joy & Hall to be given in evidence - of which we have said all that was necessary &
- 2^d That the verdict is against the evidence in the case -

We know that this Court will not disturb the Verdict of the Jury if there is any considerable evidence to sustain it.

But in this Case, ^{all the evidence is sent up &} there is no evidence whatever to sustain the Verdict, if the declarations of Joy are excluded as they undoubtedly should be. There is probably sufficient evidence to show that Gayweather made a contract substantially like that declared upon, but aside from ^{pretended} Joy's declarations there is no evidence, to connect the defendants or either of them with it - Not one of the witnesses pretend to state that Gayweather had any Authority from the plaintiffs in error - Nor is he shown to have been their Agent previous to the contract - On the contrary the witnesses all say that they do not know that he had any such Authority - If then the declarations of Joy be excluded this Court will set aside the verdict, as against the evidence in the case -

But if these declarations are not excluded

the verdict is so evidently against the weight of evidence that we think the Court will not hesitate to sit ^{it} ~~aside~~ ~~the verdict~~ and grant a new trial -

As has already been said all the evidence there is to show that Hayneworth had any Authority whatever from the defendants below to make the Contract is ~~in~~ in these pretended declarations of Joy -

On the contrary Joy says that he never made any such Admission or declarations, and testifies that Hayneworth was not employed by either of defendants & had no Authority from either of them to his knowledge to make the Contract, and that he told the witness Brackett so at the time he came to see him -

Hayneworth himself testifies that he had no Authority from defendants, that he was not employed by them or either of them, and did not act for them, but that he was employed and paid by the Peoria & Quincy R. R. Co. and received all his instructions from Col. Warren who is ^{shown} ~~known~~ to have been the Agent of that Company - As it seems to us these pretended declarations given in evidence by one of the Attorneys for plaintiffs below ought not for a moment to weigh against the ^{direct} ~~clear~~ and positive testimony of James D. Joy & Hayneworth to the contrary, especially when Mr. Joy unqualifiedly denies in his testimony ever having made any such statements -

In any event therefore we think this verdict

clearly against the weight of evidence in the cause
and ought to be set aside for that reason if there be
no other

The declarations of each
agent not admissible
to prove his own agency

24 Pick 242 - (bel) 33 -

1800-

1900

900-

)

6800-

Supreme Court
Chicago, B. & Quincy RR

in

Coleman

Mem^o. of Authorities
to of Plffs in Error

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6000.

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30/1250
4

Walker & Stuart
for Plffs in Error

State of Illinois }
Supreme Court } Of the April Term AD 1857

The Chicago Burlington &
Quincy Rail Road Company
And The Central Military Tract
Rail Road Company. Plffs. in error

vs
John Coleman & Co. Defts in error.

To the above named defendants or T. C. B. Waite
their Attorney

Gentlemen:

You will please take
notice that we shall on ~~wednesday~~ Tuesday the
21st day of April instant or as soon thereafter as
counsel can be heard, apply to the Supreme Court at
the Supreme Court Room in Ottawa in said State
for a rehearing in the above entitled cause

Sedgwick & Walker
Atty for Plffs in error

I acknowledge service of above notice
this 14th day of April AD 1857

T. C. B. Waite
Atty for Defts
in Error.

141

Supreme Court

C. B. & D. R. A. Co. &

C. D. T. R. & Co

Opp. in error

vs

John Coleman et al

Defts in error

Noted

Filed Apr. 22 1857

L. Leland

CLK

Supreme Court of Illinois }
Third Grand Division }
Of the June Term AD 1856.

John Coleman et al. }
Defendants in Error } Error to
 and } Revert
The Chicago Burlington }
& Quincy Railroad Co. }
et al. Plaintiffs in Error }

And hereupon, afterwards, to wit, on the said Ninth day of June in the same term, before the said Supreme Judges of the State of Illinois, at Ottawa aforesaid, the said John Coleman, James Coleman and Andrew Coleman, by Charles P. Waite their Attorney, freely come here into Court, and say that there is no error, either in the record and proceedings aforesaid, or in the refusal to grant a new trial as aforesaid, or in giving the judgment aforesaid; and they pray that the said Supreme Court of Judicature, before the aforesaid Justices thereof, now here, may proceed to examine as well the record and

proceedings aforesaid, as the matters
aforesaid above assigned for error;
and that the judgment aforesaid,
in form aforesaid given, may
be in all things affirmed &c.

~~John~~
Charles P Waite
Counsel for Defts in Error.

John Coleman et al.
Defendants in Error

vs
The Chicago & North
Western & Quincy
Railroad Company
et al. Plaintiffs in Error.

Finders in Error.

Filed July 1, 1856

L. Edmund
Clerk

Opinion by Whiner.

1 This was an action of assumpsit. The declaration alleges a contract whereby the defendants below agreed to furnish 2000 tons of iron to be carried by the Plaintiffs from Rock Island to opposite Burlington, at the agreed price of six dollars per ton. The declaration alleges for breach the non delivery of all the iron for carriage, except a small portion, and that ~~defendants~~ Plaintiffs were ready to perform the contract on their part, and sustained damages ~~to wit~~ ^{thereby} by reason of the non performance on the part of the defendants.

The cause was tried upon the general issue, by jury, and ^{resulted in} a verdict and judgment ~~rendered~~ for the Plaintiffs.

The evidence clearly establishes the making of the contract declared on, by one Fayet ^{brother} as agent for the defendants, with the Plaintiffs, who were owners of a steam boat running on the Mississippi river; performance of the contract on the part of the Plaintiffs by carrying all the iron furnished and continuing ready to carry the whole quantity; the non delivery of the iron, except a small quantity, for carriage ~~by defendants~~, and damages sustained by Plaintiffs by reason thereof for ^{the} carrying the amount of the recovery. The record and affidavits of error show that during the progress of the trial numerous exceptions were taken by defendants to rulings of the Court upon the admission of evidence on the part of the Plaintiffs, which rulings and

also the refusal of the Court to grant a new trial, are assigned for error. The main question in the case is, whether the Court erred in admitting proof of the admission of the president of the Corporation sued, of authority in Foyesweather to act for the Corporation in making the contract sued on. The plaintiffs sent an agent to Chicago to settle with defendants their claim arising out of the contract. By his evidence it appears, that he called on the president at his office in Chicago and presented the claim for adjustment; that the president refused to pay the claim upon the ground that it had already been settled by ~~the~~ payment to plaintiffs for all the iron they had consumed was exorbitant; and that the president then admitted that Foyesweather was sent by him to get the iron carried for the defendants.

The record shows independent of the admissions of the president, that he filled the office of president of the Corporation at the time of the making of the contract and at the time of the admissions, ^{freight on the} and that the iron carried was paid for ~~by draft on the~~ at the contract price, by a draft on the defendants which they honored, and that the president addressed Foyesweather, refusing to send any more iron on account of the price at which it was being carried by plaintiffs.

Corporations in this country are numerous and of various kinds and their rights and liabilities should ^{be} the same or opposite to private individuals, regulated by the law of

their existence, or charter, so far ^{as} is consistent
 with their character and ~~sphere of action~~ objects.
 This is a rail road Corporation, empowered
 by the legislature to construct and operate
 a rail road or rail roads through a large
 extent of territory, and the business transac-
 tions appertaining ^{to it} must of necessity
 be extensive and multifarious, — incap-
 able of execution immediately by a board
 of directors, and requiring for that purpose
 a vast number of officers, agents and
 employees. The business of such Corporatio-
 ns can only be carried on through ~~it~~
 their officers, agents and servants, and
 their President is treated by the public
 and made by usage, their chief officer
 and executive agent. ^{head} Through him
 numerous every day affairs of the corpo-
 ration are transacted, and such acts
 as are incident to the execution of the
 trust reposed in him, — of an ordinary
 character and frequent occurrence in
 the routine of the business of the Corpora-
 tion — such as custom or necessity has
 imposed upon the office, he may perfor-
 m for the corporation. It is immater-
 ial whether this power exists by virtue
 of his office, or is founded upon implied
 authority from the board of directors, for
 in either case it is the same for the
 purposes of this suit. ~~He~~ He is an officer
 within, and a part of, the Corporation, ^{which is} an
 artificial or mere legal person, incapable

of acting or speaking, & ext- through its officers and agents; and the admission of such officer, in his official capacity and in the execution of the duties of his office are evidence against the Corporation.

Angel and Ames on Corp, 521, 522; 2 Storck's Ex 29; 1 Grunty's Ex 332.

The President - having authority to make the contract, and to do the same through another, was also, authorized to settle and adjust the claims arising out of the same; and when the claim was presented to him in his official capacity for settlement, whether he settled or refused to settle it, he was acting in the business of the Corporation and within the scope and bounds of his powers, and what therefore, he then said in relation to the subject matter of the business before him is evidence against the Corporation or a part of the res gesta. If the officer or agent is acting within the scope of his ordinary powers and duties, in a matter which calls for the admission concerning it, it is ~~the~~ in effect, the admission of ~~the~~ his principal, for it is made by his authority.

The Supreme Court of New York hold that the admission of the President of a Bank, that a note in favor of the Bank had been paid, made upon an examination of the Bank books, is proper evidence of payment in a suit by the Bank on the note. - Bank of Worcester v. Field, 2 Hill 445.

~~The following authorities recognize the same~~
~~principles~~ 1 Greenliff Ev. 225, 332, 113;
 8 Pick 142, 143; 19 ibid, 226; 21 ibid, 270;
 11 Fry & Rowle, 179, 181; 4 ibid, 317, 321;
 7 Hor & Whar, 104; 18 Conn, 484; 2 Peters, 358,
 364; 12 Wharton 468, 469; 2 Root-150.

To examine all the questions made in the
 Circuit Court upon the admissibility of evidence on
 the part of the plaintiffs ~~and whether or not~~
~~in this Court~~, would swell this opinion to
 an unwarrantable length, and it is un-
 necessary upon this record to do so.

If there was sufficient evidence before
 the jury to justify the verdict this Court
 will not reverse the judgment ^{merely} because
 other evidence on the part of the plaintiffs
 was improperly admitted.

~~The~~ Gillett vs Sweet, 1 Gil 475; 4 Wend,
 458; Fryer vs Laughlin, 1 Gil 3347;

Admitting the declaration of the presi-
 dent that Fayerweather was acting
 by authority from the defendants
 in making the contract, and there
 is abundant legal evidence in the
 record to justify the ~~verdict~~ finding
 of the jury. And the facts fairly
 appearing in the case, aside from
 the admission, that Fayerweather
 was in charge of the defendants
 iron in its course of transportation,
 that the president was dissatisfied

6 With the price at which the iron was being
carried by the Plaintiff, and wrote Foye-
weather that he should send no more
iron; and that the defendants did pay
for what iron was actually carried under
the contract, and such as the jury were
entitled to consider in connection with
all the evidence, and attach such weight
to or to them they seemed to deserve.
For one we proposed to pay, were the
evidence of the admissions of the President
out of the case, that the verdict should
have been set aside.

It is urged ^{that} the evidence taken together
disproves authority of Foyeweather to
make the contract.

Where the evidence is conflicting and
contradictory, as in this case it is, this
Court will not disturb ~~the a judgment~~
~~rendered~~ the verdict, where there is
enough evidence in the record to
sustain ~~the verdict~~ it, especially where
from the whole record substantial justice
appears to have been done.

It is the province of the jury to decide
upon the credibility of witnesses before
them and to give such weight to their
testimony as any part of, or upon
consideration of the whole evidence,
it may in their judgment be entitled
to. 3 Conn, 97; ibid, 15. 10 Conn, 491.
ibid, 533; 1 Gil, 70; 2 Gil, 618; 5 Gil,
72. Judgment affirmed.

141
Chicago Burlington
& Quincy RR
Co

Columbus et al

Specimen by
Meiner

Recorded

~~62~~ 141

Charles Burlington
C. B. 12
Company
No.
Coleman St.

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12503

1857

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