

No. **12223**

Supreme Court of Illinois

Dyer

vs.

Talcott

71641  7

State of Illinois
County of Cook

Pleas before the Honorable
John M. Wilson Judge of the Cook County Court of
Common Pleas within and for the County said State
aforesaid at a vacation term of said Court. begun
and held at the Court House in the City of Chicago in
said County on the First Monday being the Sixth
day of March. in the Year of Our Lord One thousand
Eight hundred and fifty four. and of the Independence
of the United States the Seventy eighth
Present the Hon. John M. Wilson Judge
Cyrus P. Bradley Sheriff
Attest Walter Rice Clerk

BE it Remembered that on the Twentieth day
of January in the year of Our Lord One thousand
Eight hundred and fifty three came Edward B. Talcott
by Arnold Larned & Lay his attorneys and files in
the Office of the Clerk of the Cook County Court of Common
Plea a precept which said precept is in words and
figures as follows to wit:

State of Illinois
County of Cook
Edward B. Talcott } Court of Common Pleas
Thomas Dyer & } Attest
C. P. Willard } Case
Damm \$500

The Clerk will please give a
writ of Summons in the above entitled Cause in
an action on the case directed to the Sheriff of Cook

Be Returnable at February Term AD 1854. Pay
the Damages at Five hundred Dollars.
Yours &c
Arnold Linné & Lay
Plffs atty

And thereupon Summons issued out of the Clerk's Office
aforesaid, in said Cause which said Summons is in
words & figures as follows to wit:

State of Illinois
Cook County JSS

The People of the State of Illinois
to the Sheriff of said County — Greeting

We Command you that you Summon W P Williams &
Thomas Dyer if they shall be found in your County
personally to be and appear before the Cook County
Court of Common Pleas of said County, on the first
day of the next term thereof to be holden at the Court
House in the City of Chicago, in said County on the
first Monday of February next to answer unto
Edward B Talcott, in a plea of action on the case
to the damage of the said plaintiff as he says in the
Sum of Five Hundred Dollars. And have you
then and there this writ with an Endorsement thereon
in what manner you shall have Executed the same
Witness Walter Kirshald Clerk of Court
said Court, and the seal thereof, at the
City of Chicago this 20th day of January
AD 1854.

Seal

Walter Kirshald Clerk

And Which Said Summons was afterwards
returned into the Clerk Office aforesaid with the
following Endorsement, to-wit:

"Served by Reading to the named
Thomas Dyer, January 23rd 1854. W. P. Williams
not found in my County. January 23rd 1854.

E. P. Bradley Sheriff
By J. M. Norton Clerk

And On the Twentieth day of January in the
Year aforesaid, there was filed in said Cause in
the Clerk Office aforesaid a Declaration, which said
Declaration, is in words and figures as follows to-wit:
State of Illinois)
County of Cook)
vs.)
February Term A.D. 1854.

Edward B. Talcott,

Thomas "Dyer") Case
vs.)
W. P. Williams.

Edward B. Talcott Plaintiff
in the above Entitled Cause. complains of Thomas
Dyer, W. P. Williams defendants duly Summoned
by the Sheriff in an action on the Case for that
whereas the said plaintiff at the time of the committing
of the grievances hereinafter mentioned was lawfully
proprietor of a certain Steam Tug called the Seneca
aforesaid value viz of the value of Two Thousand Dollars
then lawfully being in the Chicago River, to-wit at
said Chicago, in said County, and the said defendants
were also proprietors of a certain other vessel called the
W. P. Williams, on the River aforesaid then lying
at a certain dock on said River, viz at said Chicago

Said Defendants then & there had the care
& direction & Management of the Same, by their
Agents & Servants in that behalf. Yet the Said
Defendants not regarding their duty in that behalf
whilst the Said Steam Tug of the Said plaintiffs
so was in the Said River, to wit: On the Seventh
day of October, A.D. 1853. at said Chicago, then
& there, by their Servants in that behalf stretched
and Extended a rope or Cable from the Said
Vessel of said Defendants Continently across the
Said River and fastened the Same to a dock on
the Opposite Side of said River, One End of which
Rope was attached to the Said Vessel and the
Other to the Said Dock and in Such manner
as to prevent the passage of ^{the} vessels of the plaintiff
and other vessels up and down the Said Chicago
River & to interrupt and obstruct the navigation
thereof, and kept and continued the Said Rope across
the Said River in manner aforesaid for a long
space of time, and the Said plaintiff then and
there being in said River and navigating and sailing
along the Same as he lawfully might, was unable
to pass along said River without the Said rope
was let down and dropped by said defendants,
and the Said plaintiff gave to the Said Agents, notice
of his approach by letting off steam, and otherwise
yet the Said defendants by their Servants in that behalf
took so little and such bad care of their Said vessel
and of the Said Rope or Cable attached to the Same in
the direction and Management of the Same, and were
guilty of such Carelessness & Negligence in the premises
viz in the Extending said Rope across the Said River
in keeping the Same Extended across said River

For an undue unreasonable length of time, in delaying
and neglecting to lower and drop the same, in due season
to allow the said tug of the plaintiff to pass, and in
refusing to drop the same to give passage to the plaintiff
tug and in failing & neglecting to keep a good look
out for the plaintiff tug and drop said rope in
season for said tug to pass, and in various and
divers other particulars that the said Steam Tug of the
said plaintiff was by & through the carelessness mis-
direction & negligence of the said defendants
or their servants in that behalf in the premises aforesaid
then and there struck with great force and violence by the
said rope or cable, and the said ^{two} cable and the said rope
or cable ran foul of & struck with great force & violence
the smoke pipe of the said Steam Tug and over threw the
same, and tore away and injured the bulwarks and
rigging and upper works of the said Steam Tug, and
swept the decks thereof, and otherwise greatly damaged
and injured the same, and also by means of the premises
the said plaintiff hath been forced and obliged to pay
lay out and expend and hath necessarily paid laid
out and expended a large sum of money viz Five
thousand Dollars, in and about the repairing of
the said damage, so done to the said Steam tug as
aforesaid, and also by means of the premises the
said plaintiff lost and was deprived of the use of the
said Steam Tug of the said plaintiff for a long
space of time viz for the space of twenty (20) days, and
thereby lost and was deprived of all the profits and
advantages which during that time he might and
also otherwise would have derived and acquired
from the use of his said Steam Tug viz at said
Chicago in said County

And Also say that whereas the Said
plaintiff, before, and at the time of the committing
the grievances. Hereinafter first mentioned was
lawfully possessed of a certain other Steam Tug
of Great value viz of the value of Two thousand
Dollars. then lawfully being in the Chicago River
viz at Said County and the Said defendants were
also then possessed of a certain other vessel called
the C. P. Williams in the River aforesaid at Said
County and lying at a Dock along Said River
and then and there Said defendants by their agents
& Servants in that behalf had the care direction
& Management of the Same. Yet the Said defendants
not regarding their duty in that behalf whilst the
said Steam tug of the Said plaintiff so ran in the Said river
to wit: On the 7th day of October 1853. at Said County
took so little and such bad care of their Said vessel & the ropes
cables and appurtenances thereunto belonging in the direction
and Management thereof that the same by and through
the carelessness, misdirection and mismanagement of the
Said defendants by their Servants in that behalf then
and there with great force and violence ran foul
of Said Struck against the Said Steam Tug of the Said
plaintiff and thereby then & there greatly broke damages
and injured the Same, and thereby by reason of the premises
the Said plaintiff hath been forced & Obligated to pay
lay out and expend and hath respectively paid laid
out, and Expended a large Sum of Money to wit:
The Sum of Five hundred Dollars. in and about
the repairing the Said damage so done to the Said Steam
Tug of the Said plaintiff as aforesaid and also by
means of the premises the Said plaintiff lost and was
deprived of the use of the Said Steam Tug for a long

Space of time viz Twenty days and thence lost and was
deprived of all the profits and advantage which during
that time he might and also otherwise would have derived
and acquired from the use of the said Steam Eng to wit:
at said Chicago.

To the damage of the plaintiff, Five hundred
Dollars wherefore he brings suit by his attys
Arnold Lunn & Lay.
Plff attys.

And Afterwards to wit, On the Eleventh day of February
in the year Eighteen Hundred and Fifty four. Came
the said defendants by Collins & Williams their attorneys
and filed in said cause in the Clerk's Office aforesaid
their plea. Which said plea is in words and figures
as follows to wit:

Cook County Court of Common Pleas
Thomas Dyer ^{impleaded} with C P Williams } February Term
Edw^d B Sulcatt } 1854.

And now comes the said defendants
by Collins & Williams their Attorneys & defend the wrong
& injury when &c and say that they are not guilty of
the said supposed grievances above laid to their
charge in manner & form as the said plaintiff hath
above thereof complained against them &c and of this
they put themselves upon the Country.

Collins & Williams Dfns attys
And the plaintiff
the like by their attys
Arnold Lunn & Lay.

And Afterward to wit: On the Fourteenth day
of March in the year aforesaid. Said day being
one of the days of the March Vacation term of said
Court. At 11 o'clock the following proceedings were had
and Entered of Record in said Cause to wit:

Edward B. Talcott

C. J. Williams and } Case
Thomas Dyer }

And now at this day comes the said
plaintiff by Arnold Larned & Lay his attorneys, and
the defendant Thomas Dyer. who alone had been served
with Summons issued in this cause by Collins & Williams
his attorneys, also comes and issue being joined herein it
is ordered that a jury come. And thereupon come the jurors
of a jury of good and lawfull men to wit:

H. B. French. D. M. Stone Thomas Brock Nelson Hatch
A. J. Wheeler Geo. P. Hanson Ruben Taylor Stephen Cherry
Henry D. Walker. Jos. Harbuck Edward Murphy & John Murphy
who being duly Elector tried and sworn well and truly to
try the issue joined aforesaid. After hearing a part of the
testimony the hour of adjournment having thereupon
arrived by agreement of said parties the jury are permitted
to separate and meet the Court tomorrow morning

And Afterward to wit: On the Fifteenth day of
March. in the year aforesaid. Said day being one of
the days of the aforesaid March Vacation term of
said Court. the following proceedings were had and
Entered of Record in said Cause to wit:

Edward B Tulcott }
 C P Williams & } Case
 Thomas Dyer }

This day again come the said parties by their said attorneys, And the jury empanelled in this cause also come, and thereupon by agreement and Consent of said parties it is ordered that George R. Hartwell One of the jurors in this cause be Excused from further Attendance herein And this cause be heard before the remaining Clergy Jurors, And after hearing the Evidence adduced, the further hearing of this cause is postponed untill tomorrow morning, to which time the jury are permitted to Separate by Consent of parties.

And Afterwards to Wit: On the Sixteenth day of March in the year aforesaid said day being one of the days of the aforesaid March Vacation Term of said Court the following proceedings were had and Entered of Record in said Cause to wit:

Edward B Tulcott }
 C P Williams & } Case.
 Thomas Dyer }

And now again come the parties aforesaid by their said attorneys, and the jury empanelled herein also come, and after hearing the argument of Counsel and instructions of the Court, retire to consider of their verdict, and afterwards come into Court, and say to the jury, find the defendant guilty and owe a sum to the said plaintiffs damages, to the sum of One hundred and Eighty Dollars, and thereupon the said Defendant enters his Motion herein for a new trial in this cause

which after being heard is overruled by the Court.
Therefore it is considered that the
Said plaintiffs do have and recover of the Said defendant
Thomas Dyer. impleaded with the Said C P Williams
his damages of One Hundred and Eighty Dollars
in form aforesaid by the jury aforesaid and also
his Costs and Charges by him about his Suit in this
behalf Expended and have Execution therefore.
And thereupon the said defendant
Enters his Exceptions herein to the Opinion of the Court
and prays appeal to the Supreme Court of the State
of Illinois, which is allowed on his filing appeal
Bond herein in the Sum of Five Hundred dollars
And also bill of Exceptions in thirty days from this
date - Said Bond to be approved by the Court

And Afterwards to Wit, On the Eleventh day
of April in the year aforesaid there was filed in
the Clerk's Office aforesaid in Said Cause. a Power
of Attorney, Which Said Power of Attorney is in
the words and figures as follows to Wit:
Court of Common Pleas.

Thomas Dyer impleaded
with Charles P Williams

ad Case
Edward B Talcott

I do hereby authorize and Empower
Erastus S Williams or James H Collins to Execute for me
and in my name, an appeal Bond in this cause and to
do any act which may be necessary & proper in order
to remove this cause by appeal to the Supreme Court
of this State

Dated & Sealed this 17 day of March 1854
Thos. Hlyer Seal

And Afterwards to Wit: On the 16th day of April
in the year aforesaid came the said Defendants by
their attorneys and filed in the Clerk's Office aforesaid
in said cause their Bill of Exceptions. Which said
Bill of Exceptions are in words and figures as
follows to Wit:

of said County Court of Common Pleas
Thomas Dyer impleaded
with C. P. Williams

and
Edward P. Talcott

Be it Remembered that
upon the nineteenth day of March 1854 Eighteen
hundred & fifty four. being the March Special
Term of said Court before the Hon John
McWilson Judge of said Court, & a jury duly empanelled
-ed to try the issue herein the above Cause came on
to be heard upon the trial thereof the plaintiff to
sustain the issue on his part introduced as a
Witness

S. N. Wisner

Who being duly sworn said. That he
was Captain of the Steam Tug Seneca at the time
of the accident which occurred the last of October
1853. That at the time of the accident he was running
the boat. stood on the deck by the helm giving
Orders. The boat came down the River from
above the Mills Street bridge. Passed the Clark
Street Bridge after a little delay. Saw the line of the
Vessel C. P. Williams while above the Clark Street bridge
It was stretched across the River. There were two lines

Stretched across. Saw through before I passed through
Clark Street bridge, ^{completely blocking the way} ~~through~~ ^{through} Clark Street bridge
through bridge. I kept up a continual whistle till
I came near the ^{line} P Williams was lying Opposite
Burlingame Dock On the North Side of the River
She had her lines on the North Dock. I think there was
an elevator inside of her. One line lead from P.
Williams across the River to the foot of State Street
One end fastened to Spencers Dock, the other, to the
Vessel ten feet above the Water. The Other line
was to a propeller. The first line was the one nearest to
me. I saw 2, 3, or 4 men standing near the middle of
Vessel near the main Mast. Some fifteen feet from
main Mast was fastened on vessel. part of them were
looking toward our boat just fixing an elevator,
when I came near to line. I stopped Engines gave
notice to reverse Engines by the usual signal to the
Engineer. He commenced backing before the boat
after boat came in contact with the line, line was
so taut that it passed over bow & came in contact
with the pipe. I was about fifty feet from the Rope
when I gave orders to reverse. The Engine I should
judge. It might have been more. The Rope tore down
Chimney of the Tug Boat & small Cabin broke off
two or three parts used to stay the guards. The Boat was
delayed all that day and the next till Evening for
repairs

Question by Plaintiffs Counsel. How much
was the Vessel carrying a day at that time.

Question Objected to by Defendants Counsel
Objection Overruled by Court. & Defendant then and
there Excepted

Answer From \$50. to \$56. a day on an

Average during the month. I was present while the repairs were being done. They were pushed through as soon as they could be. The actual repairs of wood work were about \$15.00. This included the Carpenters work. The Pipe was nearly ruined, was broke into in one place and bruised in another. A man on board the propeller cast off the lower line. He said he did not want his bulwarks torn away. There was sufficient time to have gone the length of a whole Block & thrown off the line after blowing our whistle. We were going slower than usual, about 3 miles an hour. Blowing a Whistle is the usual signal to lower the line. I have been engaged, in navigating vessels in Harbor for 2 years. A Whistle is the usual signal of Tugs. The C. P. Williams was not hauling at the time. I do not know how long the lines had been stretched. I saw the lines some ten minutes before the accident. At this time the Williams was tied to the wharf on the north side. I was present the irons were brought on board for repairs. I don't know the cost of these repairs. I paid \$4.50 for help to hoist Chimney & \$3.00 for black Smiths work. There was some black Smiths, bills for making chains & I don't know the amount of them. Some team work was done, nearly a whole day for one horse team. The team was running around for the greater part of two days. There were extra hands employed in raising pipe &c. Dwyer was an extra hand was employed two days. Guthrie 2 days. I suppose hands were worth \$2.00 a day.

Capt. Examiner I saw line two blocks off above Clark Street Bridge. The Williams was not then hauling over the River. I first saw the men on board when I was one block from the line, was then on

the lower side of bridge. Three or Four Men were
Standing On the deck of the Williams. between the
lines. Some of them were employed in repairing a
Spant. They were hauling Spant on board from
between ship & wharf. Some part of the hands were
Hauling something towards Elevating or loading Reel
I saw the lines some 15 minutes before I got to it
time enough to have stopped & had him, loaded
I could have done it. I was 50 or 60. feet from line
when I gave notice to reverse Engine. I had not
instructions from my Employers. Not to Stop for
lines. I do not recollect of talking to Capt Kelly
about having instructions about lines. I do not
recollect telling him that I had instructions Not to
Stop for lines. Our Expenses were \$20. to \$25.00 a day
for Running Trip. That includes all labor & wood.
The work in repairs consisted of blacksmiths & Carpenters
work. Mending Stay Chains was one piece of work
Could not tell how much of Chains. was gone. a
part of two or three. Some parts were put in
14 feet each & 7 or 8 inches square. Some flooring
was used. I think a Space was opened about 12
as large as a large table. 2 Sheets of Sheet iron
were used. I don't think the team was engaged
more than one day in hauling. Some bails & mallets
were up Trip putting up rope \$3.00 was paid them
for their services

Re Expenses.

After the Expenses of boat. were
not going on while repairs were being made we
did not burn so much fuel then. Fuel was \$10
to \$12.00. a day. I should have had to send a man
named by the bridge to unfasten the line from
the dock When men are hauling they snap line

to let us pass. The Steam was sent off on errands while repairs were being made. It is not the universal custom for boats to cast off their lines. It is customary either to drop the line or give notice that they can not do so. No notice was given that they could not drop the line in this instance.

Thomas L Hoag was duly sworn

A paper purporting to be a bill of Sale of the Seneca Executed by Hoag was then shown to the Witness (which said paper was afterwards introduced in Evidence) and thereupon the plaintiffs counsel asked the witness the following question, by whom was the paper now presented to you Executed. To which question the Defendant by his counsel Objected the Objection being Overruled by the Court. The Defendant then and there Excepted.

Ans.

The paper was Executed by me. The firm of Tapp & Hoag said the Seneca & I bought her & made out this bill of Sale to Edward B Talcott as I intended.

I sold the boat to Edward B Talcott.

Archibald Ruppel being duly sworn said that the Williams had hailed from Stanton's spare house on South Side of River about $\frac{3}{4}$ of an hour before the accident. It had been at Buntingames half an hour. I was on the floating Elevator which was on the side of the Williams. I could not say what the Williams was using her lines for. There was no vessel between her and the dock. She was about 10 feet from the dock. I was on the deck of the Elevator when the accident took place. Heard one distinct whistle from the Tug 3 or 4 minutes before the accident. I was working on the Elevator in connection with the Williams. The men were assisting in putting up spants. The Seneca could be seen from the Williams 100 Rods. I saw her before I heard the whistle. The line went over the deck then

down the Smoke pipe & to the parts upper Cabin. I
don't remember seeing the lower Rope lowered.

Capt Examined The floating Elevator. was on Side the Williams.
The Williams was a large vessel. The lines were fastened
to keep the vessel off the Shore. The Tug Boat was going
5 Miles an hour. The Wheel were not in motion when
the boat struck the line. The hands were then fixing the
Elevator on the Williams. Wheat was to be Elevated from
Canal Boat into the Williams. The Williams had been
lying on the North Side half an hour. The hands on
her had been making her fast to the dock. She had
been hauled over by the lines.

Ke Exa They were loading 2 or 3 hours after the accident
the lines were let down. were down most of the time after
accident. There was no difficulty in loading the vessel
after the lines were let down.

Thomas

Kelley. being duly sworn. Said
That he was Captain of the Elevator. was in
Yard Craning the River at the time of the accident.

The Williams had been lying on the North Side
1/2 an hour at time of accident. The Williams. One line
was out fastened to the opposite Side of the River to
Hantons dock. The line was to keep the Williams
from going hard to the other Side. The Wind was
blowing from the South West. The line was lowered
when we were loading. The line had been up 20 minutes
to 1/2 ^{an} hour. after they hauled across before the accident
I was in the yard when I saw the Tug coming down
It was not more than 100 feet from the line when I
first saw it I heard the whistle when I got into the
Center of the Stream If there had been man to lower
rope there was a plenty of time to have done it before
Tug struck it. The general Signal to lower Rope

is by Whistle. Sometimes bell is rung. Sometimes
a man calls out to have line lowered. There is a good
deal of passing up & down the River at this point
at this season of the year. Sometimes vessels pass very
frequently. Sometimes there is one hour or two when
not one passes. When the line caught the tug it
threw down Cabin & Smoke pipe, and broke fast to
I think there was no one on the look out.

Capt Examined. The men on the Schooner were digging
the Spauls. The Boat was under too much head
way to stop when I first saw her. She was going
between four and five miles an hour. She was less
than 100 feet from line. If it had not been for
the line I should have seen run over. The Williams
was that against the North bank. It was a Stern line
that I saw cut to South pier.

The Williams was headed down the
River. The line was a little aft. The Williams
drifted across. She was held by lines while drifting.
The Elevator was on the East side of the
Williams. When in the middle of stream I was about
80 feet from line. I saw the tug when in the middle
of the stream. As soon as I got by the bow of the
Williams I saw the tug. She whistled then. There
was a canal boat on the East side of the Elevator.
I did not hear any whistling until I was in the
middle of the stream. I had been on Elevator 20 to
30 minutes. The lines of the Williams were fastened
to the North side of the River at the time of the accident.

Re Exa

I had been making Elevator fast before I went across
the River.

James McCobb. Being duly sworn Said
That he furnished the Smoke pipe for the
Tug Seneca. The price of it was \$11.60. That was the amount
paid. It was taken from our Shop by Drumm
Capt Examined I did not know the old Smoke pipe. I had
known the boat a year, or two. Smoke pipes will last 4
or 5 years. They depreciate by use about 25 per cent
per annum.

Joseph Donaston. Being duly sworn Said
That he was on the Tug as whyle man. I saw
the line of the Williams as we passed through the Clark
Street bridge. Blew the whistle then. We were not going
fast the whistle was blown in the usual way. Capt
Wigner blew it once. I once. When I blew it the Tug was
half way from Clark Street to State Street. There
was time enough after blowing the whistle to take the
line down. The usual signal of Tugs is a Whistle. It
is customary for people hanging lines across the River
to drop them when the whistle is blown. I don't
know how long the line had been ^{up} from Williams.
I don't think there was any receipt for the line.
The wind blew from the South. There was one man
on the Williams. He stood aft from aft to quarter.
He stood near enough to cut off the line. He
stood 20 feet from the line. I should think he
could have seen the Tug. I did not see any other
man. We were 100 feet from line when the bell
was rung to stop & back vessel - I think the Engine
was reversed. We were from 80 to 100 feet from the
line when the Bell was rung - The line was so taut that
it came over bows & carried away smoke pipe, whistle
pipe & Cabin. There was a Stern line out to the North.
Black I think

Craft Examined - I saw the line of the Williams when we were coming through Clark Street Bridge, two blocks or more off. First time whistle was blown was while coming through the bridge. Half the distance between the bridge & the vessel we blew again. There would have been no difficulty in stopping Tug boat before we got to the line. It could have been done had we not expected them to let down their line. We were from 80 to 100 feet from line when we rung bell to Stop Engine. I saw a number of men on board the Williams. One of them was coiling a rope some were giving a Spout. I can't say that the man nearest the line saw us. He did not know who he was or what he had to do. Nothing to prevent his seeing me.

Otis Piper being duly sworn deposed & said, That he was on board the Sequea as Engineer we were coming down the River when the whistle was sounded twice. The bell was rung to Stop Engine. Engine was stopped & was reversed at the time we struck rope. I obeyed the order to Stop as soon as it was given. About 2 or three minutes from time the bell was rung until we stopped I had been on the boat since the August 1891.

Craft Examined - I think the Tug was going 3 or 4 miles an hour. From the time the bell was rung till the time we stopped was 2 minutes. Going at this rate the boat would have run 200 feet with her Engines reversed. She could not be stopped with her Engines reversed in 100 feet might be ⁱⁿ 200 feet. The Engine had ^{been} reversed one or two times before the Tug struck the rope. Two revolutions can be made in 1/2 a minute. When pipe came down two reverses - revolutions had been made. Half a minute had

after we were engaged and
Elapaid before we struck.

William M. Kinn being duly sworn said

That he does not know how long the
Smoke pipe had been used. A Smoke pipe was
put up on Seneca in June or July 1852. I helped
put it up it was in good order.

Capt. Encinnyed

Smoke pipe that I helped put up had
been used before it was put up. The pipe lay
on the dock after Seneca was burned. The pipe she
was again fitted up in 1852. The Seneca was
brought here five years ago. The pipes used on boat
when I returned from St Louis was not the same
pipe that was used before I went, I came back in
the Spring of 1852. The pipe that I put up was the
one on board of boat when she was burned. It
was up in the June or July 1852. I do not know
whether the pipe which was put up in October last
after the accident was an old or a new pipe when
it was put up. Do not know that any pipe was
put up since Spring of 1852 (June or July 1852).

Rec Eva

The Smoke pipe was whole & sound previous to the
accident with the exception of a ding. A new pipe would
be worth from 12 to 15 cents per pound. The old pipe
was worth when I put it up. From 1/3 to 1/4 less than new
pipe. This is the difference between old & new
pipe. The pipe was used from June 1852. for that
year in 1853. until the time of accident, used as the Seneca
was. a pipe would be used up in 4 to 5 years.

Benjamin Perkins being duly sworn. Said

That he was coming down the river on the
Haputh behind the Seneca & was not near enough to see
anything. Did not see accident. Have been engaged in
navigating river for three years

A whistle is the usual signal of tug boats
I feared the rope shaken as if being across the river from
the Williams. It was landed for me. They saw me
coming. The line was drawn taut. I feared
twenty minutes after Seneca. They started their
rope down without my whistling. Nothing comes
pass up and down the river while the line
was out except a canal boat.

Samuel Harris, being duly sworn said, that he
was a justice of the Peace of Cook County in No-
vember Eighteen Hundred Fifty-one. The docket
now in Court is my docket.

The plaintiffs Counsel ^{then} offered in Evidence the
justice docket of a Judgment against the Seneca
under the attachment act against Boats and
Vessels. To the admission of which the defendants
Counsel objected, & the objection being overruled
by the Court the defendant then & then excepted.
The docket of the Judgment was then read as
follows.

Wardell Guthrie

Steam Boat Seneca

in attachment. Defendants

Samuel Guthrie

Ossian Guthrie

Attachment issued
25 Nov 1851

returnable same day.

returned by Constable Hoy, by attaching said
Boat and notifying defendants. Defendant
appeared asked for a continuance until 26th
at 11 O'clock. granted.

Nov 26 1851. Defendant Ossian Guthrie ap-
peared, plaintiff appeared by Counsel Mr Roberts
after hearing the testimony Judgment is hereby

given against the said Steam Boat Seneca for
the sum of Fifty one Dollars and costs
Given under my hand 26 Nov 1851
Samuel Maars.

Costs in the above Suit

Spring att. & Bond. & Dec 75. In 25 Cts 12 1/2 order 25. & 1.37
Costs 1407 1.00

Order of Sale issued 26. Directed to Const Hoy,
Order returned executed by Const Hoy by selling
said Steam Boat Buckel boiler and engines, the
amount satisfied. Justice not paid and returned
Plaintiff Wardell Guthrie for his demand
paid by the Constable to him.

J. Maars J.P.

The Plaintiffs Counsel then offered in evidence
the affidavit for the attachment in the cause
last mentioned, to the admission of which
the Defendants Counsel objected, the objec-
tion being overruled by the Court the Defen-
dant then and there excepted. The plaintiffs
Counsel then read the affidavit in evidence
as follows.

State of Illinois

Cook County

vs

Wardell Guthrie

being duly sworn deposes and says that the
Steam Boat Seneca is justly indebted to him
in the sum of fifty Dollars one and above
all discoms for work and labor done
and performed on said Steam Boat Seneca
as a Seaman, and at the request of Samuel
Guthrie the Master of said boat, and that said
work and labor was done and performed while

said Steam boat was running in the navigable
waters within the jurisdiction of the said State.
Deponent further says that said boat is in the
County of Cook and that Opian Guthrie & Samuel
Guthrie are the owners of said boat.

Subscribed & sworn

Wardell Guthrie

this 25 Nov 1857 before me

Samuel Marrs, J.P.

The Plaintiff's Counsel then offered in evidence
the attachment returned in the cause last
mentioned, to the reading of which the said
defendant by his Counsel objected, and the
objection being overruled by the Court the de-
fendant then and there excepted. The attach-
ment was then read as follows.

State of Illinois &

Cook County &

J.P. The People of the State
of Illinois to any constable of said
County Greeting;

Whereas Wardell Guthrie has complained on oath
before Samuel Marrs a Justice of the Peace in and
for said County, that the Steam Boat *Serenus* justly
indebted to the said Wardell Guthrie in the
amount of Fifty dollars and oath having been
also made that the said debt accrued for work
and labor done and performed as seaman on said
Boat & at the request of Samuel Guthrie the Master,
and that said labor was performed while said boat
was running in the navigable waters of the State
of Illinois, and the said Wardell Guthrie having
given bond and security according to the directions
of the act in such case made and provided. We
therefore, Command You, that you attach the

said Steam Boat Seneca together with her engines
boilers tackle and machinery if to be found
in your County as shall be of Value sufficient
to satisfy the said debt and costs, according to
the Complaint, and such personal estate so
attached, in your hands to secure or so to pro-
vide that the same may be liable to further
proceedings thereon according to law. before
the undersigned Justice of the Peace, And in case
personal property of Value sufficient cannot be
found, that you summon all persons whom the
Plaintiff or his agent shall direct to appear
before said Justice on the 25th day of November
A D 1851 at 4 O'Clock P M then and there to answer
what may be objected against said Claim when
and where you shall make known how you
have executed this writ, And have you then
and there this writ, Given under my hand
and Seal this 24th day of Nov A D 1851

Samuel Harris. Justice of the
Peace. Seal

Executed by attaching the remains of the Steam
Boat Seneca now lying in the Chicago River
near Canal Port. also her boilers and other
Machinery November 25th 1851
Geo. S. Smith. Thos Hoy Const

The plaintiff then offered in evidence
the execution, order of Sale & return in the
above cause, to the admission of each and
every one of which the said Defendant ob-
jected, and the objections being overruled
by the Court, the Defendant thereupon then &

there excepted to the opinion of the Court
in overruling each objection to the admission
of said papers. The said Execution, order
of Sale & return were each then read in
evidence as follows.

State of Illinois }
County of Cook } S.S.

The People of the State
of Illinois To any constable of said County
Greeting: Whereas by virtue of a Certain writ
of attachment issued by the undersigned a Justice
of the Peace in and for said County - wherein
Wardell Guthrie was the Plaintiff and the
owners of the Steam Boat Seneca Defendants,
and by which the said Steam Boat Seneca
attached and levied upon together with her
engines boilers tackle and Machinery
by Thomas Hogg a Constable of said County
And Whereas such further proceedings
have been had and taken in said Cause
that on the twenty sixth day of November
inst A.D. 1851 a judgment was rendered by
the said Justice in favor of said Plaintiff
for the sum of Fifty-one (\$51) Dollars damages
besides the Cost of suit which are taxed and
endorsed hereon and an order also made
that the said Attached Steam Boat her boilers
engines tackle and Machinery should be
sold to satisfy said damages and costs in
conformity with the provisions of the Statute
in such case made and provided. You
are therefore hereby commanded that you

Proceed without delay to make Sale of
said Attached property as the same was
adjudged by me to be sold in satisfaction
of said damages and costs, and make due
return to me of your proceedings Hereon,
Given under my Hand and Seal this 26th Day
of November 1857

Samuel Means

Justice of Peace

Executed by Selling the within named Steam
Boat Seneca her Engines Boilers Tackle and
Machinery December 10th 1857 to E. B.
Talbot being the highest bidder for the sum
of Fifty Five dollars.

Thos Hoy Const

The plaintiffs then offered in Evidence
a Bill of Sale made by Thomas Hoy to the
plaintiff in this cause which was read in
evidence as follows

X "Know all men by these presents, that whereas a
writ of attachment was issued by Samuel Means a Justice
of the Peace of the County of Cook and State of Illinois upon
the 24th day of November A.D. 1857 in a suit wherein
Hurdell Guthrie was plaintiff & the owners of the Steam
Boat Seneca were defendants which said writ of
attachment was based upon the Steam Boat Seneca
her Engines, Boilers tackle and Machinery, by the
undersigned a Constable of said County of Cook &
State of Illinois, and whereas such further proceed-
ings were had and taken in the suit above men-
tioned that on the twenty sixth day of November
A.D. 1857 a Judgment was rendered by the Justice

above mentioned in favor of the plaintiff in said
suit for the sum of fifty one Dollars damages
besides the costs of said suit which were taxed
& endorsed on said order. And Whereas an order
was made by said Justice that the said Steam Boat
attached as above mentioned her boilers, engines
tackle & Machinery should be sold to satisfy said
damages & costs in conformity with the Statute
in such case made and provided, And Whereas
by the order above mentioned any Constable
of the County of Cook aforesaid was comman-
ded to proceed without delay to make sale of
the attached property above mentioned as the
same was adjudged by said Justice to be sold
in satisfaction of said damages & costs & make
due returns to said Justice of his proceedings
on the said order. And Whereas in pursuance
of the above mentioned order the under-
signed Constable in & for the County of Cook
in the State aforesaid did at Canal Port in
the County of Cook on the Tenth Day of December
A.D. 1851 offer for sale the said Steam Boat
Jeneca her Engines, Boilers tackle and Machinery
at public Vendue and the boat above mentioned
her Engines Boilers tackle and Machinery were
struck off to Edward B. Balcomb for the sum
of fifty five dollars he being the highest and
best bidder therefor. There several notices
of said sale having been put up by me in
public places in the vicinity of said sale,
which notices specified the hour and place
of sale and the property to be sold.

Now Therefore in consideration of the

premises. I Thomas Macy, constable as
above mentioned, have and by these presents
do grant & convey unto the said Edward
B Talcott his executor administrators and
assigns the said Steam Boat Seneca heren-
gins Boilers tackle and machinery. So
have and to hold the same unto the said
Edward B Talcott his Executor, adminis-
trators & assigns forever.

In Witness Whereof I have hereunto
set my hand & Seal this 10th day of Decem-
ber A D 1851.

Thomas Macy Seal

In presence of
H. W. Singer.

It was then admitted by the defendant Counsel that the docket now in court and about to be produced was the docket of W. S. Ricker a Justice of the Peace of Cook County.

The Plaintiff's Attorney then offered in evidence a record of a judgment in the cause of Capt & Hoag vs The Steam Boat Seneca in attachment to the admission of which the said defendant by his Counsel objected, and the objection being overruled by the Court the said defendant then and there excepted. The record was then read in evidence as follows.

Oliver T. Capt & Thomas C Hoag	} Demand \$750 Affidavit on account Attachment.
vs Steam Boat Seneca	

On affidavit of Thomas C Hoag & Bond filed writ of attachment issued January 3^d 1852 retab'd Jan'y 8th at 9 o'clock A.M. Same Capt Hoag. Ret'd by Const Carther. "Served by attaching to Jan'y 3^d 1852. & he deft. Jan'y 6th. January 8 1852. No appearance on behalf of the defendant & no service had. Cause is continued to Jan'y 19 at 9 o'clock A.M. and notice g'd to Const Carther - Notice returned "Served by posting to Jan'y 8 1852.

January 19 1852 Plffs in Court. No appearance for defendant. after examination of evidence &c. Judgment is rendered for the plaintiffs for their amount proven being

	Damages	\$750
And for Costs of Suit	Costs	_____

& property attached ordered to be sold. Judgment Jan'y 19 1852. Order Sale g'd Jan'y 21st 1852 to Const Carther

Retd "made by Sale of the boat \$90.00"

The plaintiff then offered in evidence the affidavit for attachment in the cause last mentioned to the admission of which the said defendant objected & the objection being overruled by the Court the defendant then & there excepted, the affidavit was then read as follows.

State of Illinois }
Cook County } S. J.

Thomas C Hoag being duly sworn
says that there is justly due to Oliver H. Epp & Thomas
C Hoag the sum of Seventy five Dollars and thirty
seven cents for provisions and supplies furnished by
them to the use of the Steam Boat Seneca which she
was running upon the navigable waters of this
State, and that said supplies were furnished
at the request of the Master or Captain of said
Boat, and that he does not know who is or are
the owner or owners of said Boat
Sworn to before me Thomas C Hoag
this 3^d day of January
1852. W. L. Riecher

Just peace,

The plaintiff then offered in evidence the attach-
ment writ in the cause last mentioned to the ad-
mission of which the said defendant objected
& the objections being overruled by the Court
the defendant then & there excepted.
The writ was then read as follows.

State of Illinois }
Cook County } S. J. The People of the State

of Illinois, to any Constable of said County Greeting.

Whereas Thomas C Hoag has complained on oath before Henry L Rucker a Justice of the Peace in and for said County that the Steam Boat Seneca is justly indebted to the said Thomas C Hoag and Oliver Sopp in the amount of seventy five dollars and thirty seven cents, and oath having been also made that the said indebtedness accrued for supplies furnished said Steam Boat Seneca, and the said Thomas C Hoag having given bond and security according to the directions of the act in such case made and provided: We therefore command you that you attach said Steam Boat Seneca with her furniture and apparatus if to be found in your County to satisfy the said debt and costs according to the complaint, and such personal estate so attached in your hands to secure or so to provide that the same may be liable to further proceedings thereon according to law before the undersigned Justice of the Peace, and persons who claim to be owners of said vessel to appear before said Justice on the 8th day of January A.D. 1852 at 9 O'clock A.M. then and then to answer what may be objected against her or them, when and when you shall make known how you have executed this writ: and have you then and then this writ. Given under my hand and Seal this 3^d day of January A.D. 1852

H. L. Rucker *Just*
Justice of the Peace

Cook County, Ill.

By virtue of the within writ I did on the 3^d day

of January 1852 attach the Steam Boat Seneca
and the fixtures machinery & tackle that can be
found which said boat & a portion of its machinery
is now in the Chicago River at Bridgeport in Cook
County and a portion of which said machinery
is now on the premises of Elmer Granger at
Chicago. Dated at Chicago January 3 1852
18 or 50.4 miles 20 R. V. Carthen

Constable

The Plaintiff then offered in evidence the Execu-
tion, order of Sale & officers return in the last
mentioned Cause, to the admission of each of
which the Defendant objected & the objections
being overruled by the Court, the Defendant
then and there excepted to the several
opinions of the Court & overruling each & every
one of said objections

The Execution order of Sale & officers return were
then read as follows,

State of Illinois
County of Cook

The People of the State of Illinois

To any Constable of said County Greeting.

Whereas heretofore to wit on the 8th day of Jan-
uary 1852. Oliver L. Goss & Thomas C. Hoag sued out
before the undersigned a Justice of the peace in and
for said County an attachment against the Steam
Boat Seneca on a demand claimed to be due them
for supplies furnished said boat, and have caused
said attachment to be levied on said Steam Boat
Seneca with the fixtures machinery & tackle.

And whereas afterwards to wit on the 19th day

day of January inst Such proceedings were had
Before said Justice as that a Judgment was ren-
dered in favour of said Capt Hoag for the sum of
Seventy five Dollars and thirty seven Cents damages
besides Cost of suit and that the said property
attached was ordered to be sold for the Satisfac-
tion of said Judgment.

Now and therefore Henry commanded that
pursuant to said judgment & in conformity with
the Statute in such case made and provided, that
you proceed without delay to make Sale of said at-
tached property and make said damages and costs
which are hereon endorsed, and make due
report and return of your doings hereon
Given under my hand and seal this 21st day of
January 1852 W. L. Ricker State
Just Peace.

Property advertised & Sold to Thomas C Hoag
for \$90.00. He being the highest bidder.
June 23^d 1852 R. Carthen Constable

The Plaintiff then offered in evidence
a bill of sale of the Seneca signed by Thomas
C Hoag, & to the execution of which said Hoag
had sworn in his testimony above set forth,
to the admission of which the said Defendant
objected & the objections being overruled by
the Court the Defendant then & then excepted.
The bill of sale was then read in evidence as
followed.

Now and in consideration of the sum of Ninety
five Dollars paid by Note of this date for the said
sum of Ninety five Dollars payable at the office

of J A Burch & Co on the 1st day October next. I
hereby bargain sell and transfer all the right title
and interest which the firm of Gop and Hoag have
or might have upon the Steam Boat Seneca by vir-
tue of a certain judgment obtained against said
Boat on the 19th of Jan'y 1852 before Henry
S. Rucker a Justice of the Peace in and
for the County of Cook and State of Illinois.
Or by virtue of a Sale of said boat under
said judgment signed sealed and delivered
this 17th day of July A D 1852

Thomas C Hoag. *Thos C*
In presence of {
A. Guthrie

Captain Miner recalled said —
Some time last June I was employed by Ossian Guthrie to take
charge of the tug, this Mr Guthrie has charge of her.

The Plaintiff then offered in evidence a paper from Salcott
to Guthrie authorizing him to do certain acts: the execution of
which paper was admitted by the defendants. The defendant
then objected to the admission of said paper & the objection being
overruled by the Court the defendant then and there excepted.

The Plaintiff then offered in evidence the ordin-
ance of the City of Chicago Chapter 19 Sec 7, as follows
No vessel craft or float shall be so moored or anchored
within the harbor or in any slip or dock as to prevent the passage
of any other vessel craft or float, nor shall any vessel
craft or float be so moved as to run against or injure any

bridge across the River or any Branch thereof under a fine of not less than Ten Dollars nor Exceeding one hundred Dollars if the master owner or person in Charge thereof.

It was admitted by the defendant that the L. P. Williams was owned by the defendant and L. P. Williams whereupon the Plaintiff closed his Case.

The defendant to sustain the issue on his part introduced as a witness

William H. Gosson who being duly sworn said that he was master of the L. P. Williams at the time of the accident. I do not recollect the date. It was in the forenoon, the wind was blowing a gale from the South. We were laying at St. James wharf. Dock had been loading grain there, had to take on the balance at Burlinghams wharf - the other side of the River, in order to get across River we had to get out two stout lines. We got them out and dropped a cross aside of the Lady of the Lake at Burlinghams Dock about the time that the Williams got over along side of the propeller. I jumped on board the propeller in order to get a line out to the north dock. I had to climb up 5 feet to get upon propeller. I jumped upon the gang way to get upon the deck. Before I got on to the upper deck I heard the crash of smoke pipe on the tug. We got a line out as soon as we could from the stern of the vessel Williams to Burlinghams Dock on the north side. We then slackened the line which had been hitched to South side of the River. We had had one line out across the River. It was made fast to Haddocks Slip. It was necessary to get this line out in order to go over the River with safety either to our selves or other vessels, the propeller Lady of the Lake lay at Burlinghams Dock. The elevator dropped ahead as we came

over to get out of our way. It was moving out of our way while we were dropping across. The Elevator came to us to Elevate wheat from Canal Boat into our vessel. The first I saw of the tug was when I got upon the Propeller's upper deck. Her smoke pipe and house were then over. I was not more than a minute after we got along side of the Propeller in getting on to her for the purpose of getting out line. When I first saw Tug her wheels were not in motion. She had such head way that she passed down the River 500 feet before stopping. I got out Stern line as soon as I could after I got across the river. As soon as this was fast to the north dock, the other line over the river was slacked. The line over the river could not have been slacked before. We should have run into the Propeller or some other vessel. I have been sailing into Harbor for 12 years on Sail vessels. We have to put out lines in order to get vessel across river. Steam Boats always stop to let us lower the line. Never had such an accident before. have stopped over River in this way at other times. All Steam vessels stop for line unless they have something in tow. Then they can't stop. When they are not towing other vessels Steam vessels always stop for line. This is the first instance I ever knew to the contrary. From the time I jumped on board the Propeller until the line was fastened on the north dock. It could not have been over five minutes.

Cross Examined

Our vessel was not fast to the north dock at the time of the accident. I got on Propeller for the purpose of getting out line to the north dock. I think the Kossouth passed & that at that time our line was not up. When the Kossouth passed the line to South side was slack. It was slack within five minutes after we got our line to the north side & down

think it was but over six minutes after we got across
along side propeller and did not put up again. I am as
certain that the fire was not up more than five minutes after
we got across as I am of any facts have sworn to. The Sug
brought up against the dock on the north side of River. The
wheels did not turn as the Sug went down River. The wind
from the direction from which it was blowing would have
carried the Williams across the River more than down it
from the time I saw the Sug the Engines were not reversed
I do not know how many Engines she had. I suppose there
was only one. I do not know that the Captain of the Sug
saw the Boat ahead after the accident. I did not see that
she was hauled to get her to the dock. The Ferry rope is
always dropped in order to let vessels pass. There is
more danger to a vessel in dropping her rope. The vessels
always drop line when they can. When there is a single
line holding the vessel it is not safe to drop it. I think the
Williams had not been on north side more than a minute
before Sug came down. After the Stern line was fastened
to the North Pier, the line across the River was dropped
I did not state to any of the hands on Sug that I would
jack them to run upon lines. I was Master of vessel
I have not much interest or personal feeling about the Suit
I do not consider myself to blame at all about the matter.
A vessel could not have got across the River without the
line. A man stationed where the rope was fastened on
South Side could not have seen the Sug I think. There
was a Steam Boat in the way that would have prevented
I did not hear the whistle of the Sug. In ordinary times
a whistle can be heard $\frac{1}{4}$ of a mile the wind was
blowing nearly across vessel. There was no man on the
look out but myself. Thought I was keeping good look-

out, If man had been on lookout Sug could have been seen. We had two lines out at first. One was slackened before Sug came down. When the hands whose Steam-arsels see a line across the river they go slow. So that they can stop if necessary. One vessel had just touched the propeller at the time of accident. I had been on board all the time while she was crossing the river. The ^{wind} wind was between ahead and a quarter. It would have taken the Williams across & down the river against the propeller the wind was nearly South. It would not have carried us directly against the Lady of the Lake partly down the river. There were several men on board the Williams. There was not any man stationed to drop the line for the Sug. There was a man stationed at the line to drop the vessel across the river & he was to slack the line when he had orders to do so. He was stationed at line & was to slack it when ordered. I saw this man at the rope when I climbed upon the Rail to get upon propeller. did not see him while I was on gangway when I went aft on propeller I was abreast of him. he was not to slack line without orders from me or the mate. No order was given him to slack it. We had no man to give notice that one rope was not to be slackened on either side of the river. there was a man stationed to let down line. he was not stationed expressly to let down line for the Sug. He was there to let down line when he had orders from me or the mate. He stood close by the line with the end of the line in his hand. neither the mate nor myself was on the Look out at the time. gave no orders. Am as sure that the lines across the river was not up five minutes after the accident as I am that the Stern line to the north dock was not fastened at time of accident.

Re Examined

The man had a Burn on the Capstan & was dropping away as we went across. We had nothing else to do. I do not know where the men then on the vessel now are. The Mate of the Williams is now in Detroit. The bow line of our vessel was let go about a minute before the accident. There was another line across the river, going from Propeller and fastened nearly opposite. This line was let down after our bow line. When our bow line was let down there were yet two lines up.

Cross Examination Returns

Not duty of man to let down rope there were 7 or 8 men on board the Williams at time

J. H. Rossman being duly sworn saith

That he was Master of the Propeller Lady of the Lake in October last. My vessel was laying at Burlinghams dock. I was at the Stern of the boat at the time of accident. The Williams was dropping across the river. The wind was from the South West. The Williams had got her bows across near my boat. We were hauling a little astern. The mate of Williams wanted us to take a line and we would not. When the bow of the Williams struck us her bow line was slack. Capt. Larson about the time of the accident came on to my boat. The Williams had no line across the mouth side at the time. She was hanging by the Stern line at the time of collision. This line was fastened on South Side of the River. The Stern of the Williams at the time of collision had not got alongside of our vessel. It would not have been safe for the Williams to have cast off her Stern line until the line was fastened to the north pier. The wind was blowing down & across the river & without the Stern line the Williams would have struck against us.

or something else. I should think it was five or ten minutes after Bows of Williams came along side before line was made fast to the north side. My vessel was in motion at the time & it would take ten or 15 minutes to get a line from the Williams to the north side. The Williams was on the out side of us & her stern line had to be run around ours to the dock. I have been sailing to this port since 1835. On a Propeller for three years the rest of the time on sailing vessels, it is the custom of steam vessels to stop while a vessel has a line out across the river where a vessel can slack her line with safety. She does it, it is more common to have the line slackened, it can not always be done. The Williams could not have slackened her line with safety. She would have struck against something. The Brig Banner lay just ahead of us & I do not know where the elevator was. I had a line out across the river from my vessel. It was let go after the tug run up by the line of the Williams. There were but two lines out & there. The Bow line of the Williams was slackened before the accident.

Cross Examined

I was at the time of the accident at the stern of the Propeller, hauling her astern. I was not particularly attentive to my vessel. I was paying attention to what was being done on Williams as well as my vessel. The bow of the Williams was on our vessel. I was looking at my own vessel and the Williams too. There was no line from the Williams to the north dock at the time of the accident. There was a difficulty in getting line from Williams to the north dock. Bow of Williams was on my vessel when bow line of Williams was cast off.

The Stern of the Williams was 25 feet from the north dock, I think she was too far ahead to throw a line to the north dock, my men were all engaged & my own vessel was moving, we had a small line out to the north shore by which we hauled. - When a vessel can slack a line to let another pass it is usual to do it, I think I saw the tug boat pass with pass. I should think that the Captain of the tug could have seen whether the Williams was fastened by a line to the north dock. the Bow line of the Williams was down at the time of accident I think

Re Examined

There was no difficulty in the hauls upon the tug ascertaining the condition of the Williams. It would have required only ordinary attention. Her Stern was out in the river & she was hanging by a taut line from the South pier. The wind was blowing fresh the vessel would have drifted down the river & been blown partly across

Re X Exd

The Captain of the tug might have seen a rope to the north dock from the foot of State Street. State Street is a block above where rope was. I should not think the rope could have been seen further on account of the bend in the river. I think a rope such as the one used by the Williams could have been seen from the foot of State Street. It might not have been seen much above that

Direct Returned

Such a line stretched taut across the river would have attracted attention

William McHenry

Being duly sworn I depose
That he was on board of the Lady of the Lake as
mate. At the time of the Accident, I was standing
forward on the promenade deck. The bow of the Williams
had just got along side of us at the time of the acci-
dent, her Stern was from 10 to 15 feet off. I saw Capt -
Dabson when he got on board our Boat, he got on
forward, the Stern was then 10 to 15 feet off. We were
hauling astern at the time of Collision or had just been
hauling astern. The mate of the Williams and some
men were getting out a line to the north dock, it was
the first line and the only one got out from Williams to
the north dock, the first I saw of the tug she was 50 or
60 feet from the line. She was then going 4 miles per
hour. Some one on board the tug called out slack
down the line. When I first saw tug her wheels were
in motion, going ahead. I stood looking at the tug,
my attention being directed to her by the call of some one
on board of tug. I saw that tug was not to be
stopped, I saw the Captain of the tug run to the
bells about the time the line came in contact with
his Stern. When the line struck the Stern it slipped -
over and caught the rife. At the time the line came
over and took rife Captain dodged down ran to bells
to stop engine & the engine stopped. The wheels were
not reversed I think. I was watching the tug at the time
At the time of the Accident I think there was only one
line out from the Williams, if there was more than one
it was slack. The wind was blowing fresh South-
South West (S S W) $\frac{1}{2}$ a gale. The Propeller had one
line out across the river. I do not recollect of seeing

any but the Stern line out from the Williams when we slacked ours. No line was out from the Williams to the North Side at the time of Accident. She was hanging by the Stern line to the South Side. It would not have been safe to let this line go until a line was fastened to the North Side. She would have gone against the dock on the North Side. I have been on the Lakes for 20 Years sailing to the port of Chicago since 1836 have been on Steam Vessels since 1848. There would not have been any difficulty in the Sloop stopping before she got to the line. The line of the Williams would have attracted attention. If a man on board the Sloop had been looking out. I think he could have seen whether the Williams had a line out to the North Dock. It was his duty to look out and see whether or not there was a line to North Dock. It is the duty of a Steam Vessel to stop & avoid coming in Collision with the rope. The Sloop could have stopped & avoided coming in contact with the line. It is Customary for Steam Vessels to stop in such circumstances & those in which the Williams was placed.

Cross Examined

I am sailing for Cranford & Hamberlain of Cleveland. I should expect a line to be slack unless there was good reason why it should not be. There is a bend in the river near Burlinghams. I think that a man 100 feet above the bend could have seen in coming down the river, the place where the line of the Williams was afterwards made fast. The Sloop was below the bend and within 50 feet of the line when

first Sawyer, I saw the Capt all the time. do not know that Captain rung the Bells the first time before he struck rope. I did not see him ring any Bells until he came in contact ^{with} of line with his Steer, I do not know how many places there may be on tug to ring Bells for Engineer. The Capt went to the same place twice to ring. Bells were rung and engine stopped. I could hear the Bells from my Boat. After the Capt of the tug gave notice there was not time to let down the line unless a man stood by it. it is Customary for Vessels to Lower their lines when there is not a good reason for keeping them up. it is not usual to let down a line when the vessel would be damaged by so doing. Previous to the man shouting I did not see the tug. I was attending to my own business. I did not hear the whistle. there was no answer from the Williams. nor no notice taken of the shouting. if a vessel is so that she cant lower her line. it is Customary for her to ring out and give notice of it. I remember of but one line across the river at the time of the Accident. if there had been two I should have seen them. I am as confident of this fact as of the other facts I have stated

Re Examined

It would not have been safe to let the line of the Williams down for a moment. She would have ranged into the docks. The Williams might have been $\frac{1}{2}$ hour getting across the river. Capt Dobson got on board of us when bow came along side and it took five minutes to get the Williams line fast I was with Dobson at the time he went aft to get

the line ashore. The line to the South Side was slackened up, as soon as they got the line to the North Shore fast. The line across the river might have been made fast afterwards. I think the bow line was loosed before the Collision. I only remember one line being up at the time of Collision. I am not positive whether or not our line was let go at the time of the Collision. The Stern of the Williams was between 30 + 40 feet from North Dock at the time of the accident. The Stern of the Williams was about the Center, abast the Center of our Vessel

Rr X Eyed

Capt Baseman

or one of his men made the line of the Williams fast to the North Dock. We would not let them make fast to us. We had a Small line and were hauling astern by it

John Wyman

Being duly Sworn Said
have been engaged in navigating Sug Boats for the last Season & been interested in Sug Boats. have seen other Sug than my own navigating the River. I have heard a part of the Testimony in this Cause there would have been no trouble in the hands on Sug Boat being the line of the Williams. I mean the line over the river. Can't say how it would be as to line to North Shore. the Custom of Sug Boat managers in approaching lines is to have the Sug under control so that it may be stopped if necessary. there is no trouble in stopping a Sug Boat to prevent running on a line. I do not recollect but two instances

Except this where a tug boat run upon a vessel line one was in the night. And once the line was near the river. In one third of the distance between the Clark Street Bridge & the place where the Williams was a tug could be stopped.

Cross Examined

I should not in running a tug run so close to a boat line that I could not stop if the line was not lowered. It is not half the time that vessel lines are jammed without the tug stopping. I should move slowly with tug until I ~~was~~ knew whether the line was to be lowered. It is a general thing for vessels to jam their lines on being notified of approach of tugs. It is customary to either lower the line or give notice they are unable to do so.

Re Examined

A rate of two miles an hour among vessels is a safe speed for tugs.

Re X cxd

There are two crooks in the river near the place where the Williams lay. I would not run at this place more than 2 miles an hour with vessels laying there. 2 miles per hour would be a safe speed at the place Williams was laying.

William W. Benton

Being duly sworn said

I have been interest as owner in tugs on the Chicago River. I was engaged in navigating one last season. A manager of a tug has to feel his way up & down the river. We always slacked the speed on our tug when approaching line until the line was lowered. Two to four

miles is the usual Speed upon Sigs. Two miles an hour is the usual Speed, a Safe Speed, where there are vessels Two miles an hour is as fast as a Sig ought to go where there are vessels. If lines are out across the river the Speed of the Sig should be checked. It is the custom so far as I know it for Sig to hold up to see whether line of vessel was to be let down or not. If there was a line from the Williams to the north dock it could be seen from above the foot of State. A line to the north dock could been seen from the foot of State Street or from the bend, if there had been one from the Williams to that dock. A line could have been seen for that distance where a vessel was situated in the way the Williams is described to have been

Cross Examined

You might not be able to see the line to the north side if the vessel was into the dock. There is 8 feet difference in the height of my Sig & of the Seneca, My Sig is 8 feet the lowest & line could be seen better from the Seneca than from my Boat. When there is nothing to prevent a vessel lowering her lines it is usual for her to do it to let Sig pass. If a man on board the Sig had been attending this business he could have seen how the Williams was situated. He could have seen a Fault line across the river. There might have

be obstructions to prevent seeing a line to north dock
Sometimes hands on board a Sail vessel Cry out
when they can't let down their line. As the Suez appro-
ached some times they do so. It is the General
practice to lower the lines when notified if they can
do so with safety. and if not to give notice to the
Steam vessel to that effect, I have often hollered
out to Steam vessels when I could not lower

Re Examined

If the Stern of a vessel was 40 feet
out into the river, there would have been no difficulty
in seeing from the Suez when she was at the bend
whether the vessel was fast or not to the north pier

Captain Kelly

Being duly sworn Said
I have been running on the River. Last Year was
running the Suez Franklin. I passed Seneca as -
she went down the River at the time of the Accident
she had just come through Clark Street Bridge
when I passed her. I was going up towing a vessel
let go the vessel in Clark Street Bridge & turned &
came down again through the Bridge before it
shut & went along down the river. As I went down
I saw the Seneca dismasted. when I passed up the
river & passed the Williams. She was about opposite
to Norbous warehouse, she had commenced to drop

across the river. The line across the river from the Williams had been dropped when I returned. I had not been up more than twenty minutes. I went up on the north side of the Williams, when I came down she was at Burlinghams. She had no line then across the river. The wind was South South East blowing pretty strong. I had a conversation with Wilson the Master of the Seneca on the same day. He said that he had orders from Mr Guthrie to cut the lines. not to stop for any lines. They (the Guthries) would take the consequences. This was what Wiener told me the Guthries said. I told Wiener that he had been beat at his own game. He replied these ^{new} need lines are strong. When a line is out a Sug-should approach it slowly. It is customary for Sug Boats to slacken speed when approaching lines. Where vessels can not cast off their lines it is usual for Sugs to stop. I don't think a man coming down the river on a Sug could be positive as to a vessel being tied to Burlinghams dock, unless he saw both ends of the line. The Seneca had nothing in

for
Cross Examined

I have been navigating the waters for twelve years. Last 2 years have been going up & down the river more or less. I own $\frac{1}{2}$ of the Sug Franklin, Clarence Lyon the son of the

defendant the other half. I have had a quarrel
with Triemer. the difficulty between us was in Novem-
ber last. I was very mad then have no malice towards
him now. I took an axe to strike him in the head
& should have done it if I could. when we had
the conversation in which he spoke of Luther's orders
we were from 3 to 10 feet apart. It was soon after
the accident. He was on the dock & I was on my
vessel & there was no person near to my knowledge
A South South East wind would have a tendency
to drift vessel down the river. At the place in the
river where the Williams was. I think it was near
15 minutes than 20 between the time I passed the
Williams going up and the time I passed her
going down. I went up at the rate of three or
four miles an hour. was towing a vessel. I do not
consider this a safe rate of speed. I went this
rate because I had a vessel in tow & could not
stop. I went up through Clark Street Bridge
turned & came down again before the Bridge
was shut. It is usual to lower lines when a vessel
can do it safely. It is as usual for hands on board
a vessel not to give notice ~~so~~ that lines can not
be lowered as to give notice. they more often give
notice but not always. Sometimes they give notice
Sometimes they don't. It is the general practice to
give notice. I don't recollect of but two instances

in which notice has not been given, if they

The quarrel between me & Winner arose out
of my cutting a rope of the Seneca's

Captain Trapier

Being duly sworn said
That he is a Sailor and has been 15 Years. Sailed
to this port 12 Years. Have heard the testimony as to
the way the Williams got over. When a Vessel is hanging
by a Stern line as the Williams was, it would not be
safe to let it go until another was out to the north shore
if the wind was blowing. I never saw a Sloop refuse
to stop for a Vessel's line except this Sloop. It is the
Custom for Sloops to wait until the line of a Vessel is
lowered. I should think there would be no trouble -
from the Bend to see whether or not a Vessel had a line
to Burlinghams wharf. If Vessel was fastened to
wharf the line would be fast. I should think there
would be no trouble in seeing whether she was fastened
or not

Cross Examined

I am sailing for the
defendant. There is but one place on Burlinghams dock
where a line can be made fast. The line to Burlinghams
dock if there had been one might have been seen -
from the Sloop. A man on the Pilot House could have
seen such a line if it had been out. If the Stern of a

Boat was out in the River 20 or 40 feet. A man on the tug could see the stern line. It is the custom for vessels when notified of approach of steam vessels to lower their lines if they can do so with safety and if ~~they~~ not to give notice that they can not do so. The hands on vessel sometimes give notice that line could be taken down. Sometimes they don't. I know that I gave ~~notice~~ drum notice when I could not lower my lines.

Re Examined

It is the custom for tugs to stop when lines are out in this way.

Re X added

Don't know whether there were Rail Road ties on the dock or not.

Mark Boardman

Being duly sworn said
Is Captain of a vessel & has been sailing for 20 years to this port for 14 years. It is the custom for tugs to stop when a vessel is dropping across. It would not have been safe for a vessel dropping to the north side with a wind from the south side to let go her line to the South shore. I think if there had been a line from Burlinghams dock a man could have seen it from the tug when she was at the bend of the river.

Cross Examined

The Williams could have had a line to the north side. She must had a line to the South side if the wind was from the South. Fine across the river could have been seen from the Blaine Street Bridge. If hands on vessel can not let down their line & see the tug in time to give them notice it is usual to give ^{tug} ~~them~~ notice. If they dont see it in time they dont give the notice. If a tug runs up to a line while the line is across the river the custom is to run very slow. If I saw a line with a man standing by it ~~with~~ holding the end in his hand ready to drop and no notice was given me to the contrary & I knew of nothing to prevent I should go on my way expecting the rope to be dropped.

Plaintiffs Testimony Resumed
Captain Kriner Recalled.

Dont Recollect of making the statements to which Kelly has sworn to him. I had not orders from Guthrie to break lines. I do not know on what dock the Rail Road Ties were. There was nothing to my knowledge to have prevented the Williams taking out a line to the north ~~side~~ dock.

Capt. Erskine

Recalled

Burlinghams dock was in 4 or 5 feet from wharfe. The Rail Road Ties were on Burlinghams dock, I think I have seen ropes

fastened to both sides of River while Vessel was dropping
across. One to check her and the other to haul over by
cross examined

I do not see that it is necessary to have
two lines, one to each side of the River. It is not usual to
have two. One line is all that is necessary or usual
The Rail Road ties I think were on the logs above
marshes, when a heavy wind is blowing & vessel
is pulling across. I think it would be prudent to
have two lines

Re exd

The line from the Williams was across when
I came down the River, I was 20 minutes after
Accident Rope was blacked down for us to pass
Capt William Magr

Being duly sworn said
Is a Sailor & have been for 15 years. If there is nothing
to prevent a vessel lower her line for a tug to pass
cross examined

Sometimes the hands on board of vessel
tell the tug men to hold up & sometimes they do not tell
them, where the vessel can not black the line without
danger the tug is to stop. This is the custom. The usual
way of dropping across is to have 2 lines to wind-
ward. It would not be Seaman like to have lines to
each side of the River

Re exd If the wind was

blowing down the Stream. I should have two lines —
one to each side to get across
Capt Morais Turner

Being duly sworn said
If vessel was to be got across river. I should put a line
to windward if wind was blowing. If the wind was
blowing down the Stream I might then have a line to each
side of the River. If there is any danger to vessel in blacking
line when she is hauling across river it is usual for a Steam
vessel to stop. A Steam vessel ought to know the Circum-
stances of a vessel which is dropping across the river &
whether it is safe for her to black line. Sometimes a notice
is given by the hands on board a Sail vessel to those
on Steam vessel to stop. Sometimes no such notice
is given. I should think it necessary & proper to have
lines on each side river if wind is blowing fresh
Cross Examined

I should think that the existence
of a saw line across the river would be a sufficient
notice to a Steam vessel of the condition of a Sail vessel
& that the Steam vessel should stop for the line.

Re Exd

I think if wind was blowing down the river I should
have two lines. One on the north side to haul to the door.
I think it would be proper & usual to either dropped
line or give some notice to the contrary.

This was all the testimony

which was offered in the Cause either on the part of the Plaintiff or on the part of the defendant

The Plaintiff then asked the Court to give to the Jury the following instructions

1st
If the Jury believe from the Evidence that the defendant had their vessel the S. P. Williams so moved, or anchored within the Harbor of the City of Chicago as to prevent the passage of any other vessel Craft or float contrary to and in violation of the ordinances of the City of Chicago then the Plaintiff is entitled to recover for all damages resulting from the violation of such ordinances by said defendant unless by negligence of Plaintiff contributed to produce the damage sustained by the Plaintiff

2nd

The Chicago River being a public navigable highway it was not lawful for the deft to draw a rope across it in such manner as to obstruct the free passage up and down said River. And for any injury occasioned by said obstruction to the Plaintiff while navigating said River without fault on his part the Plaintiff is entitled to recover

4th

If the Jury believe from the Evidence that the defendant maintained said Rope across said River in such manner as to obstruct the navigation thereof for an unnecessary and unusual length of time then such obstruction would thereby become a nuisance and the deft

are liable for all injuries resulting therefrom to the Plaintiff while navigating said River in a proper manner.

If the Jury believe from the Evidence that the defendants stretched a rope across the Chicago River in such a manner as to obstruct the navigation of said River by vessels and that they neglected to keep a proper look out, and to take proper precautions to have said rope lowered and by means of such neglect the Plaintiff has sustained damage without fault on his part. then Plaintiff is entitled to recover.

If the Jury believe from the evidence that it is the custom in the harbor of Chicago for Steam Sloop to give notice of their Approach by sounding a Steam whistle. And that it is also the custom for Boats and Vessels having lines drawn across said River to drop said lines on such notice being given upon the Approach of said Vessels or in case of inability to do with safety to themselves to notify such vessel of such inability and that no such notice was given, then the Captain of said Steam Sloop would have been justified in the expectation that said rope was to be lowered and if they further believe that the Captain of the Seneca continued his Course under such expectation and that so soon as he had any sufficient reason to doubt that said rope would be lowered he took all the means in his power to prevent the Collision then the defendant is liable for all the damages.

proved to have been suffered by the Plaintiff in consequence of such Collision

Which instructions were given by the Court. to the giving of each & every one of said instructions the said defendant then and there excepted. *Teach on page See paper*

The Jury thereupon retired to consider of their Verdict & afterwards came into Court and rendered the following Verdict. We the Jury find for the Plaintiff and assess his damages at One hundred and eighty dollars

Thomas Brodie foreman
The defendants thereupon moved the Court for a new trial in said Cause & filed the following motion
Thomas Dyer impleaded &c

adg
Edward B. Talcott

vs
Leok County Court of Common Pleas

And now comes the defendant by Hallins & Williams his Attorneys and moves the Court for a new trial herein for the following Reasons
1st First that the Court erred in refusing to admit the evidence offered on the part of the defendant
Second That the Court erred in admitting the evidence on the part of the Plaintiff
Third That the Court erred in giving the instructions asked for by the Plaintiff
Fourth That the Court erred in refusing the instructions asked for by the defendant
Fifth That the Verdict is against the Law and Evidence
Hallins & Williams Atty's for deft

which motion for a new trial was overruled by the
said court. So which decision of the court in overruling
the said motion for a new trial the said defendant then and
there excepted. And moved the court to sign this his =
Bill of Exceptions which is done

John Mc Wilson 

And Afterwards To Wit on the fourteenth day of April
in the Year Eighteen hundred and fifty four Came the said
defendants and file with the said clerk of said court =
above said his said Appeal Bond, which said Appeal
Bond is in words and figures To Wit,

Know all men by These Presents

That Mr Thomas Lyer as Principal and James H
Hallum as Surety are held and firmly bound unto =
Edward B. Salcott in the penal sum of Five hun-
dred Dollars to be paid to the said Edward B. Salcott
or to his certain Attorney Executors Administrators &
Assigns, for which payment well and truly to be
made we bind ourselves our heirs Executors & Adminis-
trators and each and every of them jointly severally
and firmly by these presents

Witness our
Hands and Dated this eighteenth day of April A.D. 1854

Whereas at the March Special
Term of the Cook County Court of Common Pleas in
the Year of our Lord one Thousand Eight hundred and
fifty four Judgment was rendered by the said court
in favor of the above named Edward B. Salcott
Against the above named Thomas Lyer impleaded with
G. P. Williams for the sum of One hundred & eighty =
Dollars. And whereas the said Thomas Lyer has

prayed an Appeal from the said Judgment to the Supreme Court. Now Therefore the Condition of the above Obligation is such that if the above bounden Thomas Dyer shall duly prosecute the said Appeal & will pay or Cause to be paid to the said Judgment Costs interest and damages in Case the said Judgment shall be affirmed. Then the above Obligation to be void otherwise to be and remain in full force and Virtue

Thomas Dyer
By J. H. Collins his atty in fact
James H. Collins
E. H. Headden

Seal

Seal

Seal

State of Illinois
County of Cook & S.S.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within & for the County & State aforesaid do hereby Certify that the foregoing is a full true and correct Transcript of the Original papers now on file in my office in said Cause, and also of the orders & proceedings had in said Court as appears from the Records of said Court now in my office, in the case of Edward B. Saleck Plaintiff and Thomas Dyer & C. P. Williams Defendants.

In testimony whereof I have hereunto set my Hand & affixed the Seal of said Court at the City of Chicago in said County this 10th day of June A.D. 1854.

Walter Kimball, Clerk



The defendant then asked the Court
to give the Jury the following instruction

Deft's Instruction

That the burden of proof in this action
is upon the plaintiff to show not only, that
the defendant was guilty of negligence but
that he himself was not guilty of negli-
gence or carelessness.

Refused J. W. Wilson
which instruction was refused by the Court
to which refusal of the Court to give said
Instruction the said defendant then assented
there excepted.

waived to think
of the Court
Refused J. W. Wilson

Refused

Supreme Court.

Thos Dyer impleaded
with C. P. Williams

State of Illinois
Term A. D. 1854.

vs
Edward B. Telett

SM Error from Cook Co.

And now comes the said Thos Dyer
impleaded as aforesaid Plaintiff
in error by Collins & Williams his attor-
neys and says that in the record &
proceedings aforesaid & in the enter-
ing up of judgment aforesaid there
is manifest error in this, to wit,

First - The Court erred in admitting
improper & illegal evidence on the part of the
Plaintiff in this cause -

Second - The Court erred in erred in giving
the instructions asked for by the Plaintiff
in the Court below -

Third - The Court erred in refusing the instruc-
tion asked for by the Defendant upon
the trial of this cause -

Fourth,

The Court erred in refusing the
motion for a new trial made by the
Defendant in the Court below -

Fifth

[10223-31]

The Court erred in giving judg-
ment for the Plaintiff & not for the Defen-
dant.

Collins & Williams
Attys for Plaintiff

State of Illinois
Superior Court
June 8. 1885

Thomas Dyer impleaded
with C. P. Williams
vs

Edward B. Talcott

And the said
Edward B. Talcott the within named
appellee by his attorney Arnold Lamed & Lay
say that there is no error in the record
& proceedings aforesaid & in the entry of
the judgment aforesaid

Arnold Lamed & Lay
Atty for Appellee

Supreme Court
Thomas Dyer
impleaded to

vs
Edward B. Talcott
Applicant of error

Supreme Court

~~Supreme Court~~

Thomas H. Jones

P. Williams

Edward B. Talbot

Transcript

Colliers of Williams
Ally for the same

Filed June 13. 1854.
L. Sel and Clk.

Colliers of Williams
Ally for the same

Filed June 13. 1854

Thomas Dyer Appellant } Supreme Court
 vs }
 Edward W. Talcott Appellee }
 June Term 1853

Brief Higgins & Rockwith for Appellant

II. The testimony in the case, did not justify the verdict of the Jury allowing the plff as damages for the two days delay of his Sug, the average net earnings per day for the month of October. The witness Wiener, testified "that the collision took place Oct 7, and that the average gross earnings for that month were from \$50. to \$56. per day". He afterwards on Cross examination, says, "that the expenses of running the Sug were from \$20. to \$25." This testimony was objected to, and is all the evidence in the case upon the point - The Jury allowed the plaintiff for the use of the Sug for the one and three quarters days she was delayed the average earnings per day for the month of October - The expenses of repairs were

The cost of a new pipe \$117.60 - The one in use was an old one when put on board worth 29 per cent less than a new one when put up -	83.30
Upon the wood work	15.00
Help to put Chimneys \$4.50. Paid Blacksmith \$3.00	7.50
Extra Help and team work	6.00
	111.80
Consequently the Jury must have allowed for detention of the vessel	68.20
To make up the verdict to	\$ 180.00

A motion for a new trial was made on the ground that the verdict was against the evidence, which was overruled, and the question properly arises whether there was any

competent evidence from which such a verdict could have been found.

1. The rule of damages in a particular case always depends upon the facts shown to exist - Where a plff claims that a particular rule of damage applicable only to a certain state of facts, should be adopted in his case, it is incumbent upon him to show all the facts necessary to bring his case within the rule.

As for example, if the plffs Tug was actually earning freight under contract then the rule of damages applicable to the state of facts thus shown would be the net earnings of the vessel for the period of time she was actually delayed. - In such a case it would be necessary for the plff to show affirmatively that his vessel was actually earning freight under contract at the time of the collision - It is not pretended that the Tug was earning freight under contract at that time, and consequently the above rule as applicable to that state of case was not applicable to the present case.

Or for example if a plff can show that his vessel was ready to receive freight, - that she would have received freight had the collision not taken place, and the market value of such freight, then the rule of damages would be the net earnings of the vessel for the time she was delayed. This is only another mode of showing what the use of the vessel was worth, under the particular circumstances of the case. But in the present case, it is not shown that the plffs Tug would have received a dollar for freight for the next two days if she had not been injured. Her earnings depended upon the number of vessels she could get to tow up and down the river. - This would depend upon the number of vessels in the harbor, the state of the weather, and many other contingences - Some days the Tug would have full employment, and on other days have none at all.

Her average earnings for a month might be \$30. per day, and still for one half of that time she might earn nothing. - A Hackman with his hack standing at the corner of a street, may earn on average during a month \$5. per day, and yet half of the days of that month earn little or nothing. It would not be pretended that if the hack was injured, the rule of damages would be the average net earnings for the month - The rule in such a case would be what could the Hack, &c. be chartered for, and so in this case as the plff. failed to show that his Tug was so situated that she would have received towage for the time she was delayed, and the market value of such towage, he should have shown what the Tug could have been chartered for during that period of time, as under the circumstances that was the true measure of damages he was entitled to recover. -

As a further illustration of the rule, if a plff. case show that he could have chartered his Tug for a given sum during the period she was delayed, the rule of damages applicable to such a state of facts would be the same for which the Tug might have been chartered. - In such case it would be incumbent upon the plff. to show the facts to bring him within this rule, as neither the Court nor Jury can otherwise know that she could have been chartered at all. Without proof of any of these facts, the rule of damages is the expense of repairing the injured vessel.

In the present case, the plff. within written showed that the Tug would have received towage, and the market value of such towage, nor what the use of his Tug was worth for the period she was delayed, and therefore he was not entitled to recover any damages for detention.

II.

The Jury must have allowed the plff \$83.30. for the smoke pipe, being its value when it was put on to the tug in 1852. There was no contradiction in the testimony that the pipe had depreciated in value from that time up to the time of the collision 25 per cent a year, for 18 months making the pipe actually worth when destroyed \$49.10. and making the verdict \$34.20 larger than there was any evidence whatever to justify it, even allowing all that was claimed for the detention of the tug. See testimony of Wiener, Cobb & Dunn.

III.

The Court below erred in giving the seventh instruction asked for by the plff. The Court assumed that the Jury would be warranted in finding from the evidence a custom for boats and vessels having lines drawn across the river to drop the line on sounding of a steam whistle, or in case of inability so to do with safety to give notice of such inability. - We say, that the evidence was not sufficient to warrant the finding of any such custom.

A custom is made up of certain elements, or rather a conclusion of law from certain facts, ~~that the Court may~~ and to establish a custom it is necessary to show the facts, that the Court may judge whether they constitute a custom. - A custom cannot be established by swearing to the legal conclusion.

5 Dana 501.

1. One of the essential requisites of a custom is antiquity. - It is only from its antiquity that it is presumed to be known to all parties. A custom of to day or yesterday is good for nothing.

Dixon v Durham 14 Ill 327.

2. Another of the essential requisites of a custom is uniformity.

Dixon v Durham 14 Ill 327.

A careful examination of the evidence, will show that it had no tendency to show either of these essential requisites, but quite the reverse. Capt Wiener says, "Blowing a whistle is the usual signal to lower the line - It is not the universal custom for boats to cast off their lines. It is customary either to drop the line or give notice that they cannot do so". He does not say how long the custom had existed, but simply that it existed when he testified. He does not say, that it was known to the deft. or that it was uniform.

Joseph Donaston says, The signal of a tug is a whistle - It is customary for vessels having lines across the river to drop them "when the whistle is blown".

W. H. Dohson says, "When Tugs are not towing vessels, they
"are always to stop for line - This is the first instance I ever
"knew to the contrary." J. W. Rouman says, "It is the custom
of steam vessels to stop while a vessel has a line out across
the river". "It is the duty of a steam vessel to stop and avoid
coming in collision in such circumstances". He speaks of
this alleged custom in several places, and repudiates it in both.
Edw. Nyman repudiates the alleged custom distinctly.
William H. Benton, Captain Kelly, Capt Kapin, Mack Boardman,
Captain Magar, Captain Wiener all testify in relation to the
alleged custom, and they all say that no such custom as
the court instructed the Jury that they might find, existed.

The plffs Tug run wantonly against the
line, and then set up a custom to keep on at full speed unless
notice was given them - The legal duty of the plff was to stop,
and to avoid this legal duty this custom of yesterday was set
up which no two witnesses agree about, and which was entirely
repudiated by the majority of the witnesses. No one of the
witnesses say that the custom was uniform, or was well known,
or had any one of the essential elements of a legal custom.

IV.

The Court erred in giving the first instruction of the plff,
it assumes that the C. P. Williams was moored or anchored
within the harbor, so as to be within the provisions of the

city ordinance relative to vessels moored or anchored -

The C. P. Williams was not moored or anchored and there was no evidence tending to show that such was the case -

The effect of the instruction was to mislead the Jury by assuming that the C. P. Williams was in fault, in having violated the city ordinances, and as a consequence of such violation was responsible for all the damages resulting from the violation of such ordinances - The Court might as well have instructed the Jury, if they believed the C. P. Williams was on her voyage to Buffalo, that such a proposition would be law, as to have given the instruction in question, as there was as much evidence to warrant the one or the other -

V.

The Court erred in giving the fifth instruction. - It is assumed as the law, that it was the duty of the C. P. Williams to keep a proper look out, and to take proper precautions to have said line lowered on the approach of the plffs. tug - There is no such abstract principle of law, and whether the look out and precautions were necessary was a question of fact under the circumstances for the Jury to pass upon and should not have been assumed by the Court. Was a look out necessary or proper? This was a question of fact depending upon the situation of the vessel &c. &c. - Was it incumbent upon the Williams to lower her rope? Not as a matter of law - Not as a matter of duty - Under some circumstances it might be a duty, but these circumstances should have been left to Jury to find, and not assumed - 15 Ill R 510.

It is evident from the whole record, that the C. P. Williams was hauling across the river, under a strong wind, where a line was absolutely necessary for his safety. That the line was kept up no longer than was absolutely necessary, and that at the time of the collision the Williams had not reached his wharf, and could not with safety have dropped his line. That the Juffs Tug could have seen and did see the precise situation of the Williams, and wantonly kept on with full speed knowing that the line could not be lowered. The Tug claimed the exclusive right of way in the river as a matter of law, and that every body else must get out of the way at their peril. The result did not prove as favorable as they expected, and they then set up a custom by which all other vessels should give way to a Tug. The whole record shows that the Judge who tried the case, undertook to act as the champion of the rights of Tugs, and under his assumptions it is evident that gross injustice has been done. The alteration of the record after the case came to this court, and the imputation attempted to be cast upon E. S. Williams by the return to the certificate ^{and} together with the ~~memorandum~~ made by the judge on the side of the record, in order to support the verdict and judgment in this case, is fully explained by Mr Williams in his affidavit on file, and the imputation is not only repelled, but it shows how much further judges under some circumstances ~~may~~ will go to sustain themselves, than to administer justice.

Keif
muh

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Thomas Dyer

vs

Edward R. Salcott

Thomas Dyer, Appellants
vs.
Edward B. Talcott, Appellee

Appeal from the Cook County Court of
Common Pleas.

Argument and Points made for defense
~~and in error.~~

This was an action on the case brought
in the court below by the Appellee against
the Appellants to recover damages done
to the Steam Lug "Seneca" owned by the ap-
pellee, by reason of the appellant unlawfully
obstructing the Chicago River, by placing
across it a rope, and negligently suffering it
to remain, upon which the Lug ran afoul,
causing injury to the vessel, and detaining
her from her business a day and three quar-
ters in making repairs &c.

The record shows that it was the usage
at the Port of Chicago, for vessels having out-
lines so as to obstruct navigation in any
way, to lower the rope so as to admit the
safe and free passage of other vessels, when
notified by the vessel wishing to pass giving
a signal by whistling, in case it could be
so lowered by the vessel having out the line,
and if the rope could not be so lowered
with safety, to notify the other vessel that
their rope could not be lowered, in which
latter case, it was the usage for such vessel
to wait until the rope could be reasonably

and with safely lowered.

The weight of evidence in the record clearly shows that the Master of the "Seneca" gave such notice, by whistling with steam, giving to the appellant due and timely notice of his approach and his desire to pass; that the appellant paid no attention to the signal whatever, and did not in any way notify the appellee of his inability to lower his rope at that time and that in that behalf, he was not only guilty of a breach of the Ordinance of Chicago, but behaved and conducted himself in that behalf in a very careless and negligent manner, and contrary to the usage of watermen in that Port,

We submit, that under the ordinance of the City of Chicago, in evidence of the trial, which prohibited the appellants' vessel, "Williams" from being so moved or anchored in the harbor, or any slip or dock of said city, so as to prevent or obstruct the passage of any other vessel, the instructions and finding were correct, even if the proof of the custom referred to and claimed by the appellee to have been the custom in that port, was not sufficient in law, or even although the appellant had shown a custom permitting him to keep up his line at all hazards, and under all circumstances.

The law is well settled that no custom can be set up to contravene an established rule of law, and in support of this position

we cite the following authorities -
1 Hall 602; 7 Cowen 202; 1 Mason 11;
3 Mees & Welst. 206. 402; Smith's Leading
cases 305; 1 Hall 619.

The first error assigned is, that the jury allowed the plaintiff below as damages for the $1\frac{3}{4}$ day's delay in repairing, the average net earnings per day, at the time of the injury, deducting the amount of fuel used and other such expenses, which were not incurred whilst the Seneca was repairing. It is claimed that this is not the true measure of damage in such case -

While we admit, that in ^{ordinary} cases of ~~accident~~ ~~without the fault of the appellant~~, the rule of damages would be the actual injury to the tug, yet in this case, the measure of damage taken by the jury, as claimed by the appellant, was, we contend, the true measure.

Even in ordinary cases, it is well established by authority, that in the proof of damages the plaintiff is not confined to the principal transaction, but he may prove the damage arising from the natural results of the act complained of, and we submit, that delay is a natural result of the injury, and that the plaintiff cannot receive compensation, recompense or satisfaction commensurate with the injury, unless he receives for the time he was delayed, what he would have reasonably made in his business during that time, and this may be fairly estimated.

from what he was then making at such business per day.

We further argue, that it also well settled as a rule of damages, that in actions ex delicto, like the one at bar, where there is gross negligence, the law does not adhere to the general rule of damages, but the plaintiff is entitled, in addition to the costs of putting the tug in as good condition as she was before the injury, also to the profits which he might reasonably and probably would have made, if suffered to continue at his business, without the wrongful interruption of the defendant. and that in actions ex contractu also (although the doctrine is not quite so clearly established as in tort) where there is fraud, a wanton breach of covenant, or gross oppression, or a gross neglect to keep covenants, the same rule has received in many cases the sanction of some of the most authoritative Courts of the United States.

In support of the rule as we lay it down, and as applicable to this case, we cite.

- 17 Johns. Rep. 306. 321. 323
- 8 Pick. " 356.
- 17 Pick. " 78
- 9 Wend. " 325
- 17 Wend " 71.
- 13 Wend. " 518
- 7 Hill. " 62
- 3. Fairfield (Maine) 474
- 1 Hawkins. (N. Car.) 315
- 13 Howard (U. S.) 307
- Ledgwick on Damages 39. 81-85

Again, it is assigned for error, that the
7th. Instruction given for the plaintiff be-
low was wrong. and the case of Dixon
vs. Dunham 14 Ill. 327 is relied upon
as sustaining the position of the appellant
upon the point made by him in that
behalf. We have failed in our reading
of that case, if the point solely decided
was not this, viz. That the law will
not tolerate a custom or usage of trade
to be set up to vary or control the
terms of an express contract, and the
Court incidentally mention that, amongst
the qualities of a custom, were antiquity-
and uniformity; but assuredly the Court
never intended any such inference to be
drawn from the authority of that case,
as now drawn by the appellant.

Mr. Greenleaf, in his Evidence 2 vol
sec. 251. says, "that in regard to the
usage of trade, it is not necessary that
they should have existed immemorially,
or be endowed with this quality of antiquity,
but it is sufficient, if they are "known,
are certain, uniform, reasonable and
not contrary to law". +

We submit, that the law presumes, that
persons following a particular trade or
occupation, in a particular locality, do
know of the existence of the usage or
custom, appertaining to that trade or occu-
pation, and no one can doubt, but
that the custom here claimed, was reason-
able, and not only not contrary to law

+ We suggest that acquiescence in usage of trade dispenses
with the element of antiquity, and is the true
test. Common consent is the original of our laws.
1 Black Com. 37.

but in effect expressly required by the law governing the Port of Chicago, in such cases.

The true office of a custom is to interpret the intention of parties, in cases, not arising from express contract or required by positive enactment; but in cases arising from implication or presumption.

According to the argument of the appellant, how long would it take to establish his favorite requisite or element of a custom - "antiquity", in the usage of the out-going tenant, in a particular neighborhood, having the right to carry away straw or hay left on the demised premises, after the termination of his tenancy? or the like?

The antiquity required, depends entirely on the nature of the subject matter of the custom, and is not determined by any fixed or arbitrary rule.

The rail-way was invented in 1825, and yet the English Reports show, that the law growing out of the custom, as applicable to this mode of conveyance and transportation, in the absence of express contract, was so far as it went, well settled a very short time after Gray made the application of the invention by him, to the collieries of Birmingham, and if to-day, a new invention would supplant the rail-way, to-morrow, the nebula of a custom would necessarily attach to the invention. There must be some starting point for a custom,

and we ask, where the age is to commence, if the rigid standard claimed by the appellant is to obtain. Customs is fluctuating and progressive, adapting itself day by day to the condition of man, and the demands of the times, and what is the custom to-day is the true criterion, irrespective of that absurd and idly inapplicable requisite of a rude age — antiquity.

Besides, the record here fully sustains every requisite of a good custom, and beyond censure, fully supports the instruction of the Court which is complained of as erroneous.

Without noticing other objections, in which we conceive there is no force, and we submit that the most critical analysis of the record and proceedings triumphantly sustains the instructions and law ruled by the Judge, and the finding of the Jury, and that even-handed justice has been meted out to the reckless and negligent appellant, despite the immen-
doses of counsel against a reputable Court, which this Court will not countenance.

Arnold, L. & Day
pro appellees
by Gray,

Supreme Court

Thomas Dyer, Appellant
vs.
Edward H. Talcott, Appellee

Appeal from Cook Co.

Argument and Point
made for Appellee

Supreme Court.

Thomas Dyer vs -
pleaded as Appellant

vs
Edward B. Paley
appellee -

Ernest J. Williams of the
County of Cook being duly sworn saith
that he is one of the attorneys of Thomas
Dyer the Defendant in the above suit -
That the Bill of Exceptions as presented
to the Judge for Signature contained the
following words, "The defendant then asked
the Court to give the jury the following
instruction (here insert the sixth instruc-
tion of the defendant) which instruction was
refused by the Court to which refusal
of the Court to give said instruction the
said defendant then & there excepted
That at the time the said words were written
in said Bill of Exceptions & at the time when
said Bill was presented to the Court for
signature the said sixth instruction
was marked upon the margin "refused"
in the hand writing of the Hon. J. M. Dillon.
That after having left said Bill of Ex-
ceptions with the Judge of the Cook Coun-
ty Court of Common Pleas for signature
this deponent did not again see said
Bill until the same had been signed
by the Judge & filed in the Clerk's office.
Where this deponent saw for the first
time that the words first above mentioned
had been erased -

That as soon as this deponent said
said words erased he suppressed his
suspice, & took the Bill for the purpose
of having the same presented to the Judge
and the words restored, that not finding
the Judge at said time this deponent
prior to filing the record in the Supreme
Court went to the Hon. J. M. Wilson
Judge of said Common Pleas Court
with the bill of exceptions & the said
Sixth instruction marked ~~on~~ the Mar-
gin "refused" in the hand writing
of said Wilson and stated to him
that this deponent had seen the
Clerk of the Court & that he would
insert said Sixth instruction in the
record provided the said Wilson
would mark the same with his
initials showing that the same was
refused, ^{or words to that effect} that thereupon said Wil-
son wrote "Refused J. M. Wilson" on
said instruction ^{this deponent} & returned the Bill
of exceptions & instructions to the Clerk
who inserted the said ^{instruction} in the record.
That this deponent ~~was~~ supposed that
the Judge had erased the words above
mentioned by mistake & that confirmed
in this supposition when he was informed
by said Judge that the instruction was
not present when he signed said Bill
of exceptions, he supposed that he had
erased the word "refused" & marked the
word "given" upon said instruction,

That the instruction when presented by this deponent to the Judge was pinned to the Bill of exceptions at the place where the words first above mentioned had been erased and this deponent supposed that the instruction was to be inserted in the record in the way it originally stood in said Bill & considered that the act of the Judge in marking said instruction "refused" the 2^d time after this deponent had stated to him that if so marked said clerk would insert it in the record was an admission by the said Judge that he had been mistaken in erasing it from said Bill as submitted to him by this deponent & that said instruction was to be inserted just as this deponent had originally designed it should be & as this deponent had originally written it.

And this deponent further saith that according to his best knowledge recollection & belief he accepted to the refusal of the Court to give said instruction & that he has been informed two or three times by the said Hon. J. M. Wilson that he considered this deponent as accepting to every thing at said time - That this deponent is informed & believes that E. C. Lamed one of Plaintiff's attorneys either before or after the giving of the instructions in this cause to the Jury, stated to the Court that he consented that said sixth instruction

might be given to the Jury, but this de-
ponent does not recollect of hearing said
Said to state, & does not know whether
any one or more of the Jury heard said
statement, that said instruction was mark-
ed by the Judge "refused" was delivered
as this deponent believes to the Jury as a
refused instruction was excepted to
as a refused instruction as this deponent
believes & that this deponent did not
know that the said said had request-
ed the Court to give said instruction
until long after the trial of said case
has no recollection of having heard any
such statement until after the record
in this case was filed in the Supreme
Court.

Erastus S. Williams

Subscribed & sworn

before me this 5 Day
of July 1874.

Wm. W. Marshall Ck

Clerk of the Court at the Court House
at Chicago the day & place last aforesaid.

Walter Marshall

Clerk

for E. S. Williams

In the Cook County Court
of Common Pleas

Edward B. Talcott

Thomas Oyer &
C. P. Williams

Cass.

"Defendants Instruction"

1. "If the Jury believe from the evidence that the plaintiff negligently or carelessly ran his Boat on to the line of the defendants & that the injury to his boat was the consequence of such act. then the plaintiff cannot recover."

"Defts instruction"

2. "If the Jury shall believe from the evidence that the carelessness or negligence of the plaintiff or his agents contributed to produce the injury complained of then the plaintiff cannot recover."

"Defts Instruction"

3. "That the plaintiff before he can recover must establish to the satisfaction of the Jury two points, first that the defendant was guilty of negligence, and second, that he himself was wholly without fault in producing or contributing to produce the injury."

"Defts Instruction"

"4."

"Given"

"If the Jury believe that the Plaintiff by the exercise of Ordinary care & prudence could have prevented the injury to his boat, then the Plaintiff cannot recover."

"5"

"Defts Instruction"

"Given"

"That the Defendants Vepel had a right to use the River for crossing the same and to use any rope or line necessary to cross the same with safety to itself & others and Defendant is not liable for any injury caused to the Plaintiffs Vepel by this line provided the Defendant was not guilty of negligence or carelessness in the management & use of this line."

State of Illinois
Cook County & S. S.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for the County and State aforesaid do hereby certify that the above are true copies of the Defendants Instructions now on file in my office, in the case of Edward B. Daley Plaintiff and Thomas Dyer and C. P. Williams Defendants, that said instructions are each marked on the margin thereof "Given" in the hand writing of John W. Wilson Judge of said Court, in the trial of said cause.

And I do further certify, that the words "which instruction was refused by the Court to which refusal of the Court to give said instruction the said defendant then and there excepted," as written in the transcript of said Court Certified by me, and which words are written on a half sheet attached in said transcript, were not ^{and are not now} contained in the Bill of Exceptions filed in said Cause; but were written at the suggestion of defendant's attorney after inserting the instruction marked "Refused," and immediately preceding said words, & that it does not appear by said Bill of Exceptions that any exceptions were taken to the same.

In Testimony Whereof I have hereunto set my hand and affixed the Seal of said Court at Chicago in said County this 2nd day of June A.D. 1854.
Walter Kimball
Clerk

Thomas^{61.} Dyirte
vs
E. B. Talcott

Filed July 6th 1854.
L. Leland Clk.
By P. H. Leland Depy

Supreme Court.

Thomas Oyer unpleaded
vs
appellant

vs
Edward B. Valcott
appellee

It is hereby stipulated &
agreed by & between the parties hereto
that this cause may be continued
to the next term of this Court to be
held at Ottawa in the State of Illinois
July 14, 1874

E. J. Williams
for the late firm of Collins & Williams
attys. for appellant
Arnold Larned & Say

⁶¹
Supreme Court -

Thos Dyer, applicant
vs
~~Edw B. Talcott~~

Edward B. Talcott

Stipulation to Court
time -

Filed July 21, 1854.
Island Ck.

State of Ill.

Supreme Court
June 7. 1853

Thomas Dyer.
impleaded with C. P. Williams
ad vs Appellant
Edmund B. Talcott.
Appellee

And now
comes the said Talcott Appellee
by his Attorney Amos Lamed
and says that there is no error
in the record & proceeds in
the above entitled cause
in the entering up of the
judgment aforesaid.

By his Atty
Amos Lamed

13
Supreme Court
B June 2. 1858

Thomas Dyer
Impleaded by
Appellant

Edward B Talbot
Appellee

Sunder in Error

Held July 3^d 1858:
L. Veland Clerk

Arnold Lamed & Co.

~~13~~ 13
Thomas Dyson
vs
E. B. Talcott

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1855