

No. 12397

Supreme Court of Illinois

Crawford, et al.

vs.

Clark, et al.

71641  7

~~276~~ 45.

J. H. Crawford et al

L. J. Black et al.

45

12397

1857

854

State of Illinois
Cook County

Shas before the Honorable
Hugh J. Dickel Judge of the Seventh Judicial
Circuit Court of the State of Illinois and presid-
ing Judge of the Circuit Court of the County
of Cook in the State of Illinois at a Term
therof begun and held at Chicago in said county
of Cook on the first Monday being the sixth
day of December in the year of Our Lord One
thousand Eight Hundred and fifty two, and of
the Independence of the United States Seventy Sixth

Present the Honorable Hugh J. Dickel, Judge
of said court. Daniel W. Shoy
States Attorney Intens, Cyrus P.
Bradley Sheriff.

Attest Louis D. Ward Clerk of the Circuit
Court of Cook County.

Be it remembered that on the twenty seventh
day of November in the year of Our Lord one
thousand eight hundred and fifty two there was
filed in the clerks office of the Circuit Court
of Cook County aforesaid the plaintiffs said decl-
aration which is in the words and figures following
to wit.

State of Illinois
Cook County, ss.

In the Circuit Court of
Cook County, Dec^r. T. 1852.

Saurom J. Clark & Seymour
Gilbert, plaintiffs in this suit, by Goodrich and
Scoville, their attorneys, complain of Phil^s
Chamberlin and John St. Crawford, defendants
herein, of a plea of trespass on the case; for
that whereas the said defendants, before and
at the time of the delivery of the goods and
chattles to them as herein after, next mentioned,
were and from thence hitherto have been and
still are common carriers of goods and chattles
for hire, to wit, from Clearland in the State
of Ohio, to Chicago, to wit, at the County of
Cook aforesaid; and whereas also, the said plan-
tiffs, whilst the said defendants were such common
carriers, as aforesaid, to wit, on the fourth day
of September A.D. 1852, at Clearland, to wit,
at the County of Cook aforesaid, caused to be
delivered to the said defendants, and the said
defendants then and there accepted and received
from the said plaintiffs, a quantity of iron,
and steel, to wit, five thousand pounds of iron,
& seven Bundles of steel, of great value, to wit,
of the value of five hundred dollars, to be carried
& conveyed by the said defendants, in and by a
certain vessel or propeller of the said defendants,
called the Granite State, from Clearland aforesaid,

to Chicago aforesaid, and there, to wit at Chicago,
aforesaid, to be delivered in good order and
condition, for the said plaintiffs. (the leakage of
oil, molasses, liquors and other liquids and the
dangers of navigation only excepted) for certain
reasonable freight & reward for each hundred
pounds thereof to the said defendants in that
behalf to be paid. And although the said vessel
or propeller, afterwards to wit, on the eleventh
day of September A.D. 1852, safely arrived at
Chicago, aforesaid, and no leakage, of oil,
molasses, liquors, or other liquids nor danger of
navigation, prevented the safe carriage or delivery
of the said iron and steel, as aforesaid, yet
the said defendants, not regarding their duty
in that behalf, but contriving, and fraudulently
intending, craftily and subtly to deceive and
defraud the said plaintiffs in this behalf, did
not deliver the said iron and steel, for the said
plaintiffs, but so negligently, carelessly, and improp-
erly conducted themselves in this behalf, that for
want of due care in the said defendants and
their servants in that behalf, the said iron &
steel, ~~and~~ afterwards, to wit, on the day and
year last aforesaid, at the County of Cook
aforesaid, became & were wholly lost to the
plaintiffs, to wit at the County of Cook
aforesaid.

2 And whereas also on the day & year first
aforesaid at Charland to wit, at the County
of Cook aforesaid, at the special instance
& request of the said defendants, the said
plaintiffs then and there delivered to the said
defendants divers other iron & steel, of the said
plaintiffs, to wit, one hundred & seventy four
pieces of iron, nineteen bundles of iron,
seven bundles of steel, and thirty kegs of
nails, weighing in all a great number of
pounds, to wit, twelve thousand and forty eight
pounds, and of great value to wit, of the
value of five hundred dollars, to be carried
and conveyed by the said defendants in &
by a certain other vessel or propeller called
the Granite State, to Chicago aforesaid, & there
to wit, at Chicago aforesaid, to be delivered
for the said plaintiffs, for certain freight and
reward to the said defendants in that behalf,
in good order and condition, (the leakage of
oil, molasses, liquors & other liquids, & the dangers
of navigation only excepted,) without delay
and the said defendants then & there took
accepted and received the said last mentioned
iron and steel, accordingly for the purposes
last aforesaid; and it then & there became &
was the duty of the said defendants to take due
& proper care of the said last mentioned iron &

steels, & iron & about the carriage & conveyance
of the same ^{& the delivery thereof as aforesaid}. Yet the said defendants, not
regarding their duty in that behalf, but contriv-
ing &c. afterwards to wit, on the day & year last
aforesaid, at the County of Cook aforesaid, took so
little & such bad & improper care of the said last
mentioned iron & steels, & iron and about the carriage
& conveyance of the same & delivery thereof as
aforesaid, that the same then & there by reason
of the bad and improper care of the said def-
endants in that behalf, and not by reason of
any leakage of oil, molasses, liquors, or other
liquids, nor by the dangers of navigation, be-
came & were wholly lost to the said plaintiffs,
to wit, at the County of Cook aforesaid.

3.

And whereas also afterwards, to wit, on the
fourth day of September A.D. 1852, at Chicago
to wit, at the County of Cook aforesaid, the
said defendants, the said defendants being
common carriers, as aforesaid, the said plaintiffs
then & there delivered to the said defendants,
in good order and well conditioned, divers
other iron, steels, & nails, of the like description,
quantity & weight as those in the said second
count mentioned, of the said plaintiffs to be
carried & conveyed by the said defendants,
as such common carriers, as aforesaid.

in & by a certain other vessel or propeller,
called the propeller Granite State, from Clea-
reland aforesaid, to Chicago aforesaid, & there to
wit. at Chicago, aforesaid to be delivered in
like good order & condition, for the said plain-
tiffs to J. Peck & Co. for certain freight & charges
for each one hundred pounds thereof to the
said defendants in that behalf to be paid,
(the leakage of oil, molasses, liquors, & other liquors,
& the danger of navigation only excepted,) without
delay; and the said defendants then & there took
accepted, and received the same accordingly
for the purposes last aforesaid; & it then & there
became & was the duty of the said defendants
to take due & proper care of the said last
mentioned iron, steel & nails, & in & about the
carriage & conveyance of the same & the
delivery thereof as aforesaid; but the said
defendants, not regarding their duty in that
behalf, but contriving, &c. afterwards, to wit,
on the twelfth day of September A.D. 1852, at
the County of Cook aforesaid, took so little
& such bad & improper care of the said last
mentioned iron, steel & nails, & in & about
the carriage & conveyance of the same &
delivery thereof as aforesaid, that the
same then & there, by reason of the bad
& improper care of the said defendants

and their mariners & servants in that behalf. not by reason of any leakage of oil, molasses, liquors or other liquors, nor of any damage of navigation, because & were in part, to wit, five thousand pounds thereof, lost to the said plaintiffs to wit, at the county aforesaid,

H. And whereas, also, heretofore, to wit, on the ninth day of August A.D. 1852, at Pittsburg, to wit, at the county of Cook aforesaid the said defendants being common carriers of goods & chattles for hire, to wit, from Pittsburg in the State of Pennsylvania to Chicago, in the county of Cook aforesaid the said plaintiffs caused to be delivered to the said defendants, being such common carriers as aforesaid, by Messrs. Lindsay & Co. the agents of said plaintiffs, in good order & well conditioned, certain other iron, steel, & nails, to wit, one hundred & seventy four bars of iron, nineteen bundles of iron, seven Bundles of spring steel, & thirty Kegs of nails, of great weight, to wit weighing in all twelve thousand & forty eight pounds, & of great value, to wit, of the value of five hundred dollars, of the said plaintiffs, to be carried and conveyed by the said defendants in & by a certain

Canal Boat of the Union Line from
Pittsburg, aforesaid, to Chicago, aforesaid,
and there to wit, at Chicago aforesaid to
be delivered for the said plaintiffs to Dole,
Runsey & Co. or to their assigns, for certain
freight to the said defendants in that
behalf, to wit, thirty five cents for each
one hundred pounds thereof, in good order
(the dangers of river navigation, fire &
unavoidable accidents excepted) and the
said defendants then & there, by G. W. Horton
their agent took, accepted & received
the same accordingly, for the purposes
last aforesaid, & it then & there became
& was the duty of the said defendants,
to take due & proper care of the said
last mentioned iron, steel, & nails, & in and
about the carriage & conveyance of the
same & the delivery thereof as aforesaid,
yet the said defendants not regarding
their duty in that behalf, but contriving
re. afterwards, to wit, on the twelfth day
of September A.D. 1852, to wit, at the
County of Cook aforesaid, took so little
& such bad & improper care of the said
last mentioned iron, steel & nails, & in &
about the carriage & conveyance of the
same & delivery thereof, as aforesaid,
that

that the same then others, by reason of the
& improper care of the said defendants in
that behalf, & of their negligence & default,
& of the negligence of their mariners, & servants,
and not by reason of any dangers of River
navigation, fire or other unavoidable accidents,
became & were wholly lost to the plaintiffs to
wit, at the County aforesaid.

5 And whereas also, heretofore, to wit on the
ninth day of August, 1852, the said defendants,
^{being such common carriers} ~~as aforesaid~~
as aforesaid, the said plaintiffs at Pittsburg,
to wit, at the County of Cook aforesaid, caused
to be delivered to the said defendants as such
carriers a large quantity, to wit 174 bars of
other ^{nineteen other} ~~iron~~ ^{bundles of iron} ~~iron~~, seven other bundles of steel & thirty
other kegs of nails, of great weight, to wit,
of the weight of thirteen thousand pounds &
of great value, to wit, of the value of five
hundred dollars, & the said defendants then &
there by G. W. Harton their agent accepted
and received the same from said plaintiffs
to be carried and conveyed by the said
defendants as such common carriers, from Pitts-
burg aforesaid, to Chicago in the County of Cook
aforesaid; and there, to wit at Chicago aforesaid
to be delivered in good order & well condi-
tioned, for the said plaintiffs to sell, Remy & Co.

or their apism. (the danger of navigation,
fire & unavoidable accidents excepted) for
for certain reasonable freight & reward, to
wit. thirty five cents for each hundred
pounds thereof, to the said defendants
in that behalf to be paid; Yet the
said defendants not regarding their duty,
as such common carriers, as aforesaid,
but contriving & fraudulently intending craftily
and subtly to deceive, defraud and injure
said plaintiffs in this behalf, did not nor
would, safely or securely carry or convey the
said iron, steel, & nails from Pittsburg
aforesaid, to Chicago aforesaid, nor there
to wit. at Chicago aforesaid, safely or
securely deliver the same to Dale Rumsay,
& Co for the said plaintiffs but on the
contrary thereof, the said defendants so
being such carriers as aforesaid, so carelessly
& negligently behaved & conducted themselves
in the premises, that through the carelessness,
negligence, & default of said defendants &
their servants in the premises, the said
iron, steel & nails being of the value aforesaid,
afterwards to wit. on the day & year
aforesaid, at Chicago aforesaid, became &
were wholly lost to the said plaintiffs, to
wit. at Chicago aforesaid. -

And also for that whereas, heretofore, to-wit, on the twentieth day of September A.D. 1852, to-wit, at the County of Cook aforesaid, the said plaintiffs were lawfully possessed as of their own property, of a quantity of iron & steel, other than as aforesaid, of great value, to-wit of the value of five hundred dollars, and being so possessed, the said plaintiffs afterwards to-wit, on the day & year last above mentioned, to-wit, at the County of Cook, aforesaid, casually lost the said last mentioned iron & steel out of their possession: and the same afterwards, to-wit, on the day & year last aforesaid, came into the possession of the said defendants by finding.

Yet the said defendants well knowing the said iron & steel to be the property of the said plaintiffs, & of right to belong and appertain to them, but contriving so, have not as yet delivered the said iron & steel or any part thereof to the said plaintiffs, although often requested so to do: and afterwards, to-wit, on the day & year last aforesaid, to-wit, at the County of Cook aforesaid, converted and disposed of the said iron & steel to their own use,

To the damage of the said plaintiffs of Five Hundred dollars, & therefore they bring suit &c.

Goodrich & Scoville
Plffs. attys,

And afterwards, to wit, on the day and year before mentioned, there was filed in the office of the Clerk of the Circuit Court the appearance of the defendant which is in the words & figures following to wit:-

Circuit Court of Cook County	
<u>December Term 1852.</u>	
Santrom J. Clark + Symon Gilbert	Trespass
Philo Chamberlin + John A. Crawford	Damages \$ 500.

The said defendants, Philo Chamberlin + John A. Crawford, by H. F. Waite their attorney, come & waive service of process, & enter their appearance in the above cause, in the Circuit Court of Cook County this 26th day of Nov. 1852,

H. F. Waite atty for defts

And afterwards to wit, on the nineteenth day of November A.D. 1853 there was filed in the said Office the defendants Plea^{notice}, which are in words & figures following to wit,

Cook County Circuit Court
of November Term A.D. 1853

Phil Chamberlain &
John N. Crawford

at

Lantrorn J. Clark &

Seymour Gilbert

And the said defendants
by N. J. Waite their attorney come & defend the
wrong and injury when & and say that
they are not guilty in manner and form
as the said plaintiffs have in their declaration
alleged against them: and of this they put
themselves upon the country.

N. J. Waite depts atty.

The plaintiffs will take notice, that on the
trial of this cause the defendants will offer
in evidence to prove & will insist in defence
of their said action that, it was during the
year 1852 when said goods were delivered
by the defendants at Chicago and still in the
customs for boats and vessels engaged in the
carrying trade on the lakes in delivering
goods to consignees at Chicago to land their
whole cargo on their own dock and on only
one dock, and never to deliver a part of
a cargo at one place on the Chicago river
and then haul the vessel over to another place
and land the remainder of the cargo there —
never to move the vessel around to the

docks of the different consignees, and put off the cargo in different places. - That during said year 1852 at Chicago such a delivery by a vessel of a whole cargo on their own ~~and~~ dock and no other was considered and by the uniform custom & usage of warehousemen and forwarders was a good complete and sufficient delivery to discharge and exonerate the carriers. -

That said plaintiff and their agents at Chicago, Dale, Ramsey & Co., had at the time of the landing of said iron in said declaration mentioned notice of the uniform custom and usage above mentioned, and that all of said iron, nails & steel in said declaration described was so delivered on the dock of said propeller in the city of Chicago, and that the same was a sufficient, valid and complete delivery to the said plaintiff and their agents aforesaid and constituted a complete performance of the said contract and agreement of the said defendants. -

The plaintiff will further take notice, that on the trial of this cause, the defendants will offer in evidence to prove & will insist, that the defendants received the iron to transport to the city of Chicago, and the same was

placed on board the propeller Granite State,
a steam propeller loaded with an assorted cargo
for Chicago, assigned to the consignees along
the Chicago River, that said Propeller runs in a
line called Crawford Chamberlin & Co's Ogdensburg
line, and said Propeller runs to the dock of
the agents of said line, and all doing business
with said Propeller and line, and in the city
of Chicago. Know who are the agents of said
line; that it is & always has been the custom
of steam vessels to run to a particular dock,
and there unload their entire cargo, and that
the consignees thereof come to said dock & take
their goods so consigned to them. That said
custom is known and acknowledged to exist
at Chicago: - that notifying the consignees that
a propeller has goods on board, consigned
to them, and a landing upon such
wharf is a good and valid delivery and
releases by said custom the carrier from
all liability as common carriers, and
from any loss of the goods happening after
the same are landed on the dock, and
that they will further prove that Dale,
Rumsey & Co. the assignees had notice that
the said propeller had the iron & goods on
board, in the plaintiff's declaration described,
and that the same was being delivered

on the dock where the said propeller was
was lying in the city of Chicago, and they
further say, that all of said iron & goods
in the plaintiffs declaration described was
landed on the dock where said propeller
was lying.

And the plaintiffs will further
take notice that said goods in said
plaintiffs declaration described were transpo-
rted to Chicago by the Steam Propeller Granite
State, and that by the custom of Chicago,
and ports of the chain of Lakes, it is the univer-
sal custom of steam boats, and propellers having
assorted cargoes to land at one dock, and
there unload there entire cargo, and the
consignees receive the several parcels of goods
consigned to them at such dock, and such
is by custom deemed a delivery to the consig-
nees; that said Propeller Granite State, had
an assorted cargo, and landed all her cargo
at the dock of George A. Gibbs & Co. in the
city of Chicago to consignees; and that Dole,
Runney & Co. had notice that the goods in
the plaintiffs declaration described were on
board said Propeller, and the same was all
delivered on said dock to the plaintiffs consig-
nees - and which facts the defence will
prove in defence of the plaintiffs claim,

H. F. Waite

defendants atty.

And afterwards, to wit, on the twenty eighth day of December A.D. 1858. it being one of the days of the November Term of said court, the following, among other proceedings were had, to wit:

Santorn J. Clark &
Seymour Gilbert

Phil's Chamberlain &
John A Crawford

Trespass

This day come the said parties by their attorneys and issue being joined herein, it is ordered that a jury come, and thereupon come the issue of a Jury of good and lawful men, to wit, Jacob Miller, Michael McGuire, John Casey, William Fleming, Elton Crane, James McKie, and John Denks, who being duly elected, tried and sworn well and truly to try the issue joined between the parties according to law and the evidence and they having heard the testimony of witnesses were allowed to separate, and the further hearing of this cause is postponed to the coming in of the court on to morrow.

morning.

And afterwards, to wit on the twenty ninth day of December A D 1852 it being one of the days of the November Term of said court the following among other proceedings were had to wit,

The State of Illinois,	}	Circuit Court
Cook County S.S. }		
Seymour Gilbert et al		
vs		
John H Crawford et al	}	Circuit Court

Be it remembered at the November Term of the Circuit Court within & for the county of Cook & State of Illinois, before the Honorable Buckner S. Morris Judge; the above entitled cause came on for trial, upon the issue joined between the parties and the plaintiffs to maintain the issue on their part, offered the following testimony; to wit,

They here introduced the Bill of Lading a copy of which is marked exhibit "A" which is in the words and figures following, to wit;

Cleveland Ohio. November 4th 1852

Shipped in good order and condition by Chamberlain & Crawford as agents and forwarders, for account and at the risk of whom it may concern on board the Propeller Granite State whereof A. C. Keating is master, now in the port of Cyahago and bound for Chicago the following articles, as here marked and described, to be delivered in like good order and condition, as addressed on the margin, or to his or their assigns or consignees, upon paying the freight and charges as noted below. (the dangers of navigation excepted)

In witness whereof. The said master of said vessel hath affirmed to two Bills of Lading of this tenor and date, one of which being accomplished the other to stand void.

263 "F" that played Chicago Cass Hale	110	Regd Rustford that played Petrol's	11,660 35	40 81
263 "B M N" H. N. Butler Cass A. S. Spencer 161 Chicago	97 45	Per Rustford A. J. Hale Hale	7957 35	27 85
Total			19,617 70	68 66

263 "L + B" 210 Slabs Steel
 Lake & Brown 35 Kegs
 Chicago
 Can J. H. Peck & Co

Forward \$ 68 66
 26.592 30 79 77
 3.710 25 9 28 89 05

259 Bay & Baldwin 1 Box
 Chicago
 Can S. A. Gibbs & Co

Box
 Am. Express
 Lake & Brown
 Freight

2 05
 25
 50 2 80

254 "J S" 45 14f Brs Glap
 J. Sears
 Can Gibbs & Co
 Chicago

Br. Glap
 Recd
 Lake & Brown
 Freight

2545 85 891

254 "S L" 142 14f Brs
 S. D. Smith
 Chicago
 Can J. A. Gibbs & Co

Br. Smith
 Recd
 S. D. Smith

7100 30 21 30
 450* own weight 1 56
 \$ 19 94

253 J. B. Ely 2 Boxes
 H. F. & S. H. Ely
 Ottawa & Ill
 and as above Chicago

Boxes
 Am. Express
 Freight

1000 00 1 50
 50
 25 2 50 4 50

253 "O" 357 Box Iron
 Lake & Brown 204 Bds
 Chicago 100 Kegs
 Can J. Peck & Co

Box Iron
 Bds
 Kegs
 "30 Kegs
 Lake & Brown
 Freight

23.258 "41 Box over"
 16.402 "41 Bds over"
 10.600 54260 30 150 78

252 J. M. Lill & Co Pekin Ill Car Smith & Wheeler Chicago	1	Box 17 Rustproof Chicago C. & J.		432 25			1 08
252 Sumner & Co Car Dole Runey & Co Chicago	4 11	Boxes 100 lbs do 100 lbs In Clear Rustproof Chicago C. & J.	1550 5982	5,572 25	13 78 3 06		16 84
252 Brighton & Baker Mid-Morris Ill Car G. A. Lill & Co Chicago	2	Boxes In Clear Rustproof Chicago C. & J.		185	50 2 50		3 00
249 Lake & Brown Chicago Car J. Beck & Co	12	Vices Rustproof Lake & Brown		795 30			2 29
249 "C" Clark & Gilbert Rockford Ill Car as above Chicago	174 19 7 30	Pcs Iron Bells do " Steel Keys Nails	8214 654 3180	12,048 35			42 17
249 "F" Thos Floyd Chicago Car Hale	74 46	Keys Nails Pcs Rustproof Hale Peterson Shook 1142 35	7844 1510	9354 35			32 74 2 42 29 32
249 H. A. S. & Co H. A. Strong & Co Joliet Car as above Chicago	135	Hf 100 lbs Rustproof Hale Peterson Shook 1142 35		7424 35			25 98

249 (S)
L.D. Smith
Chicago
A. H. A. 1869

64

Rec. L.D. Smith
Box Glass

3520.30

10.56

Shipped in good order and well conditioned
by Traff Lindsay & Co for account and risk of
whom it may concern on board the Canal
Boat of Union line whereof Warlen is Master
for the present voyage, now lying at the
Port of Pittsburgh, and bound for Chicago
the following packages, or articles marked
as below, which are to be delivered, without
delay in like good order, at the Port of Chicago
(the dangers of River navigation, fire, and unavoi-
dable accidents excepted) unto Dale Ramsey
or to their assigns, he or they paying
freight at the rate of thirty five cents per
100th by Steam on Lakes.

In witness whereof
the owners Master or clerk of said boat
has affirmed to two Bills of Lading of this
tenor and date, one of which being accom-
plished, the other to stand void.

Dated at Pittsburgh this 9 day of August 1882

Marks		
C For Clark & Gilbert Rockford	174 Bars Iron	
	19 Bundles Iron	82.14
	7 Bobs Spring Steel	6.54
	30 Kegs Nails	31.80
		<u>120.48</u>
\$ 314.84		G. M. Harton Agt.

And the stipulation marked "A.A" which
is in words and figures following, to wit:

Cook Circuit Court

Clark & Gilbert

Chamberlin & Crawford

It is admitted in
this suit that the depts were part owners
of the union line of canal Boats, menti-
oned in Bill of Lading hereto attached &
that G. M. Norton, who signed said bill
of lading was agent and authorized by depts.
to sign the same — the plaintiffs to furnish
me a copy of said bill of lading.

July 13. 1853.

H. J. White

Defendants Atty.

They then called Augustus Holden on to
the stand as a witness; who testified, that
"he was in the employment of Dole Rumsey
& Co", during the year A.D. 1852, and then
acted as check clerk and has been their
check clerk for the last seven years;
saw the bill of lading marked exhibit "A"
and took a copy of the goods consigned
to them; went to Propeller, could not find any
of the iron marked "C", asked the clerk of the
Propeller for it. he referred me to the man

tallying off. He said they had no "C"
iron on board, nothing but "O" iron; witness
looked round dock for it, & then went to the
clerk & the witness told him he could not
find it & he the clerk said he supposed
it had not been put on board; after
this witness left the dock. At that time,
the clerk had not settled freight bill
with Sole Rumsey & Co. There was a
large quantity of iron on board marked
"O" —

Crop Examined.

The Propeller having the
iron on board were in a regular line,
and had a regular dock; they run to George
A Gibbs & Co as their agents, took copy of bills
of Lading at George A. Gibbs & Co warehouse
& which copy is marked "B" & is hereto
attached & which is in the words & figures
following, to wit;

"B"

Granite State

W A D 160

G. H. Barton & Co

du Buque

✓

4 Boxes Goods

1111

W A D 160

P. Haples & Smith

du Buque

✓

2 Boxes Goods

11

(C) Chicago

✓

1 Box Piano

1

✓

1 Stool

1

A Bigelow

12 Boxes Goods

1111 1111 1

1 Bale Yarn

✓

2 do do

11

1 Bale Goods 1 Box Thread

J. B. Daggett

✓

12 Bbls Vinegar

6-6

R R

X

Clark & Gilbert

41 Kegs Nails

16-22

A. G. Burley & Co

✓

2 crates E. Ware

11

5 do do

1111

B & Hilder

2 crates E. Ware

11

Gunnec & Yac

4 Boxes Indge

1111

11 do Harnesses

1111 1111

Clark & Gilbert

Rockford

174 Bass Iron

19 Bds do

7 " Steel

30 Kegs Nails

W. A. Strong & Co

Joliet

135 1/2 Boxes Glass

J. B. Thomas

Dubuque

2 Boxes Goods

11

1 " "

Dodge & Bentley

Galena

1 Box Drugs

1

4 Baskets oil

1111

Was about the dock most of the time which the Propeller was unloading, was there when the "O" iron was tallying out. Know George W. Gardner the clerk of the Propeller. Both clerk and mate were tallying out the "O" iron, this was the ordinary dock of the line; Exhibit "B" is the copy & took from the bill of Lading. Reexamined, Large lot of goods for Dale Rumsey & Co; and I was there, most of the time for two days except meals.

M^r. Clapp testified he was book keeper for Dale & Rumsey & Co & had been with them since 1845, when the clerk of Propeller came to settle up the bill of freight. I asked the clerk about this lot of iron, & he told me he supposed it had not been put on board at Chaaland; Cross examined, said nothing about its being tallied on shore but directly the contrary; when we settled the Propeller had unloaded entirely.

Exhibit attached marked "F" is a copy of his settlement with the clerk, which exhibit is in the words and figures following, to wit:

Copy from the receipt book of Dale
Rumsey & Co.

Per Granite State chgs.

Smith Martin & Co	\$119.51
Strickland Treat & Co	62.72
George W. Barton & Co	12.50
P. Harpel & Smith	3.74
Chicago	9.00
A. Bigelow	
J. B. Dagget	14.80
Clark & Gilbert	
P. B. Branby & Co	15.74
B. J. Wilder	5.34
Gurnee & Yoe	16.84
W. A. Strong & Co	25.98
J. B. Thomas & Co	8.50
Dodge & Bentz	.96
	\$285.63

Recd of Sale Runsey & Co above

Signed Geo H. Gardner

Clark

Daniel J. Lake, Testified that he is of the firm of Lake & Brown, and had iron on the Propeller, it was marked 'C'. J. S. Sack & Co were our consignees. They received all the goods at that time, & sent them to our store. Recd at this time a large lot of iron marked 'C'. Shipper & Colony the agent of the defendants, & said they were short some iron, told him we had an overplus of some forty bars. He directed us to employ men to sort.

2 short & }
not included }

our iron which we did, and found over
100 bars of the "C" iron. The mark "C" and
"O" were much alike; these were over checked,
found no bundles. The iron was a day or
two in being delivered by Peck; think it
was next day or about that time Mr Clary
called. Was on the dock when the Propeller
was landing, and when the iron was lying
there; there was at that time several piles
of iron; three at least, our iron lay in sepa-
rate piles might have been others, while there
the captain said, there was our nails. Some
of them were marked "C". He picked them out
of ours and rolled them one side. The "C"
iron came to our store with our iron. It
was sent by Mr Peck's Check Clerk,

Our crop examination said.

We were selling iron
all the while. In the first place we found
our checks over. In comparing the invoices of
these parties brought by Mr Clary with
ours, I found we had received of the same
mass. The Clerk were cautioned not to sell
any iron of the "C" mark. Reexamined,
could not have sold any of this iron, as
the Clerk were cautioned immediately not
to do so.

It was then admitted if the plaintiffs

recovered at all. they might have a credit
for

The defence then offered the depositions
of George Gardner, J. M. Green, & A. C.
Heating, copies of which are hereto attached
and marked exhibits C, D, E, which are
in the words and figures following, to wit:

The deposition of Isaac M. Green of Oswego
in the State of New York a witness of lawful
age, produced, sworn and examined upon
his corporal oath, on the Twentieth day of
September in the year of our Lord one thou-
sand eight hundred and fifty three at
the office of Elisha Taylor in the City of
Detroit State of Michigan, by me Elisha
Taylor a commissioner duly appointed by
a *dedimus Potestatem* or commission issued
out of the Clerk's Office of the Circuit Court
of Cook County, in the State of Illinois,
bearing test in the name of Louis D. Hoard
Esqr Clerk of the said Circuit Court, with
the seal of the said Court affixed thereto,
and to me directed as such commissioner
for the examination of the said Isaac M.
Green a witness in a certain suit, and
matter in controversy, now pending and
undetermined in the said Circuit Court wherein
Santrom J. Clark et al are Plaintiffs, and John
H. Crawford et al, are defendants, in behalf of
the said defendants upon the interrogatories of
the defendants, which were attached or enclosed
with the said commission, and upon none
others. The said Isaac M. Green being first duly
sworn by me as a witness in the said cause,
previous to the commencement of his examination

to testify the truth as well on the part of the plaintiffs as the defendants, in relation to the matter in controversy between the said plaintiffs and defendants so far as he should be interrogated testified and deposed as follows:

Interrogatory First.

Your name, where do you reside, are you acquainted with the parties to this suit, If so - have you ever been in the employ of either of them. If so - were you in the defendants employ during the year 1852. If so - what were you engaged in doing? and how long were you so engaged?

Answer to 1st Interrogatory:

My name is Isaac M. Green, I reside in Oswego New York. I know the defendants, do not know the plaintiffs. I was in the employ of the defendants during the year Eighteen Hundred and fifty two. I was acting as sailing master of the Propeller Granite State which belonged to said defendants, and I was thus employed from about the first of August to the first of December Eighteen Hundred and fifty two.

Interrogatory Second.

If you in answer to the first interrogatory

saying you were on the Propeller Granite State as mate, please state whether you have anything to do with tallying any iron on board? If so - please state the marks? Who tallied the same off at Chicago, and the quantity of each kind or marks delivered

Answer to the second Interrogation:

I tallied certain iron that was delivered from said Propeller "Granite State" on the dock at Chicago about the Eighth or Tenth of September Eighteen hundred and fifty two. It was on Friday. There were two lots of iron - one marked "O" and one marked "C" delivered from said Granite State on the same dock in Chicago. I tallied off the "O" iron first and immediately afterwards I tallied off the iron marked "C" and twenty five bars of the iron marked "C" was thrown upon the pile of iron marked "C" which had just been delivered on the dock. I then for the first time discovered that there were two lots of iron marked "C" and one marked "O" and I asked the Clerk George Gardner if he had any iron on board marked "C" he replied that he had. Capt A. C. Keating and myself then carefully examined

the iron marked "C" which had been thrown upon the iron marked "O" and separated the same and I tallied off the ballance of said iron marked "C" as it was delivered from the Propeller on to the dock. There were six hundred bars of the iron marked "O" and two hundred bars of the iron marked "C" tallied off by me as it was delivered on the dock, and it was laid in two piles near each other.

Interrogatory Third,

Please state whether ^{there} was any iron and nails on board last September marked "C" consigned on bill of lading "Clark & Gilbert", "Whitaker & Brown"? If so, - state how many pieces of each kind were received on board and when it was you landed it at Chicago?

Answer to the third Interrogatory,

There was iron and nails on board marked "C" last September which were delivered at Chicago at the time stated in my last answer some of the nails were marked "C" and some were "C" and "B". I do not know the names of any of the consignees. I cannot tell how many pieces of each kind were received on board.

It was landed at Chicago on the tenth of September Eighteen hundred and fifty two.

Interrogatory Fourth.

Where were these several lots of iron stored on board of the Propeller? were they placed together or separate? above or under deck?

X Answer to the fourth Interrogatory

These several lots of iron were placed separately on the main deck of the Propeller.

Interrogatory Fifth.

After the iron marked "C" was received on board at Cleveland, was there, or was there not any opportunity of its being lost before the Propeller reached Chicago? State fully in regard to where the iron was stored, and whether the same could, or could not have been stored between Cleveland and Chicago?

Answer to the fifth Interrogatory.

There was not any opportunity for the iron marked "C" to be lost or stolen from said Propeller before it reached Chicago. It was stored on the main deck and the "C" iron was laid in one pile by itself on deck. The "D" iron was in several piles and the same

could not have been stolen between
Cleveland and Chicago. It was taken
on board at Cleveland and was all delivered
at Chicago, at the time afore stated,

Interrogatory Sixth.

If in answer to the fifth interrogatory you say
it could not have been stolen or lost, - give
fully and at large your reasons for so saying?

Answer to the sixth Interrogatory.

After leaving Cleveland we only stopped
at Sheboygan, Milwaukee and Racine
and only a short time at either of those
places and were busy at work delivering
goods while we were at each of those places
and I should have known if any
goods had been stolen and I am
satisfied that none were stolen,

Interrogatory Seventh.

Will you state whether or not all the "C" iron
was delivered at Chicago. If yes - What reasons
have you for ^{so} saying?

Answer to the seventh Interrogatory.

All the iron marked "C" that I know
of having been on board of said Propeller

was delivered at Chicago on the tenth of September last. I remember the iron marked "C" distinctly because of the mistake which I made tallying it off with the "Q" iron which I afterwards corrected and I know that there was two hundred barrels and bars of the "C" iron delivered and piled up together on the dock at Chicago.

Interrogatory Eighth.

Did you check off at Chicago in September 1852 from the Propeller Granite State any iron? If so - what were the marks on the iron? Can you state the quantity so checked off with the marks thereon? and have you any means of stating the quantity so checked off, with the marks thereon? If so - what are your means?

Answer to the Eighth Interrogatory.

I did check off in September Eighteen Hundred and Fifty Two ^{at Chicago} from the Propeller Granite State certain lots of iron. I checked off one lot of iron of six hundred bars and bundles marked "C" One lot of two hundred bars and bundles marked "C" and one lot of one hundred and ninety five bars and bundles marked "H" and one lot of Fifty-

marked "P" and ~~the~~ ^{there} many have been
other lots. My means of knowing are
from personal recollection of the fact
and also from the original tally or check
book now in my possession, and the
leaf containing the original tally or check
marks then made by me is hereto attached.
For the "C" iron there are forty checks or
tally marks, and each mark represents
five bar or bundles of iron delivered, and the
same is the fact with the "O" iron. The "P"
iron and the "H" iron which were checked off
on that leaf, said leaf is marked exhibit
"A" and signed by me and hereto attached.

Interrogatory Ninth.

Did you ever see paper shown to you,
marked Exhibit "A" If so - when were the
figures and marks thereon made, and
by whom and where, and what do they
represent and where? and from whence
is said Exhibit taken.

Answer to the Ninth Interrogatory.

I have seen the paper shown to me marked
Exhibit "A" and referred to in my last answer.
It is a leaf from my original tally book.
The marks thereon were made by me at
Chicago.

Chicago in September last and represent the quantity of different kinds of iron delivered from the propeller "Granite State" as stated in my answer to the last interrogatory.

Interrogatory Tenth.

Have you any memorandum made by you at the time of the cargo of the Granite State on that trip was taken on shore, which shows the quantity of iron delivered at Chicago. If so, where is it & if in your possession produce it?

Answer to the tenth interrogatory.

I have a memorandum made by me at Chicago on the tenth of September last which shows the quantity of iron delivered and tallied off by me at that time and the said memorandum is Exhibit 'A' referred to in my answer to the Eighth and ninth interrogatories and is hereto annexed.

Interrogatory Eleventh.

On whose dock in Chicago was the iron marked "C", delivered, and who claimed to be the consignees of this iron at Chicago? If Ole Runsey Oler, who represented them in receiving the iron? and what did he do if any

thing while you were tallying it on shore,

Answer to the Eleventh Interrogatory.

I do not know who was the owner of the dock at Chicago where the iron marked "C" was delivered, but it was the first dock above the second Bridge on the north side of Chicago River, and Mr. Colan, the agent for the Northern Rail Road line there kept his office in a warehouse directly opposite this dock on the other side of the river. While I was tallying off and delivering goods from said propeller last September at the dock above described in Chicago I remember a young man enquiring for the iron marked "C" and was present while I was tallying off iron from said vessel or propeller and he spoke to me about this "C" iron and said that I had tallied off more of the "C" iron than there was. But I had tallied the bars and bundles together and and my tally agreed with the bill of lading.

Interrogatory Twelfth.

Since the controversy in the case have you or have you not for any purpose seen any

Clark of Dale, Rumsey & Co, & if so who was it - and when did you see him, - and for what purpose - and what if any conclusion did you come to in regard to his being the clerk to whom you tallied out the "C" iron?

Answer to the twelfth interrogatory,

Since the commencement of the suit in this case I have been at Chicago and called to see a clerk of the firm of Dale Rumsey & Co, by the name of A. Holden,

This was about the twenty ninth ~~day~~ of November Eighteen Hundred and fifty two. I called to see if I could recognize him as one of the persons who inquired for goods from said propeller Granite State in September Eighteen Hundred and fifty two, at Chicago and who was present while I was tallying said iron. I recognized him as being on board of said propeller "Granite State" at the time she was discharging her cargo at Chicago in September Eighteen Hundred and fifty two, and enquiring for goods for that house and whatever he inquired for was delivered and tallied off to him. The "C" iron and the "O" iron were removed from the dock before the propeller left Chicago and no

complaint was then made of any mistake or error. -

Interrogatory Thirteenth,

Will you state whether or not Dale Ramsey & Co - or their clerks had notice of the landing of this iron? If so - how did they have notice and did they or did they not - have any one there to receive the iron - If so whom?

Answer to the Thirteenth interrogatory,

I cannot state whether or not Dale Ramsey & Co or their clerks had notice of the landing of this iron. but I presume the clerk of the Propeller gave them notice as that was a part of his duty.

Interrogatory Fourteenth,

If you know of any other matter or thing of importance to the defendants connected with this case state it? Have you any means of knowing the customs at Chicago of propellers delivering cargoes - as to the place of landing? If so what is the custom? State that custom fully and at large.

Answer to the Fourteenth Interrogatory,

I do not know of any other matter or

I Elisha Paylor of the City of Detroit,
and State of Michigan, a commissioner
duly appointed to take the deposition of
the said Isaac M Green a witness
whose name is subscribed to the foregoing
depositions, do hereby certify that before
previous to the commencement of the
examination of the said Isaac M. Green
as a witness in the said suit between the
said Santorum J. Clark et al ~~defendants~~
Plaintiffs and the said John H. Crawford
et al defendants; he was duly sworn by
me as such commissioner to testify the
truth in relation to the matters in contro-
versy between the said Santorum J. Clark
et al Plaintiffs, and the said John H.
Crawford et al defendants, so far as
he should be interrogated concerning the
same; that the said depositions were
taken at my office in the City of Detroit
in the County of Wayne in the State
of Michigan on the Tenth day
of September A.D. 1853, and that after
said depositions were taken by me as
aforesaid, the interrogatories and answers
thereto, as written down, were read over
to the said witness; and that thereupon
the same were signed and sworn to

by the said deponent Isaac M Green before
me, the oath being administered by me as
such commissioner at the place, and on
the day and year last aforesaid, and
I further certify that the above exhibit
"A" annexed to depositions of Isaac M,
Green is the same produced on the
examination of said witness and referred
to by him in his answer to said inter-
rogatories.

Witness my hand at Detroit
this Fourteenth day of September
Eighteen Hundred and Fifty Three,
Elisha Taylor
Commissioner

Commissioner's fees \$10.00
Witness fees 1.00
\$11.00

The above Interrogatories and answers thereto
were written down by my clerk in my presence
no one being present except said clerk & myself
Detroit Sept 14, 1853. - Elisha Taylor
Commissioner

The Depositions of Asa C. Keating and George Gardner witnesses of lawful age residing in the City of Cleveland in the State of Ohio produced, sworn and examined upon their corporal Oaths on the fifth day of July in the year of Our Lord One thousand eight hundred and fifty three, at the office of Rufus P. Spaulding in the City of Cleveland in the County of Cuyahoga and State of Ohio by me the said Rufus P. Spaulding a commissioner duly appointed by a "dedimus potestatem" issued out of the Clerk's office of the Circuit Court of Cook County in the State of Illinois bearing date in the name of Louis D. Ward Esq. Clerk of the said Circuit Court with the seal of said court affixed thereto and to me directed as such commissioner, for the examination of the said Asa C. Keating and George Gardner as witnesses in a certain suit and matter in controversy now pending and undetermined in the said Circuit Court wherein Santrom J. Clark and Seymour Gilbert are plaintiffs and Philo Chamberlin and John H. Crawford are defendants in behalf of the said defendants as well upon the comp-interrogatories of the plaintiffs as on the interrogatories of the defendants which were attached

to or inclosed with the said commission and upon none other. The said Asa C. Keating being first duly sworn by me as a witness in the said cause previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as the defendants in relation to the matters in controversy between the said plaintiffs and defendants so far as he should be interrogated, testified and deposed as follows:

Interrogatory 1st

Are you acquainted with the defendants? If so, have you ever been in their employ? and if so, were you in their employ during the month of September A.D. 1852, on board of any propeller if so, what one? and in what capacity were you so employed?

Answer to 1st Interrogatory.

I am acquainted with Defendants Greep, Chamberlin & Crawford - am in their employ at this time - I was in their employ during the month of September A.D. 1852, as master of the Propeller "Granite State," in the Albany and Chicago trade.

Interrogatory 2nd -

Did you have any knowledge of any iron being received on board of the Propeller "Granite State" at Cleveland consigned to

Chicago? If so, the marks and to whom
was it consigned? & who were the owners,
and what were the marks?

Answer to 2^d Interrogatory.

I had knowledge of two lots of iron taken
on board the "Granite State" at Cleveland
early in September 1852. I think we left
Cleveland on the 4th of September for
Chicago. One lot was owned by Clark
& Gilburt of Rockford Illinois, and was
consigned to J. Peck & Co Chicago marked "C".
the other lot was owned by Lake & Brown
Chicago and consigned in Bill of lading
to J. Peck & Co marked "O".

Interrogatory 3^d.

If in answer to the last interrogatory
you say there was iron marked "O" &
also iron marked "C" where was that
iron stored. - And after you left Cleav-
land and before you reached Chicago,
how much if any iron was landed
on the way? -

Answer to 3^d Interrogatory.

X The iron for Chicago was all stowed in
the hold - after leaving Cleveland and before
reaching Chicago we landed a small parcel
of iron at Racine which had been stowed
on deck - We also landed some sheet-iron

at Milwaukee, I can recollect of none other. —

Interrogatory 4th —

Will you state whether or not any of this iron was lost on its way to Chicago, and if you say nay to this, state fully and at large your reasons for saying it was not lost?

Answer to 4th Interrogatory —

No part of the iron shipped at Cleveland for Chicago was lost on the trip but it was all safely landed at the last mentioned place. I attended to the delivering of freight at the different ports myself and I know that no iron intended for Chicago was put on shore at any other place. Besides I discovered the difference in the marks "C" and "O" upon the two lots of iron as we were putting it on shore at Chicago, after some twelve or fifteen bars had been landed of the "C" iron. The "O" iron was first put on shore, and then twelve or fifteen bars of the "C" iron was thrown out with it when I saw the difference in the marks and stepped up and separated it and spoke to Mr Green the mate and told him there were two marks and he was mixing it. — He went to the clerk Geo Gardner who also

told him there were two marks "C" and "Q" as the iron was delivered upon the dock, the count was reported to me at the time, to be correct; that is, it compared with the Bills of Lading -

Interrogatory 5th.

When the Propeller reached Chicago where did you land your cargo? who claimed to be the consignee of this iron? where was it landed? Did any one - as the Clerk of Dale Ramsey & Co. claim the "C" iron? If so, what was his name and state whether he was there during the landing of the iron more than once - If so, how many times? and had you any conversation with him in regard to this or any lot of iron? If so what was this conversation - state it fully and at large, and all that occurred connected with landing it? -

Answer to 5th Interrogatory.

We landed our cargo at one dock and but one; I think it was called "Gibbs dock" It was on the East side of the river opposite the office then occupied by Stephen Clary or nearly so. - I can't tell who claimed to be the consignee of this iron but it was landed on "Gibbs dock" - I was a stranger in Chicago and did not recognize the Clerk of Dale Ramsey & Co. or any

any of the other clerks - There were persons present at the landing of the Cargo, claiming to be consignees on the clerk of consignees, but I do not know who they were - The cargo of the Propeller was taken off the dock by the persons claiming it, nearly as fast as we landed it. - It was all taken off the same day that we finished discharging. In answer to the 6th interrogatory, the witness answers and says that he had no conversation as he recollects with Augustus Holden. -

Interrogatory 7th -

Did you ever inform any one there was no iron marked "C" on board - if so, who? -

Answer to 7th Interrogatory - I never did. -

Interrogatory 8th

Will you state whether or not you ever was enquired of by Augustus Holden if there was any "C" iron on board. If so what was your answer?

Answer to 8th Interrogatory. -

I never was enquired of in that respect, to any knowledge, by Holden or any other person. If I was, I must have answered according to what I knew to be the fact at the time - that there was "C" iron on board.

Interrogatory 9th

What are your means of acquaintance with
Sole Ramsey & Co. - state fully &c -

Answer to 9th Interrogatory -

I have no acquaintance with them whatever,
Interrogatory 10th

Have you any means of knowing the
custom of Propellers delivering cargoes at
Chicago, as to the place of landing the parcels
delivered to the different consignees: If so, state
fully and at large the custom. - If you know
any other matter or thing of importance to
the defendants state it -

Answer to 10th Interrogatory -

The custom is to land all the cargo at
one dock and the consignees take it
about as fast as it is landed and cart
it off. - If the freight be of iron say of
of different marks. we lay it upon the wharf
in separate lots each lot by itself - We also
store it on board of the vessel each mark
by itself -

A. C. Keating.

The said George Gardner being first duly sworn by me as a witness in the said cause previous to the commencement of his examination, to testify the truth as well on the part of Plaintiffs as defendants, in relation to the matter in controversy between the said plaintiffs and defendants so far as he should be interrogated, testified and deposed as follows —

Interrogatory 1st

Are you acquainted with the defendants, If so, have you ever been in their employ? And if so, were you in their employ during the month of September A.D. 1852, on board of any propeller. If so, what one? and in what capacity were you so employed?

Answer to 1st Interrogatory,

I am acquainted with defendants Chamberlin and Crawford. I was in their employ during the seasons of 1851 & 1852, as clerk on board some one of their Propellers. During the month of September 1852 I was acting for them as clerk on board the Propeller "Granite State". I am not now in their employ —

Interrogatory 2^d —

did you have any knowledge of any iron being received on board of the Populm "Granite State" at Cleaveland consigned to Chicago? If so, the marks, and to whom was it consigned? and who were the owners and what were the marks?

Answer to 2nd Interrogatory

In the early part of September 1852 the Granite "State" made a trip from Cleaveland to Chicago and I well recollect that on that occasion two panels of iron were taken on board at Cleaveland both of which were consigned on Bills of Lading to J. Peck & Co Chicago and were marked One panel "C" and the other "O". The Bills of Lading showed Lake & Brown to be the owners of the iron marked "O" and Clark & Gilbert to be the owners of the iron marked "C". There was other iron on board for J. Peck & Co at that same time but having other and different marks.

Interrogatory 3^d

If in answer to the last interrogatory you say there was iron marked "O" and also iron marked "C" where was that iron stowed, and after you left Cleaveland and before you reached Chicago how much if any iron was landed on the way?

Answer to 3^d Interrogatory—

I don't know where it was stowed. There was iron on deck and ⁱⁿ the hold; I cannot say where this particular iron was stowed. We stopped at three or four different places to land freight between Clearland and Chicago, and it was my business to see that the freight was properly put on shore; I feel quite sure that no iron consigned to persons in Chicago was landed at any other place than Chicago. I speak particularly in regard to this fact for I know it—

Interrogatory 4th

Will you state whether any of this iron was lost on its way to Chicago? and if you say nay to this state fully and at large your reasons for saying it was not lost.

Answer to 4th Interrogatory—

There was no part of this iron lost on its way to Chicago. I say so because we met with no accidents on the voyage and were not compelled to throw any of our load over board, and there was none put on shore at intermediate ports but what belonged there— and further I have reason to know the 'C' iron was all landed at Chicago—

Interrogatory 5th

When the Propeller reached Chicago where did you land your cargo? who claimed to be the consignee of this iron? where was it landed? did any one as the clerk of Dale Ramsey & Co claim the "C" iron? If so what was his name and state whether he was there during the landing of the iron more than once, if so how many times? and had you any conversation with him in regard to this or any lot of iron? If so what was this conversation? state it fully and at large; and all that occurred connected with landing it.

Answer to 5th Interrogatory -

We landed the cargo all of it, at Geo. A. Gibbs & Co's dock, I supposed from the Bill that J. Beck & Co were the consignees of the iron marked "C" and "C," but while we were discharging our cargo, a young man called "Augustus" and whom I knew to be the clerk of Dale Ramsey & Co came on board and came to me in company with Mr Green our mate, when Mr Green inquired of me, in presence of the clerk, whether there was any iron marked "C" I examined my tally-book and told him there was. The two then went forward together and

very soon I heard them say they had discovered the mark on some of the iron. Capt Keating then went on to the dock and picked out the "C" iron that had already been landed with other iron, and laid it in a lot by itself - after the cargo was discharged, Mr Green and myself compared his tally, or account of the delivering on the dock for the "C" iron, with the amount in the Bill of lading and found it correct.

Interrogatory 6th -

Did you have any conversation with Augustus Holden about the "C" iron? if so, what was that conversation? Did he or any one else come to you to know if there was any "C" iron on board - if so, who? and what did you tell him? -

Answer to 6th Interrogatory.

I recollect no conversation with Augustus Holden or in his presence respecting the "C" iron other than that related in my answer to the 5th interrogatory, until after the cargo was discharged when Holden said he had not seen the iron and could not find it; I replied to him that the iron was all delivered on the dock for we had tallied it and the tally compared with the

the Bill of Lading -

Interrogatory 7th -

Did you ever inform any one there was iron marked "C" on board - if so who? -

Answer to Interrogatory 7th

I never did tell any person so, -

Interrogatory 8th

Will you state whether or not you were ever was inquired of by Augustus Holden if there was any "C" iron on board? if so, what was your answer?

Answer to 8th Interrogatory,

I do not recollect that Holden in person asked me that question, but if he did I am confident I told him there was iron of that mark on board - I certainly told the mate so in the presence of Holden when they came to me together as already stated in my previous answer.

Interrogatory 9th -

What are your means of acquaintance with Dole Ramsey & Co. Clerk? state fully and at large your means of knowledge on that subject?

Answer to 9th interrogatory -

I have done a good deal of business with that House before this time and had

Frequently seen this Mr. Holcom at their Store House acting as their clerk. He had several times before received goods from me as clerk for Soley Rumsey & Co and had signed Receipts for that firm.

Interrogatory 10th.

Have you any means of knowing the custom of Propellers delivering cargoes at Chicago as to the place of landing the parcels delivered to the different consignees? If so state fully and at large the custom. If you have any other matters or things of importance to the defendants state it.

Answer to 10th Interrogatory.

The custom is for propellers running to Chicago to land their cargoes on the docks of their respective agents. The clerk of the Propeller as soon as she touches the dock, goes into the office of the agent and delivers up the Bills of Lading. The Clerks of the different commission houses in Chicago, called "Dally clerks" are all the while on the look out for goods. They go to the office of the agent and take copies from the Bills of Lading of all the stuff consigned to their respective houses and then it is the custom for those clerks to stay by, as the cargo is being landed and

each one takes away his own share
The difficulty in this case was owing to
Dale Rumsey old clerk neglecting to stay
by until the "C" iron was all delivered
upon the dock, and thus affording an
opportunity to the draysman of J. Beck old
to haul off the "C" iron together with the
"Q" iron.

Geo. H. Gardner

I Rufus P. Spaulding of the City of Cleveland
in the County Cuyahoga in the State of
Ohio a commissioner duly appointed to
take the depositions of the said Asa C.
Keating and George Gardner witnesses
whose names are respectively subscribed
to the foregoing depositions, do hereby
certify that previous to the commencement
of the examination of the said Asa C.
Keating and George Gardner as witnesses
in said suit between the said L. J. Clark
and Seymour Gilbert Plaintiffs, and the
said Phil Chamberlin and John H. Crawford,
defendants; they and each of them were
by me as such commissioner duly sworn
to testify the truth in relation to the
matter in controversy between the said

L. J. Clark and Seymour Gilbert Plaintiffs
and the said Philo Chamberlain, & John H.
Crawford defendants so far as they should
be severally interrogated concerning the
same; that the said depositions were
taken at my office in the city of
Cleveland in the County of Cuyahoga
and State of Ohio on the fifth day
of July A.D. 1853; and that after said
depositions were taken by me as aforesaid
the interrogatories and answers thereto as
written down, were read over to the said
witnesses respectively, and that thereupon the
same were respectively signed and sworn
to by the said deponents Asa C. Keating
and George Gardner before me the oath
being administered by me as such com-
missioner at the place and on the day
and year last aforesaid -

Rufus P. Spaulding
Commissioner

Witness Fees \$1.50

Court " 10.

\$11.50 Paid by depts,

Samuel Howe testified, he has been two years in the forwarding and commission business has had opportunities of knowing what the custom of propellers in delivering cargoes at Chicago, is. It is the general and uniform custom of propellers to land all their goods at one dock, which is the usual dock of the propeller and for all having goods on board to go to that dock and get them; - the custom never requires the propeller at the dock of the consignee; - that as soon as the propeller comes in the check clerks go at once, to the office of the agent of the propeller and draw off into their checkbooks such goods as belong to their house; - The defendant's attorney then asked the witness, if by such custom, are the check clerks, governed by the propellers bill of lading, or by the original bill of lading? In this question the plaintiff attorney objected, & the objection was sustained.

The defence then asked this question; "do the clerks take notice of the propellers bill of lading or do they act from facts within their own knowledge?" In this question the plaintiff objected, and the objection was sustained, to the sustaining of which objection defendant then and there excepted;

On cross-examination the witness said the mere throwing on the dock was not considered a delivery. If the clerk had notice of the delivery and did not attend, they would still be in charge of the propeller. If the clerk neglects to attend to his business, they must still take care of them.

Gillespie said substantially, he had been engaged in the forwarding business some four years, has the means of knowing and does know the custom in delivering goods, from Propellers in Chicago; that by a usual and uniform custom, Propellers loaded with an assorted cargo, run to but one dock, and land all their cargo there; and the landing it upon such a dock, with notice to the consignee will be a valid delivery.

Can't say the mere throwing off the goods is a delivery, if the consignee is not there to receive them. Suppose it would be the duty of Propellers to put them in a place of safety, if there was no one there to receive them. -

Stephen J. Clary said substantially, that he had resided in Chicago two years, was agent of the defendants. This Propeller had on an assorted cargo; and landed

it all at her usual dock, she and the line had always landed all their goods there, had always landed all goods consigned to Dale Rumsey & Co at the same dock, except on one occasion, when they had a large lot of iron for the rail road & they hauled round to deliver there. In making his freight bills found all the freight not paid, went to Dale Rumsey & Co and asked why they had not paid for it, they said they had not received it, went to Peck to see what there tally was of the iron sent to Lake & Brown. Their checks were not up but said they were correct. Waited three days at least for Peck & Co to make up their checks, in the mean-time had been to Lake & Brown. Mr Lake said at first he had only forty bars, but afterwards admitted they had more; desired him to send to Dale Rumsey & Co whatever they had, it was a week or ten days after before they sent it.

Crop-Examined.

Some clerks this year had attended to the delivery of goods. Last year they did not, the custom was to throw them onto the dock indiscriminately;

The plaintiff then asked the court to give
the instructions copies of which are attached
marked "G".

"G."

Plaintiff's instructions given

given
If the Jury believe from the evidence that clerk of Dale Rumsey & Co. applied for the iron, & the servants of the defendants told him, they had no "C." iron, & the same was lost or delivered to any one else, the defendants are liable for what was lost;

1st
given
If the Jury believe from the evidence, that the contract between the plaintiff and defendant, was that the iron should be consigned and delivered to Dale Rumsey & Co. & that said iron was consigned to J. Beck & Co. & was not delivered to Dale Rumsey & Co., & thereby any part of said iron was lost, the plaintiffs are entitled to recover,

2^d
given
If the jury shall believe from the evidence that the iron was put on the dock of Gibbs & Co., but was not actually taken possession of, or delivered to Dale Rumsey & Co. then the defendants are liable, unless they shall have shown that they deposited the iron in some safe warehouse for the plaintiffs.

3^d

If the Jury shall believe from the evidence that the iron was put on Beck & Co's wharf, it was the duty of the defendants to have separated the same, & to give Sole Rummy & Co due notice that the same was so put off & separated & if they neglected or refused to take the same, it was the duty of the defendants to place the same in a safe store house & if their neglect to do so, was the occasion of the loss of any part of the iron, the defendants are liable therefor to the plaintiffs; - to the giving of which instructions the defendants object;

The defence then asked the court to give the several instructions hereto attached marked 'H'

"H"

1st Defendants instructions refused marked "H"
Should the jury find from the evidence in this case, that the iron was duly landed at the usual dock in Chicago of the Propellers composing the line; and that the plaintiffs consignees or their clerks had notice that the iron was so landed, & it was lost subsequently to its being so landed; that negligence is chargeable to the consignees & they will render a verdict for the defendants.

Refused

2nd That if the jury should find the two following propositions to be true, they will render a verdict for the defendants,

1st That if the jury should find from the evidence in the case, that by usual & uniform custom at Chicago, that goods on board a propeller are to be landed at the usual dock of said Propeller and that it is the duty of the consignees, to take care & charge of them when so landed, upon being notified that there are goods on board consigned to them;

Refused

Refused

And 2ndly If the jury should further find that the officers of the Propeller, landed all the iron in controversy at their usual dock in Chicago, and that the consignees of the Plaintiffs or their agents or clerks, had notice that the iron was on said propeller & being landed, the same was at the risk of plaintiffs.

This instruction was
the cause of

If the jury believe from the evidence that the Plaintiffs not only had notice of the landing of the iron in question but assented to receiving the same at Gibbs & Co wharf and the same was left there for the plaintiffs, then the plaintiffs can not recover.

Seven

4th

Refused

If the jury should find from the evidence, that the defendants landed all the iron in this case, at their usual landing place, and that the consignees Dale Runney & Co. or their clerks, had notice of the time and place, and that the defendants had landed said iron at such dock, and that the defendants had separated the said goods from the others landed, then the law is with the defendants.

5th

Refused

If the jury should find from the evidence, that the iron of the plaintiffs, was consigned to Dale Runney & Co. and that the clerk of Dale Runney & Co. had notice that such iron was on board, and that the propeller was discharging said iron on to the usual dock of such propeller, in the city of Chicago, and that the iron was so delivered in a separate pile on the dock, & should they further find that by the ordinary custom a landing on the usual dock of the propeller is a delivery; the law is for the defendant, & they will return a verdict for them;

6th

Refused

If the jury believe find that the iron in question was all landed at the usual place of unloading at the Port of Chicago, and that the plaintiff's agents Dale & Rumsay had notice that said iron was then and there landed & that the clerk of said Dale & Rumsay was there in the discharge of his regular business as clerk of said Dale & Rumsay at the time of said iron being landed, and had notice that said iron was on board and being landed, then the jury will find for the defendants.

7th

Refused

That if the jury should find, from the evidence in this case, that there exists a uniform & clearly established usage, by which Propellers and Steamboats land their freight at their usual dock, and that if the consignee, has notice of such landing, it is by such custom deemed a delivery to the consignee, and that the defendants ^{landed} the iron in this case at their usual dock, and that Dale Rumsay & Co or their check clerk had notice of said iron being so landed, and were there while they were being delivered, and the

iron was piled up for the consignees of the plaintiffs, the law is with the defendant.

The court refused to give each of them; to the refusal of the court to give each of said instructions the defence excepted; and at the request of the defence gave the instructions marked "I."

"I"

Defendants instruction given.

8 If the jury find that for years there has been a custom at the Port of Chicago for vessels discharging their cargo to discharge it all on one wharf, they are warranted in finding that said contract made between the parties in this suit was made with reference to said custom is a part of the contract, unless there is an express provision of some kind in the contract ~~showing~~ showing that the parties did not mean to be governed at all in the explanation of the contract by said custom.

Given

And in giving the instructions the court read to the jury those which they

had refused to give, and so told the jury, to the reading of which to the jury the defendants objected & excepted;

And afterwards to wit on the twenty ninth day of December, A.D. 1854, the following proceedings, among other things, were had to wit:

Saurom D. Clark &
Symon Gilbert.

^{vs}
Phil Chamberlain &
John H. Crawford

Trespass

This day again come the said parties by their attorneys and the jurors of the Jury also come and they having heard all the testimony, arguments of counsel thereon, and instructions of the court retire under charge of an officer of the court to consider of their verdict, and afterwards come into court and say we of the jury find the issue for the plaintiffs and assess their damages at the sum of One hundred and sixteen dollars and sixteen cents, ~~whereupon~~

Which said verdict is in the words and figures following, to wit;

We of the Jury find for the plaintiffs
Damages \$116. 16.-

James Michie

Foreman

Whereupon the defendants move the court
for a new trial herein for reasons filed;
Which said reasons are in the words and
figures following, to wit;

John H. Crawford et al }

vs

Clark & Gilbert }

And now comes
the defendant and moves for a new trial,
for the following reasons, to wit;

That the court erred in deciding the law
during the trial of the case;

2^{ndly} The court erred in refusing the several
instructions asked for on the part of the
defendants.

3^{rdly} The court erred in giving the instructions
asked for by the plaintiffs;

4th The court erred in reading the instructions refused which were asked for by the defendants.

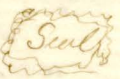
5th The verdict is contrary to the evidence,
For these & other reasons the defendants move for a new trial.

H. J. Waite

Defendants atty,

Which motion was overruled, to which ruling of the court the defendant in due time excepted and pray that their bill of exceptions might be signed and sealed & made part of the record of said case; and that an appeal might be allowed them which is accordingly done and allowed.

On motion of the defendants counsel on the day that the court adjourned and on the last day of the term, the court made the order in the record extending the time to file a bill of exceptions for thirty days, but without the agent of the plaintiff's counsel they not being present.

B. S. Morris 

Judge 7th Judicial Circuit

And afterwards, to wit: on the thirty first day of December A D 1833, the following among other proceedings were had, to wit:

Gautron J. Clark &
Seymour Gilbert

Philo Chamberlain &
John W. Crawford

Trespass

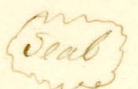
This day again come
the said parties by their attorneys and the
court having heard the arguments of counsel
upon the motion for a new trial heretofore
entered herein overrules the same and orders
that Judgment be entered,

Therefore it is considered
by the court that the said plaintiffs do have
and recover of the said defendants, their damages
of one hundred and sixteen dollars and sixteen
cents together with their costs and charges by
them about their suit herein expended and
have execution therefor. Whereupon the said
defendant by his attorney aforesaid prays an
appeal to the supreme court of this State
which is granted by the court, and ordered
that the said defendant file his Bill of
exceptions and a Bond in the penal sum
of three hundred dollars to be approved of
by the clerk within thirty days from the
entry hereof.

And afterwards, to wit, on the twenty second day of February A.D. 1854. there was filed in the office of the clerk of the said court, a Power of Attorney which is in the words and figures following, to wit;

I Philo Chamberlin do hereby nominate, constitute and appoint Stephen Selary of Chicago Cook County Illinois, my true & lawful attorney in fact, for me and in my name and stead, and behalf to sign, my name to all and every appeal bond, writ of error bond, or other papers either with or without seal & do all acts which may be necessary or which is required by law to take out a writ of error or effect an appeal to the Supreme court of Illinois in a certain cause or from a certain Judgment rendered against myself and John H Crawford in a certain action wherein Sanstrom J. Clark & Seymour Gilbert were plaintiffs and myself & said Crawford were defendants tried at the November Term of the circuit court within & for the County of Cook & State of Illinois. Hereby satisfying all my said attorney may do in the premises,

witness my hand & seal this twentieth day of January A.D. 1854.

Philo Chamberlin 

There was also filed on the same day & year as
aforesaid in the said clerk's office, a certain other
Power of attorney, which is in the words & figures
following, to wit;

I John H. Crawford do hereby nominate,
constitute ^{of Chicago Cook County Illinois} and appoint Stephen Clary, my
true and lawful attorney in fact for me,
and in my name and behalf to sign my
name to all & any appeal bond, writ of
error bond, or other papers, either with or
without seal and to do all acts which may
be necessary or required by law to take out
either a writ of error or appeal to the Supreme
Court of Illinois, in a certain cause, or from
a certain judgment rendered against myself
& Philo Chamberlin in a certain action wherein
Launtrom J. Clark & Seymour Gilbert were
plaintiffs & myself & said Chamberlin were
defendants. tried at the November Term of
the Circuit Court within & for the County of
Cook & State of Illinois; Hereby ratifying all
my said attorney may do in the premises;
Witness my hand and Seal this 20 day
of January A.D. 1854.

J. H. Crawford {Seal}

And afterwards, to wit; on the day and year last above mentioned there was filed in the office of the clerk of this Court a certain appeal bond which is in the words & figures following, to wit;

Know all men by these presents that we Philo Chamberlin John H. Crawford, William J. Thatcher, and George J. Rogers, are held and firmly bound unto Santrom J. Clark and Seymour Gilbert in the penal sum of Two Hundred dollars for the payment of which well and truly to be made, we bind our selves, our heirs, executors administrators, and assigns, sealed with our seals, and dated this first day of February A.D. 1854,

The condition of the above obligation is such that whereas the above bounden John H. Crawford and Philo Chamberlin have taken an appeal from the circuit court within and for the County of Cook & State of Illinois to the Supreme Court of the State of Illinois, from the judgment rendered in said Circuit Court against said John H. Crawford and Philo Chamberlin, in favor of Santrom J. Clark & Seymour Gilbert in the sum of one hundred and sixteen dollars & sixteen cents damages; and dollars & cents costs;

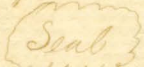
Now if the said John H. Crawford & Philo Chamberlin shall well & truly pay said judgment, interest, costs, and damages in the event said judgment shall be affirmed and shall duly prosecute said appeal; then this obligation to be of no effect, otherwise to be & remain in full force & virtue in law.

Witness our hands and seals the day & year above written.

John H. Crawford 

Philo Chamberlin 

by their atty, S. Clary.

Wm J. Mather 

Geo. D. Rogers 

State of Illinois
Cook County ss I Louis D. Hoard Clerk of the Circuit Court in & for said County, do hereby certify that the foregoing contains a full and perfect transcript of all the proceedings and papers filed in my office in a certain suit of ^{on the case} ~~Transcript~~ wherein Santorum & Clark and Seymour Gilbert were plaintiffs and John H. Crawford and Philo Chamberlin were defendants so far as the same appears to have been had and entered of Record in said cause.

Witness my hand and the seal of said Court at Chicago in the County aforesaid this 25th day of May A.D. 1854.

See for this Record

[2397-41]

24.65

Rec^d fee of H. B. White

L. D. Hoard

L. D. Hoard Clerk

45.

John H. Crawford et al.

Laurens J. Clark

Record

Filed June 12. 1854.
L. Seland Clk.

H. C. Wells

W. C. Wells

[12597-42]

is marked "B" of which the following
is a part

Clark & Gilbert

Rockford

Can RR { 174 Bars Iron
19 Bolo do
1 " Steel
3.0 Kys Nails

Was about the dock most of the time
while Propeller was unloading. Was there
when the "O" Iron was tallying out. Know
Geo W Gardner Clerk of the Prop. Both
Clark & Meade were tallying out the "O"
iron: This was the ordinary dock of the
line. Large lot of goods for John Rum-
sey & Co. & I was there most of the
time for two days except meals

Mr Clapp testified he was book-
keeper for John Rumsey & Co. had been
with them since 1845. When the Clerk
of Propeller came to settle up the bill
of freight asked him about this iron
He said he supposed it had not been
put on board, said nothing about its
being tallied on shore but directly the
contrary

Exhibit "H" is a copy of his settlement
with the Clerk. - Attached to the Record.

Daniel J. Lake testified that he is
of the firm of Lake & Brown, had iron on
board marked "O" consigned to J Peck & Co
Shipper & Clary agent of Defts said they
were short some iron, told him we had

an overplus of some forty bars. He directed us to employ Men to sort our iron which we did & found over 100 bars of the "C" Iron. The mark "C" & "O" were much alike. These were over checked, found no bundles. The iron was a day or two in being delivered by Peck. Was on the dock when the Propeller was landing. There were several piles of iron. at least our iron lay in separate piles. While then the Captain said, there was our nails. Some were marked "C". He picked them out of ours & rolled them one side. The C iron came to our store with ours, sent by Pecks. chuck clerk

An Corp Examination said. We were selling iron all the while. The clerks were cautioned, not to sell any "C" Iron. Could not have sold any of this iron.

It was then admitted if the Phelps recovered at all they might have a credit for \$

The Defence offered the depositions of Geo. Gardner, I M Green, & A C Keating.

Isaac M. Green was sailing Master of the Granite State at the time in question & loaded the iron. Two lots marked "O" & "C" 25 bars of "C" were accidentally put on the "O", but afterwards removed & put by itself in two piles near each other - 200 bars. Nails marked "C" & "C & G" also delivered.

The several lots of Iron were placed separately on the main deck of the Prop. No opportunity for it to be stolen. It was taken on at Cleveland & all delivered at Chicago. I should have known if any had been stolen. Has a memorandum of the Iron tallied off - It was delivered upon the first dock above the second bridge on the north side of Chicago River. While tallying it off a young man came & inquired for the "C" Iron - Said I had tallied none "C" Iron than there was - but I had tallied both bars & bundles together & my tally agreed with the bill of lading. Afterwards knew the young man to be A. Holden, Clerk of John Ramsey & Co. He was present when the goods in question were delivered, & no complaint was then made of any mistake or error.

The custom at Chicago is for a Propeller to deliver all her cargo at her own dock & the different consignees come & get the goods consigned to them.

Deposition before Elisha Taylor Commissioner at Detroit Mich.

A. C. Keating deposed. was ^{master} of "Grand State". Knew of the Iron, one lot owned by Clark Gilbur of Rockford, consigned to J. Peck & Co marked "C". The other lot was owned by Lusk & Brown of Chicago, also consigned to J. Peck & Co & marked "C". The iron for Chicago was all stored in the hold. No part was lost but all

safely delivered at Chicago. Attended
to the delivery himself. The "O" Iron
was first put on shore & then 12 or 15
bars of "C" thrown out with it when the
difference in the marks was discovered.

The count compared with the bills of
Lading. All the Cargo was landed
on "Gibbs Dock" & claimed & taken away
by persons claiming to be Consignees.

Had no conversation that he recollects
with Augustus Holden - never said
there was no "C" Iron on board. Have
no acquaintance with John Rummy & Co's
clerk - The custom at Chicago is
to land all the cargo at one dock &
the Consignees take it as far as it is landed.
We store & deliver the different marks
separately. A.C. Keating

George Gardner deposed. Was clerk of the
"Prairie State". In the early part of Sep-
tember 1852 she made a trip from Cleve-
land to Chicago. Had two parcels of Iron
marked "O" & "C" consigned to Peck & Co.
Bills of Lading showed Lake & Brown
to be owners of the "O" Iron & Clark &
Gilbert of the "C". Don't know when
it was stowed. There was Iron on Deck
& in the Hold. Stopped at 3 or 4 places
between Cleveland & Chicago to land freight.
Know that none consigned to Chicago was
landed ^{elsewhere than} at Chicago. Know that none was
lost. We landed all the cargo at Geo.

A. Gibbs Dock. Supposed from Bill
that of Peck & Co were consignees of Iron
marked "O" & "C" but while discharging
a young man called "Augustus" & whom I
knew to be Clerk of Lolo Rumsey & Co
came on board & came to me with Mr.
Green our mate when Mr Green inquired
in presence of the Clerk whether there
was any iron marked "C". Examined
my tally book & told him there was. It
was found & delivered in a lot by itself.
After unloading Mr Green & myself
compared his tally with the amount
in the Bill of Lading & found it correct.
Recollect no other conversation with
Augustus Holden about the "C" Iron until
after the cargo was discharged, when Holden
said he had not seen the iron & could not
find it. I replied to him that the iron
was all delivered on the dock for we had
tallied it & the tally compared with
the bill of Lading. Never informed
any one there was no "C" iron on board.

Do not recollect that Holden in
person asked me if there was any "C"
iron on board. but if he did I told him
there was. I certainly told the mate ^{so} in
his presence.

I have done a good deal of business
with Lolo Rumsey - having frequently
seen Holden acting as their clerk.
He had before rec^d goods of me &
signed receipts for that firm.

The custom of Propellers running

to Chicago is as before disposed.

The clerk of the Propeller as soon as she lands, goes into the office of the Agent & delivers the bills of Lading. The "Tally Clerks" of different Commission houses are all the while on the look-out. They go to the office of the Agent & take copies of the Bills of Lading of goods consigned to their houses, & then it is the custom for these clerks to stay by as the cargo is being landed & each take away his own share. The difficulty in this case was owing to John Rumney & Co's clerk neglecting to stay by until the "C" Iron was all delivered upon the dock, & thus affording an opportunity for the dryman of J. Peck & Co to haul off the "C" Iron with the "O" — Geo H Gardner

These dispositions were before Rufus P. Spaulding Commissioner at Cleveland O.

Samuel Howe testified he has been two years in the For. & Com. business - knows the custom of Propellers in delivering goods at Chicago - which is to land all their cargo at one dock which is the usual dock of the Propeller, & for all having goods on board to go to that dock & get them. The custom never requires the Prop at the dock of Consignees. That as soon as the propeller comes in the check clerks go to the office of the Agent of the Prop. & draw off into their check books

such goods as belong to their house.
The Defts Atty then asked if by such custom the clerk clerks are governed by the Propellers bill of lading, or by the original bill of lading - to which the Plffs Atty objected & the objection was sustained. The Defense then asked "Do the clerks take notice of the Propellers bill of lading or do they act from facts within their own knowledge" to which the Plffs objected & the objection was sustained, to the sustaining of which objection the Defts excepted.
On Cross Ex. witness said the men throwing on the dock was not considered a delivery. If the clerk had notice & did not attend they would still be in charge of the propellers. If the clerk neglect to attend to his business they must still take care of them.

Hillier said he had been in forwarding business four years - knows the custom &c - that Propellers run to but one dock & land all their cargo there. and such notice such landing with notice to the consignee is a valid delivery.
Can't say the men throwing off the goods is a delivery if the consignee is not there to receive them. Suppose it the duty of the Prop. to put them in a safe place if there was no one there to receive them.

Stephen H. Cary said he had

resided in Chicago two years, was agent
of Defts. This Prop. had an assorted
cargo & landed it all at her usual
dock. Always landed there. Always landed
goods consigned to Dole Rummy & Co then
except once in case of a large lot of
R.R. Iron. In making freight bills
found the freight not all paid - went to
Dole Rummy & Co to ask why they had
not paid for it. They said they had
not received it. Went to Pick to see
their tally of the iron sent to Lake & Brown
Their checks were not up but said they
were correct. Waited three days for
Pick & Co to make up their checks.
In the mean time had been to Lake &
Brown. Mr Lake said at first he had
only 40 bars, but afterwards admitted
they had more. Desired him to send
to Dole Rummy & Co whatever they had.
I was a week or ten days before they
sent it.

Crop Ex. Some clerks this year have
attended to the delivery of goods. Last
year they did not. The custom was
to throw them onto the dock indiscrimi-
nately.

The Plffs then asked the Court to give
the instructions marked "C."

In Supreme Court

Philo Chamberline

John H. Crawford }

vs
Laurence J. Clark }

Symon Gilbert }

In Error

And now coming
the said Philo Chamberline & John H
Crawford, vs say that in the record pro
ceeding there is manifest error in the
court;

1. st The Court erred in charging the
jury; & in ruling on the evidence -
- 2nd The Court erred in refusing to give the
instructions asked for by the defendant below -
- 3 The Court below erred in refusing to give the
first instructions asked for on the part of the
plaintiff in error (defendant below)
- 4th The Court below erred in refusing to
give the second instructions asked for by
the plaintiff in error (defendant below)
- 5 That the Court below, erred in refusing to
give the fourth instructions asked for by
the plaintiff in error, (defendant below) -
6. That the Court erred in refusing to give the
the fifth instructions asked for by the
plaintiff in error (the defendant below)
- 7 The Court erred in refusing to give the
sixth instructions asked for by the plaintiff
in error; the defendant below

8. The Court below erred, in refusing to give the the 8th instructions asked for by the plaintiff in error, the defendant below.
- 9th That the Court below erred in refusing to the jury the instructions, they refused to give, & so letting the jury they refused to give.
- 10th The Court ~~refused~~ erred in refusing the several instructions asked for by the plaintiff in error, the defendant below
- 11th The Court erred in refusing to grant a new trial as asked for.
- 12 The Court ~~refused~~ erred in ~~refusing to give the~~ giving the several instructions asked for by the plaintiff below - the defendant in error.
- 13th Said judgment was in favor of the defendant in error - when it should have been in favor of the plaintiff in error by the laws of the land. Wherefore the plaintiff in error pray that said judgment in error may be reversed annulled, & that they may be restored to all things that they have lost, by reason thereof - & said case remanded
- W. F. Waite
Plaintiffs Atty

The defendant by Goodrich Scoville their
attys. Come & say their an answer
in the said record & proceedings as is shown
by said plff. signed & subscribed & may
the said judge. May be of find

Goodrich Scoville
for deft.

45

Supreme Court

for Error

Phil Chamberlain & Co

vs

Lawrence Gilbert & Co

assignment given

Filed June 12. 1854.
L. Keland Attys.

W. W. Carter
Plaintiff's Attys

Clark Gillens
and
Brownford et al

To render custom available
it must be shown in the
pleadings & proved that
the party sought to be affected
by it, knew of it or had
acquiesced in it

Liggatt vs Wilkins

5 Wattans Reports page 24

Clark & Gillous
ad

Crawford et al

Ad. B. of authorities
5 Galtan St

Crawford
M
Larkin

Apt for Cook

11 Am Wait for supplies

Flinders on Shipping 273^{usage} - This was a good delivery
1 Parsons on Contracts 666^{usage} independent of army
Custom

3 Lounnan R 227

4 Pickering 371 no custom

10 Mulcahy 473

23 Vermont 210

3 Comstock 325

15 John 39 Contra not good

1 Denis 45

2 Kent (3rd) 605

6 Mo 371

16 Rt. 62 Seventh instruction is within the case
of Dunham last term

Goodrich

~~5 Bratton 24~~

7 Blackford 497

2 John 335 Custom must not violate any

15 " 39 rule of law - Passenger to St Thomas

6 Motto D. 62

1 Denis 45

25 Eng C. L. R. 274 Custom among printers of 4 weeks notice

[2397-5]

Parsons 663-4 The notice is insufficient
" 601

to admit proof of a custom

1 Arnoldson Ins. 71-2-5-

The custom must be known
to the party or generally known
to all persons engaged in the
trade

9 Mulealf 355-

2 Story R45-

10 Eng C & 364

20 " 455-

39 " 181

Usage not binding on non-
residents unless it is shown
to have been known to them

1 Sand. Supr. 138

1 Story 606

Angit on car, 298-306

6 Peck (Chickering) squinting }

8 Meason & Malt 128-

Motive for pliff in Error.

3 Hill 261

Notice is good enough. It would
be paid on your disclaimer upon
a plea

1 Ball 203

Liability, ceases when land at 1 Wharf -

6 Whorton Contra -

branford
v
Clarke