

12191

No. _____

Supreme Court of Illinois

Bissel, et al

vs.

Price

71641  7

Orrin P. Popel et al
as
Heiman Price

} Appeal from Peoria

And the said plaintiffs in error come and say that in the record and proceedings in this cause and in the rendition of judgment in the Circuit Court there is manifest error to the injury of Popps in this Court

1. The Court erred in permitting the defendant to prove ^{before} the custom among shipkeepers as to paying pecuniary charges on goods
2. The Court erred in overruling the motion of the plaintiffs in error to exclude the evidence which goes to prove that the goods were injured before they were received on board the garden City as stated in the bill of exceptions
3. The Court erred in excluding the evidence offered by the plaintiffs in error as to the custom of boats paying dockage for injuries to goods as stated in the bill of exceptions
4. The Court erred in giving the instructions asked by the defendant in error
5. The Court erred in refusing to give the instructions asked by the plaintiffs in error,
6. The Court Erred in modifying and qualifying the instructions asked by the plaintiffs in error
7. The Court erred in overruling the motion for a new trial

- 8 The Court erred in entering Judgment against the plaintiffs in error.
- 9 Because the verdict ~~judgment~~ was against the law of the case
- 2 " The verdict is against the weight of evidence
- 3 The Court refused proper instructions asked by the Plaintiffs in error
- 4 The Court gave improper instructions asked by the Defendants in Error
- 5 The Court allowed the Defendant in error ^{to offer} improper evidence
- 6 The Court refused to allow the Defendant to offer proper evidence.
- 7 The Court refused to exclude the evidence offered by the Defendant in error contradicting his own written evidence
- 8 The verdict should have been for the Plaintiffs in error
- 9 Other errors for which the Plaintiffs in error pray the Court here to reverse & set aside each Judgment that the same may be wholly for naught esteemed

The Verdict set
 aside
 Jan 21, 1890
 Atty Gen. H. C. W.

John McCoy
 Atty for Plffs in Error

Be it remembered that heretofore, to wit on the seventeenth day of June in the year of our Lord one thousand eight hundred and fifty four, there was filed in the office of the clerk of the Circuit Court in and for the county of Peoria in the State of Illinois, a declaration, precept and copy of account sued on, which are in the words and figures following, to wit

Declaration -

Herman Price

Corin P. Bissell

William A. Willard

State of Illinois

Peoria County

Circuit Court, Peoria County

May Term A. D. 1854

Herman Price complains of Corin P. Bissell and William A. Willard late partners in business under the name and firm of Bissell & Willard for plea of trespass on the case upon promises. For that whereas the defendants heretofore to wit on the fifteenth day of June A. D. 1854 at the County aforesaid were indebted to the plaintiff in the sum of two hundred dollars for certain freight and charges there and there due and payable from the defendants to the plaintiff for and in respect of the carriage and conveyance of divers goods and chattels and merchandize by the plaintiff before that time carried and conveyed in and on board of certain Steamboats and Vessels from divers ports and places to divers other ports and places and there to wit at said last mentioned ports and places delivered by the plaintiff for said defendants and at their request, and being so indebted the defendants in consideration thereof afterwards to wit on the day and year and at the County aforesaid promised the plaintiff to pay him the said sum of money when requested.

And whereas also afterwards to wit on the day and year aforesaid at the County aforesaid the defendants were indebted to the plaintiff in the sum of two hundred dollars

for certain freight and charges then and there due from the defendants to the plaintiff for and in respect of the carriage and conveyance of divers other goods and merchandize by the plaintiff before that time carried and conveyed in and on board of a certain Steamboat called the "Garden City" of the plaintiff from the port of La Salle in said State to the port of Peoria in said State and there to wit, at the said port and place last mentioned, delivered by the plaintiff for the defendants, and at their request. And being so indebted the defendants in consideration thereof afterwards to wit on the day and year aforesaid at the County aforesaid promised the plaintiff to pay him the said sum of money when thereto requested.

And whereas also heretofore to wit on the day and year aforesaid at the County aforesaid the defendants were indebted to the plaintiff in the sum of two hundred dollars for the carriage and conveyance of and work and labor care and diligence done and performed by the plaintiff upon certain goods and merchandize of the defendants and for the defendants and at their request and for divers journeys by the plaintiff before that time performed in and about said carriage and conveyance, work and labor and at their like request.

And in two hundred dollars for money then and there paid laid out and expended for the use of the defendants and at their request.

And in two hundred dollars for money then and there received by the defendants for the use of the plaintiff.

And in two hundred dollars for money then and there lent to the defendants by the plaintiff at their request.

And in two hundred dollars for money then and there found due from the defendants to the plaintiff on an account then and there stated between them.

And whereas afterwards to wit on the day and year aforesaid at the County aforesaid the defendants in consideration

of the premises promised the plaintiff to pay him the several sums of money last above mentioned on request. - Yet they have disregarded their promises and have not paid any part of said moneys or either of them although requested, to the plaintiffs damage Two hundred dollars and therefore he brings suit &c.

Bryan & Pratt
for Plffs.

precipe -

Issue Summons in Assumpsit. Damages \$200 -

J. Gale Esq.

Bryan & Pratt
for Plff.

account -

Copy of Account sued on
Bissel & Willard

To Herman Price

Master of Steamboat "Garden City"
For freight on Merchandise

49 50

15¢

\$ 7.45

Charges

\$ 82.00

" freight & charges on goods &c

\$ 200.00

" freight & charges on merchandise

\$ 200.00

" carriage of goods & work & labor

\$ 200.00

" money paid your use

\$ 200.00

" money recd by you for my use

\$ 200.00

" money lent

\$ 200.00

" money due ~~me~~ on account stated

\$ 200.00

Rule to plead.

Proceedings at a term of the Circuit Court begun and held at the Court house in the City of Peoria in and for the County of Peoria in the State of Illinois on the second Monday of September in the year of our Lord one thousand eight hundred and fifty four, it being the eleventh day of said month. Present the Honorable Ouslow Peters, Judge of the sixteenth

Judicial Circuit in the State of Illinois to wit:
Monday September 18th A.D. 1854

Herman Price

vs

Orvin P. Bissell

William A. Willard

} Assumpsit

The plaintiff by Bryan and Pratt
his attorneys enters a motion for a rule on the defendants
to plead to this action by Wednesday morning next.

Wednesday September 20th A.D. 1854

This day came on to be heard a motion of the plaintiff for
a rule on the defendants to plead herein whereupon it is
ordered by the Court that the defendants plead to this action
by the fifteenth day of October next

time to plead }
extended }

Proceedings in the Circuit Court in and for the County of
Peoria in the State of Illinois before the Honorable Cuslow
Peters Judge of the sixteenth Judicial Circuit in the State
of Illinois at the Court House in the City of Peoria on the
Rule days of said Court commencing on Monday the sixth day
of November in the year of our Lord one thousand eight hundred
and fifty four to wit

Monday November 6th A.D. 1854.

Herman Price

vs

Orvin P. Bissell

William A. Willard

} Assumpsit

On motion of the defendants by
their attorney the time to plead is extended to the first day
of next term of this Court.

And afterwards on the fifteenth day of November A.D. 1854
the defendants filed the following pleas in this cause, to wit,

Pleas —

Corrin P. Bissell &
William A. Willard

at

Herman Price

1 Plea.

In Peoria County Circuit Court
To May Term A.D. 1854.

And the said defendants by Grove &
McCoy their Attorneys come and defend the wrong and injury
wherein &c and say that they did not undertake or promise
in manner and form as the said plaintiff hath thereof com-
plained against them and of this they put themselves upon
the country.

by Grove & McCoy
their Attorneys

And Plff doth the like

Bryan for Plff.

2 Plea. And the said defendants for further plea in this
behalf, with leave of the Court here for that purpose first had
and obtained say actio non, because they say that after the
making of the said several premises in Plffs. declaration mention-
ed and before the commencement of this suit to wit on the fif-
teenth day of June A.D. 1854, at the County of Peoria aforesaid
the defendants fully paid and satisfied the said plaintiff of
and for the said sums of money in plaintiffs declaration mention-
ed & that they are ready to verify wherefore they pray judgment &c.

by Grove & McCoy
their Attorneys.

3 Plea. And for further plea in this behalf the defend-
ants say actio non, because they say that the only cause of
action in Plffs declaration mentioned is to recover the freight &
charges on the boxes cases bales & bills of goods hereinafter men-
tioned & they further say that said Plaintiff at and before the
commencement of this suit to wit, on the fifteenth day of,

June A.D. 1854 at Peoria in the County aforesaid was and still is indebted to the defendants in the sum of five hundred dollars for failing and neglecting to deliver to the defendants in good order and condition, seventeen Bores goods four cases, one Bale & 1 Bill & 1 box of goods of the value of two thousand dollars, And the defendants aver that said plaintiff before and at the said time when he was a common carrier and master of the Good Steamboat Garden City then running on the Illinois river and the said plaintiff as such common carrier was engaged in the business of carrying and transporting goods from Lasalle in the State of Illinois to the City of Peoria in the State aforesaid and the defendants then there at Lasalle aforesaid delivered to the said plaintiff as such common carrier the said seventeen bores Goods four cases one Bale & 1 Bill & 1 box goods to transport and carry from Lasalle aforesaid to Peoria aforesaid for a certain ~~for~~ certain reasonable reward to be paid by the defendants to the said plaintiff and the said defendants further say that said Plff then and there received said 17 bores goods four cases one bale 1 Bill & 1 box of goods the property of defendants on board said Steam Boat Garden City and then and there undertook & faithfully promised to deliver said 17 bores four cases 1 Bale 1 bill & 1 box goods in good order and condition to the defendants at Peoria and the said plaintiff then and there by his agent & clerk Bowles delivered to the defendants a Bill of Lading in the words & figures following.

Isaac D. Harmon & Co
Forwarding and Commission Merchants
Isaac D. Harmon Peoria and Lasalle Illinois Cha's L. Huntton

La Salle April 29 1854
Shipped in good order and well-conditioned by I. D. Harmon
& Co on board the good Steamboat Garden City the following

articles marked and consigned as below which are to be delivered without delay in like good order and condition (the unavoidable dangers of navigation and Fire excepted) to consignee, he or they paying freight and charges as noted in the margin.

Three Bills Lading				
Marks	No	Articles	Weights	Charges
Bissel & Willard	17	boxes goods		
Peoria	4	Cases		
	1	Bale		
	1	Bill	4810	
		R. R. charges	5	75 22
		Cartage		1 50
		Our charges		2 40
				\$ 79 12
Same as	1	Box goods	140	
		R. R. charges		2 62
		Our		25
				2 87
Just got them from the cars this morning)		freight	15	
J. D. H. & Co				Cowles.

And thereby bound himself to deliver said boxes bales bills & boxes of goods to the defendants in good order and condition at Peoria as aforesaid. Yet the said defendants aver that said plaintiff did not nor would deliver said boxes of goods bills & bales to the defendants in good order and condition but on the contrary the said plaintiff so negligently, carelessly and improperly transported said goods boxes of goods bales bills & boxes of goods that the same became and were wet injured moulded damaged & spoiled that the same became and were of no use or value to the defendants, and the defendants then & there and thereby sustained damages in the sum of five hundred dollars & which is still due and owing from

the said plaintiff to the defendants and which sum of five hundred dollars exceeds the damages sustained by the said plaintiff by reason of the nonperformance by the said defendants of the said several supposed promises and undertakings in the said declaration mentioned and out of which said sum of money so is due and owing from the said plaintiff to the said defendants the said defendants are ready and willing and hereby offer to set off and allow the said plaintiff the full amount of said damages according to the form of the Statute in such case made and provided. And thus they are ready to verify wherefore they pray
judgt &c

By Grove & Mc Coy

their attys.

11 And for further pleas the defendants say action non because they say that the only cause of action in said plaintiff's declaration mentioned which the said plaintiff can or ought to have against the defendants is for the transportation of 17 boxes goods 4 cases 1 Bale 1 Bill & 1 box goods from to Peoria Ill. And the defendants say that said plaintiff at the said time when &c. was then and there the Master of the Steam Boat Garden City and was then and there a common carrier & the plaintiff then and there received said 17 Boxes goods 4 cases 1 Bale 1 Bill & 1 box goods of the value of two thousand dollars on board said Steam Boat whereof the said plaintiff then and there was Master & the plaintiff by his agent & servant bowles then and there executed & delivered to the defendants the bill of lading attached to and made part of defendants third plea and thereby bound himself to deliver said boxes, cases bales & Bills of goods in good order and condition to the defendants at Peoria for certain reward to be paid by the defendants to the plaintiff. And the defendants further say that said plaintiff did not nor would deliver said 17 boxes goods nor said 4 Bales nor said 4 cases or said 1 Bill or said 1 box of goods in good order and condition to the defendants

but on the contrary said Plff. so negligently wrongfully & carelessly transported said boxes bills & cases & bales of goods that the same became and were wet injured mouldy damaged and spoiled. And the defendants say that after the transportation and carrying said boxes Bales cases Bill & boxes of goods in said bill of lading described and after the wetting injury, damaging and spoiling of said goods as aforesaid the said plff. by Wm C. Boilvin his agent duly authorized to act for said plaintiff and the defendants agreed to submit the said matters and differences growing out of the injuring damaging & spoiling and freight and charges on said boxes cases Bales & Bills of goods to the final arbitrament decision and award of Abram Frank and Galusha Burnett ^{arbitrators} indifferently chosen by the parties, and the said arbitrators proceeded to examine and decide the matter in difference between the parties and then and there did determine and award that said goods were greatly injured and spoiled and that the said plaintiff should take of said damaged goods

4 "	Linen thread	55¢	2.20
1/6 Doz.	Razor Straps	850	1.42
4 "	Boys Suspenders	114	4.56
3 "	" " "	200	6.00
6 "	" " "	1.60	9.60
1 1/2 "	" " "	180	2.70
6	Cork float lines	31	1.86
8	lb fish hooks	42	3.36
20 Doz.	Stay binding	25	5.00
1 1/3 "	Port money	11.55	10.59
1/2 "	Pocket knives	1.25	.63
7	lb Buff envelopes	200	14.00
Adding thereto ten per cent for freight & charges			61.92
			6.19
			68.12

And should allow to the defendants the said sum of \$68.12

as their damages in that behalf and the said arbitrators then and there further awarded and determined that the said plaintiff should allow to the defendants the sum of six dollars and twenty six cents as damages for spoiling & injuring and damaging

2 Gro.	fish hooks	65°	\$ 1.20
1	"	Ea 165 908 42	2.97
1/4 Doz.	razor Straps	850	2.12
8	"	stay binding 32	2.56
1 Doz.	Buff envelopes		2.00
1	"	Suspenders	4.00
2	"	" 185	3.70
1	"	"	2.00
8	"	linen thread 55 c	4.40
			<u>25.05</u>

damages assessed them at the rate of twenty five per cent. And the said defendants aver that they have at all times been ready and willing to stand by and perform said award and upon the making thereof the defendants offered to the said plaintiff the said goods first mentioned and still are ready and willing to deliver the same. And the defendants aver that the amount of money found and awarded to be due from the said plaintiff to the defendants greatly exceeds the amount justly due the said plaintiff from the defendants to the plaintiff as a reasonable award for the freight and charges in said boxes cases, bills & bales of goods and which amount so awarded by said arbitrators under the submission aforesaid to the defendants, the defendants are willing to offset and allow to the plaintiff on any amount found to be due him for his freight and charges as aforesaid and this the defendants are ready to verify wherefore they pray

judgt &c.
By Grove & McCoy
their attys.

And the said defendants and for further plea say that as to all the promises and undertakings in plffs declaration mentioned except as to the sum of (eighty nine dollars & forty four cents) say that they did not undertake and promise as the said plaintiff hath thereof complained against them and of this they put themselves upon the Country. (and as to the said sum of eighty one $99\frac{1}{100}$ dollars part of said $89\frac{44}{100}$ dollars the defendants say actio non, because they say that the said plaintiff paid said sum of money if any such money was paid by him of his own wrong, and without any request in writing signed or authorized by the defendants and without their being indebted to the person or persons to whom such supposed payments were made) and as to the sum of seven dollars & forty five cents (part of said sum of $89\frac{44}{100}$ dollars) defendants say actio non, because they say that the defendants on the first day of May 1854 at LaSalle on the Illinois river delivered to the said plaintiff 18 boxes & cases 1 Bale and one Bill of goods of great value to wit of the value of two thousand dollars to transport and carry to Peoria in the state of Illinois for certain reasonable reward to be paid by the defendants to the plaintiff, and the said plaintiff then and there being and acting as a common carrier and as master of the said Steam Boat Garden City then and there received & said goods boxes bales cases & bills on board said Steam Boat and then and there in the name of Bowles executed and delivered to the defendant the bill of lading attached to and made part defendants third plea and thereby then and there acknowledged that he had received said boxes cases Bales and bills of goods in good order and condition on board said Garden City and then and there thereby & therein promised and undertook to deliver said boxes bills cases & bales of goods to the defendants at Peoria in like good order & condition (the unavoidable dangers of navigation & fire excepted) Yet the said

plaintiff of his own wrong and not in consequence of fire or other unavoidable danger is negligently carelessly & wrongfully transported said boxes, cases bales & bill of goods that the same became and were wet, spoiled injured damaged & destroyed by means whereof the defendants sustained damages in the sum of five hundred dollars, which they are ready to offset & allow to the said Plff. on said sum of Seven dollars & forty five cents according to the Statute in such case made & provided & this they are ready to verify wherefore they pray judgment &c

By Grove & McCoy
their Attys.

And afterwards, to wit, on the fifth day of December A.D. 1854 the plaintiff filed the following replications and demurrers in said cause, to wit,

Replication -

Herman Price

vs

Corin P. Bissell

William A. Willard

Circuit Court

November Term 1854

And for replication to said plea by the defendants 2ndly above filed the plaintiff says precluded now because he says that the defendants have not paid the said several sums of money in said declaration mentioned or any part thereof in manner and form as in said plea alleged and this he prays may be inquired of by the country &c

Bryan for Plff

And the defendants do the like

Grove & McCoy for Defs.

demurrer -

And as to that part of said plea by the defendants 5thly above pleaded as is intended to apply to the sum of eighty one 29/100 dollars part of the said sum mentioned in said declaration

the plaintiff comes and demurs and says that the same and the matters therein contained are insufficient in law to bar the plaintiff of his action for said sum & that he is not bound by law to answer the same. And this he is ready to verify &c. And for cause says that said part of said plea amounts the general issue
Bryan for Plff.

Replication -

And for replication to said pleas by the defendants 3d 4th and the residue of said plea 5thly above pleaded the plaintiff says precludi non because he says that he is not and was not indebted to the defendants in the said several sums of money in said plea mentioned or any part thereof in manner and form as in said plea alledged, and this he prays may be inquired of by the Country &c.
Bryan for Plff.

& Deft likewise

Grove & McCoy for defts

Proceedings at a term of the Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois on the first monday of March in the year of our Lord one thousand eight hundred and fifty five it being the fifth day of said month. Present the Honorable Onslow Peters, Judge of the sixteenth Judicial Circuit in the State of Illinois, to wit,

Monday March 26th A.D. 1855

Herman Price

vs

Corin C. Bissell

William A Willard

} Assumpsit

Demurrer sustained

This day came the plaintiff by William F. Bryan his attorney and the defendants by Henry Grove their attorney and this cause came on to be heard on a demurrer of plaintiff to the fifth plea of the defendants on consideration

leave to amend -

whereof the Court being fully advised in the premises is of opinion that the said fifth plea in the matters demurred to is insufficient in law to bar the plaintiff from maintaining his action herein. Whereupon the defendants asked leave ^{to amend} their said fifth plea, which is allowed by the Court and the amendment thereto filed.

jury empanelled -

Issues being joined by the parties it is ordered by the Court that a jury be empanelled to try said issues. Whereupon came a jury of twelve good and lawful men to wit. Matthew Brown, Henry Bentley, Horatio N. Wheeler, William H. Pratt, Charles Hale, Walter H. Crew, Jonathan K. Elson, R. B. McCulloch, R. B. Roberts, John Waugh, Henry W. Keach and Jacob Keefe, who being duly chosen tried and sworn, well and truly to try the issues joined and a true verdict give according to evidence, the evidence not having been fully heard were adjourned to meet the Court again to morrow morning.

And on the said 26th day of March A.D. 1855 the following amendment was filed to said fifth plea of defendants under the leave of Court aforesaid, to wit,

amendment }
to plea 5th

Orren P. Bissell

William A. Willard

als

Herman Price

} In Piora County Circuit Court
May Term A.D. 1854

The defendant by leave of the Court here amends their fifth Plea as follows.

Strike out commencing on the ninth line at the word "And as to &c & to the end of the word "made" on 18th line

Amend by inserting the words "Seven dollars and forty five cent." in the fourth line and strike out the words eighty nine dollars & forty four cents.

Strike out the words "part of said sum of 89 ⁴⁴/₁₀₀ dollars" on 19 & 20 lines.

All of the above erasures marked original filed in brackets. ()

Grove & McCoy
for defts

And afterwards, to wit, on the 27th day of March A.D. 1855 at said last mentioned term of said Court the following further proceedings were had in this cause in said Court, to wit,

Tuesday March 27th A.D. 1855

Verdict -

judgment -

appeal -

This day came again the parties by their respective attorneys and the jury empanelled in this cause on yesterday, the evidence having been fully heard, on their oaths aforesaid do say, We the Jury find the issues for the plaintiff and do assess his damages at the sum of eighty nine dollars and forty three cents. Whereupon the defendants entered a motion for a new trial in this cause, on considerations whereof the Court being fully advised in the premises overruled said motion. Therefore it is considered that the said Herman Price have and recover of the said Orrin P. Bissell and William A. Willard the said sum of eighty nine dollars and forty three cents his damages aforesaid by the jury assessed and also his costs and charges by him about his suit in this behalf expended and that he have execution therefor. The defendants prayed an appeal in this cause to the Supreme Court of this State, which is allowed them on their filing in the office of the Clerk of this Court in thirty days an appeal bond with Henry Grove as surety in the penalty of two hundred dollars and conditioned according to law.

Ordered that the Bill of exceptions in this cause be settled and filed in vacation.

On the 19th day of April A.D. 1855 the defendants filed in said clerk's office an Appeal Bond in the words and figures following, to wit,

Appeal Bond: Know all men by these presents that we Orrin P. Bissel & William A. Willard as principals and Henry Grove as surety are held and firmly bound unto Herman Price in the penal sum of three hundred & fifty dollars for the payment whereof well and truly to be made to the said Herman Price his heirs and assigns we do jointly and severally bind ourselves our heirs executors and administrators firmly by these presents witness our hands & seals this nineteenth day of April A.D. 1855. The condition of the above obligation is this whereas the said Herman Price did on the twenty seventh day of March A.D. 1855 at the March ^{term} A.D. 1855 of the Circuit Court in & for Peoria County in the State of Illinois by the judgment of said Court in a certain cause therein pending wherein the said Herman Price is Plaintiff and the said Orrin P. Bissel & William A. Willard are defendants obtain a judgment that the said Orrin P. Bissel & William A. Willard should pay the said Price the sum of eighty nine dollars & forty three cents & cost of suit from which judgment the said Bissel and Willard have taken an appeal to the Supreme Court of this State. Now if the said Orrin P. Bissel & William A. Willard shall pay the judgment in this cause, as well in the said Supreme Court as in said Circuit Court and all costs interest and damages in this cause, in case the said judgment shall be affirmed and shall duly prosecute his said appeal then this obligation to be void otherwise in force

Orrin P. Bissell (Seal)

Wm A. Willard (Seal)

Henry Grove (Seal)

And afterwards to wit on the 23rd day of June A.D. 1855 there was filed the following Bill of Exceptions in said cause with agreement thereunder written to wit.

Herman Price

vs

Bissell & Willard

Be it remembered that on the trial of this cause, the plaintiff to maintain the issues on his part, called the following witnesses who testified as hereinafter stated to wit: A. T. Stewart. I am a clerk of Boilwin & Co, of Peoria who are forwarding merchants in Peoria, they were in the forwarding business here in the Spring of 1854 - The plaintiff was the Captain of the Steamer Garden City some goods came by her to depts with a clean bill of lading, the goods were some damaged, I did not know much of it (the damage) then. A freight bill was here shown to the witness which was as follows to wit:

Isaac D. Harmon & Co.

Forwarding and Commission Merchants

Isaac D. Harmon Peoria and LaSalle Illinois Chas. L. Huntorn

La Salle April 29, 1854

Shipped in good order and well conditioned by I. D. Harmon & Co on board the good Steamboat Garden City the following articles marked and consigned as below which are to be delivered without delay in like good order and condition (the unavoidable dangers of navigation and fire excepted) to consignee he or they paying freight and charges as noted in the margin.

Marks	No	Articles	Weights	Charges
Bissell & Willard	17	Boxes Goods		
Peoria	4	boxes		
	1	Bale		
	1	Bill	4810	
		R.R. Charges		75.22
		Cartage		1.50
		Our Charges	5	2.40
				\$79.12

Same as	1	Box Goods	140	
		R.R. Charges		2 62
		Our "		25
Just got them from the				2 87
Cars this morning		freight	15	Cowles
J.D. Harbo				

This is the bill of lading, it is a duplicate from J. D. Harmon & Co of Peoria; - The Plff here offered to prove the custom among shippers & carriers as to paying previous charges on goods - the evidence was objected to by the Defs, but the objections was overruled by the court & the evidence admitted & the defts excepted to the decision. The witness then stated, that the custom on this (the Illinois) river is for the shipper from any one point of goods forwarded, there to pay the charges of the former forwarders & carriers; for instance, the receiver & shipper at La Salle pays the charges of freight &c to La Salle; these charges together with charges at La Salle are paid by the Boat & on the arrival of the goods at Peoria the boat collects these charges & its own freight & charges of the consignee here. The custom is to advance the charges; unless this were done they could not get the goods I never heard of it being otherwise. Boats sometimes advance \$3000 or \$4000 on goods for previous freights & charges - The Garden City was then running & freighting on this river, Boilvin & Co were the agents for her. Persons were selected, Mr. Boilvin acting for plff. to value the damages. - The depositions of Andrew Cowles & Geo. L. Putney were next read to the jury and were as follows to wit.

Herman Price	} Depositions
25	
Orin P. Bissell and	
William A. Willard	Circuit Court
	Peoria County Ills.
	September Term 1854

Depositions of Witnesses produced sworn & examined in the above entitled cause at my office in the County of St Louis &

State of Missouri on the second day of September 1854 before me
Mann Butler a Commissioner of deeds for the State of Illinois
wherein Herman Price is plaintiff and Orrin P. Bissell and Wil-
liam A. Willard defendants on the part of the above named
plaintiff.

Andrew Bowles of lawful age produced sworn and examined
to following interrogatories

1st Question. Are you acquainted with the parties to the above
cause and how long have you known them respectively?

Answer to the first question deponent says, I am. I have known
the plaintiff five years, I have known the defendants about 24
months.

Question 2nd Do you know whether the St. Boat Garden City
received at LaSalle Illinois some time in the month of April
last any boxes and bales of merchandize marked Bissell and
Willard Peoria Ills. and whether said Steam boat brought said
boxes and bales to Peoria Illinois? If so state the number of
boxes & bales, what was their appearance and condition when
so received and delivered? whether the boxes and bales were tight
& close or otherwise, whether there were any external indications
of injury to the contents, whether said boxes and bales were opened
for examination prior to their receipt by said Steam Boat. From
whom were said boxes and bales received? Where were they placed
when received and during their transit to Peoria. Where were
they delivered at Peoria, were any of said packages exposed to
rain or wet or were any of them in any manner wet or other-
wise injured on said Steamboat or at any time between the
date of their Shipment at LaSalle and their delivery at Peoria.
State your means of knowledge of all the foregoing matters.

Answer to the second question deponent says I know she
did in the later part of April 1854 Steamboat Garden^{City} re-
ceived 24 packages mostly boxes of Merchandize marked Bissell
& Willard Peoria Ills, the said Steamboat brought and delivered

said boxes and Bales at Peoria Illinois, do not know positively the number of each, not having a duplicate of bill of lading, but believe there were only one or two bales, the packages all appeared when received and delivered in good external condition, they were perfect in external order to all appearance, there was no indication of injury, the boxes were not opened nor the bales for examination prior to their receipt by said Steam Boat.

I received them from Isaac D. Harmon & Co. LaSalle they were placed on board of the Boat across the main hatches and remained there during the trip to Peoria they were delivered at the levee at Peoria a steam boat laying long side the wharf boat, the goods being put on shore nearly opposite. the packages ^{exposed to wet or rain not over they anyway} were not anyway injured on board said boat, they were received in all appearance in good order and delivered accordingly in the same good order as received, my means of knowledge, I was up all night, the first clerk being ashore and sick at home - however we took him on board at Halls Landing.

3rd Question. Who signed the bills of lading for said goods and received the same on behalf of the said Steamboat. Please attach a copy of the bill of lading and state why said boxes & bales were receipted for "in good order" and well conditioned.

Answer to the third question deponent says, I received them and believe I signed them the first clerk not being at LaSalle when the goods were shipped, I cannot attach a copy of bill of lading but will forward one from LaSalle, the reason why we signed they were shipped in good order & et the reason of the fact they to all appearance were in good external order.

Question 4th What was the freight and charges on said goods. Attach a bill of same and state how said charges and freight respectively accrued and to whom and for whose account and by whom said charges were paid.

Answer to the 4th question deponent says, the freight and charges, the freight was seven dollars $4\frac{3}{100}$ dollars, the charges

eighty two dollars I do attach a Bill marked exhibit "A" do not know how charges accrued, the Boat paid said charges, the freight accrued it being 15 cents per hundred for 4950 pounds the charges were paid to Isaac D. Harmon & Co, ^{the shipper} on act. of Kissell & Willard, they were paid by this deponent for the Steam Boat.

5th Question. Who was Captain or Master of the said Steam Boat at the time of the receipt and delivery of said boxes & bales, and how long did he occupy that office?

Answer to the fifth Question deponent says, Capt. H. Price was Master of the Boat at the time of the receiving of the goods also at their delivery he has occupied that office ever since the boat has been in the Illinois River trade.

6th Question Do you know any other matter that may be of benefit to plaintiff in the premises If so state fully.

Answer to the sixth question deponent says, the packages were received at Peoria Illinois by one of the parties or some one in their employ in good order, they never complained that they were in bad order and as said before to all external appearance the packages were in good order.

Cross Interrogatories.

1st Crossinterrogatory. What is your occupation and where have you resided for the ten years last past.

Answer to the first Cross Interrogatory deponent says occupation Steam Boat Clerk, I have resided in Illinois for the last ten years, since 1852. I have been engaged entirely on the river.

2nd Crossinterrogatory. Do you know who own the Steam boat Garden City and how long has such ownership existed.

Answer to the second Cross Interrogatory deponent says only from report.

3rd Cross Interrogatory. On whose account and for whose benefit is said boat run.

Answer to the third Cross Interrogatory, dont know, she run for the benefit of her owners.

4th Cross Interrogatory. Is Herman Price the only person entitled to receive the freight earned or made by said boat.

Answer to the fourth Cross Interrogatory deponent says, do not know.

5th Cross Interrogatory. Who else besides Herman Price are interested jointly with him in running said Steam Boat. State the names and interest or share each are entitled to receive out of the earnings of said boat in transporting or carrying passengers or freight.

Answer to the fifth & Cross Interrogatory deponent says he does not know how or if any one are interested.

6th Cross Interrogatory. For on account of whom is said boat run and on whose account was she run during the present & last Season.

Answer to the sixth Cross Interrogatory deponent says I suppose for the benefit of the owners and has said before I do not know who the owners are.

7th Cross Interrogatory. Do you own any share or interest in said boat, state the share or interest owned by you and each of you.

Answer to the 7th Cross Interrogatory deponent says, I own no interest or share in said Steamboat.

8th Cross Interrogatory. Were you at the time of the shipment of said goods boxes & bales or either of them engaged as workman or otherwise on said Steam Boat Garden City, if so state how, the compensation you received or were to receive & to whom & to what fund did you look for your pay.

Answer to the eighth Cross Interrogatory deponent says, I was engaged at that time as 2nd clerk of said Steam Boat, my compensation is a matter of contract, that witness believes he is not bound to answer, however at that time I received at the rate of Nine Hundred dollars per annum. I always looked to the boat for my pay.

9th Cross Interrogatory. Have you any distinct and certain recollection about the appearance of said boxes or bales or either

of them, state from your own recollection how many boxes or bales you received on said Boat at LaSalle that trip.

Answer to the 9th Cross Interrogatory deponent says according to his best knowledge and recollection the packages were in good external order, the packages were 24, do not know the number of boxes or of bales.

10th Cross Interrogatory. Did you or either of you open or examine any other boxes or bales received at that time.

Answer to the tenth Cross Interrogatory deponent says, I did not.

11th Cross Interrogatory. Who were the officers of said boat at the time, state the name of the Capt. Clerk & Mate, state the interest of each in the Boat in her earnings freight & profits.

Answer to the eleventh Cross Interrogatory deponent says. H. Price Master, E. R. Mills 1st Clerk, myself 2nd Clerk, George S. Putney mate John Gibbs watchman & c.

12th Cross Interrogatory. What interest have you and each of you in said boat, freight profits or business.

Answer to the 12th Cross Interrogatory deponent says, I have got the least interest in the boat freight or profits.

13th Cross Interrogatory. Do you of your own knowledge know that a bill of lading was signed, if so how did you acquire said knowledge.

Answer to the 13th Cross interrogatory deponent says I do know there was a bill of lading signed, I signed the Shippers bill of lading at LaSalle and think also the one to consignee.

14th Cross Interrogatory. Were the defendants or either of them present at the time said bill of lading was signed, if not where were they at that time

Answer to the fourteenth Cross Interrogatory deponent says I know they were not present and know not where they were.

15th Cross Interrogatory. Did the defendants or either of them employ the plaintiff to transport for them said bales or

boxes or either of them.

Answer to the 15th Cross Interrogatory deponent says I do not know.

16th Cross Interrogatory. How were said boxes marked state all the marks names &c. on said boxes or either of them

Answer to the sixteenth Cross Interrogatory deponent says to the best of my knowledge they were marked Bissell & Willard, Peoria Ills.

17th Cross Interrogatory. Did not the marks on said boxes & bales show that the defendants had caused said boxes & bales to be transported by an express company, if so state what company

Answer to the seventeenth Cross Interrogatory deponent says cannot say, did not examine any other marks already stated

18th Cross Interrogatory. By what line or company were said boxes & bales shipped, who compose the company, who the line,

Answer to the eighteenth Cross Interrogatory deponent says, do not know

19th Cross Interrogatory. Did the defendants or either of them employ the plaintiff to pay any freight charges, or anything else on said boxes or bales, if so state which one of the defendants did so & how, were you present state your means of information

Answer to the nineteenth Cross Interrogatory deponent says, I do not know if they did or not, was not present.

20th Cross Interrogatory. Did you see the plaintiff pay any freight or charges on said boxes and bales if so whose money was paid to whom was it paid & when.

Answer to the twentieth cross interrogatory deponent says, I paid the charges myself out of the boats funds paid to Isaac G. Harmon & Co. at LaSalle on the 29th day of April 1854

21st Cross Interrogatory. Did the plaintiff see the goods the time they were shipped. Is it the business of the Capt. or Master to inspect goods at the time of shipment, was the person who signed said bill of lading the clerk of the boat, was he the

Agent & Clerk of the Capt. as well as of the Boat. How long had he been acting as agent & clerk of said boat. How long had he been signing bills of lading for said boat. Did the Captain know he was signing Bills of lading for goods shipped on said boat. Was said person acting under the Captain & Master of said boat or did he work on his own hook and independent of the order and authority of the Captain of said Boat.

Answer to the 21st ^{Cross} Interrogatory deponent says, I do not know if plaintiff saw the goods at the time of shipment I do not know if it is the business of Master or Captain to inspect goods when shipped. I signed bill of lading and am the clerk of the boat acting as the agent of Capt. & Clerk. I have acted in that capacity for five months during that time have been in the habit of signing bills of lading, does not know if Capt. knew it or not, my duty as clerk is laid down which duty I try to perform for the owner of the boat, do not work on my own hook and am not independent but try to obey the orders and authority of the Captain.

22nd Cross Interrogatory. What share or interest had said person in said boat or in her freight profits or charges. How and by whom was he paid out of the funds earned or made by said boat or out of the funds of the owners of said boat or either of them.

Answer to the 22nd Cross Interrogatory deponent says not knowing what person alluded to cannot answer the person. The boat paid me for my services out of the boat funds, further this deponent sayeth not. Andrew C. Cowles.

Inworn to and subscribed before me this 2nd day of September A. D. 1854. In testimony whereof I have herewith set my hand & official seal.

Mann Butler
Justice of the Peace and Commissioner
of deeds for the State of Illinois in St. Louis
Missouri

attached to above
deposition

"
H
"

Bissell & Willard

To Steamer Garden City	Dr.
To Freight on Merchandise as per B/L 4950 @ 15	\$ 7.43
" Charges " " "	82.00
	\$ 89.43

George I. Putney of lawful age being duly sworn, deposes and says in answer to the following interrogatories to wit

Question 1. Are you acquainted with the parties to the above cause and how long have you known them respectively?

Answer 1. I am acquainted with the plaintiff and have known him personally for about fifteen months; the defendants I do not know.

Question 2nd Do you know whether the Steamboat Garden City received at LaSalle Illinois some time in the month of April last any bales and boxes of Merchandise marked Bissell & Willard Peoria Illinois, and whether said Steamboat brought said boxes and bales to Peoria Illinois? If so state the number of boxes & bales, what was their appearance and condition when so received and delivered? Whether the boxes and bales were tight & close or otherwise, whether there were any external indications of injury to the contents, whether said boxes and bales were opened for examination prior to the receipt by said Steam Boat. From whom were said boxes and bales received, where were they placed when received and during their transit to Peoria, where were they delivered at Peoria, were any of said packages exposed to rain or wet or were any of them in any manner wet or otherwise injured on said Steamboat or at any time between the date of their shipment at LaSalle and their delivery at Peoria. State your means of knowledge of all the foregoing matters.

Answer 2nd I did receive as Mate of the Steam Boat Garden City at LaSalle Illinois during the month of April last, certain

goods marked Bissell and Willard Peoria Illinois. I know that the said steam boat delivered the said goods so far as I received them, at Peoria in like condition to that in which they were received. The number and quantity of said goods I do not know, but the external appearance of the said merchandize was good both when received and delivered. The boxes and bales were tight and close as well as I recollect and I remember the trip distinctly from the violent wind which prevailed on our course from LaSalle to Peoria. I recollect no external indications of injury to the contents of said boxes and bales of merchandize. I know of no opening of the said boxes and bales for examination prior to their receipt by said Steam Boat. From whom the said merchandize was received I do not know, the said merchandize was stowed across the forward hatches under the boiler deck upon the main deck and were kept there during their transit, the said goods were likewise well damaged. The said merchandize was delivered at the regular Steam Boat landing, the steamer lying along side the wharff boat at the time and the goods were placed on the levee at Peoria Illinois, they were exposed to sun and rain either in the boat or at any time between their shipment at LaSalle and delivery at Peoria nor were they injured in any manner. My means of knowledge arose from being Mate of said Steam Boat.

3rd Interrogatory. Who signed the bill of lading for said goods and received the same on behalf of said Steam Boat, Please attach a copy of the bill of lading and state why said boxes & bales were receipted for in good order and well conditioned.

Answer to the third interrogatory deponent says, I do not know who signed Bill of lading nor any thing embraced in the 3rd Interrogatory.

4th Interrogatory. What were the freight and charges on said goods. Attach a bill of same and state how said charges and freight respectively accrued and to whom and for whose account

and by whom said charges were paid.

Answer to the fourth Interrogatory deponent say he does not know anything embraced in the fourth Interrogatory.

5th Interrogatory. Who was Capt or Master of the said Steamboat at the time of the receipt and delivery of said boxes and bales and how long did he occupy that office.

Answer to the fifth Interrogatory deponent says Herman Price was Master at the time he occupied said office since the steamboat has been in the trade some sixteen or seventeen months.

6th Interrogatory. Do you know any other matter or thing that may be of benefit to plaintiff in the premises. If so state fully.

Answer to the sixth interrogatory deponent says I know nothing more than already stated.

Crossinterrogatory.

1st Cross. What is your occupation and where have you resided for the ten last years last past

Answer to the 1st Cross Interrogatory deponent says occupation a Mate have resided in St. Louis for the last ten years

2nd Crossinterrogatory. Do you know who own the steamboat Garden City and how long has such ownership existed

Answer to the 2nd Cross Interrogatory deponent says, I know from report only. Capt. Price E. R. Mills & Dana Holmes it is reported they built her and own her at present time.

3rd Crossinterrogatory. On whose account and for whose benefit is said boat run.

Answer to the 3rd Crossinterrogatory deponent says, I suppose for the benefit of the owners.

4th Crossinterrogatory. Is Herman Price the only person entitled to receive the freight earned or made by said boat

Answer to the fourth Crossinterrogatory deponent say I don't know.

5th Crossinterrogatory. Who else beside Herman Price

are interested jointly with him in running said St. Boat, state the names and interest or share each are entitled to receive out of the earnings of said boat in transporting or carriage of passengers or freight.

Answer to the fifth Crossinterrogatory deponent says, I have already stated who are reported owners and interested in said boat, know not what their interest are, nor know what their earnings.

6th Cross Interrogatory. For or on account of whom is said boat run and on whose account was she run during the present & last season.

Answer to the sixth Crossinterrogatory deponent says, for the benefit of the reported owners

7th Crossinterrogatory. Do you own any share or interest in said boat, if so state the share or interest owned by you and each of you.

Answer to the seventh Crossinterrogatory deponent. I own no interest whatsoever.

8th Cross Interrogatory. Were you at the time of shipment of said goods boxes & bales or either of them engaged as workman or otherwise on said steamboat Garden City, if so state how the compensation you received or were to receive & to whom and to what fund did you look for your pay.

Answer to the eighth crossinterrogatory deponent says at the time, I was engaged as Mate of said boat, I received for my services One hundred dollars per month which I was paid I looked to the boat for my pay.

9th Crossinterrogatory. Have you any distinct and certain recollection about the appearance of said boxes or bales or either of them, state from your own recollection how many boxes or bales you received on said boat at Ladalle that trip.

Answer to the 9th Crossinterrogatory deponent says number & quantity do not know any recollection as regards the external appearance was good.

10th Crossinterrogatory. Did you or either of you open or examine any other boxes or bales received at that time?

Answer to the 10th Crossinterrogatory deponent says, I did not open any nor did I see any open.

11th Crossinterrogatory. Who were the officers of said boat at the time, state the name of the Capt. Clerk & Mate. State the interest of each in the boat in her earnings freight and profits.

Answer to the eleventh Cross Interrogatory deponent says, Herman Price Capt; E. R. Mills first clerk, Andrew Lowles 2nd clerk myself chief mate, John Gibbs Watchman Paul Samery Chief engineer Susan Winslow Chambermaid - - - do not their interest individually as regards the earnings of the boat.

12 Cross Interrogatory. What interest have you and each of you in said boat freight profits or business?

Answer to the 12th Crossinterrogatory deponent says I have already answered none to the two foregoing interrogatories again no interest whatsoever.

13th Cross Interrogatory. Do you of your own knowledge know that a Bill of lading was signed if so how did you acquire said knowledge?

Answer to the thirteenth cross interrogatory deponent says, I have already said in my examination in chief. I do not know.

14th Cross Interrogatory were the defendants or either of them present at the time said bill of lading was signed if not where were they at that time.

Answer to the fourteenth Cross interrogatory deponent says, I do not know who were present.

15th Cross Interrogatory. Did the defendants or either of them employ the plaintiff to transport for them said bales or boxes or either of them?

Answer to the 15th Cross interrogatory deponent says I know

of no contract between the plaintiffs and defendants.

16th Cross Interrogatory. How were said boxes marked, state all the marks, names &c. on said boxes and on said bales & each of them.

Answer to the sixteenth Cross Interrogatory deponent says I can not recollect all the marks some were marked Bissell & Willard, Peoria Ills.

17th Cross interrogatory. Did not the marks on said boxes & bales show that the defendants had caused said boxes & bales to be transported by an express company if so state what company

Answer to the 17th Cross interrogatory deponent says, I do not examine the packages sufficiently close enough to state positively the marks or how they were to be transported.

18 Cross interrogatory By what line or company were said boxes and bales shipped who compose the company, who the line?

Answer to the eighteenth Cross interrogatory deponent says, I do not know.

19th Cross interrogatory. Did the defendants or either of them employ the plaintiff to pay any freight, charges or any thing else on said boxes or bales, if so state which one of the defendants did so and how, was you present, state your means of information,

Answer to the 19th Cross interrogatory deponent says, I know nothing embraced in the foregoing interrogatory.

20th Interrogatory. Did you see the plaintiff pay any freight or charges on said boxes & bales if so whose money was paid to whom was it paid & when.

Answer to the 20th Cross interrogatory deponent says, I did not see any money paid

21st Cross interrogatory did the plaintiffs see the goods at the time they were shipped is it the business of the Captain or Master to inspect goods at the time of shipment was the person who signed said bill of lading the clerk of the boat, was

he the agent & clerk of the Captain as of the boat. How long had he been acting as agent & clerk of said boat. How long had he been in the habit of signing bills of lading for said boat. Did the Captain know he was signing bills of lading for goods shipped on said boat, was said person acting under the Captain & Master of said boat or did he work on his own hook & independent of the orders and authority of the Captain of said boat.

Answer to the twenty first Cross interrogatory deponent says, I do not know if the plaintiff seen the goods or not. I think it is not the duty of the Captain or master to inspect the goods it is generally done by the clerk or his instruction; do not know who signed bill of lading and therefore can answer no further to this crossinterrogatory

22nd Cross interrogatory. What share or interest had said person in said boat or in her freight profits & charges. How and by whom was he paid, was he paid out of the funds of the owners of said boat or either of them

Answer to the twenty second Crossinterrogatory deponent says, I do not know what is the meaning of the person whom alluded to I know nothing more of the shares & interest of any one on the boat further deponent sayeth not.

G. S. Putney

I sworn to and subscribed before me this 2^d day of September 1854.



Mann Butler, Commissioner of the
State of Illinois for the County
of St. Louis Mo.

State of Missouri }
County of St. Louis }

I Mann Butler a Commissioner of deeds for the State of Illinois duly commissioned & qualified and to whom was directed the annexed commission & notice personally appeared before me at my office in the City and County of St. Louis on this 2^d day of September in the year 1854 Andrew C. Howles & George S. Putney who were by me sworn &

examined to the foregoing interrogatories and there examination reduced to writing in my presence and subscribed to by them at the time and place, when the same were taken and the said depositions are herewith returned. In testimony whereof I have  hereunto set my hand & affixed my official seal at office in the City & County of St. Louis this 2nd day of Sept. in the year 1854 Meann Butler
Commissioner as aforesaid

attached to and made part of defendants 3rd plea
William Sammis called. A bill of lading shown to the witness. I was clerk of depts. at the date of this bill, they received it, it arrived here on Sunday. I found it in the store. I am their bookkeeper. I have seen the writing of Harmon & Co frequently on bills of lading, think the name & the body of this bill, ~~the address on the back to Bissell & Gillard~~ ^{are in} their handwriting. I probably gave it to depts. attorney (the bill was then read in evidence & is in the words & figures following to wit

Isaac D. Harman & Co.,
Forwarding and Commission Merchants
Isaac D. Harmon Peru and La Salle, Illinois. Chas. L. Huntorn

La Salle April 29, 1854

Shipped in good Order and well-conditioned by I. D. Harmon & Co. on board the good Steamboat Garden City the following articles, marked and consigned as below, which are to be delivered without delay in like good order and condition (the unavoidable dangers of Navigation and Fire excepted) to consignee, he or they paying freight and charges as noted in the margin

Three Bills Lading

Marks	No	Articles	Weights	Charges
Bissell & Willard	17	Boxes goods		
Peoria	4	Leases		
	1	Bale		
	1	Bill	4810	
		R. R. Charges		75.22
		Cartage		1.50
		Our charges	5	2.40
				\$79.12
Same as	1	Box Goods	140	
		R. R. charges		2.62
		Our "		25
Just got them from				2.87
the bars this morning		freight	15	
J. D. H & Co.				Cowles

I remember the goods some of them were in a damaged condition Messrs. Burnett & Frank looked at them examined them & selected the damaged ones. They made a bill of the damaged ones, suspenders &c. - we sell such goods twenty to thirty per cent advance on New York prices. This bill is the New York prices with the charges added.

William C. Boilvin called.

I am in the commission & forwarding business here, & steam boat agent & was in the Spring of 1854, and we collected the bills for the boats. The Defts. received the goods, Bissell came down & said the goods were damaged we appointed Messrs Frank & Burnett to appraise the damages. I saw the goods opened when they were there. Their & my opinion was that they were not damaged on the Garden City. They were mouldy & some of them almost rotten. No goods will mould & dry in three days. The pocket books were moulded.

& rusted. The goods were taken out upon the counter. Messrs. Burnett & Frank then came in & saw them. I have been a forwarder since 1841 - Boxes containing goods may look all right & the goods be all rotten. I have examined goods that have been recently damaged - can judge whether they have been recently wet. When goods are damaged we act for the boats and get the packages were externally in good order and condition when received by us. The damage appraised. The custom is for the boat to pay the prior freight & charges & add this to the freight of the boat, this is so generally with the boats.

The following Bill of Lading was offered in evidence to wit.

Isaac D. Harmon & Co

Forwarding and Commission Merchants

Isaac D. Harmon Peoria and LaSalle, Illinois Chas. L. Huntress

La Salle April 29, 1854

Shipped, in good order and well conditioned by I. D. Harmon & Co on board the good Steamboat Garden City the following articles, marked and consigned as below which are to be delivered without delay in like good order and condition (the unavoidable dangers of navigation and fire excepted) to consignee, he or they paying freight and charges, as noted in the margin.

Three Bills Lading

Marks	No	Articles	Weights	Charges
Bissell & Willard	17	Boxes Goods		
Peoria	4	boxes		
	1	Bale		
	1	Bill	48 10	
		R. R. Charges		75 22
		Cartage		1 50
		Port charges		2 40
				\$ 79 12
Same as	1	Box Goods	140	
Just got them from		R. R. Charges		2 62
the cars this morning		Our		25
I. D. H & Co		freight	15	

Cowles.

Mr. Bryan was sworn & testified to the Court, that he received this bill of lading in an envelope by mail - but knew personally nothing more about it. The evidence was objected to by Defts & the objection was sustained by the Court & the evidence was excluded.

The plaintiff here rested his case and the defts moved to exclude all the evidence which goes to prove that the goods were injured before they were received on board of the Garden City, on the ground, that the plaintiff having introduced the bill of lading, reciting that the goods were in good order & condition, he cannot contradict it.

The Court overruled the motion & the defts excepted to the decision.

The Defts then called

L. L. Webb. - I was a partner of the Defts. in a branch of their business but had no interest in the part of the business relating to these goods. I examined these goods, they were damaged, they were mouldy & rotten. I estimated the damages at \$ 61.92, of the goods which I thought were wholly destroyed, and 30 per cent, should be added to that to make their value here at that time. For the goods partially damaged I estimated the damages at \$ 25.05, the damage to them was 25 per cent & thirty per cent should be added to the 25.05 & the 25 per cent should be computed on the amount thus made. The goods were wet & damaged, they were wet when we first received them, they appeared to have been recently wet, not mouldy then as I saw, but they were when the men appraised the damages.

I helped open the goods, though I did but little about it they were packed in boxes, there may have been one or two bales not in boxes. They were received into the Store on Sunday & were opened on Monday. If the goods had been wet a long time they would have been mouldy & rotten, Do not know as any of them were rotten except some thread, when the

weather is warm, goods that are wet will soon mould & rot. The first lot of goods mentioned was not worth any thing, it was wholly destroyed & worthless.

Mr. Burnett, I looked at the goods. I was requested by Mr. Willard to examine them Mr. Frank assisted. Mr. Willard appeared with his clerks, Mr. Boilvin also called, as he was passing as I supposed. The goods were in a very bad condition from being wet; they were wet then; some of them appeared to have been wet sometime & some appeared to be getting rotten.

(A bill of appraisement of the damages was here shown & handed to the witness) I signed that bill, it expressed my opinion of the damages. Some of the injury might have been done within two or three days - two hours of water on the stationary was time enough to have so damaged it. I fixed the Stationary at New York prices & ten per cent added. I supposed the matter was amicably adjusted, as steam boats are in the habit of doing, I made the statement at the bottom of the bill so that they might have recourse back upon the boat & that the boat might have recourse back upon other parties. I think the goods were wet in the boxes & were not wet when they were packed. I am a bookseller in Peoria. The bill of damages referred to by the witness was read to the jury and is as follows.

Peoria May 2. 1854

Steamer Garden City

To Bissell & Willard Dr.

For the following goods damaged

4 lb Linen thread	55¢	2 20
1/6 Doz. Razor Strips	8.50	1 42
4 " Boys Suspenders	114	4 56
3 " "	200	6 00
4 " "	160	6 40
2 " "	"	3 20
1 1/2 " "	180	2 70

6 " Cork Boat Lines	31	1 86
8 M Fish Hooks	42	3 36
20 doz. Stay Binding	25	5 00
4 1/2 " Porte monnaies	1155	10 59
1/2 " Pocket Books	125	63
7 M Buff envelopes	200	14 00
		<u>\$ 61 92</u>

Damages assessed on the following 25 %

2 Gro. Fish Hooks	65	4 30
1 " " " Ea. 165.90 & 42		2 97
1/4 Doz Razor straps	850	2 12
8 " Stay Binding	32	2 56
1 M Buff envelopes		2 00
1 Doz. Suspenders		4 00
2 " "	185	3 70
1 " "		2 00
8 lb Linen thread	55	4 40
		<u>25.05</u>

Damage 25 %

6 26

\$ 68.18

We the undersigned do certify that the above damage was assessed by us after a careful examination of the goods damaged & further state, that we believe said damage to have been done before they were placed on the Garden City.

G. Burnell

A. Frank

The defendants proved that said Frank was absent & could not be had as a witness. The Defs. offered to prove that the Steam Boats were in the habit of settling for damages done to goods by carriers done before they (the boats) received them. The Plff. objected to this testimony and the objection was sustained & the evidence excluded by the Court & the Defs. excepted to the decision.

At the request of the plaintiff the Court instructed the jury

- as follows to wit. If they believe from the evidence
- 1 That the plaintiff was Master of the Garden City at the time of the receipt and transportation of the goods described in bill of lading he is entitled to maintain his action
 - 2 That if the plaintiff as Master of the Steamboat Garden City carried the goods of the defendants from La Salle to Peoria and there delivered them he is entitled to recover the stipulated prices of such transportation and ^{the bill of lading is the} presumptive evidence of such price and the quantity of goods so carried.
 - 3 That the plaintiff as such Master being a common carrier, received said goods in the ordinary course of his business and in the proper line of transit and paid freight and charges thereon to preceding carriers or Warehousemen, he is entitled to recover the amount so paid although the goods may have suffered damage before they reached the plaintiff, while in the hands of some prior carrier.

That the plaintiff is entitled to recover the amount of freight stipulated if he performed his contract, and the amount of previous charges paid by him, in the ordinary course of business as a common carrier, unless the goods were injured while in his hands. And in this event only can the amount of such damage be recouped from such freight and charges.

That a Bill of Lading may be explained by evidence and if the jury believe from the evidence that the goods were injured or wet before they came into plaintiffs hands and that they were externally in good order and condition, when plaintiff received them, and that plaintiff could not without opening have ascertained their actual condition, the mere fact of his having receipted for them in "good order and well conditioned" will not preclude him from recovering the full amount of freight and charges proved.
To the giving of which the defts excepted

The defts requested the Court to instruct the jury as follows to wit:

If the jury believe from the evidence that it is the custom of the Captains of boats to allow the owners of goods, the amount of damages that such goods may have received during their transportation to the City of Peoria & if the jury further believe from the evidence that the goods for which the plaintiff has brought his suit for freight & charges were injured while being transported to the city of Peoria, they should offset that amount of damages against the plaintiffs claim.

Which instructions the Court refused to give & the defts excepted to the decision.

The Court at the request of defts. gave the following instructions to wit:

- 1 Before the plaintiff can recover for advances made or paid by the Garden City to Isaac D. Harmon & Co, he must prove to the satisfaction of the jury that Isaac D. Harmon & Co had a valid and lawful claim on the goods to that amount & evidence that the Garden City or her owners or clerks made such payment does not prove that the amount paid was lawfully due to Harmon & Co. [But if Harmon & Co were forwarders or warehousemen, received the goods as such then the jury may infer that the money was rightfully paid to them]
- 2 The plaintiff can only recover such amount as he may be entitled to by the evidence
3. The Bill of Lading shows prima facie that the goods were in good order and condition at the time they were received by the plaintiff and if the jury believe from the evidence that the goods were injured before and at the time they were received by defendants [and after they were recd by the plfff. on the Garden City] then the defendants would have a right to offset their damages against any valid claim the plaintiff has proved against the defendants and if the defendants damages exceeds

the amount of plaintiff's claim as proved the jury should return a verdict in favor of the defendants for such overplus.

5. A consignee is the person to whom the goods are consigned. And before Isaac Harmon & Co could lawfully take the defendants' goods into their possession and make charges upon them they must have had some authority from the defendants or in some other way thus to take them and if there is no evidence satisfactory to the jury of such authority, then the mere fact that the plaintiff paid Harmon & Co will not justify the jury in finding a verdict for such sum of money.

6. The Bill of lading offered in evidence by the plaintiff recites that the goods were in good order and condition at the time they were received on board the Garden City, and by said bill of lading the plaintiff contracted and promised to deliver said goods in like good order and condition to the defendants at Peoria and if the jury believe from the evidence that the goods were not delivered in good order and condition, as good order and condition [as when received by the plaintiff] and that the defendants were injured thereby then defendants may offset their injury or damages against any valid claim the plaintiff may have proved against the defendants.

7. The plaintiff having offered the bill of lading in evidence cannot be allowed to contradict or explain unless on showing fraud or mistake, and fraud or mistake cannot be inferred but must be proved. [Though it is competent for the plaintiff to shew that the goods were damaged before he received them & that this was unknown to him at the time he received them.]

If the jury believe from the evidence that there was an agreement between the captain of the Steamboat Garden City or his authorized agent to allow the defendants the amount of damages that appraisers chosen by the parties should decide were done to the goods shipped by the plaintiff for the defendants while said goods were in transit to the City of

Peoria, the jury should then in that case allow the defendants the full amount of such appraised damages so made by said appraisers. But the court qualified the instructions by inserting the clauses included in Brackets, to which the defendants excepted. The jury found a verdict for the Plff.

The defts moved for a new trial for the following reasons:

1. The verdict is against the law of the case.
2. The verdict is against the weight of evidence.
3. The Court refused proper instructions asked by the defendants.
4. The Court gave improper instructions asked by the plaintiff.
5. The Court allowed the plaintiff to introduce improper evidence.
6. The Court refused to exclude the evidence of plaintiff contradicting his own written evidence.
7. The verdict should have been for the defendants.

Grove & McCoy for defts.

Which motion was overruled & the defts excepted to the decision & prayed that this his bill of exceptions may be allowed, signed & sealed by the judge & made part of the record in this cause, which is done.

Orslow Peters 

It is agreed that the record in this cause may be filed in the Supreme Court at any time prior to July 4th 1855 and all objections on account of delay waived.

H. Grove for defts

Wm F. Bryan for plff.

State of Illinois,

Peoria County of I. Jacob Gate clerk of the Circuit Court in and for the County of Peoria in the State of Illinois do hereby certify that the foregoing is a correct transcript from the Records of all the proceedings in the said Circuit Court in a certain cause therein of Herman Price plaintiff against Orrin P. Bissell and William A. Willard defendants as the same

Remain of Record and are on file in my office.

In witness whereof I hereto set
my hand and affix the seal of
Said Circuit Court at my office
in the City of Peoria, this twenty
ninth day of June A.D. 1855.
Jacob Gale, clerk.

Clerks fees, for certified transcript of Record \$15.50
paid by defendants
Jacob Gale

Orin P. Bissel *Wal.*

Herman Price

Receipts.

Filed July 2^d - 1855
S. Leland Clerk.

Orrin P Bassett
William A Villard
Plffs in Error
vs
Herman Price
Def in Error.

In the Supreme Court
Appeal from Peoria

This was an action of assumpsit brought by Price as master of the Garden City against the Appellants, to recover for advances freight and charges on goods transported from Lasalle to Peoria. The defence was that the advances claimed to have been paid by Price were not due from Appellants that the goods were injured in amount exceeding the just claim of Price which amount Appellants offered to offset.

Price proved by the clerk of the boat that some dollars was paid by the clerk of the boat and out of the funds belonging to the boat to Isaac H Harmon Ho of Lasalle.

Appellants insisted that before Price could recover he must show that Harmon Ho had a lawful claim in the goods.

Appellants also proved the injury to the goods amounting to near 100\$ & that appraisers had been appointed by the parties to adjust the loss and an assessment made by the appraisers, which appellants insisted on as a proper offset.

The appellee insisted that the goods were injured before they were received by the Garden City & that he was not liable for such injury.

1. There is no evidence in the record tending to prove that Harmon & Co. had any claim whatever on the goods. They should at least have been some evidence to show that they have a claim or demand. & that it was a reasonable claim.
11 Barker 120.

2. But could Price buy or pay off any claim that Harmon & Co. had against Appellants without the knowledge or assent of the latter & then maintain an action therefor.
In either ~~view~~ view the modification of Appellants' first instruction and the giving of Appellees' third instruction were wrong.

3. There was no evidence that the goods ever were in the hands of any person other than Harmon & Co. At the Garden City, & the goods must have been injured in the hands of one or the other or if injured by Harmon & Co. Price could not by paying Harmon & Co. ~~even a just~~ claim for charges or freight & thus cut off Appellants from their right to recover the damages done to their goods while in the possession of Harmon & Co.
The deposition of Coule shows the payment to have been made in the absence of and without the request or assent of Appellants.

4. Price was not the agent of Appellants but of Harmon & Co 1 Dougl Michigan April 1. Day is decision of this

5. The appellees having introduced the bill of Lading could not contradict it by parol evidence. 6 Watts 426. Hence there was error in the Court below overruling the motion of appellants to exclude all the parol evidence ~~that~~ offered by Price that tended to prove that the goods were injured before they came to care of the Garden City

6. Appellants had the right to show that it was the custom at Peoria for Boats to pay damages in cases where goods were injured. The parties may have carried the goods with that understanding, hence the Court erred in refusing to permit Appellants to prove such custom. It would certainly be ~~more~~ more convenient for all parties if such were the rule. Suppose the Appellants should sue Harmon & Co for their damages in this case would not the bill of Lading be evidence that the goods were in good order when received

on both the Gaden City. And if the Court should hold that Price was the agent of appellants would not the Bill of Lading be a complete answer to the claim of appellants, as against Harmon No.

7. The verdict was against the right of defence. because the record shows that the parties submitted the matter of damages to the award of Burnett & Frank and an award made by them.

B The fourth Plea sets up the subrogation award & proposes to offset the amount.

The replication does not deny either both stands confessed in the record, Brillion Stewart & Burnett. All confirm it & yet the Jury found the whole amount claimed by Price.

8. The 1st instruction given for Price asserts ~~the~~ right of ~~that~~ his right to maintain the action without any qualification whatever.

His right to maintain the action if it exists at all must depend upon his receiving and transporting the goods & delivering them to the consignees. This instruction was erroneous.

9. The second instruction given for Price assumes that there was a stipulated price

10. The third instruction given for Price took all the facts from the Jury and assumes and gives no less than seven distinct facts.

1. That Price was master of the Garden City
2. That he was a common carrier
3. That he received said goods in the ordinary course of business
4. That he received them in the proper line of transit
5. That he paid freight and charges
6. That he paid them to preceding warehousemen or carriers
7. That he is entitled to recover the amount so paid.

This instruction assumes all these & there was nothing left for the Jury but to find the amount which under the second instruction was to be done by from the bill of lading.

This instruction lays down the doctrine that although Harmon & Co. acquired the goods while in their possession Price by paying money to them could recover it of appellants when Harmon & Co. could not do so themselves. This instruction is clearly wrong.

11. The appellee's 4th instruction is erroneous. It asserts that there is only one contingency in which the appellants could recover their damages, viz. if the goods were injured while in appellee's hands.

This would protect Price although he paid four times the value of the goods to Haermen & Co. or if the article was stolen and it would protect him even if he knew Haermen & Co. had purposely injured or taken the goods.

12. The appellee's 5th instruction allows him to explain & contradict his own written & printed evidence.

13. Appellants insist that each and all of these instructions should have been given as asked without qualification or modification.

Bessel and Price

argt. for appellants

Orrin Bissel et al
vs
Herman Price

} Appeal from Peoria

Abstract of record Declaration

1st Count That Defts on 1st day of Dec 1854 was indebted to Plff.
in 200 \$ for freight & Charges on goods & Chattels, Carried from
divers ports & places to other ports & places & afterwards
promised to pay the same.

2 Count Defts were indebted in \$200 for the carrying of other
goods on Steamer "Garden City" from Sasalle to Peoria
Defts promised to pay

3 Count Defts indebted in \$200 for work & Labor

\$200, for money paid lent out & ex-

pended for use of Defts

And in \$200 for money received by Deft. for use of Plff.

" " \$200 " " lent

\$200 " " found due

Promised to pay

Account filed for freight on Merchandise

4950, 1854 945

Charges 82.00

freight & Charges on goods 200.00

freight & Charges on Merchandise 200.00

Carrying of goods and labor 200.00

Money paid for use 200.00

Money recd 200.00

" lent 200.00

" due 200.00

Pleas

1. Non assumpsit for under the Country
2. Payment & for under
3. That only Cause of action is to recover the freights & Charges. That Plff. was indebted to defendants in \$500, for failing to deliver 18 boxes & Cases 1 Bale 1 Bill 1 Box of goods of the value of \$2000,00. That Plaintiff was a common ^{carrier} Master of Steam Boat Garden City running on the Illinois river & engaged in the business of transporting goods &c, and as such carrier Plff. received said boxes & to transport from Sasalle to Peoria that Plaintiff received said goods & promised to deliver the same in good order and Condition to the Defts at Peoria & Plaintiff executed Bill of lading acknowledging receipt of said boxes Bale &c of goods in good order and Condition & agreeing to deliver the same in like good order and Condition at Peoria

That Plff did not nor would deliver said goods in good order but so negligently Carelessly & Transporting the same that they became wet mouldy & were damaged in \$500, which Defts would offset & allow.

4th Plea Only Cause of action transportation of goods that Plaintiff was a Common Carrier & rec; said 18 boxes & ~~Cases~~ 1 bale & of the value of 2000, \$ on board Steamer Garden City of which Plaintiff was Master & Plff. by his agent Carles there executed and delivered to Defts a bill of lading attached to & made

part of 3 filed & thereby bound myself to deliver ^{said goods} in good order and condition to the Depts. at Peoria for certain reasonable reward &c. that I did not nor would deliver said goods in good order but so wrongfully negligently &c carried &c that the same became wet and spoiled.

And afterwards the Pff by Bodwin his agent and authorised to act for him & the defendants agreed to submit the matters & differences growing out of the injury damaging & spoiling & freight & charge on said boxes cases bales & bills of goods to the final arbitrament & award of Abram Frank^r Galusba Burnet arbitrators indifferently chosen by the parties.

That said arbitrators proceeded to examine & decide the matters in difference & then & there did determine that said plaintiff should take 61.92 adding thereto 10 percent for freight & charges^{making}.

619

6812

& should allow to the defendant 6812 as these damages on said goods & the further sum of 6700 as damages for spoiling other goods than above.

Depts have at all times been ready and willing to stand by and perform awards & defendants offered said goods to plaintiff & still are ready to deliver the same. That amt due from plaintiff to defendants greatly exceeds amount of freight & defendants are willing to offset the same.

5th Plea

As to all the premises in the declaration mentioned except as to 7th & 8th 'Not Guilty' & as to said 8th set off delivery of goods to plaintiff to transport (& same matter as in 4th Plea) breach that goods were lost & spoiled & damaged & injured to amount of \$500 which defendant would offset & allow to P^lff. in any amount to be proved by plaintiff

Replication to 3rd & 5th pleas that plaintiff is not indebted to D^fs. Concludes to the Country & founds Plaintiffs (below) testimony.

A. J. Stewart, an Clerk of Boardman & Co forwarding Merchant in Spring of 1854 in Peoria P^lff. was Captain of Garden City some goods came by her to defendant with Clean Bill of lading duplicate from J. D. Harman & Company

Plaintiff here offered to prove custom among shipper & carriers as to paying previous charges on on goods, evidence objected to by defendants & objection overruled & defendants excepted; Witness stated it was the custom on the Illinois river is for the shippers from any one point of goods forwarded there to pay the charges of the former forwarders or carriers, never heard of it being otherwise boats sometimes advance 3000 or 4000 \$ Garden City was ^{then} running on Illinois river

Boardman & Co. were the agents of her persons were selected Mr Boardman acting for P^lff. to value the damages

- 5 The Court erred in refusing to give the instructions asked by the plaintiff in error
- 6 The Court erred in modifying and qualifying the instruction asked by plaintiff in error
- 7 The Court erred in overruling the motion for a new trial & in entering judgment against the Pff. for same reasons as set forth in motion for a new trial

Grove & McCoy
for Appellant

11.8

Bussel et al

vs

Price

Abstract

Filed July 2 1855

Second W

Deposition of Andrew Coules

Knows full 5 years + defendant

4 Mrs Knows Garden City brought goods to Defendants in latter part of April 1854 24 packages Marked Bissel & Willard Seoria Ill. boat delivered packages at Seoria Ill. Don't know number of each only one or two bales Packages appeared When received in good condition no indication of injury boxes were not opened nor bales prior to shipment placed on boat near main hatch & kept there during the trip, delivered at Levee in Seoria packages not exposed to wet nor injured on the boat delivered in same good order as received. I received the goods and signed the Bill of lading the reason why ~~the~~ goods were receipted as being ⁱⁿ good order was because they appeared so

Freight + Charges were $7\frac{24}{100}$ \$ Charges 82 \$ don't know how charges accrued the boat paid said Charges ~~part~~ freight was 4850 lbs. at 15 ct per Hundred Charges paid to Harmon. He an acct. of Bissel & Willard paid by witness on account of boat. Capt H Price was Master. The packages were received in good order by one of the parties or by one in their employ they never complained that they were in bad order

Steam boat Clerk. Don't know who owns Garden City only from report. Don't know on whom account she runs she runs for benefit of her

owners, Dont know that Herman Price is the only
persons entitled to receive freight, was second
Clerk & looked to the boat for his pay to test
of his knowledge & recollection packages were
in good order package 24, Price Master Mills
Clerk has no interest signed Shippers bill at
Sasalle over on to Consigner, Knows defendants
were not present when bills of lading were signed
& dont know where they were I do not know
that defendant employed plaintiff to pay any
transport said goods & boxes I do not know whether
the defendant employed plaintiff to pay any
charges or not was not present I paid the charges
out of the boat funds dont know that it is the
business of the Capt or Clerk to inspect goods boat
paid witness out of boat funds.

George J. Putney, deposition - Knows parties
received as mate the goods marked Bassel &
Willard ^{Peoria} boat delivered them in like good order
as received at Peoria. External appearance
good when received & when delivered, boxes
& bales were tight remember trip from violent
winds that prevailed recollect no opening or injury
to the goods dont know from where the goods were
received were stored across the forward hatches under
the lower deck were well secured, said
goods were delivered at the regular Steamboat
landing the steamboat lying along side the

wharf boat and the goods were delivered
at the levee at Pecoria & were exposed to sun
or rain either on the boat at any time ^{between} their
shipment at LaSalle & their delivery at Pecoria
nor were they injured in any manner, means of
knowing arises from being mate of the boat
dont know who signed bill of lading Price was
Master of boat

Knows owners of Garden City from re port
only. Supposes she is run on account of her
owners dont know Price was only person
entitled to collect freights recd 100 per month
looked to boat for pay did not open and did
not see any of said goods opened Price was
~~Master~~ Captain Mills Clerk & dont know
their interest, dont that a bill of lading was
signed. Knows of no Contract between Plff
& defendant some boxes marked Bissell & Willard
dont know that defendants employed
plaintiff to pay any freights or charges on said
goods did not see any money paid dont
know that plaintiff saw goods

William Sammons Called by Plff

Bill of lading shown witness
attached to & made part of depts 3 files was
Clerk of depts at date of bill they received it
it came on Sunday found it in their store

and their Bookkeeper have seen their hand
writing think it and the address on the back
to Bissel & Willard in their hand writing I probably
gave it to depts attorney it was then read in ev-
id the words following

Isaac D Harmon & Co (examined Copy from bill of
exceptions) (her sec copy) Some of the goods
were damaged Burnett & Frank examined
goods they made Bill of damaged ones we sell
such goods at twenty to thirty per cent above New
York prices The Bill is the New York prices
with Charges added

Wm C Bowen Called

Again in the Commission business
& Steam Boat agent & was in Spring 1854 & col-
lected bills for the Boats. The defendants received
the goods Bissel came down & said the goods were
damaged we appointed Frank & Burnett to
appraise the damages saw goods when opened
& my opinion was that they were not damaged
in garden City were mouldy and some were
rotten almost. No goods will mould & dry in
three days. Packet Boats were mouldy & rusted
goods were taken out upon the Coruter, Burnett
& Frank came in & saw them have been a
forwarder since 1841 Boxes containing the
goods my look all right and the goods be
rotten have examined goods recently

unrayed can judge whether they have been recently wet. When goods are damaged we act for the boats and yet the damages appertain to the packages. The packages were all esteemed in good order & condition when received by us.

The custom is for the boat to pay the former prior freight & charges & add this to the freight & this is generally so with the boats — Here another bill of lading was offered in evidence. Plff. here rested his ~~case~~ case and the defendants moved to exclude all the evidence which goes to prove that the goods were not injured before they were received on board the Garden City on the ground that the plaintiff having introduced the Bill of lading reciting that the goods were in good order and condition he cannot contradict it. The Court overruled the motion & the defendant excepted to the ~~decision~~ ~~defendant excepted to the decision~~ The defendant then called A. J. Webb.

Witness examined the goods and estimated ^{the} goods wholly damaged & destroyed at 61.92 to that ought to be added 30 per cent to make to make their value here the goods were mouldy & rotten For the goods partially damaged I estimate the damage at 25.05 (This makes the damage

61.92
30 percent added
18.54
Partially damaged
25.05
add 25 percent
6.25
111.76

See his estimate

The goods were wet when we first opened them they appeared to have been recently wet not mouldy when we received them as I saw but they were when they appraised them the damages I helped open the goods. They were received in the store on Sunday and were opened on Monday

If the goods had been wet a long time they would have been mouldy & rotten don't know that any were rotten except some thread When the weather is warm goods that are wet will soon mould & rot the first lot of goods were worthless

G Burnet testified that he looked at the goods was requested to do so by Mr Willard to examine them Mr Frank assisted. Willard appeared with his clerks Mr. Bauman also appeared the goods were in very bad ~~order~~ condition from being wet

They were wet there. Some appeared to have been wet some time & getting rotten Bill of appraisement of the damages here shown to witness I signed that Bill it expressed my opinion of the damages, Some of the damages might have been done within two or three days two hours of wet on the stationary was time enough to have so damaged it I fixed the stationary at N.Y. prices adding 10 percent I supposed the matter amicably adjusted as steam boats are in the habit of doing I made the statement at the bottom of the Bill so that they might

Owen P. Bissel et al. }
 vs } Appeal from Peoria
 Herman Price }
 Abstract of Declaration

1st Count

That defendants on 15 day of Dec 1854 were indebted to Plff in \$200, for freight & Charges on goods & Chattels carried from divers ports & places to other ports & places & afterward promised to pay the same

2 Count

Defendants were indebted in \$200, for the carrying of the other goods on Steam Boat "Golden City" from Lodi to Peoria. Defts promised to pay.

3 Count

Defts indebted in \$200, for work & labor

\$200, for money paid laid out & expended for use of Defts.

And in \$200, for money received by deft for use of Plff.

" " \$200, " " lent

" " \$200 " " found due

Promised to pay

Account filed for freight on Merchandise

4850. 158

745

Charges	82.00
freight & charges in goods	200.00
freight & Charges on Merchandise	200.00
Carrying of goods and labor	200.00
Money paid your use	200.00
Money recd.	200.00

" lent

200.00

" due

200.00

Pleas

1. Non assumpsit tender to the Country
2. Payment & tender
3. That only Cause of action is to recover the freight & charges
" Plff. was indebted to defendants in \$500.00 for failing to deliver 17 boxes & 4 cases 1 Bale 1 Box of goods of the value of 2000.00. That Plff. was a common carrier & Master of Steam Boat Garden City running on the Illinois river & engaged in business of transporting goods &c and as such carrier Plff. rec^d said boxes & to transport from LaSalle to Peoria that Plff. rec^d said goods & promised to deliver the same in good order and condition to the defts. at Peoria & Plff. executed bill of lading acknowledging receipt of said boxes bales &c of goods in good order and condition & agreeing to deliver the same in like good order and condition at Peoria

That Plff. did ^{not} nor would ~~not~~ deliver said goods in good order but so negligently carelessly &c transporting the same that they became wet mouldy & were damaged in \$500, which defts. would offset & ~~claim~~ allow.

4th Plea Only Cause of action Transportation of goods that Plff. was a common carrier & received said 17 boxes & 4 cases 1 bale & of the value of 2000.00 on board ^{Steamer} ~~Steam Boat~~ Garden City of which Plaintiff was master & Plff. by his agent Carles there executed and delivered to Defendant a bill of lading attached to and made part of 3 pleas & thereby bound himself to deliver in good order and condition to the Defendant at ^{Peoria} ~~Peoria~~ for certain reasonable reward &c. That Plaintiff did not nor

would deliver said goods in good order but so
wrongfully negligently & carelessly that the same became
wet & spoiled

And afterwards the plaintiff by Bolcum his agent
and authorized to act for him the defendant agreed
to submit the matters & differences growing out of the in-
jury damaging & spoiling & freight & charge on said
boxes bales cases & bills of goods to the final arbitra-
ment & award of Abram Frank Galuska Burnett
arbitrators indifferently chosen by the parties That said
arbitrators proceeded to examine & decide the mat-
ters in difference & then & there did determine
that said plaintiff should take \$182 ct adding thereto
10 p. ct. for freight & charges making 612 6812,

& should allow to the defts 6812 as their damages
on said goods & ^{the} further sum of \$250.00 as damage for
spoiling other goods than above

Defendants have at all times been ready and will-
ing to stand by and perform award, & defendants of-
fered said goods to plaintiff & still are ready to de-
liver the same. That amt. due from plaintiff to de-
fendants greatly exceeds amount of freight & defendants
are willing to offset the same.

5th Plea As to all the premises in declaration mentioned
except as 1st & 2nd Not guilty & as to said \$45 sets up
delivery of goods to plaintiff to transport (& same
matters as in 4th Plea) breach that goods were wet &
damaged & injured to amt. of \$500, which defendant

would effect & allow & allow to plaintiff in any amount
to be proved by plaintiff

Replication to 3, 4 & 5 pleas that plaintiff is not
indebted to defts concludes to the Country & founder
Plaintiffs (below) testimony

A J Stewart, Am Clerk of Burlington forwarding
merchants in Spring of 1854 in Peoria Pff. was Captain of
Garden City some goods came by her to defendant with
clean bill of lading goods were some damaged. did
not know much of the damage freight Bill shown
to witness, This is Bill of lading duplicate from J D.
Harrison & Company

Plaintiff here offered to prove custom among ship^{pers}
& carriers as to paying previous charges on goods evidence
objected objected to by defendants & objections overruled
& defendants excepted; witness stated it was the
custom on the Illinois river is for ^{the} shipper from any
one point of goods forwarded there to pay the charges of
the former forwarders or carrier. never heard of it
being otherwise boats sometimes advance 3000 or 1000
Garden City was then running on Illinois river
Burling & Co were the agents of her, persons were selected
Mr Burling acting for Pff. to value the damages
Deposition of Andrew Conley.

Knows plaintiff 5 years & defendants
& knows Garden City brought goods to Defendants
in latter part of April 1854 24 packages marked Bape

+ Willard Peoria Ill. boat delivered packages at Peoria Ill. dont know number of each only one or two bales, packages appeared when received in good external condition no indication of injury boxes were not opened, no bales prior to shipment

placed on boat near main hatch & kept there during the trip delivered at Levee in Peoria packages not exposed to wet nor injured on the boat delivered in same good order as received, I received the goods & signed bill of lading, the reason why the goods were receipted as being in good order was because they appeared so

+ Freight & Charges were \$743.88 Charges \$2.18 dont know how charges accrued the boat paid ~~said~~ said charges freight was 4950 lbs at 15cts per hundred Charges part to Harmon & Co on acct of Bissel & Willard paid by witness on account of boat, Capt H Price was master The packages were received in good order by one of the parties or by one in their employ they never complained that ^{they} were in bad order

\$ Steam boat Clerk, dont know who owns Garden City only from report dont know on whose account she runs she runs for benefit of her owners, dont know that Herman Price is the only person entitled to receive freight, was second clerk & looked to the boat for his pay to best of ^{his} knowledge & recollection packages were in good order

packages 24, River Master, Mills Clerk has no interest signed shippers bills at LaSalle over one to consignee, knows defendants were not present when bills of lading were signed & don't ^{know} where they were I do not know that defendant employed plaintiff to transport said goods & boxes, I do not know whether the defendant employed plaintiff to transport said goods to pay any charges or not was not present I paid the charges out of the boat funds don't know that is the business of the Capt or Clerk to inspect goods boat paid witness out of boat funds.

George S Putney deposition - Knows parties

received as mate the goods marked Bissel & Willard
boat delivered them in like good order as received at Peoria

Peoria, external appearance good when received ^{were tight} & when delivered, boxes & bales, ~~received~~ remember trip from violent winds that prevailed recollect no opening or injury to the goods don't know from where the goods were received were stored across the forward hatches under the lower deck, were well ^{arranged} & covered said goods were delivered at the regular Steamboat landing the Steamboat lying along side the wharf boat and the goods were delivered at the ~~reg-~~ ^{no} levee at Peoria & were exposed to wet or ruin either on the boat at any time between their shipment at LaSalle & their delivery

at Peoria. no. were they injured in any manner. means of knowing arises from being mate of the boat dont know who signed bill of lading Price was Master of boat

Knows owners of Garden City from report only, supposed he is run on account of her owners - dont know that Price was only person entitled to collect freights - rec 100 per month looked to boat for pay did not open and did not see any of said goods opened. Price was Captain Will, Clerk &c dont know their interest. dont know that a bill of lading was signed, knows of no contract between Pff. & defendants, some boxes marked Bissel & Willard. dont know that defendants employed plaintiff to pay any freight or charges on said goods did not see any money paid. dont know that plaintiff saw goods

William Samms Calley plaintiff
Bill of lading shown
Witness attached to and made part of Deft's
plea was clerk of depts at date of bill they
received it it came in Sunday
found it in their store and their Bookkeeper
have seen their hand writing thereon and the
address on the back to Bissel & Willard in their
hand writing I probably gave it to depts attor-

ney it was then read in evidence in the words following

~~Isaac D. Harman & Co.~~ ^{Harman} (Harman's Copy)

Isaac D. Harman & Co (Examined Copy in Bill of exceptions) (here see Copy) Some of goods were damaged Burnett & Frank examined goods they made Bill of damaged ones, we sell such goods at twenty to thirty per cent above New York prices

The Bill is the The New York prices added with Charges added

Wm. C. Bolman Called

Am in Commission business & Steam Boat agent & was in Spring of 1854 & collected bills for the boats. The depts rec'd the goods Bissel came down & said the goods were damaged we appointed Frank & Burnett to appraise the damages saw goods when opened they opinion was that they were not damaged in Garden City were mouldy and some were rotten almost no goods will mould and dry in 3 days Pocket Books were mouldy & rusted goods were taken out upon the Comites Burnett & Frank came in and saw them have been forwarded since 1841 Boxes containing the goods may look all right & the goods be rotten have examined goods recently damaged can Judge whether they have been recently wet, when goods are dam-

damaged we act for the boat and get the damages appraised, the packages were all esteemed in good order & condition when received by us. The custom is for the boat to pay the prior freight & charges and add this to the freight this is generally so with the boat— Here another bill of lading was offered in evidence. Plaintiff here rested his case and the defendants moved to exclude all the evidence which goes to prove that the goods were not injured before they were received ^{on board the ~~Burden~~} ~~by the~~ ^{Golden} city on the ground that the plaintiff having introduced the Bill of lading reciting that the goods were in good order and condition he cannot contradict it.

The Court overruled the motion & the defendants excepted to the decision.

The defendant then called J. S. Webb,

Witness examined the goods and estimated the damages, ^{goods} wholly destroyed at \$61.72 to that ought to be added 30 percent to make their value here the goods were mouldy & rotten. For the goods partially damaged I estimate the damage at \$25.05 (This makes the damage

	61.72
30 per cent added	18.54
Partially damaged	25.05
Add 25 percent	6.25
	111.56

See his estimate

The goods were wet when we first opened them they appeared to have been recently wet not mouldy when we received them as I saw but they were when they appraised the damages I helped open the goods

They were received ^{in the store} on Sunday and were opened on Monday. If the goods had been wet a long time they they would have been mouldy & rotten. dont know that any were rotten except some thread. When the weather is warm goods that are wet will soon mould and rot the first lot of goods were worthless.

G Burnett testified that he looked at the goods was requested to do so by Mr Willard to examine them Mr Frank assisted Willard appeared with his clerk, Mr Berlin also appeared the goods were in a very bad condition from being wet. They ^{was} wet then some ^{rotten} appeared to have been wet some time & getting ~~dry~~

Bill of appraisement of the damages here shown to witnesses, I signed that Bill it expressed my opinion of the damages, Some of the damages might have been done within two or three days Two hours of wet on the stationary was time enough to have so damaged it. I fixed the stationary at Neps York price adding ten percent I supposed the matter amicably adjusted as steam boats are in the habit of doing, I made the statement at the bottom of the bill so that they might have recourse back upon the boat and that the Boat might have recourse back upon other parties I think the goods were

wet in the boxes and were not wet when
packed - and a Book seller in Peoria - bill of
damages was here read to the jury and is as follows
Peoria May 2 1854

Steamer Garden City

To Bissel & Willard Esq,

For the following goods damaged
here follows list of goods ^{amount to} damaged 61,82
also 25¢ et in another list $\frac{626}{68,18}$

We the undersigned do certify that the above
damage was done assessed by us after a careful
examination of the goods damaged & further state
that we believe said damage to have been done
before they were placed in the Garden City

Signed G. Burnett
A. Frank

The defendant proved
that said Frank was absent and could not be
had as a witness. The defendant offered to prove
that the Custom was for boats to pay for damages
done to goods but the plaintiff objected & the
testimony excluded and the defendant excepted

The Court gave the following instructions for Pff.

- 1 If they believe from the evidence that the plain-
tiff was master of the Garden City at the time of the
receipt and transportation of the ^{goods} described in bill
of lading he is entitled to maintain his action

2 That if the Plaintiff as Master of the Steam Boat Carried the goods of ^{the} defendant from Lsalle to Peoria and then delivered them he is entitled to ^{recover} the stipulated price of such transportation and the Bill of lading is presumptive evidence of such price and the quantity of goods Carried

3 That the Plaintiff as such Master being a common Carrier received such goods in the ordinary course of business and on the proper line of transit and paid Freight and Charges thereon to preceding Carrier or Warehousemen he is entitled to receive the amount so paid although the goods may have suffered damage before they reached the Plaintiff while in the hands of some prior Carrier.

That the Plaintiff is entitled to recover the amount of freight stipulated if he performs his contract and the amount ^{of the previous charges} paid by him in the ordinary course of business as a common Carrier unless the goods were injured in his hands and in this event only can the amount of such damage be recovered from such freight and charges

That a bill of lading may be explained by evidence and if the Jury believe from the evidence that the goods were injured or wet before they came into plaintiffs hands and that they externally in good order and condition when

plaintiff received them and that the plaintiff could not without opening have ascertained their actual condition the mere fact of his receipted for them in good order and well conditioned will not preclude him from recovering the full amount of freight and charges proved.

Is the giving of which the defendants excepted

The defendant requested the Court to instruct the Jury as follows

If the Jury believe from the evidence that it is the custom of the Captains of boats to allow the owners of goods the amount of damages that such goods may have received during the transportation to the City of Peoria and if the Jury further believe from the evidence that the goods for which the plaintiff has brought his suit for freight and charges were injured while being transported to the City of Peoria they should offset that amount of claim against the plaintiff's claim, which instruction the Court refused to give & the defendants excepted to the decision.

(Except that part in brackets)

The Court was to instruct the Jury as follows

- 1 Before the Plaintiff can recover for advances made or paid by the Garden City to Isaac D Harman & Co he must prove to the satisfaction of the Jury that Isaac D Harman & Co had a valid & lawful claim on the goods to that amount & evidence that the Garden City

or her owners or clerks made such payments does not prove that the amount was lawfully due to Harman & Co. [But if Harman & Co were forwarders or warehousemen received the goods as such then the Jury may infer that the money was rightfully paid to them]

- 2 The plaintiff can only recover such amount as he may be entitled to by the evidence
- 3 The bills of Lading shows prima facie that the goods were in good order and condition at the time they were received by the plaintiff and if the Jury believe from the evidence that the goods were injured before and at the time they were received by the defendants [and after they were received by the plaintiff on the Garden City] then the defendants would have a right to offset their damages against any valid claim the plaintiff has got proved against the defendant and if the defendants damages exceeds the amount of Plaintiff claim as proved the Jury return a verdict in favor of the defendant for such overplus
- 5 A consignee is the person to whom the goods are consigned and before Isaac Harman & Co could lawfully take the defendants goods into their possession and make charges upon them they must have had some authority from the de-

pendants or in some other way thus to take them, and if there is no evidence satisfactory to the Jury of such authority, then the mere fact that the plaintiff paid Harmon & Co will not justify the Jury in finding a verdict for such sum of money

6 The Bill of lading offered in evidence by the plaintiff recites that the goods were in good order and Condition at the time they were received on board the Garden City and by said Bill of the plaintiff Contracted and promised to deliver said goods in like good order and Condition to the defendants at Peoria and if the Jury believe from the evidence that the goods were not delivered in good order and Condition [as when received by the plaintiff] And that the defendants were injured thereby then the defendant may offset their injury or damages against any valid claim the plaintiffs may have proved against the defendants

7 The plaintiff having offered the Bill of lading in evidence cannot be allowed to contradict or explain it unless in showing fraud or mistake, ^{or fraud or mistake} cannot be inferred but must be proved [though it is competent for the plaintiffs to show that the goods were damaged before he received them and that this was unknown to him at

the time he received them]

If the Jury believe from the evidence that there was an agreement between the Captain of the Steam boat Garden City or his authorized agent to ^{that} allow the defendants the amount of damages appraisers chosen by the parties should decide were done to the goods shipped by the plaintiff for the defendants which said goods were in transit to the city of Peoria the Jury should then in that case allow the defendants the full amount of such appraised damages so made by said appraisers. But the Court qualified the instructions by inserting the Clauses included in Brackets to which the defendants excepted.

The ^{Jury} found a verdict for Plaintiff

89.400 B

The defendant moved for a new trial for following reasons.

- 1 The verdict is against the law of the case.
- 2 The verdict is against the weight of evidence.
- 3 The Court refused proper instructions asked by defendants.
- 4 The Court gave improper instructions asked by the Plaintiff.
- 5 The Court gave ~~improper instructions~~ allowed the plff. to introduce improper evidence.
- 6 The Court refused to exclude the evidence of plaintiff contradicting his own written evidence.

7 The verdict should have been for the defendants
~~for~~ ^{for} McCoy for deft.

Which motion was overruled & defendants
excepted, defendants appealed & assign on
record ^{here} the following

- 1 The Court erred in permitting the defendants to
prove the custom among shippers & carriers as
to paying previous charges on goods.
- 2 The Court erred in overruling the motion of the
plaintiffs in error, to exclude the evidence
which goes to prove that the goods were injured
before they were received on board the Garden
City as stated in the Bill of exceptions
- 3 The Court erred in excluding the evidence offered
by the plaintiffs in error as to the custom of boats
paying damages for injuries to goods as stated
in bill of exceptions
- 4 The Court erred in ~~refusing to give~~ ^{the instruction}
asked by the ~~plaintiffs~~ ^{defendants} in error
- 5 The Court erred in refusing to give the in-
structions asked by the plaintiffs in error

6 The Court erred in ~~refusing to~~ modifying
and qualifying the instructions asked by plain-
tiff in error

7 The Court erred in overruling the motion for
a new trial & in entering judgment against the
plaintiff for same reasons as set forth in
motion for new trial

Wm. A. Ray, Groves & McCoy
for Appellant.

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Bissell dal
vs
Price
Abstract

Filed May 2 1855
Leland CB

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C. P. Bissel et al.

vs

Arman Price

1855

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