No. 12466

Supreme Court of Illinois

Galena & Chicago Union R.R.Co.

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vs.

Rea, et al

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57 [illegible]

Galena & Chicago R.R. Co.

v.

William L. Rae et al

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12465

1851

Illinois ss:
In the Supreme Court – 3d Grand Division –
June Term 1856.

Galena & Chicago Union
Rail Road Company } Plffs in Error
vs
William B. Ray &
Daniel Dow } Defendants in Error.

And now come the plaintiffs in
error by Loop & Lathrop & E. Peck
their attorneys, and say that in the
record and proceedings aforesaid there
is manifest Error in this Court –

1st For the Circuit Court erred in allowing evidence
to be given to the Jury of the price and
value of grain in the Chicago Market
at different periods in the fall of 1854.

2nd For the Circuit Court erred in allowing
evidence to be given to the Jury of the
difference in price & value of grain in
Warehouses, or on the cars at the
Rail Road Depot in Rockford.

3d For the Circuit erred in allowing evidence to
be given to the Jury of Quantity of grain
shipped & the facilities afforded by the
Rail Road Company at Freeport.

[12466]

4th The Circuit Court erred in giving to the Jury the instructions on the part of the plaintiffs below, Numbered, 1. 2, 3, 4, 5, – 7, 8, – 10, 11, 12, – 14, 15, 16, 17 & 18, and each & every of them.

5th The Circuit Court erred in refusing to give to the Jury the instructions asked by the defendants below, numbered 2 & 6.

6th The Circuit Court erred in refusing to grant a new trial on the motion of the defendants below.

7th And also that there are divers other manifest errors in the record and proceedings in this cause in the said Circuit Court.

Wherefore the said plaintiffs in error pray that for the errors aforesaid assigned, and also for other errors upon the face of said record apparent, the said judgment of the said Circuit Court may be reversed, set aside, and for naught held.

Cook & Patterson & E. Peck, attys for Pffs. in error.

3246-31

Supreme Court
William S Rea &
Daniel Dow
vs
the Galena & Chicago
Union Rail Road Co

Writ of Error

And the said defendants in Error by Sam M. Wright their attorney come and say that there is no error in the record and proceedings in said cause as above assigned

June 21st 1856 Sam M. Wright
dfts atty

In Supreme Court.

G. & C. U. Rail Road Co.

vs.

Rea & Dow

Assignments of Error.

Loch & Sattley &
E. Peck, attys
for Plffs in Error.

United States of America
State of Illinois
Winnebago County } ss

Pleas before the Hon
Benjamin R Sheldon Judge of the fourteenth
Judicial Circuit of the State of Illinois at a Term
of the Winnebago County Circuit Court begun and
held at the Court House in Rockford in said County
of Winnebago on the 24th Day of September in the
Year of our Lord one thousand Eight hundred
and fifty five

Present the Hon Benj R Sheldon Judge
William Bross States Attorney
John F Taylor Sheriff
Attest
Charles W Spafford Clerk

William G Rea }
David Dow }
vs }
The Galena & Chicago }
Union Rail Road Company }

Be it remembered
that on the 10th day of April AD 1855 a Declaration
was filed in the above entitled which said Declaration
is in the words & figures following (to wit)

[13422-3]

Winnebago Circuit Court of the term of
April in the year of our Lord
one thousand eight hun-
dred and fifty five

Winnebago County } ss

William G Rea and Daniel
Dow plaintiffs by Holland and Wight their
attorneys complain of the Galena and Chicago
Union Rail Road Company defendants a
body corporate and politic being duly summoned
of a plea of trespass on the case

For that whereas the said defendants on the
first day of September in the year of our Lord
one thousand eight hundred and fifty four
and from thence hitherto were and now are
common carriers to wit at the county of Winne-
bago in the state of Illinois and as such com-
mon carriers were engaged in carrying and
transporting by Rail Road for a reasonable
compensation and reward to be by them re-
ceived therefor from their depot in the City of
Rockford in the county of Winnebago to their
depot in the City of Chicago in the County of
Cook in the state of Illinois goods chattels
merchandises grain produce and other freight
and for the purpose of carrying and transport-
ing such freight were in the possession enjoyment
and control of a certain Rail Road running
from the said depot in Rockford aforesaid
to the said depot in Chicago aforesaid with

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the nessessary locomotives engines cars and other rolling stock and furniture and as such common carriers it was the duty of said defendants to receive for carriage and transportation and for a reasonable compensation and reward to carry and transport all such goods chattels merchandise grain produce and other freight as the owners thereof might be desirous of having carried and transported over the said Rail Road of the defendants between the points above mentioned and as the owners thereof should present deliver and offer the same for transportation and carriage as aforesaid and the plaintiff aware that at the time aforesaid to wit at Rockford in the county of Winnebago in the state of Illinois they were possessed as of their own goods and chattels of a large quantity of grain of divers kinds and discriptions to wit one hundred thousand bushels of corn twenty thousand bushels of oats and ten thousand bushels of wheat of great value to wit of the value of one hundred thousand dollars which they were desirous of having carried and transported by the said defendants over their Rail Road from Rockford in the County of Winnebago to Chicago in the County of Cook aforesaid and being so desirous of sending and causing the said grain aforesaid to be carried and transported as aforesaid from Rockford to the City of Chicago aforesaid and the defendants then being common carriers as aforesaid the plaintiffs on the first day of November and in the year aforesaid did present and tender the said

grain above mentioned to the defendants and their servants at the depot of the said defendants at Rockford aforesaid for the purpose of being carried and transported by them on their Rail Road aforesaid for the benifit of the said Plaintiffs and did then and there request and require the said defendants to receive and accept the said grain for the purpose of being carried and transported to said Chicago as above mentioned and the said plaintiffs were then and there ready and willing to pay the said defendants for so receiving carrying and transporting said grain as aforesaid such trouble time compensation and reward as the said defendants were entitled to receive in that behalf of which the said defendants then and there notice and thereby it became the duty of the said defendants then and there to accept and receive said grain and safely and within a reasonable time to transport and carry the same by the said Rail Road to the said depot in the City of Chicago aforesaid yet the said defendants well knowing the premises wholly disregarded their duty in that behalf and intending to wrong and injure said plaintiffs did not and would not receive and accept the said grain of the said plaintiffs so offered and tendered to them as aforesaid for the purpose of being carried and transported as aforesaid but wholly and absolutely refused to receive and accept such grain for the purpose aforesaid by which the said plaintiffs were entirely deprived of the benifit and advantages

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of having their said grain sent to the City of Chicago as aforesaid and in consequence thereof suffered and underwent great losses in the premises whereby the aforesaid grain wholly lost to them to wit at Winnebago County aforesaid

2 And whereas also afterwards to wit on the day year first aforesaid and from thence hitherto and at the place aforesaid the said defendants were common carriers of freight and as such common carriers were engaged in the transportation of merchandise and other freights and particularly of grain by their Rail Road between the depot in the City of Rockford in the County of Winnebago and the depot in the City of Chicago in the County of Cook and for that purpose were in possession enjoyment and control of a Rail Road between those points and as such common carriers it became and was their duty to carry and transport all such goods merchandise grain and other produce as might be offered and tendered them by the owners thereof for the purpose of being carried between the points aforesaid and to receive a reasonable time compensation and reward therefor And the plaintiffs in fact say that they well knowing the duty of the defendants in that behalf and fully believeing that said defendants would in all respects perform and fulfil their said duty in that behalf on the first day of September in the year aforesaid did buy and

purchase of divers persons large quantities of grain of different kinds and discriptions to wit one hundred thousand bushels of corn twenty thousand bushels of oats ten thousand bushels of wheat and ten thousand bushels of other grain of great value to wit of the value of one hundred thousand dollars with the intention of having the same carried and transported by the defendants on their Rail Road from their depot in the City of Rockford aforesaid to their said depot in the City of Chicago and of having the same disposed and sold in said City for their profit benifit and advantage and on the first day of November and year first aforesaid the said plaintiff did present tender and offer to the said defendants and their servants at their depot aforesaid at Rockford aforesaid in the County of Winnebago aforesaid all of the grain aforesaid of the kinds and discriptions aforesaid for the purpose of having the same carried and transported over the Rail Road of the aforesaid defendants to the City of Chicago and did then and there insist and demand of said defendants that they should accept and receive said grain and by their Rail Road aforesaid should carry and transport the same to Chicago aforesaid and were then and there willing to pay the said defendants such reasonable compensation for such transportation of said grain as the defendants diserved to receive therefor yet the said defendants well knowing the premises and intending to aggrieve

and injure the plaintiff in that behalf in disregard of their duty in the premises did not would receive and accept the said grain for the purpose of carrying and transporting the same as aforesaid but utterly and absolutely refused to accept and receive the same whereby and by means whereof the said plaintiffs were prevented from sending the said grain to Chicago and from selling the same there and thereby were deprived of large profits and gains upon the same which they otherwise would have received and suffered great losses in the fall and depreciation in the value thereof to wit the sum of twenty thousand dollars to wit) at the County of Winnebago aforesaid

3 And whereby also afterwards to wit on the day and year first aforesaid and from thence hitherto and at the place aforesaid the defendants were common carriers of freight between Rockford in the County of Winnebago and Chicago in the County of Cook and for the purpose of transporting and carrying freight between those points were in the possession use and enjoyment of a Rail Road running from to and between the same and as such common carriers it became and was their duty to receive for transportation and carry and transport for a reasonable reward to be paid them therefor between those points all such freight as might be offered by the owners thereof for that purpose and such being the duty of the defendants in

that behalf the plaintiffs on the first day of November and year aforesaid being possessed as of their own goods and chattels of a large quantity of grain of different kinds and discriptions to wit one hundred thousand bushels of corn twenty thousand bushels of oats ten thousand bushels of wheat and ten thousand bushels of other grain of the value of one hundred thousand dollars at the depot of the defendants in Rockford aforesaid in the County of Winnebago aforesaid did deliver to the defendants and their servants the grain above mentioned to be by the defendants by their Rail Road carried and transported to their depot in the said City of Chicago which said grain was then and there accepted and received by said defendants and it became and was their duty for a reasonable reward to be by them received of the plaintiffs to carry and transport said grain from the depot of the defendants at Rockford aforesaid to their depot in Chicago aforesaid there to be delivered to the plaintiffs yet the said defendants disregarding their duty in that behalf did not nor would carry and transport the said grain from Rockford aforesaid to Chicago aforesaid but intending to aggrieve and injure the plaintiffs in that behalf wholly neglected and refused to carry and transport said grain of said plaintiffs to Chicago aforesaid whereby the said grain of the said plaintiff became and was wholly lost to them to wit at the County of Winnebago aforesaid

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4 and whereas also afterwards to wit on the day and
year first aforesaid and from thence hitherto and
at the place aforesaid the said defendants were
common carriers and as such common carriers were
engaged in the transportation and carrage by Rail
Road from the City of Rockford to the City of
Chicago of grain produce and other freight for
a reasonable hire and reward to be paid by the
owners thereof to them and for that purpose were
in the use enjoyment and possession of a certain
Rail Road with the appendages and appurtenances
known as the Galena and Chicago Union Rail
Road and by reason thereof it became and was
their duty to receive of the owners thereof and safe-
ly promptly and in a reasonable time to carry
and transport the same between the places and
points above mentioned all such grain produce
and other freight as the owners thereof might be
desirous of having carried and transported upon
the said Rail Road and might deliver to them
for that purpose and such being the duty of the
defendants in that behalf the plaintiffs on the
day and year aforesaid at the depot of the said
defendants in Rockford aforesaid in the County of
Winnebago aforesaid delivered to the said defen-
dants to be carried and transported by them safe-
ly and shurely and in a reasonable time from
said place to the depot of the said defendants
in the City of Chicago aforesaid a large quantity
of grain then and there belonging to the plaintiffs
to wit one hundred thousand bushels of corn

twenty thousand bushels of oats ten thousand bushels of wheat and ten thousand bushels of other grain of great value to wit of the value of one hundred thousand dollars which said grain was then and there accepted and received by the said defendants and thereby it became and was the duty of the defendants to promptly and in a reasonable time carry and transport said grain from Rockford aforesaid to Chicago aforesaid then and there to be redelivered the said plaintiffs yet the said defendants well knowing the premises but wholly disregarding their duty in that behalf and intending to injure and aggrieve the plaintiffs in the premises and altho the plaintiffs were ready and willing to pay the defendants for such carriage and transportation such reasonable reward as they might deserve to have therefor did not and would not safely promptly and in a reasonable time carry and transport the said grain of the plaintiffs from Rockford aforesaid to Chicago aforesaid but so negligently carlessly and wrongfully conducted themselves in the premises that the carriage and transportation of such grain was unreasonably and unnecessaraly delayed for a long space of time to wit for the space of three whole months during which time and unnecessary delay the said grain greatly declined depreciated and lessned in value whereby the said plaintiffs were prevented from selling and disposing of their said grain at large gains and profits as they otherwise would and should have done and were prevented from disposing of the said grain at full fair and large prices as they might and would

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have done but for the wrongful conduct of the defendants in the premises whereby the said plaintiffs suffered and underwent great and grievous losses in that behalf to wit at the County of Winnebago aforesaid

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And whereas also afterwards to wit on the day and year first aforesaid and from thence hitherto and at the place aforesaid the defendants were common carriers and as such were engaged in transporting by Rail Road from Rockford in the County of Winnebago to Chicago in the County of Cook such grain produce and other freight as might be delivered to them for that purpose and for the purpose of transporting and carrying such freight they were in the use and enjoyment of a certain Rail Road called the Galena and Chicago Union Rail Road running from Rockford aforesaid to Chicago aforesaid and were also in the use and enjoyment of a certain depot in the said City of Rockford appurtenant to said Rail Road with divers side tracks and other things appertenant thereto and in connection therewith near one of said side tracks and adjoining said depot was a certain Warehouse belonging W M Warner & Co and used by them for the storage of divers grains and other produce which the owners thereof were desireous of sending and having carried by the Rail Road of the defendants to Chicago aforesaid which grain so received and stored by the said W M Warner & Co in their said Warehouse

for the purpose aforesaid the defendants are accustomed to receive from said warehouse into their cars and to place the nescessary cars for the receiving and loading the said grain and produce therein upon the side track immediately adjoining and near to said warehouse and during the time aforesaid the plaintiffs were dealers in grain and other produce which by an arrangement with the said defendants and the said owners of the said warehouse they were accustomed to have received into and stored in said warehouse and in a reasonable time delivered and loaded into the cars of the said defendants furnished by the said defendants upon request to them upon the side track adjoining said depot as aforesaid and by the said defendants immediately carried and transported in their said cars to the depot of the said defendants in the City of Chicago aforesaid and the said arrangement between the said plaintiffs and defendants being for a long space of time to wit for the space of one whole year beow in force and effect and the said defendants during all that time having been accustomed to receive at such warehouse of U. M. Warner & Co all such grain and other produce as might have been stored and received therein for the plaintiffs for the purpose of being carried and transported as aforesaid by the defendants the plaintiffs on the day and year first aforesaid and at the place aforesaid were possessed and the owners of a large quantity of grain of divers kinds to wit of one hundred thousand bushels of corn twenty thousand

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bushels of oats ten thousand bushels of wheat and ten thousand bushels of other grain all of which had been purchased by the plaintiffs with the express design and intention of being sent and transported by the defendants to Chicago aforesaid for the benifit of the plaintiffs and under the aforesaid arrangement between the plaintiffs and defendants the same was stored and received into the aforesaid warehouse for the purpose of being loaded therefrom into the cars of the defendants and delivered to the defendants for carriage by them as aforesaid of all which the defendants then and there had notice and it became and was their duty in that behalf to receive into their said cars upon the reasonable request of said plaintiffs and from said warehouse for a reasonable compensation to be paid them therefor and to carry and transport said grain to the depot of the defendants in the City of Chicago aforesaid and the said plaintiffs aver that on the day and year aforesaid and at the place aforesaid and on divers other days and times from that day until the first day of November then next ensueing they requested the defendants and demanded of them that they should receive into their cars from said warehouse the aforesaid grain of the plaintiffs and should promptly and in a reasonable time transport and carry the same from their ~~said~~ depot in Rockford aforesaid to their said depot in the City of Chicago aforesaid and were then

and there ready and willing to pay the said defendants to such reasonable reward as they might diserve to have for the same yet the said defendants wholly disregarding their duty in that behalf and intending to aggreave and oppress and injure the plaintiffs and well knowing the premises did not and would not receive said grain of the plaintiffs and transport the same to Chicago aforesaid as was their duty in that behalf but wholly refused to receive and transport the grain of the plaintiffs as aforesaid whereby the said grain of the said plaintiffs became wholly lost to them to wit at Rockford aforesaid in the County of Winnebago aforesaid

6 And whereas also afterwards to wit on the day and year first aforesaid and from thence hitherto and at the place aforesaid the defendants were common carriers and as such common carriers were engaged in the carriage and transportation of freight from the City of Rockford in the County of Winnebago to the City of Chicago in the County of Cook and for that purpose were in the possession use and enjoyment of a certain Rail Road and its appurtenances running from Rockford to Chicago aforesaid and were also in the possession and use as appurtenant to said Rail Road in said Rockford of a certain depot upon which were divers side tracks and other fixtures in connection with the same and upon one of said side tracks was a certain warehouse owned by A. M. Warner & Co. in which the said owners were accustomed to receive grain and other produce for storage and for the purpose of being delivered

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therefrom and received by the defendants into their cars standing upon said side track adjacent to said warehouse in which warehouse the plaintiffs for a long space of time had been accustomed to stow the produce owned by them and to have the same delivered from said warehouse to the cars of said defendants standing upon said side track adjacent to the same as aforesaid and the said defendants were and for a long space of time to wit two whole years had been accustomed to receive the same from said warehouse into their said cars and to transport the same from the said depot in Rockford aforesaid to Chicago aforesaid upon their said Rail Road and were accustomed to treat such delivery at the warehouse as aforesaid and notice to themselves thereof and consider the same as a delivery to themselves for the purpose of transportation as aforesaid which mode of doing business was one of great convenience and an advantage to defendants as well as to plaintiffs and the said plaintiffs acting under such custom and mode of doing business by the defendants and being engaged in buying grain and other produce to be sent by said Rail Road to Chicago aforesaid in pursuance thereof at and before the day and year aforesaid and at the place aforesaid had purchased large quantities of grain to wit one hundred thousand bushels of corn twenty thousand bushels of oats ten thousand bushels of wheat and ten thousand bushels of other grain of great value to wit of the value of one hundred thousand dollars which said grain was delivered to and

stored in the warehouse of the said U. M. Warner & Co aforesaid with the design and intention on the part of the plaintiffs of having the same in a reasonable time delivered to the said defendants and by them transported on their said Rail Road to their depot in the City of Chicago aforesaid in persuance of the custom and mode of doing business aforesaid between the plaintiffs and said defendants of all which the defendants had notice whereby it became and was the duty of the said defendants upon the reasonable request of the said plaintiffs and within a reasonable time to receive said grain into their cars from the said warehouse and for that purpose to furnish at their said side track adjacent to said warehouse suitable cars therefor and in a reasonable time to transport and carry the same by said Rail Road from said depot their depot in Chicago aforesaid and the said plaintiffs in fact say that on the day and year aforesaid and on divers other days and times thereafter between that day and the first day of November then next ensueing the plaintiffs requested the said defendants to receive said grain into their said cars and for that purpose to furnish cars upon said side track adjacent the said warehouse and to transport and carry the same to their said depot in Chicago aforesaid and then and there notified the said defendants that such grain was in said warehouse awaiting such transportation and demanded that they should then and there receive the same and in a reasonable time carry and transport the same as aforesaid and altho the said plaintiffs were then and there ready and willing

16 to pay to the said defendants such reasonable compensation as they diserved to have for such carriage and transportation of said grain and were ready willing and desireous of delivering said grain to the defendants upon the cars from the said warehouse aforesaid for the purpose aforesaid of which the said defendants then and there had notice yet the said defendants disregarding their duty in that behalf did not then and there receive the said grain and within a reasonable time carry and transport the same as aforesaid but intending to wrong injure and aggrive the plaintiffs in that behalf wrongfully delayed and neglected to receive accept and transport said grain for a long space of time to wit for three full months then next ensueing whereby the said plaintiffs were greatly delayed and hindered in making Sale of said grain at Chicago aforesaid during all that time and the said grain during that time greatly depreciated in value and the plaintiff in consequence of and by reason of the wrongfull conduct of the defendants in that behalf were deprived of the opportunities of advantagously selling and disposing of said grain as they otherwise would have done and were deprived of great gains and profits thereon which they otherwise would have received and Suffered and underwent great loss in consequence of the fall decline and depreciation price and value of the same to wit the sum of twenty thousand dollars to wit at Winnebago County aforesaid

17 And whereas also afterwards to wit on the day

and year first aforesaid and from thence hitherto at the place aforesaid the said defendants were common carriers of freight and as such common carriers were engaged in the transportation of merchandise and other freight and particularly of grain by their Rail Road between their depot in the City of Rockford in the County of Winnebago and their depot in the City of Chicago in the County of Cook and for that purpose were in the possession enjoyment and control of a Rail Road between those points and as such common carriers it became and was their duty to carry and transport all such goods merchandises grain and other produce as might be offered and tendered them by the owners thereof for the purpose of being carried between the points aforesaid and to receive a reasonable time and compensation and reward therefor and the plaintiffs well knowing the duty of the defendants in that behalf and in full confidence that they would in all respects faithfully and honestly perform the same on the first day of September in the year first aforesaid had bought and purchased of divers persons large quantities of grain to wit one hundred thousand bushels of corn twenty thousand bushels of oats ten thousand bushels of wheat and ten thousand bushels of other grain of great value to wit of the value of one hundred thousand dollars with the intention and design of having the same carried and transported by the defendants as aforesaid from Rockford aforesaid to Chicago aforesaid and of having the same there sold and disposed of for the use and benifit of said plaintiffs

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And the plaintiffs in fact say that having purchased the said grain above discribed as aforesaid and having the same in their possession and being desireous of causing the same to be transported and carried from the said City of Rockford to the City of Chicago the plaintiffs on the first day of September aforesaid and on divers other days thereafter within three months then next ensueing to wit at Rockford aforesaid in the County of Winnebago aforesaid did tender and offer to the defendants their aforesaid grain for carriage and transportation there of as aforesaid and then and there insisted and demanded of them that the defendants should then and there receive the same and by their said Rail Road in a reasonable time thereafter transport and carry the same to the said depot of the said defendants in Chicago as aforesaid there to be redelivered to the said plaintiffs on request and the said plaintiffs were then and there ready and willing to pay the said defendants for such carriage and transportation of said grain such compensation as they reasonably deserved to have therefor whereby it then and there became the duty of said defendants immediately to receive said grain and in a reasonable time carry and transport the same to Chicago aforesaid yet the said defendants well knowing the premises but intending to injure and aggrieve the plaintiffs in the premises did not nor would then and there receive and in a reasonable time transport and carry the same to Chicago as aforesaid but for a long space of

time to wit for the space of three months wrongfully and negligently neglected and delayed to receive and transport said grain as aforesaid and during all that time did not receive and transport the same whereby and by means whereof the plaintiffs suffered and underwent great severe and heavy losses in the premises by the spoiling deterioration and injury suffered by said grain by reason of such delay and by reason of the great depreciation in price and value of the same in market in said City of Chicago while the said plaintiffs were unable to have the same carried and disposed of there and were compelled to pay out large sums of money for storage thereof and were prevented from advantageously disposing of and selling said grain as they otherwise might and would have done and in other respects suffered and underwent great losses and injures in the premises to wit at the County of Winnebago aforesaid

8 And whereas also afterwards to wit on the day and year first aforesaid and from thence hitherto and at the place aforesaid the defendants were common carriers of freight between Rockford in the County of Winnebago and Chicago in the County of Cook and for the purpose of transporting and carrying freight between those points were in the possession use and enjoyment of a Rail Road running from to and between those points and as such common carriers it became and was their duty to receive for transportation and in a reasonable time transport and carry for a reasonable reward to be paid them

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therefor between those points all such freight as might be offered by the owners thereof for that purpose and such being the duty of the defendants in that behalf the plaintiffs being possessed as of their own goods and chattels of a large quantity of grain to wit one hundred thousand bushels of corn twenty thousand bushels of oats ten thousand bushels of wheat and ten thousand bushels of other grain of the value of one hundred thousand dollars. did on the day and year first aforesaid at the depot of the defendants in Rockford aforesaid deliver to the defendants and their servants the aforesaid grain to be carried and transported by them upon their said Rail Road to their depot in Chicago aforesaid within a reasonable time and there in such reasonable time to be delivered to the plaintiffs the said plaintiffs then intending and desiring to immediately ship such grain upon divers vessels navigating the lakes between the port of Chicago in the State of Illinois and the port of Buffalo in the State of New York to be upon and by said vessels transported and carried to the port of Buffalo aforesaid and in such time as would fully enable the vessels upon which the plaintiffs might ship the same to reach said Buffalo without any impediment hinderance or delay from cold weather or in the transit upon said lakes and their said grain was then and there accepted and received by said defendants and it became and was their duty in that behalf in a reasonable time to transport and carry said grain to Chicago aforesaid there to be delivered to the plaintiffs yet the

said defendants well knowing the premises but wholly disregarding their duty in that behalf and intending to injure and aggrieve the plaintiffs in the premises altho the plaintiffs were ready and willing to pay them for the transportation and carriage of said grain such reasonable reward as they diserved to have therefor did not and would not safely and in a reasonable time transport and carry said grain to Chicago as aforesaid but so negligently and wrongfully conducted themselves in that behalf and the carriage and transportation of said grain was so unreasonably and unnecessarily delayed that the said grain was not received and delivered in Chicago for a long space of time and not until after three months had elapsed after the time of the delivery of the same to the defendants in consequence of which after the delivery of the said grain to the plaintiffs the plaintiffs were unable to ship the same for the port of Buffalo aforesaid on vessels as aforesaid sufficiently early in the season to enable the vessels upon which the same was shipped to reach the port of Buffalo before the said Lakes were closed by ice and in time to prevent any impediment and hinderance to the arrival of said grain at the said port by reason of the cold weather but the said vessels in which the said grain was necessarily shipped were frozen in and obstructed by the ice in said Lakes long before they could have reached said port and by reason of such freezing and obstruction were unable to reach said port and still are detained in said ice and unable to reach said port whereby the said plaintiffs are prevented from selling and disposing of said grain and obtaining a large sum of money

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therefor and also during said detention the value and price thereof became greatly lessend and depreciated in value whereby the plaintiffs suffered losses in that behalf to wit the sum of twenty thousand dollars and were obliged to pay out large sums of money in freight insurance and interest which they would not otherwise have been obliged to do. to wit the sum of five thousand dollars and was in other respects greatly damaged injured and aggrieved to wit at the County of Winnebago aforesaid to the damage of the plaintiffs of twenty thousand dollars and therefore they bring suit

Holland & Wight
Plffs Atty

The 5th Count above of this declaration is not amended. The 6th count is amended by sundry interlineations and by striking out. and the 7th count is amended by striking out the same and the substitution of an entire new one. June 6th 1855 Holland & Wight

And afterwards Suit on the
30th Day of April AD 1855 at the April Term of
said Court a Demurrer was filed in said
Cause which said Demurrer remains
and forms pleading in said Suit.

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Galena & Chicago Union
Rail Road Company
ads
Wm G Rea and
Daniel Doro

And the said defendants come and defend &c and say that the said declaration of the said plaintiffs and each count thereof is insufficient in law, and they demur thereto, and to each separate count thereof and for cause of demurrer to the first count of said declaration the defendants show,

1 That the said first count of the said declaration does not aver and show that the plaintiffs tendered or offered to the defendants pay for transporting said grain.

2 It does not show to whom the grain was tendered for transportation, and does not show that any person to whom such supposed tender was made was authorized to represent the defendants in that behalf.

3 It does not aver and show that the defendants had sufficient cars and furniture and capacity to transport said grain at the time the same was offered.

And for cause of demurrer to the second count of said declaration the defendants show and assign the same as to the first, and also, that the injury assigned for which damage is claimed, and the damages claimed are too remote to be the result of such injury.

And for cause of demurrer to the third count of said declaration the defendants assign the same as to the first and second.

And for cause of demurrer to the fourth count of said declaration the defendants assign the same as to the first and second.

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And for cause of demurrer to the fifth count of said declaration the defendants assign the same as to the first and second- and also that it sets up a contract to take the grain from Warner's warehouse. the remedy for which would be apsumpsit and not case.

And for cause of demurrer to the sixth count of said declaration the defendants assign the same as to the fifth-

And for cause of demurrer to the seventh and eighth counts of said declaration the defendants assign the same as to the fifth

And said defendants show that there is a misjoinder of counts in the said declaration,

And that the causes of action set up in some of the counts are not proper to be declared on in case, but should be in assumpsit.

And that no ability is averred on the part of the defendants to transport the produce of the plaintiffs and no charge of negligence is averred for not having such ability.

Loop & Lathrop
Attys for Defts

And afterwards Dwit on the 11th day of
May at the May Term AD 1855 of said Court
in the Record of the proceedings of said Court
is the following entry — in said cause Dwit

William G Rea }
Plntff Pro }
}
The Galena & Chicago }
Union Rail Road Company }

and now come
on to be heard the argument of counsel on the
Demurrer of Defts to Plaintiffs Declaration
herein. And the Court being fully advised
thereof Sustains the Same as to the 1st 4th & 5th
& 6th counts of Plffs Declaration and
overrules the Same as to the other counts.
And thereupon on Motion of Plff, leave
is granted them to withdraw their Demurrer
to the other counts, And on motion of Plff leave is
granted them to amend the 5th 6th & 7th counts of
their Declaration herein

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2246-17

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And afterwards Sept on the 25th day of September Term AD 1835 the following Plea & Notice was filed by the Plaintiff in this cause in words & figures following Sept

Galena & Chicago Union
Rail Road Company
ads
Wm G Reid and
Daniel Dow

And the said defendants by Loop and Lathrop their Attorneys, come and defend the wrong and injury when &C. and say that they are not guilty of the said several premises in said plaintiffs declaration mentioned or any or either or any part thereof and of this the said defendants put themselves upon the Country &C

Loop & Lathrop
Attys for Defts

Plaintiffs doth the like
Holland & Wight. Plffs Attys

The Plaintiffs are hereby notified that on the trial of this cause the defendants will insist upon and give in evidence, in bar of the Plaintiffs right of action. That at the several times when &C in Plaintiffs declaration mentioned the said defendants, took, received, and conveyed upon their Rail Road for the Plaintiffs all the grain and produce of the Plaintiffs, when offered, which they at the several times when &C were able to take, or that they had sufficient cars and transportation for

G. & C. U. Rail Road Co
By Loop & Lathrop
their Attys

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[28-416-28]

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And afterwards Dunt on the 10th day of October at the September Term A.D. 1853 of said Court in the Record of the proceedings of said Court is the following entry in the Cause Towit

William G. Rea &
Daniel Dow
vs
The Galena & Chicago
Union Rail Road Company

And now come the Plaintiffs by their Attorneys Marsh Wright and Turner and the Defendants by Loop & Latham their Attorneys also come and issue being joined It is ordered that a Jury come and thereupon come a Jury of good & lawful men Towit J. B. Johnson A. S. Lake Wm. Peckham A. Leffingwell G. N. Lord Geo. Morris John Hewitt F. S. Murphy D. Carpenter C. A. Lake Jno. Garlock & J. Eastman who being empannelled sworn & sworn well and truly to try the issue joined according to the Evidence and hearing thereupon the Evidence and argument of Counsel they retired to consider of their Verdict and thereafter they returned into Court with the following Verdict Towit We the Jury find the Defendants Guilty and assess the Plaintiffs damages against the said Defendants at the Sum of Four thousand Nine hundred and fifty dollars, and

thereupon the said Defendants (now the Court
for a new Trial herein and the Court being fully
advised in said Motion overrules the Same. It
is therefore Ordered and considered by the Court that
the said Plaintiffs have and recover of the said
Defendants the said Sum of Four thousand
nine hundred and fifty Dollars Damages
as aforesaid as also their Costs and
Charges herein Expended and that they have
Execution therefor.

And thereupon the Defendants
pray the Court for an appeal in this cause to the
Supreme Court of the State of Illinois, which is
granted them upon condition that within six
weeks from the rising of this Court the Defendants
with Thomas D Roberts as Security enter
into and file with the Clerk of this Court an
appeal Bond to the said Plaintiffs in the penalty
of Six thousand Dollars conditioned as the Law
directs

And afterwards to wit on the 11 day of
October A.D. 1855. the following Appeal Bond
Bill of Exceptions was filed in this cause which is in the words
and figures following to wit

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In the Winnebago County Circuit Court

September Term A.D. 1855

William G. Rea
& Daniel Dow
vs
The Galena and Chicago Union
Rail Road Company

Be it remembered that on the 10th day of October A.D. 1855. as yet of the September Term. this cause came on to be tried before William Brown Esqr sitting by agreement and consent of the parties as Circuit judge, and a jury and thereupon the Plaintiffs in their behalf introduced as a witness Chester Spaulding, who testified that he was a warehouse man in Rockford in 1854 was one of the firm of U M. Warner & Co and occupied the warehouse of U M. Warner & Co near the depot of the defendants. that the defendants constructed a side track running by the warehouse and grain was loaded immediately from the warehouse into the cars on said side track That the Plaintiffs were engaged in buying grain at this place from August to November 1854 they stored most of their grain at witness warehouse.
From the 1st to the middle of September Plaintiffs had stored at this warehouse from 30.000 to 40.000 bushels of grain.
Mr A.G. Lowrey also stored grain at that warehouse He (Witness & Lowrey) sold some grain to a Mr Ramsey at our warehouse the last of September or 1st of October at the time that Plaintiffs had 30 or 40.000 bushels of grain at our house, we had all in the

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S12461-28

house that we dared put into it. at this time the Plaintiffs also stored at Risings and at Remingtons warehouses. the reason of grain accumulating there was we could not get cars to take it off. Plaintiffs commenced storing in July or August 1854. The warehouse is situated on the G & C. U. R.R. track Capt Turner was at that time superintendent of defendants Rail Road. he was out here several times. The company shipped grain from our warehouse up to the forepart of August the R.R.Co took off the grain as fast as it came in and continued to do so until the grain began to come in after harvest. has known of Plaintiffs calling for cars to take off their grain they applied to the man in the depot and men out doors The Plaintiffs called for cars almost every day after grain began to accumulate and I have frequently called for cars to ship Plaintiffs grain I did not always get cars. during this time there were occasionally empty cars on the track a car load is about 300 or 350 bushels

I called for cars on Seymour before he left and on Woodworth afterwards and on Kirk Patrick track master, there was a man there they called Matt (Matthew Berry) before Kirk Patrick was track master

I cannot give day and date when I called upon any of the agents for cars.

Sometimes we got all the cars we were entitled to at our warehouse dividing the cars between the several warehouses.

Sometimes they sent off empty cars saying that Mr Turner had directed them to send some of the

cars to other Stations. at the time cars were so sent away the Plaintiffs had a large quantity of grain at our warehouse which they wanted shipped. I know of cars being loaded with grain which came up in a Boat from Oregon. I have known them to saw cars for the freight of the Boat when it came up to be loaded from the Boat. at one time when the Boat came the Plaintiffs had grain which they wanted shipped there is but one time that I remember distinctly of it was in September or October. Plaintiffs then wanted cars. had no conversation with the agents about it. I know of Farmers loading cars from waggons on the track. a good many came in and loaded from their waggons in that way that I don't know who they were. I remember Leach loaded corn. and J. Mc Nil loaded some wheat. cars were loaded from waggons on the track by Farmers several times when we wanted to get cars to get our grain away Farmers loaded cars very frequently sometimes a majority of cars would be loaded on the track from grain brought directly in. I don't remember any time when we could not get any cars, but there were times when they furnished cars to farmers to be loaded on the track as they drew in their grain when we could not get all the cars we wanted. has known cars to be run on side track to stand until grain could be drawn from farmers it was with Leach. he had a car standing two days Leach had a car left on the track which he was two days loading the Plaintiffs all this time had grain in the warehouse which they wanted to ship and were all this time calling for cars. a large amount of grain of the Plaintiffs was in the storehouse from middle

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of August to October - on the first of October we charged them extra storage on 16,000 bushels which had laid over from August - on the first of November we charged them extra storage on 8,000. We took in grain and charged a certain price per bushel if shipped within 30 days and if it remained in store more than 30 days we charged extra one cent per bushel.
The Plaintiffs took into our warehouse in the month of September 16,000 bushels more than they shipped during that time I do not remember the amount of extra storage - could tell from my book.
When the agents let the farmers have a majority of the cars we complained to them. the agents

I went to agents to get cars to ship Plaintiffs grain and grain of others stored in our warehouse agents then said it was a rule of the Company to give Farmers a preference

Some days no cars were loaded from the track and some days a majority. don't think it was often that a majority of cars were loaded from the track ~~there were not many days when a majority of the cars were loaded on the track by farmers~~

I know of cars being promised to us and then loaded by others. sometimes farmers would get them sometimes other warehouse men and sometimes both would get them this happened while the Plaintiffs had this large quantity of grain

I know of other grain dealers buying grain of farmers at this time and they getting the farmers to secure the cars. I bought grain of a farmer and shipped it in his name at this time. I do not know that the agents of the Company knew of it before or afterwards I was one of the warehouse firm of W M. Warner & Co. We were engaged in buying grain at this time

The extra storage charged Plaintiffs on 1st of October was. On Corn 11,000 bushels
" Wheat 2,500 "
" Oats 1,789 "
The extra charge was one cent per bushel.
The extra charge on the first of November was on Corn 8,000 bushels
" Wheat 894 "
" Oats 1,870
" Barley 053
" Rye 047

The extra charge was one cent per bushel
There was no charge for extra Storage December 1st
The extra charges made were for the quantities which had remained in store for a month previous

The Plaintiffs had the greatest quantity of grain in store from the middle of September to the 1st of October they then had about 30,000 bushels
During the month of October much of this grain was shipped. they had not as much in Store on the first of November as on the 1st of October I think they had

from one third to one half less 1st of November than 1st of October

On the 25th day of August 1854

Corn was worth in Chicago 50c

On 12th Sept Wheat " " " " 1.18

" 21st " Corn " " " " 54

" 16th Oct " " " " " 52

" 21st Sept Wheat " " " " 1.08

Cross examined. I went to the agents of the Rail Road Co to get cars to take off grain at our ware-house. I don't remember that I ever called on the agents for cars for Rea & Dow by name. I called up-on Seymour upon several occasions. I went into the office and asked him. Seymour, how many cars we could have at our house I don't know that I ever told any agent of the company that I wan-ted cars for Rea & Dow

I have frequently told Mr Woodworth that I wanted to ship grain for Rea and frequently told him that I wanted cars for Rea it might have been a half dozen times and it might have been forty I remember of having had a good many conversations with him

I cannot tell the precise language that we used at any one time I have said to him that our house was full of grain and we wanted cars to get it off. I don't remember the precise answer that he made

The account of grain at our office was kept with W. G. Rea alone

Dow bought some of the grain that was receipted in the name of Rea. Dow & Rea both told me that they had an interest in the grain I proposed to them to keep the account in the name of one of them

There was never a time but what I should have let Dow draw out any grain so receipted for upon his order. I do not remember of any other person buying grain at that time for Rea

There have been instances of one persons buying grain and storing the same in the name of some other person.

Robert Lake bought grain there.

The way I know that Rea & Dow had an interest in this grain was that they both told me so

I suggested to them that it would be a convenience to keep the books in the name of Rea instead of both. They said that it would make no difference whether the account was kept in Rea's name or in the names of both I think both parties told me so

The first account I find of Plaintiffs storing grain is July 14th and I think this item is for oats that Rea held over 11.000 or 12.000 bushels

The second item is August 7th

Storage Wheat	1214	bushels
"	980	"
" Corn	8053	"

These items are in the name of Wm G Rea I do not know that Dow ever had an interest in this grain I think this 8053 bushels of corn came into the storehouse during the month of July.

I do not know that I can tell what they said together about owning the grain I have heard them talking

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(12466-23)

about shipping grain and purchasing grain.
Some time in September Dow complained to Rea that he was buying more corn than they could get rid of. I would not say whether he said we or you must stop buying. I understood that Rea & Dow were partners from their own statements. I have heard Mr Dow frequently say that he and Rea were partners in the grain business It was about the time they commenced business. he said that he and Rea were buying grain in partnership.
Rea & Dow both spoke to me about getting storage for grain.

Mr Lowrey and myself sold Mr Ramsey some grain. from 2,500 to 3,000 bushels. the books will not show what time the sale was made. This grain was Wheat

Last fall there was 7 or 8 warehouses along on the track the Plaintiffs stored grain at other warehouses after ours was full. I cannot say the number of cars that were loaded at our warehouse per day I do not think it would average three per day.
I believe that I have known three cars per day loaded on the track from farmer's waggons but not often.
I have known two loaded 50 per day
The Plaintiffs stored grain at Remington's and at Risings and at Godfrey's warehouses

Sometimes we got at our warehouse one car per day sometimes 2. 3. or 4 cars per day there were several days when our warehouse got no cars.
Some of the other warehouses were full but most of them were receiving some. we were prevented from...

receiving the amount we might have received we had more grain than we could get away in August in September it increased. I think some eight or ten empty cars were sent away in one day.
I think that most of the grain that the Plaintiffs were then receiving at our warehouse was on contracts made with individuals in the Country, but I do not know certainly. I believe they received about 3.000 bushels of Wheat from one man.
I do not know the number of cars which our house was furnished with for three or four months previous to receiving Plaintiffs grain, or before harvest.
I do not think that upon the average we loaded four cars per day after August.

The company took the grain away as fast as received, until the rush came on in the fall.

The most grain was received in store in September 1854
There was more grain shipped from here in 1854 than in 1853
I do not remember whether we had trouble to get off grain in 1853
We shipped about twice as much grain from our warehouse in 1854 as in 1853 I think about twice as much grain was shipped from this place in 1854 as in 1853
Between the fall of 1853 and 1854 the Rail Road had been extended west to Freeport.
Last fall, for several days, quite a number of empty cars were sent east from this place, one day I think

some eight or ten cars were sent from here last empty. I cannot say whether we had cars to load at our warehouse that day. I know that it frequently happened that for a day we had no cars to load.

I cannot say whether the empty cars sent away came here loaded or not. I saw them standing empty on the track in the morning.

I have sometimes been told that I could have a number of cars. and did not get so many by one or two

I have told the agents that I wanted cars to ship grain for Rea and sometimes I was told that I could have some, and at others, that I could not have any.

I have also spoken to Matt Berry about cars.

There were not many days but what I got more or less cars

Sometimes our warehouse would get as many cars as any other about the depot and sometimes it did not

I do not know whether we had more cars than were furnished to Risings warehouse. I think we had more than any other warehouse.

Between our warehouse and Risings I believe the cars were usually divided equally.

Risings warehouse and ours are about the same size ours a little the largest.

I don't think there was any warehouse but what had one car to our four.

I do not know of the Rail Road Company ever holding

back any cars from our use when the cars were empty and not appropriated to some other use, except when the empty cars were sent East.

The Plaintiffs shipped the last of their corn from our warehouse on the 22nd of November 1854. and the last of their Oats were shipped in December

The cars loaded with grain at our warehouse and those loaded for and shipped in Rea's name, are as follows –

		Cars Shipped	No for Rea
1854	Nov 22	4	4
"	" 21	3	3
"	" 20	1	1
"	" 18	4	4
"	" 16	4	4
"	" 15	4	4
"	" 14	3	2
"	" 13	2	1
"	" 11	1	1
"	" 10	3	2
"	" 9	1	
"	" 8	2	1
"	" 4	2	1
"	" 3	1	
"	" 2	4	2
"	Oct 31	1	
"	" 30	1	
"	" 28	1	1
"	" 27	2	
"	" 24	2	1
"	" 23	1	

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Octe	21	2	
"	19	4	3
"	18	1	1
"	17	2	
"	16	3	2
"	14	3	2
"	13	2	1
"	12	3	2
"	11	1	1
"	10	2	1
"	9	2	1
"	7	2	1
"	6	3	1
"	5	2	1
"	4	2	2
"	3	1	
"	2	3	1
Sept	30	2	1
"	29	1	
"	28	2	
"	27	2	1
"	25	2	1
"	23	4	3
"	22	1	1
"	21	2	2
"	19	3	2
"	18	1	
"	16	3	1
"	15	1	1
"	14	1	1
"	13	4	1
"	12	4	1

Sept	11	1	1
"	9	1	1
"	8	2	1
"	7	4	2
"	6	2	1
"	5	3	2
"	4	2	
"	2	3	2
"	1	2	1
August	30	4	3
"	29	3	2
"	28	6	2
"	25	2	1
"	24	5	4
"	23	4	2
"	22	4	3
"	19	6	4
"	18	1	
"	17	6	4
"	16	4	2
"	15	4	2
"	12	2	
"	11	2	2
"	7	2	2
"	3	2	2
"	4	2	
"	2	6	5
"	1	2	
July	31	3	3
"	27	3	3
"	26	4	4
"	25	4	4

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The last date in this list July 25th 1854 is the date of the first shipment of the plaintiffs grain from our warehouse. It was all shipped in the name of W. G. Rea.

"Car loads" average about 325 bushels

It was some time in August that complaints was first made for want of Cars to take off grain. the complaint was universal among the grain buyers. during the rush we shipped as much grain as we ever had during the same length of time.
We had more cars furnished us from the middle of July to first of November than had been furnished for two or three months previous.

Here the cross examination closed and the witness was reexamined on the part of the plaintiffs.

The counsel for the plaintiffs asked the witness this question.

"Did you deal with the plaintiffs as being jointly interested in said grain which the said Dow attended to the receiving and shipping"
To which question the counsel for defendants objected the objection was overruled by the court and the witness was directed by the court to answer, to which decision of the court overruling the said objection the defendants by their counsel then and there excepted.
The witness answered. "I always considered them partners I don't know whether both were present when I suggested the keeping the account in Rea's name the suggestion was made to both of them in one day about the time

they commenced storing" the witness further stated in answer to interrogatories on the part of the Plaintiffs. that the business of Dow was at the warehouse attending to securing and shipping the grain, I do not know that the Rail Road agents knew that Rea and Dow were interested together in the grain.

The counsel for the Plaintiffs then asked the witness the following question, "You spoke last night several "times about empty cars having been sent eastward, "Did you at that time ask them for cars to send "forward this grain?"

The defendants by counsel objected to this question, The court overruled the objection and directed the witness to answer - To which decision of the court the defendants then and there excepted -
The witness answered "Yes Sir I did"

The Plaintiffs then put the following question to the witness "At the time these cars went East was there a large "quantity of this grain in store waiting to send East"?

The defendants by counsel objected to this question - The court overruled the objection and directed the witness to answer, to which decision of the court the defendants then and there excepted
The witness answered - "Yes there was a large quantity about 12 or 14,000 bushels"
The Plaintiffs then put the following question to the witness - "At the time these farmers and others were loading "cars upon the track was Rea and Dow furnishing

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"grain at your warehouse to be taken forward"?
The defendants by counsel objected to this question -
the court overruled the objection and directed the witness
to answer, to which decision of the court the defen-
dants then and there excepted.
The witness answered "They were not furnishing much"

The Plaintiffs then put the following question to the witness
"Was or was not your warehouse full at the time these
"cars were being loaded on the track"?
The defendants by counsel objected to this question, the
court overruled the objection and directed the witness
to answer, to which decision of the court the defendants
then and there excepted.
The witness answered "Our warehouse was pretty full I
know that the storage we had for Rea and Dow was
occupied"

The plaintiffs put this question "At the time these cars were
being loaded did you ask for cars for Rea and Dow"?
to which the witness answered, "I asked at this time
"for cars for the house, I do not remember that I
asked for Rea and Dow in particular, but I might
"have done so. Dow asked for cars to take forward
grain"
The witness further said, "When grain is shipped a
bill of lading is made out and sent by the Conductor
we never saw the bills of lading made by the Rail Road
Company.
The witness was then re-cross examined by defendants
and said I have heard Dow ask the agent inside

and out, for cars to ship grain, at the time these cars were being sent away. Woodworth said he was ordered to send them to some other station. I also heard Dow ask Matt on the track one day when cars were sent away. Matt said the same that Woodworth did, that they were ordered to send the cars somewhere else, that they were directed to send them to some other station

Empty cars have always since I have known the Road, been sent away to a greater or less extent, but I believe I have never known empty cars sent away to so great an extent as at the time complained of.

The plaintiffs then introduced as witness Rufus S King whose testimony was as follows,

I resided in Chicago in 1854 was a Commission Merchant I dealt in that character with the plaintiffs from Spring of 1854 to January of this year, the grain was shipped to me in the name of W. G. Rea but I was cognizant of the fact that Dow was a partner, I have a memorandum of grain shipped by plaintiffs from 28th June to January.

It shows about 32 000 bushels of Corn

Also of Wheat
Perhaps } 10 000 bushels

The plaintiffs then asked the witness the following question "Will you state the range of prices of Corn at Chicago "from the 15th of July until the 30th of November 1854?

The defendants by counsel objected to this question, the court overruled the objection and directed the witness to answer, to which decision and ruling of the Court the defendants then and there excepted.

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The witness answered, I made sales in Chicago as follows.

July	20th	50 cents per bushel
"	25	52 " " "
"	28	53 " " "
August	5	50½ " " "
"	8	50 " " "
"	16	54 " " "
"	18	55 " " "
"	19	60 " " "
"	23	59 " " "
Sept	7	57 " " "
"	4	62 " " "
Oct	13	53 " " "
"	20	56 " " "
"	24	56 " " "
"	30	53 " " "

The Plaintiffs then asked the witness the following question. "What was the range of prices after this until 30th November from your recollection"?

The defendants by counsel objected to this question, the court overruled the objection and directed the witness to answer, to which decision and ruling of the court the defendants then and there excepted.

The witness answered - "From recollection I could state that there was scarcely any market for corn during the month of November, and the price was nominally from 48 to 50 cents per bushel"

The witness, continuing his testimony said -

"Received of corn from the Plaintiffs during the month

"of November as near as I now recollect over 10.000 bushels I think nearer 15000 bushels".

The Plaintiffs then asked the witness the following question

"Could you have made sale for Plaintiffs of 20000 "bushels more of corn during the months of October and "September than you received of Plaintiffs at the prices "stated by you during those months?

The defendants by counsel objected to this question, the court overruled the objection and directed the witness to answer, to which decision and ruling of the court the defendants then and there excepted

The witness answered "I could, I could have sold any amount furnished"

The Plaintiffs then asked the witness the following question

"What became of this 10 or 15000 bushels of corn received of Plaintiffs during the month of November"?

The defendants by counsel objected to this question the court overruled the objection and directed the witness to answer, to which decision and ruling of the court the defendants then and there excepted.

The witness answered, "I sold the corn I think in January at the highest price I could get. Price 50 cents, which netted to them over storage and other charges about 47 cents per bushel. Probably 46 cents".

The other prices named by me were nett. that is the owners received that amount without any deduction for storage or other charges."

The Plaintiffs then asked the witness this question

"Did you have any conversation with Mr Turner in

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"relation to getting in the grain of the Plaintiffs?
This question was objected to by the defendants, the objection overruled by the court and the witness directed to answer to which decision and ruling of the court the defendants then and there excepted.

The witness in answer said, "I had a conversation with Mr Turner I cannot state the time, I called on him several times about cars to get in the grain of these parties and others at Rockford.
The Plaintiffs wrote to me in relation to getting forward this grain I communicated to Mr Turner what they had written, the Plaintiffs requested me to see Mr Turner. I also called on him for other parties. I cannot now state just what was said. the substance was that arrangements were being made by which cars would be furnished to all the stations on the road.

In November arrangements were made by which the Rail Road Company furnished cars for the delivery of the grain at the rate of 4000 or 5000 bushels per day

I think no promises were made by Mr Turner, but he stated that arrangements were being made to bring forward all the grain as fast as they could.
I knew a Mr McCullop connected with the Rail Road, he was acting in the capacity of Master of transportation. I applied to him for cars to get off this grain. I cannot state the time, it was about the time I applied to Mr Turner, probably about, or during September and October. When I called on McCullop

End 1

I stated to him the situation of these parties. I cannot state exactly what I said, it was the subject of conversation at different times, it was the importance of getting forward the grain. I spoke of this grain in particular because I was interested, having made advances on the same

I do not remember that either Mr Turner or Mc Cullup gave any special reason for not furnishing cars for the Plaintiffs. I remember of something being said in a conversation with them, that Rea and Dow had sued the company.

One of them said that the company would not run their cars to the house where this grain was stored, but that they must bring their grain to the depot. they gave as a reason why they would not run their cars to the warehouse, the suit having been commenced by them.

It was owing to the state of the case and both for my interest and the owners of the grain, that Turner furnished the cars after my conversation with him in November

The witness was here shown a memorandum by the Plaintiffs which he recognizes as an account of sales made by him of oats for Plaintiffs. From this witness states, the quantity of oats, when received and the prices at which the same were sold. Received November 14th and 23, 3445 bushels - Sold at 30 cents pr bushel

The Plaintiffs here exhibited to the witness certain printed papers purporting to show the market prices of the several kinds of grain in Chicago through the months of September and October, they purported

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to have been issued by a Commission house in Chicago but not by the witness, and before the exhibition of these papers the witness had stated that he did not recollect the price of Oats during that period and that he had no memoranda by which he could tell. After the examination of these papers, the Plaintiffs asked the witness this question, "What was the price of Oats through the month of September in Chicago" The defendants objected to this question, the court overruled the objection and directed the witness to answer, to which decision and ruling of the court the defendants then and there excepted
The witness answered that "the average price was about 33 cents per bushel"
Plaintiffs then asked, "What was the price of Oats through the month of October in Chicago"?
The defendants objected to this question, the court overruled the objection and directed the witness to answer, to which decision and ruling of the court the defendants then and there excepted,
The witness answered "the same as for September."

Witness was then cross examined by defendants, he said "The substance of the conversation with Mr Turner when I called upon him in September was that he was making arrangements for increased facilities to forward grain from Rockford, and he said he was making and would make an increase of facilities for forwarding grain from Rockford. we all of us knew that there were not cars to furnish. In the conversations with Turner

and McCullop the general reason assigned was that they could not furnish cars to send to Rockford. They gave me no other reason, and always said that they would furnish increased facilities as soon as they could.

In November Turner said they would take special pains to get grain in.

The prices I have given are what I have sold grain for. I sold at the warehouse, all except that sold in November the last sales made were onboard of ship the person to whom the grain was sold paid the expence of shipping. grain sold in Chicago brought the prices I have above mentioned with very little variation. parties buying generally pays storage There was a lack of warehouse room generally. I heard the complaint time and again that the cars were left out four miles because they could not get in. the impression was that cars were left out for want of facilities in the Company.

I think the fault was partly on the side of the R.R. Co and part for want of storage.

When the cars were left out four miles. the side tracks in town were filled with loaded cars"

The Plaintiffs then introduced as witness- Horace Miller, who testified as follows-

"I caused grain to be hauled to the depot at Rockford I loaded probably from waggons some six or eight cars in all. the company furnished me cars to stand on the track while we were loading. the defendants furnished me with cars to stand on the track while I hauled grain from home about seven miles. to

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load them, we usually loaded a car a day when we were hauling. In no case did we use more than an afternoon and the day ensuing.
Two cars were loaded by Mr Sears and one for Mr-
. In the six or eight I designed to embrace all that I had any thing to do with including these three. There must have been as many as eight in all.
There was a great rush of grain at this time. car loads averaged about 300 bushels
I had grain at this time in Rising's warehouse which I could not get cars to get off, and that was the reason why I loaded my grain on the track.
I never loaded but two cars in any one day.
We had four teams engaged in hauling to each car.
We never loaded but one car a day of our own grain.
These six or eight cars were loaded with wheat. I know that the "Plaintiffs were then buying grain they stored in Warners warehouse."

Upon cross examination by defendants the witness testified as follows-
"Had two cars in one day. one for myself and one for Johnson my own and sons grain was 300 bushels. Burrows had some of the cars. the reason given why I could not have cars to take my grain off from the warehouse was that they had not the cars to spare.
It was three or four weeks between the time I got the first and the last of the six or eight cars mentioned as loaded by me on the track, each car. when loaded was shipped into Chicago

2 Cont

I generally spoke for a car the day before I wished to load it, and I generally got one when I so applied for it.

In one instance a car was obtained the same day that it was applied for. my Son Clark said he paid a bonus to Matt to get that car, he said he paid a quarter of a dollar, and I think he said that Mr Barbee also paid as much as he did towards it

I engaged several cars for farmers about this time, I think the warehouses were then full.

These cars that were loaded by myself and other farmers on the track were sent out in the next regular train after they were loaded, and all the grain so loaded was in bags.

When a car load of grain was shipped for me I generally followed it in the next day or two to take care of it. I found the side tracks much filled up in Chicago with loaded cars and bags piled up on the ground between the tracks, there was difficulty and delay in discharging grain in Chicago at that time on account of the want of storage particularly for grain shipped in bulk. My grain being in bags I unloaded a car in a few hours and took my grain off by teams from the cars, which I unloaded on the track".

The Plaintiffs then introduced Joel B. Coolige as witness - who testified as follows.-

"I know of cars being loaded on the track. I shipped the corn from my farm in that manner. I loaded nine cars on the track. I hauled my grain

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from home, four and one half miles. I was allowed from morning until 6 P.M. to load a car.
I made an arrangement for cars with Mr Seymour before I went to Chicago. I asked Mr Seymour (then station agent) if I could have one or two cars a week to ship my corn. he said he thought I could. I loaded these cars in the forepart of September. my grain was all in Chicago before the 20th of September, I always got a car when I applied, but once."

Upon Cross examination by defendants the witness testified as follows,-
"Some times I applied two or three days in advance for cars. I paid no bonus for cars

The Plaintiffs then produced Elisha Kirk, as witness who testified as follows- "I shipped one car load of grain from the depot that I brought down here from my place. I shipped only one load. I bought some grain, can't say how much, two or three car loads.
The first I shipped, being that which I loaded on the track, was grain that I raised myself.
I engaged the car several days before I was to use it and before I brought down my grain from home
At this time there was a good deal of grain in the warehouses at Rockford. I saw Mr Dow make an effort to get cars. In October he applied to Mr Turner to get cars. He said it was corn that

he and Rea had that they wanted to ship.
The way I got the car was I went to Matt and asked him for the car. I think I did not give him any thing for a car I gave him something for helping to load. I do not know that I ever gave Matt any thing because he let me have a car.
The grain that I bought I put into a storehouse and sold it here, buyers offered ninety cents per bushel in the storehouse and one dollar and ten cents per bushel on the cars.
Grain at this time was worth more in the car than for storage
I sold mine with an understanding that I should get a car to ship it in
Upon cross examination by defendants the witness testified as follows.
The company promised me a car several days before I got it.
I called on Matt for a car I told him that I wanted it to ship grain that I had raised. he said I could have one

At the time I loaded this car on the track there was a car loading at La Row's warehouse, no cars were loading at Warners or Risings warehouse as he recollects.
I bought wheat and stored it and sold it while in store at Rockford.
I heard the conversation between Mr Dow and Mr Turner about getting off grain. Mr Turner told Dow that they did the best they could, that they had to furnish for all, and that he must be patient, that

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they would do all in their power to get off the grain.

The plaintiffs then produced as witness John K. Brewster- who testified as follows.

"I reside at Freeport Illinois. I was engaged in the grain business at that place in the months of September and October 1854. I had a warehouse there then

The plaintiffs then asked the witness the following question-

"Was there any delay at Freeport in furnishing cars to ship grain from Freeport during months of September and October"?

The defendants, by counsel, objected to this question the court overruled the objection and directed the witness to answer, to which decision and ruling of the court the defendants then and there excepted.

The witness answered- "We did not experience much delay at that time, later in the season we had some trouble, sometimes when grain came in freely, it would be a week before we could get our grain off, we usually could ship our grain in three or four days, and there never was a delay of over a week. grain did not accumulate much during those months.

Witness further testified, that the cost of transportation on corn from Freeport to Chicago in 1854 was 10 cents per bushel on wheat 12½ cents per bushel. I cannot tell the relative amounts of grain shipped from Freeport and from Rockford.

Grain was brought to Freeport to market from a large district of surrounding Country, as far west

as Savanna thirty five miles and a portion of Green County in Wisconsin came to Freeport. Freeport is on the Rail Road and thirty miles further from Chicago than Rockford.
There were nine or ten firms engaged in buying grain at Freeport last fall. There were seven warehouses there. I have been in the streets at Rockford during that time and saw grain coming in but can form no estimate of the relative amount received here as compared with Freeport."

Upon Cross examination by defendants the witness testified as follows, "My warehouse was the second largest one in Freeport.
Sometimes we had four or five cars in a day, sometimes one, and some days not any. When we did not get cars the agent said he had no cars for us at that time.
In November more grain came into Freeport than in either September or October, we did not have 10,000 bushels of grain at our warehouse at any one time in October. I do not think that any other house there had that amount on hand at any one time."
Upon re examination by plaintiffs, he said, "I believe it is a rule with the Rail Road Company to distribute cars among the warehouses according to the amount of business they are doing."
Upon further cross examination by defendants he said "I have heard other grain men complaining of the want of cars at that place."
The plaintiffs then introduced as witness Levi Silloway who testified as follows, "I went to work for N. M.

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Warner & Co at their warehouse in Rockford August 15th 1854 and continued there until 1st of March last. the Plaintiffs stored grain there during that time. there was a time that the warehouse was so full that it was inconvenient taking in grain the warehouse was filled the first of September.

Rea and Dow, and Lowrey, and W M Warner & Co were all storing grain there.

Rea and Dow stored a large quantity there. When the warehouse was so full I think Rea and Dow had about 30,000 bushels in store. the defendants were receiving grain from day to day. would send their cars to the warehouse and have them loaded but not every day. Rea and Dow had their turn with other buyers. for cars at the warehouse. after the storehouse got so full I think the plaintiffs rather hauled off and did not buy so much.

The warehouse was so full about four or five weeks. When Pork began to come in I think the lower floor of the warehouse was mostly clear. that was about the first of November. the warehouse was then full overhead.

I do not know personally, of the Plaintiffs going to the Rail Road agents for cars. I have been myself for cars for the Plaintiffs.

The Plaintiffs had their share of cars in proportion to other buyers.

The Rail Road agents knew that Rea had grain at the warehouse to ship. they were frequently told how full the warehouse was.

I remember of Capt. Turner being at the ware-

house and talking about this grain. I told him that the house was full and Rea must stop buying. Turner said no, tell them that they need not stop buying, that the next week he would furnish cars to take off their grain. this was in October. I told Rea and Dow, both, what Turner had said the facilities were not furnished Dow did much of the buying at that time, they were then buying in some small parcels.

The next week after this conversation with Mr Turner three or four empty cars were sent East, each day for three or four days. this conversation with Capt Turner was on Friday or Saturday.

There was a time when the Rail Road Company said we must buy grain.

At the time when we were so full Rea and Dow had some bags and I went over and asked Matt if he would receive the grain if they would bring it to the depot. Matt said, that he would not, they were doing business through the warehouse and must deliver the grain there.

The November Rea shipped a lot of grain through the warehouse in the name of S. Grant. he was obliged to do so.

Woodworth and Matt said they would not ship for Rea unless he brought it to the depot. they said Rea had sued the company.

Sometimes when we called on the agents in the morning for cars, they would say, I guess you can have so many, and then perhaps a farmer would come in and get a car. and we would not get so many.

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Upon Cross examination by the defendants the witness testified as follows-

"No grain was shipped after the conversation about Rea's having sued the Rail Road Company, in Rea's name alone. It was all shipped, afterwards, in the name of Rea and Brackett.

At some times we did not get any cars for three days. most of Rea and Dow's grain was kept on the upper floor of the warehouse. cars were loaded from above by spouts.

I expect this warehouse got its proportion of the cars. the cars were generally distributed among the warehouses according to the business done at them. We knew when we applied for cars whose grain was to be shipped, because the men storing in the warehouse each took their turns for cars. the Rail Road company distributed cars to the warehouses, without reference to the owners of the grain in each warehouse, and the respective owners made their own distribution among themselves of the cars thus furnished to the warehouse by the Rail Road Company"

The witness was then re-examined by the Plaintiffs and testified that.-

"If Mr Ramsey bought grain from the warehouse of Mr Lowrey and Spaulding, this was in October. Ramsey said, Turner said he might have the cars to ship it off. this grain was shipped to him. one car the first day and three cars the next day.

I think Mr Dow was there when this grain was shipped. Grants grain was shipped from the warehouse the last of November.

The Plaintiffs then introduced as witness, Dugald Stewart, who testified as follows-

I was a grain buyer in Rockford in the fall of 1874 a good deal of grain was loaded on the cars on the track, from waggons from first of September to first of November, the warehouses were all full of grain at this time. I would go sometimes and ask for cars and was told that I could not have them, because grain had come in and farmers were entitled to a preference.

I informed the agents what the condition of my warehouse was, the answer they gave me was, that they would give each warehouse its turn. I know of different persons purchasing grain of farmers shipped on the cars, I did myself purchase of one man his grain, and gave him six cents a bushel more on account of it's being on the car.

I know that Capt Scott bought up wheat on a Boat from down the River, he could always get cars to unload his boat into as soon as he came up, he usually brought from 900 to 1000 bushels Mr Miller used to buy grain for the farmers union as it was called. this was delivered on the tracks.

I never tried to get cars by paying a bonus. During the great push of business here they did not keep the cars employed to the full extent of their capacity.

I know of cars standing on the track before unloading one day, and once I knew one to stand

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two days. It was loaded with lumber of my own. This was at a time when I wanted cars to ship off my grain. the agents said they were discharging freight and unloading as fast as they could. they had not sufficient help. I told them I thought they could get help if they wanted it."

Upon cross examination by defendants, he said-
"The grain that I bought on the car was of Barross, about the last of September or early in October. The Rail Road company did not know that the wheat was mine. It was shipped in Barross' name - not in mine.
It was the practice of the Rail Road Company to distribute the cars among the different warehouses in proportion to the business at each. Risings and Warner & Co were the largest, and they generally distributed in the proportion of two to the largest houses to one to the smaller ones.
I have frequently seen empty cars pass here which came from the west of this station.

The Plaintiffs then introduced as witness. Albert F. Stickney. who testified as follows-
"I was engaged in the warehouse business last fall, in the employ of Remington & Co at Rockford. The Plaintiffs stored grain in that warehouse. I commenced work there on the 4th of September. the Plaintiffs had 1,000 bushels of grain in store there when I commenced.
They took in there between 3 and 4000 bushels.

End of 3

this was taken in, in September, most of it in the forepart of the month. The warehouse was on the track. this grain laid there until November.
I have known of the Plaintiffs asking for cars to take off this grain. I have time and time again asked for cars to ship this grain.
Some of this grain was shipped out in September and some in October, about two thirds was taken off in October, and the balance in November

Remington & Co and Lake and Potter were storing in this warehouse also.
I know of cars having been loaded by farmers, from their waggons, on the track, a good many cars were so loaded. cars were sometimes run up to our warehouse and were then taken away to other warehouses
I know something of cars being purchased. I got cars at two different times by paying a bonus. the first time I got one and the second time I got two. one car was left at our warehouse near three days.
I have known of cars having been taken empty from the west to the east. I have known this to happen half a dozen times, at one time there were ten cars and I have known of the company's taking empty cars East from this station.
It was a matter of frequent occurrence for cars to stand on the track for farmers to load. cars also would stand to be loaded from the boat which came from Oregon. Ramsey had his grain sent immediately. I helped sack it to

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Wz lived at Greensburgh Pa had 1200 bags. Plaintiffs had grain in Spaldings warehouse and in the warehouse of Remington & Co while empty cars were going past has known Dow asking for cars, not a day passed without his doing so. cars sometimes lay three days at the warehouse

Upon Cross examination by defendants he testified as follows - I know that farmers loaded cars from their waggons on the track, several times cars were left at our warehouse and then removed to other warehouses further up. they came and took away one that was engaged. We had engaged a car of Matt to take away this grain of Rea's and after the car was left at our house they came and took it away to Stewarts warehouse.
On that day I think there was one or two cars loaded at Wilmes & Co's house
There was shipped from this warehouse of Remington & Co during September and October 8 or 9000 bushels Remington had some on hand when the last of Dow's was taken away. I loaded three cars on the track with wheat.
I paid the bonus to Matt. he said there was a good deal of grain on hand and every buyer wanted cars, he said he would not furnish cars without inducement. I told him I would give him one dollar, he agreed to take it and let me have the car.
I paid Matt one dollar extra on the first car Mr Woodworth did not know it I think.

I think I had no conversation with Woodworth about these three cars. I believe I paid Matt $1.50 extra for the other two cars. I never told Mr Woodworth of this arrangement.
I have known four cars a day loaded at Warner & Co. house, Rea and Dow stood at Remingtons in the neighborhood of 4000 bushels."

The Plaintiffs then introduced as a witness George N Moffatt, who testified as follows.
I know that Rea and Dow were buying grain in the fall of 1854. I sold them some grain. I think it was in August or September. I cannot state the precise amount, think about 200 bushels. I delivered to them all I had to sell.
The corn that I delivered them was left on the platform of Warner & Co's warehouse, out side, for some time. I put it on the platform at this end of the warehouse. It was left there in that shape eight or ten days. I made an effort to have it put into the house because I wanted my bags. I know Mr Dow made an effort to get it into a warehouse, but could not because, as he said, the houses were all full.
I left three loads standing there in bags. 40 or 45 bushels to the load, this was the last of the grain that I delivered.
It was some three weeks or a month previous to that time, that I had delivered to them grain before this. I think the last I delivered was in September.
It was from the first to the middle of August that I delivered the first to the plaintiffs. I think the storehouse was crowded when I delivered the first

grain, it looked very full.
Upon cross examination by the defendants witness testified as follows- "I know that it was as late as September that I brought some. I am sure that it was not in August that I brought the last. the three loads were brought on two different days. I went into the lower part of the warehouse did not go overhead. I know that this grain laid on the platform eight or ten days because I called for my bags three or four times and saw them there"

The Plaintiffs then produced as a Witness, James S Sterling, who testified as follows- "I put two car loads of grain on the Road last fall. I delivered it on the cars. I raised the grain on my farm about three miles from here. It was the last of October that I loaded the two cars.
A part of the grain was on the platform at the Rail Road depot at the time I got the car.
I paid Matt a dollar for the car. I asked him for a car, he asked me how much I would give for a car, I told him a dollar, he said give me the money. I did so, and he said, there is a car.
The Plaintiffs then put the following question to the witness-
"Was there or was there not a difference in the price of grain on the car or in the warehouse"?
The defendants by counsel objected to this question. the court overruled the objection and directed the witness to answer, to which decision and ruling of

the court, the defendants then and there excepted,
The witness answered, "There was a difference"
The plaintiffs then asked this question, "What was the difference"?

The defendants objected to this question, the court overruled the objection, and directed the witness to answer, to which decision and ruling of the court the defendants then and there excepted,
The witness answered, "From three to five cents per bushel."
Witness further testified as follows—
"I sold the grain and was to deliver it in Chicago. Matt did not know that I had sold the grain. I got the second car the next day but one, about noon, the second car that I loaded stood on the track one day certain and I do not know but two days

Upon cross examination by defendants, the witness testified as follows, "I had two or three waggon loads on the depot platform at the time I got the first car. I don't know how many loads it took for a car load, I got the second car about sunset, I went into the Rail Road Office and enquired if I could get a car, and the agent, Woodworth, sent me to Matt Berry. Matt showed me a car west of the depot. I paid him a dollar for the car, I paid it as a bonus for the car, I told Rea of it next day. Matt heard that I had told of this transaction, I did not tell Mr Woodworth that I had bought a car, I did not inform any one that I had sold this grain for which I wanted a car, Matt said how much will you give me, spoke of five or ten dollars. I

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refused to pay that price, but offered him a dollar
I told Rea of it next morning. Matt had heard
that I had told of it and was not going to let me
have a car. I had to do a little extra swearing
to get one

The Plaintiffs then introduced as a witness-
Andrew J Pennock - who testified as follows -
"I delivered grain upon the cars here last fall for
James S Sterling. I delivered also some for my brother,
we loaded one car for him. I know nothing
of my brother buying a car. the car that we loaded
for my brother, we drew the grain from home after
the car was furnished."

Upon cross examination by the defendants the
witness testified as follows.
"I was with Sterling when the car was bought, did
not hear the bargain, when my brother had a car
he made an arrangement to have a car the next
day, to load it we drew three loads apiece.
Have seen cars loading before Barnes warehouse
It was sometime in October that we loaded the
car for my brother, It was probably two weeks before
we loaded for Sterling

The Plaintiffs then introduced as a witness.
William D. Pennock, who testified as follows, "I am
the brother of the last witness examined, I loaded
one car last fall." the Plaintiffs then asked the
witness this question. "Do you know whether there

was a difference in price of grain in cars and on the street? the defendants by counsel objected to this question, the court overruled the objection and directed the witness to answer, to which decision and ruling of the court the defendants then and there excepted The witness answered, "grain was worth more on the car" The plaintiffs then asked this question, "What was that difference" the defendants objected to this question the court overruled the objection and directed the witness to answer, to which decision and ruling of the court, the defendants then and there excepted,
The witness answered, "I was offered from 90 to 95 cents in the street and $1.06 to $1.07 on the car,
Witness further testified, This was 25th of October, the wheat was of extra quality I offered it to the plaintiffs I do not know whether the Storehouses at that time were full except what I saw, I think Warners was full below, and Stewarts was also full, I heard Mr Dow speak to the man behind the counter in the Rail Road office for cars, he wanted to know if they were not going to let him have any, I do not remember the reply, this was either on the day I was loading the car or the day I engaged it
Dow at that time spoke about their letting the farmers have cars, I am not able to state the words, I remember of his calling for cars and did not like it because the farmers could get them and he could not, I do not remember whether there were then any other empty cars than the one I got, other farmers were loading cars at the time I loaded mine,
Upon cross examination by the defendants, witness testified as follows- I engaged the car on 25th of

October, loaded it on the 24th and it was started for Chicago on the 25th.
I applied both to the agents in the office and to Matt for the car. I loaded it with grain of my own raising. I told them how I wanted to load the car. the load weighed in Chicago 329 bushels.
The plaintiffs then introduced as a witness E.L. Godfey who testified as follows.
I had a warehouse near the depot in Rockford in 1854 and was engaged in buying grain. Rea and Dow had grain stored at my warehouse I think they had grain there in September, it remained there about one month. they had about 1000 bushels of corn there. I applied for cars to take away the grain.
I know that at the time this grain was there farmers loaded cars on the track.
I got a car one day by paying a bonus. I applied to a man they called Mike. he was the man furnished by the Rail Road Company to change about the cars on the Rail Road tracks.
I have heard Dow talking to the agents in September and October for cars to take off his grain, the subject of the conversation was he wanted cars.
I believe there were cars loaded in the night. there was one loaded at my warehouse in the night It was loaded with my grain. when I came to the warehouse in the morning the car was loaded. I cannot say how this was done I left my partner there the night before his name is Wentworth I have informed the agents of the practice of farmers

selling their grain to others and getting the cars to take it off as their own.
The plaintiffs then asked the witness this question.
"Was there a difference in the price of grain in the street and on board of the cars"?
The defendants by counsel objected to this question. the court overruled the objection and directed the witness to answer, to which decision and ruling of the court the defendants then and there excepted.
The witness answered, "there was a difference"
The plaintiffs then asked the witness this question
"What was that difference"?
The defendants by counsel objected to this question the court overruled the objection and directed the witness to answer to which decision and ruling of the court the defendants then and there excepted.
The witness answered, "I paid ten cents per bushel more on board the cars than at the warehouse.
The plaintiffs then asked the witness this question-
"Was there or was there not ten cents per bushel difference in the price of wheat on the cars and at the warehouse"?
The defendants by counsel objected to this question the court overruled the objection and directed the witness to answer, to which decision and ruling of the court the defendants then and there excepted
The witness answered, "There was that difference I was buying at ten cents per bushels less at the warehouse than I paid on the cars
Upon cross examination by the defendants, the witness testified as follows. "I got two cars the day I paid a bonus for one

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The day before I paid for the car I made application to Matt for one and he said I could have one, and that car I got and also got the one I paid Mike for. I cannot state how many cars were loaded at Warners warehouse this day.
I cannot tell exactly what time Dow put his grain into my warehouse. I think it was in September. his grain laid there I think about one month. Sometimes the Rail Road Company furnished cars to the several warehouses and sometimes they were distributed according to the number of buyers. when Rea and Dow stored there I told them that they must get their own cars to take off their grain

I cannot say how many cars a week I averaged during the time Rea and Dow's grain was there. I think Rea and Dows grain was in our warehouse at the time I paid the 25 cents bonus for the car but I am not certain. I think it was in October sometime that I paid the bonus for the car. I never said any thing to Woodworth about it. Matt remained in business several weeks after this. I think he was discharged in November Kirk Patrick succeeded him as track master. I told mike I would give him a little something extra There were times last fall when I had from 6000 to 8000 bushels of grain in my warehouse, there have been times when, on account of low prices we were not anxious to send off grain.
The plaintiffs here introduced as a witness, Samuel P. Crawford who testified as follows.

I frequently heard Dow asking agents of the Rail Road Company for cars, in September and October last. I heard Dow ask for cars and he was put off Dow said if he could not have cars he would sue the company

A large number of cars were loaded on the track from waggons during September and October. I never paid a bonus for car but once, I paid that to Matt. I paid him one dollar. Matt was the track master.
I think cars have been loaded from the Boat. Farmers were sometimes one day in loading a car.
ten or twelve cars could be loaded in a day from Warners warehouse
The plaintiffs then put this question to the witness "Was there a difference in the price of grain in the cars and on the Street, If so what was the difference". The defendants by counsel objected to this question, the Court overruled the objection and directed the witness to answer, to which decision and ruling of the court the defendants then and there excepted, The witness answered "there was a difference grain was worth more on the cars, than on the street or at the warehouse,
The plaintiffs then put this question to the witness "What was the cause of the difference in price"?
The defendants by counsel objected to this question, the court overruled the objection, and directed the witness to answer, to which decision and ruling of the Court the defendants then and there excepted, The witness answered

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The reason was that when we got grain in the cars we thought that we could get it into Chicago.
The plaintiffs put this question, "Was there or not a practice among grain buyers to buy grain of farmers conditionally if they would procure cars to put it on board" Witness answered, "It was a very frequent occurrence to pay a bonus for cars at this depot one dollar was the highest price. Stickney got three cars for me thus in a very few days.
The man that bought grain of Lowrey and Spaulding got cars immediately. I saw him and Turner together I think I have seen empty cars going eastward.
I have heard Mr Dow ask Mr Turner for cars, the reply was that they would do the best they could to furnish Cars.
Upon cross examination, by the defendants the witness testified, "I do not know that the purchaser of the Lowrey and Spaulding grain ever said anything to Mr Turner about cars. I think perhaps four or five cars were loaded in one day. I cannot state the number of cars that he loaded. he was nearly all day at work loading. I stored at Warners storehouse the grain sold by Lowrey and Spaulding was stored at the N. M. Warner & Co's warehouse. I got no cars the day Ramsey grain was loaded
It was the last of October that Stickney got the three cars of Matt. I did not say any thing about it to the Rail Road agents. It was a common talk among the grain buyers that they could buy cars. I do not know whether Stickney made an application to Woodworth for cars.
The small warehouses got more cars in proportion to

their business than the large ones. I never have observed that in the destribution of the cars by the Rail Road company, they destributed two to the large warehouses to one to the small ones,
I remember of Dows asking very frequently of Woodworth for cars, at the same time Woodworth would say "go to Matt" and sometimes he would say they were doing the best they could,
I know that Rea and Dow have shipped grain by the cars, for the bonus to Matt, I paid for one car and Stickney paid for the other two.
one load of this grain was shipped in my name and two in the name of Mandeville, there was about one week between the first and second shipments.

The Plaintiffs then introduced as a witness John C. Whitmarsh who testified as follows.
I have seen cars loaded on the track, I have had farmers load several cars for me.
The Plaintiffs then asked the witness the following question. "Was there or was there not a difference in price between grain on the cars and on the Street" If so what was that difference?
The defendants by counsel objected to this question the Court overruled the objection and directed the witness to answer, to which decision and ruling of the court, the defendants then and there excepted The witness answered, "The difference was ten cents per bushel" the witness further testified as follows.
I once made a contract with a farmer for wheat if he could get a car to put it on board of. I think Mr Woodworth was the agent, I made the arrangement

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with the farmer, the farmer got the car, after making the arrangement with the farmer, I turned around and saw Woodworth, I told Mr Woodworth to keep cool about it, the farmer got the car, and shipped the grain in his name, I got three or four cars loaded in this way, this was some time in October, I know that Read & Dow had a large quantity of grain on hand at this time, I frequently heard Dow asking for cars,

I could not say how many cars the farmers loaded on the track in that way, during September and October they loaded a good many, some days they loaded four or five, they might have averaged one per day, but I do not think they averaged so many.

I heard a conversation between Mr Dow and Capt Turner, Turner said he thought that in the course of next week he would furnish them all the cars they wanted, this was at Risings warehouse, I remember that empty cars were sent away, I think empty cars were sent away after this conversation between Dow and Turner, but I cannot state the time,

Upon Cross examination by the defendants the witness testified as follows,-

The conversation between Turner and Dow was in September, Turner thought they would have cars in the course of a week or two, Turner said the reason why they had not sufficient cars, was that they could not get rid of the freight in Chicago, I was in Chicago, the tracks were not all filled but

there were a good many bags on the ground between the side tracks, they run one freight train per day at that time. during this time probably 12 cars per day were loaded and sent east from Rockford.
Matt came here in the summer and stayed a long time, he was track master, his business was to change about and distribute cars.
I stored grain at Risings and also at Warners, these houses were of about the same capacity, there were five or six smaller warehouses. When the larger warehouses got two cars the smaller ones usually got one.
It was Mr Spicer that I bought the grain of, which was shipped in the car in his name.
I told Woodworth to keep quiet and I thought he would get a car. I also told him I could get the grain at a certain price if he could get a car, this grain was shipped in Spicers name not in mine.

The Plaintiffs then introduced as a witness Ira Benjamin who testified as follows.-
I was a grain buyer here last fall I know that cars were frequently loaded by farmers on the track, I don't know that farmers got many cars. I think it would average one car per day that was loaded by farmers from waggons.
A boat came up here from down the River loaded with grain, that was unloaded directly into the cars
The Plaintiffs then asked the witness this question, "How long would the boat have to wait here before they commenced loading the cars out of it"?
The defendants by counsel objected to this question the court overruled the objection and directed the

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witness to answer, to which decision and ruling of the court the defendants then and there excepted. The witness answered, "They generally commenced immediately"

The witness further testified as follows- "I bought grain of L Jackson. This grain was loaded by Jackson on the tracks."

The plaintiffs then asked the witness this question- "Was there or was there not a difference between the price of grain in the cars or on the street. If so what was that difference"?

The defendants by counsel objected to this question the court overruled the objection and directed the witness to answer to which decision and ruling of the court the defendants then and there excepted. The witness answered, "There was a difference. grain was worth from eight to ten cents per bushel more on the cars than in the street or at the warehouses. Witness further testified, there was part of a train of cars left standing in front of my warehouse three or four days after loaded, It was quite frequent that a part of the train would be left two or three days after it was loaded. I have frequently heard Dow asking for cars in September and October. I was present at a conversation between Mr Dow and Mr Turner, I think Mr Turner rather flattered us that we would have better times.

There was, about the time of this conversation between Dow and Turner, empty cars sent east. four or five per day for several days. the storehouses were full at this time.

Upon cross examination by defendants, the witness testified as follows. "Jackson engaged the car to ship the grain that I bought of him. The grain was shipped in his name. I knew that if they knew that I had the car they would charge it to me. The boat came up with two loads certain, and I think three times, at one time I think the boat came up at night, and commenced loading on to the cars the next morning. The grain in the boat came up in sacks.

Andrew J Lowrey, was then introduced as a witness on the part of the plaintiffs who testified as follows. "I was a grain buyer here last fall. grain was occasionally loaded on the track.

Ramsey bought from Mr Spaulding and myself 2800 bushels grain, he was about one week in shipping it, he got it off without any detention. I think the sale was made to Ramsey in September Rea and Dow there had grain in the warehouse. The plaintiffs then asked the witness this question. "Was there or was there not a difference in the price of grain on the cars or in the street or warehouses" The defendants by counsel objected to this question the objection was overruled by the court, and the witness directed to answer. to which decision and ruling of the court the defendants then and there excepted.

"I believe there was a difference made sometimes of eight to ten cents per bushel." Witness further testified. "I know nothing of persons getting cars by paying a bonus. I could not state whether the grain from the boat was loaded into the cars immediately or not.

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I have seen empty cars going east.
Upon cross examination by defendants he testified as follows. "I suppose Rea purchased grain for Grant on commission, we used all the cars that were sent to the warehouse to ship the grain sold by us to Ramsey, the grain was stored by us in the warehouse before the sale. I do not know whether Risings warehouse had any cars at this time. I cannot state the time the grain was sold by us to Ramsey.

The Plaintiffs then introduced as a witness James Dame, who testified as follows. "I was present at a conversation between Mr Dow and Mr Turner. Mr Turner was in Risings warehouse, we were telling him how full the warehouses were, and how slow they were getting the grain away. Turner said they were making arrangements in Chicago by which he thought they would be able to receive grain there next week as fast as they wanted to ship.
Shortly after this I saw empty cars going east - I think four per day.

Upon cross examination by defendants he testified as follows. "Turner said the reason why they could not furnish more cars was that they were filled up in Chicago, and that they were fitting up some new warehouses in Chicago which would be ready the next week. Mr Turner said in this conversation that they were doing as well as they could.

I know that there were a number of days when the cars loaded here were not sent off east, and the reason given by the agent at the time for not sending them was that the side tracks in Chicago were full, and they had no room for them, and no place to discharge the grain.

When the empty cars were sent east I understood from the agents that they were sent to supply the station at Marengo.

Mr Woodworth was the station agent at Rockford at this time

The plaintiffs then introduced as a witness Warren Loomis, who testified as follows. "I know that cars were loaded from waggons by farmers, on the tracks. I had one car so loaded, I do not remember where the car stood when I got it. I think the car was not on the tracks at Warner's warehouse.

I know nothing of any person paying a bonus for cars.

I sold grain to Lake. I had to procure a car to ship it in. before I could sell the grain, the car stood then near the depot.

The plaintiffs then asked the witness this question, "Was there a difference in the price of grain in the cars, or on the street, or in warehouse? If so what was that difference?

The defendants by counsel objected to this question the court overruled the objection, and directed the witness to answer, to which decision and ruling of the court the defendants then and there excepted.

The witness answered, "There was a difference. I got

tew cents per bushel more on the cars, than I could get offered at the warehouse or on the street

Upon cross examination by the defendants, the witness testified as follows. "I went down to the depot on Saturday and told matt that I wanted a car to load with grain of my own raising on Monday. I got the car, and loaded it on Monday. the grain was shipped in my name I never told him, or any of the agents, that Lake was to have the wheat.

The defendants by consent, here further cross examined N. J. Lowrey who testified as follows- The contract by Spaulding and myself with Ramsey for the 2800 bushels wheat was made on the 22d of September, the grain was shipped from the warehouse as follows- September 27th 1 car - 28th 2 cars - 29th 1 car - 30th 1 car October 2d 1 car - October 2d 1 car, eight cars in all for Ramsey.

The plaintiffs then introduced as a witness, William T. Leroy, who testified as follows-

"I keep a warehouse at the depot in Rockford, I know of a bonus having been paid for a car. I have seen cars loaded by farmers on the Rail Road track

The plaintiffs then introduced as a witness Franklin Benjamin, who testified as follows-

"I was engaged in the warehouse business at Rockford last fall. I know that the plaintiffs had grain in store here last ~~fall~~.

fall. I have known of persons buying in grain and shipping it as farmers immediately while plaintiffs had grain in store. I think the farmers would average more than one car per day so loaded.
The day of the conversation with Mr Turner at Rockford seven cars were sent off which had been so loaded on the track.
I know of two cars having been so loaded on the track in one day. Clark loaded one of them and Sterling the other.

The plaintiffs then introduced as a witness Thomas J. L. Remington - who testified as follows -
I was keeping a warehouse at Rockford in fall of 1854 the plaintiffs stored grain with me. they commenced storing August 26th. they stored in all between 3 and 400 bushels, we received the last for them September 21st the last of their grain was taken away as late as November 21st. the most of plaintiffs grain remained in store three months.
The Rail Road Company furnished cars to our warehouse when we had any
I know that the plaintiffs applied for cars almost every day. I applied almost every day for cars to take away this grain.
During this time the company furnished cars to farmers to load on the track. during this time I have known Dow to apply to Woodworth for cars. sometimes he referred him to the track Master.
Dow told Woodworth that they let farmers have cars to take off their grain, and kept plaintiffs in store. Woodworth said there were more folks in the world than Rea and Dow and all must be provided for

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he thought them selfish, when the warehouses were the fullest the company let farmers have the most cars to load on the track.
Rea and Dow paid me extra for the grain that lay over one month one cent per bushel.
Some of their grain was in my warehouse three months and some less. Plaintiffs paid me extra storage on 35614 bushels one cent per bushel $356.14

Upon cross examination he testified as follows-
I cannot state the amount of grain received into my warehouse during the period of the plaintiffs grain being in the warehouse. I cannot state the amount shipped from the warehouse during the time, but I should think about 3000 bushels. I think not over two car loads had been taken of Plaintiffs grain. I think about ten cars were shipped in all. Thinks he got about his proportion of cars as compared with other warehouses. I have made application for cars. I have seen as many as four cars loaded on the track in one day, other days not any. I cannot say that I have seen four on more than one day.

In October saw two cars loaded in one day on the track frequently, cannot say how often, cannot state the time when he has seen them, but thinks he has.
Days frequently elapsed when no cars were loaded on the track, perhaps half of the days there were no cars loaded. I could not swear that I have noticed any day when but one car was loaded on the track. I think I did not get any car on the day or week that Horace Miller got his two cars.

The Plaintiffs then introduced as a witness Agustus Powell, who testified as follows-

I was in the employ of the Rail Road Company as a clerk last fall in the Rail Road office at Rockford. I know of Dow calling at the Rail Road office for cars. he called almost every day. he came and wanted cars. I am mistaken. Dow did not come but a few times. It was the warehouse man. Dow came nearly every day for one or two weeks in the fore part of October

Upon cross examination by defendants the witness testified as follows.

I have had him come to me. I told him that I had nothing to do with the distribution of the cars. that he must go to the man out doors.
I told him we had no cars when we had none. we had a great deal of grain to ship, and but few cars. I have heard that they were full in Chicago.
It was the instruction to divide the cars between the warehouses in proportion to the business of each I have never known as many as four cars per day loaded on the track.
It was the custom to give the farmers a preference if they wanted to get cars to load from their waggons.
It was the custom of the company to do so and has been since I have known the mode of doing business on this Road
I think Rea had grain on hand when Kirk Patrick took Matt Berry's place as track Master.
Along in October I think there may have been as many as one car per day loaded by farmers on the track

Some of the empty cars were sent to Marengo to be loaded with grain. they were sent for that purpose, we had instructions to send cars to other stations,
Cars were sent from station to station on the Road, it was always the practice.
I know that cars were sent to this station from other stations, and loaded here, and I suppose that the cars which were sent from here were loaded where they were sent.
I know of cars being sent from Freeport here and loaded here, I dont remember that any empty cars came from the east to this station during that time,

The Plaintiffs then introduced as a witness Benjamin P Woodworth who testified as follows-
"I was in charge of the depot at Rockford as station agent from 19th September 1854 during that fall.
I have seen Mr Dow there calling for cars quite frequently, almost every day for sometime, about first of October.
The Rail Road company was in the habit of furnishing cars to the warehouses.
Dow informed me that he had grain to be shipped cannot state the amount, a large quantity I think.
I remember of Ramsey's shipping grain, the instructions were to send grain as fast as we could, I did so.
Farmers had cars to load grain in bags on the track and, besidis that, cars were loaded with live stock.
Cars were sent east to Marengo, Cherry Valley, Garden Prairie &c
Upon cross examination by the defendants, the

witness testified as follows- These cars were sent to these stations east by the direction of Mr Turner. we have frequently sent cars to other stations.
Cars were fiequently left at this station from the west and were loaded here.
When Dow applied for cars he sometimes got them and sometimes he did not. I did not know any thing of the firm of Rea & Dow. the grain was all shipped in Rea's name. I think he got his full proportion of cars from this point. if not more.
We distributed the cars between the warehouses. I have been engaged on this road over three years. it has been the intention and the practice as long as I have known the road to allow farmers to load a car on the track when they brought grain enough for a full load.
The following statement shows the number of cars freighted at this depot from September 1st to November 15th 1874.

Whole number shipped	839
Number of grain buyers, calling a firm a single buyer	19
The average to each would be	44
Rea shipped during this time	173

This statement includes all the cars loaded with grain, but does not show separately the number loaded by farmers.
I know John C Whitmarsh. I did not know of his buying grain of a farmer to be loaded on the track and shipped in the farmer's name. I never allowed any grain buyer to ship grain in the name of the

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farmer. Matt Berry was discharged from the position of track Master, and Kirk Patrick was appointed in his place. I have heard a great many stories of his selling the privilege of cars. but I never knew any thing of it. it was never done with my knowledge or consent.

One reason of so much trouble about cars was that grain was shipped to Chicago faster than they could receive and dispose of it there. the side tracks in Chicago were filled with loaded cars, and they could not discharge for want of storage and room. I was in Chicago almost every month, sometimes oftener. We made the best use we could of all the facilities of the Road to take off freight for every one.

After the commencement of this suit I had a conversation in which I expressed an unwillingness to take Rea's freight from the warehouse, but I never refused to take it for him.

On the 16th of November Rea had nine cars. It was after these last nine cars were shipped that I told some one that I would not ship any more grain for Rea. my instructions came from the Master of transportation.

Perhaps I may have told Dow or some one, three or four times that I would not ship any more grain for Rea. I received instructions after the 1st of December. the instructions were to have them bring their grain to the depot for shipment.

The Plaintiffs then introduced as a witness Lewis Jackson who testified as follows -

I am a farmer and live three miles from Rockford. I shipped two car loads of grain of my own raising last fall. I loaded them from waggons on the Rail Road track.
I saw other farmers doing the same. I hauled my grain from home for the purpose of loading it.
I know nothing of any one's paying a bonus for cars I gave a large apple, but not as pay. # *

The Plaintiffs then introduced as a witness Nathaniel Rising, who testified as follows- "I was engaged in the warehouse business at Rockford last fall. Cars were loaded directly from my warehouse. It has been the practice to load cars at the warehouse. I stored for the plaintiffs 19000 bushels, we commenced storing for the plaintiffs on the 9th August 1854- They had in my warehouse at one time 5,000 bushels I charged them for storage 1/4 cents per bushel. they paid me for extra storage on 4,000 bushels at one cent per bushel.
I know that the plaintiffs frequently called for cars to take off their grain. I called for cars almost every day. I know that some cars were loaded by farmers from waggons on the track, can't state how many.
The plaintiffs then asked witness this question. "Was there or was there not a difference in the price of grain on board of the cars and on the street or at warehouse? If so what was that difference"?

The defendants by counsel objected to this question, the Court overruled the objection, and directed the witness

The Plaintiffs then introduced D. A. Sanford who testified as follows. I am a farmer and live in Rockford. I have shipped grain from there. I have shipped two car loads of my own raising last fall. I loaded them from waggons on the Rail Road track. I saw other farmers doing the same. I hauled my grain from home for the purpose of loading it. I know nothing of any one's paying a bonus for cars. I gave a large apple, but not as pay. * *

to answer, to which decision and ruling of the court the defendants then and there excepted.

The witness answered. "There was a difference, it was worth eight to ten cents more per bushel on the cars"

The witness further testified as follows. The Farmers Union shipped some grain. I stored some grain for the "Union" they had some considerable grain shipped on the track. Horace Miller was their acting agent. Capt Turner was here during the time the plaintiffs had this grain in store. There was a conversation with him in my warehouse about getting off grain from this point. Turner said that in a week or ten days they could furnish facilities to take off all the grain in store. There was something said by him to the effect that they need not stop buying grain.

Upon cross examination by defendants, witness testified as follows.

"I mean that Mr Turner held out inducements to the buyers to keep on buying, that we need not stop on account of being afraid that the grain would not be taken away. He came to my warehouse and enquired how much grain we had in store. I suppose he went also to other houses. he said they had not store room in Chicago to store the grain, but said that the Rail Road Company, and also a Mr Gibbs were making arangments for storage of grain. I was in Chicago during the fall. I think in the forepart of November. There was then a good deal of freight from the Rail Road there. Some was unloaded, in

sacks on the ground. I saw a good many cars loaded standing on the track there.

I have asked for cars for Rea, my warehouse, and Warner's were entitled to an equal number of cars. I received grain in store for the Plaintiffs from time to time from August 9th to some time in November.

The Plaintiffs then introduced as a witness H. M. Warner who testified that it had been the habit of the Rail Road Company to load cars directly from his warehouse on the side track running by it, that the warehouse was completed and used in the summer of 1853 and had been so used since that time, that the warehouse occupied by Rising was used about the same time.

Chester Spaulding, was then recalled by the Plaintiffs and testified as follows- It has always been the custom of the Rail Road Company to load cars directly from our warehouse, on the side tracks running by it, since the warehouse has been used for storing grain.

Here the evidence closed on the part of the Plaintiffs.

The defendants then called as a witness Augustus Crowell, who testified as follows, "While I was Clerk in the Rail Road Office and between the first of August and the first of November 1854, I have been around and offered cars to freight at the several warehouses, when they refused to load any, on account of the low price of grain in Chicago.

Benjamin P Woodworth, was called by the defendants

and testified as follows- I have called on the grain buyers to know if they wanted cars to load. I do not remember who, I called on them when we had cars to spare which were not called for.
I have had them refuse to load cars during the fall of 1854

Upon cross-examination by the plaintiffs he testified as follows- After the first of September I have had the warehouses refuse to receive cars for loading to Chicago.

Chester Spaulding. was then called upon by the defendants, and testified as follows- "Our warehouse commenced business at the depot in June 1853.
Rea & Dow commenced business in buying grain in the winter of 1853 and 1854.
During the season of 1853, the farmers were allowed to load grain on the cars, from their waggons, on the track, and that has always been the practice at this point since.
I should think that Rea & Dow had as much of all other kinds of grain, as they had of corn.

The Company, after grain began to come in after harvest, furnished greater facilities than they had before

Kirk Patrick was then called as a witness by the defendants and testified as follows- I am employed at the depot in this town, am track Master. I have been acting as trackmaster, at the Rockford Station since 11th October 1854. Matt Berry was my predecessor, he was discharged at that date.

I have many times, during the fall of 1854. called upon Spaulding, at Warner's warehouse, to see if they wanted cars and been refused.

Upon Cross examination by the Plaintiffs, he testified as follows-

I have seen Dow asking for cars, I had orders not to ship grain for Rea unless he brought it to the depot, this was after I understood he had commenced this suit.

The foregoing was all the evidence given in the cause

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The following instructions numbered one to eighteen inclusive were then asked on the part of the Plaintiffs to the Jury viz

1st The defendants being common carriers were bound to receive all freight within their means of carriage which might be offered them for transportation (such freight so offered not being objectionable) and to transport the same to the point on their road required by the person offering the same And if the jury find from the evidence that the plaintiffs did offer the said defendants authorized agents such freight for carriage within their means of transportation to be carried by them and were ready and willing to pay for such transportation and that the defendants refused to receive and carry the same, the plaintiffs will be authorized to recover of the defendants such damages as they may have sustained by reason of such refusal

2nd If the jury find from the evidence that it was the custom of the defendants to receive freight at the warehouses at the depot upon notice given them by the owners of such freight and that the Plaintiffs had freight at the said warehouses or some of them which they were desirous of having carried over the said defendants Rail Road to Chicago and were desirous and ready to deliver the same from the said warehouse upon the track adjacent thereto and that they gave notice of such facts to the defendants, such evidence will authorize the jury to find an offer or tender of said freight to the defendants such as would raise the obligation

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of the defendants to carry said freight

3 If the jury find from the evidence that the Plaintiffs delivered their grain to the defendants to be carried on their Rail Road to Chicago and that said grain was received by the defendants for that purpose such receipt by the defendants of such grain imposed upon them the obligation of carrying the grain with all reasonable dispatch and that if there was any unreasonable delay by the defendants to carry such grain the Plaintiffs are entitled to recover of the defendants the damages they suffered by such delay.

4th If the jury find from the evidence that it was the general custom of the defendants to receive freight at their warehouses at the Depot when the same was left there and notice thereof given the defendants and that upon such notice the defendants were accustomed to receive and carry such freight and that the Plaintiffs grain was deposited in such warehouses and notice given the defendants thereof and that the defendants did take and carry a part of such grain such evidence would authorize the jury to find such a receipt of the whole grain as would impose upon them the obligation to carry the whole of Plaintiffs grain in a reasonable time.

5th The defendants as common carriers were bound to treat all of their customers and persons transacting

business with them in a fair and impartial manner and had no right to make and use partiality and preferences to one set of men over an other nor to one man over an other which should operate to the prejudice of the persons against whom the preferences were made and if the jury find from the evidence that the defendants did use such partiality in the use of their facilities in favor of persons other than the plaintiffs and that the plaintiffs in consequence of such partiality were unable to get their grain to Chicago in a reasonable time and that such delay operated to the injury of the plaintiff then the jury will be authorized to find for the plaintiffs such damages as they sustained by reason of such preference. Provided the jury at the same time find that the grain of the plaintiffs was legally tendered by the plaintiffs to the defendants or received by them for carriage

6th The defendants as common carriers were bound to receive and carry freight in the order in which it was offered to them provided said freight was suitable to be carried by said defendants and had no right to receive and carry freight of one person untill all freight previously received had been previously carried unless they had facelities to carry both and if the jury find from the evidence that grain belonging to other persons which was offered and received after the grain of the plaintiffs had been offered and received by defendants, was carried to Chicago before the said grain of the plaintiffs and that such preference delayed the carriage of plaintiffs grain and that the plaintiffs sustained damage by such delay the plaintiffs are entitled to recover of the defendants such damages as they so suffered.

7th The defendants in the exercise of their duties as common carriers had no right to adopt rules which would give one class of persons

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a preference over an other and thereby give such favored class an unfair advantage over other persons and if the jury find from the evidence that such unfair and discriminating rules were adopted and that the enforcing of such rules prevented the plaintiffs from getting their grain to market in a reasonable time and as soon as they would have been able to have done if such rules had not been made and that the plaintiffs suffered damages by such delay the plaintiffs are entitled to recover of defendants such damages as they may have sustained by such delay.

8th The defendants in the exercise of their duties as common carriers were not authorized to carry freight belonging to one class of persons in preference to carrying the same kind of freight for persons belonging to an other class and if the jury find from the evidence that the defendants did carry freight belonging to other persons (which freight was offered or received after freight belonging to plaintiffs had been offered and received) before the freight belonging to plaintiffs was carried on pretence that the owners of such belonged to a favored class as aforesaid and that in consequence the carrying of the plaintiffs grain was unreasonably delayed and that plaintiffs were injured by such delay the plaintiffs will be entitled to recover of the defendants such damages as they may have suffered by such delay.

9th If the jury find from the evidence that the warehouses in which the plaintiffs grain was stored were situated on side tracks at the depot grounds of the defendants

in Rockford and that it was the practice of the defendants to use such side tracks in sending their cars to said warehouses to be loaded then a delivery of grain by the plaintiffs in such warehouses and notice thereof to the defendants is a sufficient delivery to the defendants depot

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10th If the jury find that the defendants used partiality towards other persons in carrying their freight in preference to carrying the freight of the plaintiffs and that such freight was offered and received after the freight of the plaintiffs was offered and received and that such preference caused unreasonable delay in carrying the freight of the plaintiffs and that such delay injured the plaintiffs. the plaintiffs are entitled to recover of defendants such damages as they sustained

11th The defendants were required by law to give a preference to the different persons applying and offering freight to be carried according to the priority of time at which such freight was offered and if the jury find that the defendants refused to give such preference to the plaintiffs but carried freight offered for carriage after the freight of the plaintiffs was offered and that the freight of plaintiffs was properly offered or received by defendants and that such preferance caused unreasonable delay to the plaintiffs in getting their grain to market and that they were injured thereby the plaintiffs are entitled to recover such damages as they suffered of the defendants.

12th If the jury find from the evidence that it was the custom of defendants to receive freight at the ware-

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houses a deposit of freight at a warehouse where defendants were accustomed to receive such freight for the purpose of being carried by defendants would be a delivery to defendants if defendants were notified of such deposit and took away a part of the freight there deposited and did not object to such delivery at such warehouse.

13th If the jury find from the evidence that the defendants were accustomed to receive grain at the warehouse of A M Warner & Co and to treat a delivery at such warehouse as a delivery to themselves and that Plaintiffs did deposit a large amount of grain at said warehouse and gave notice of such delivery at said warehouse to the defendants and requested them to carry the same to Chicago and that defendants instead of promptly and speedily taking such grain into their cars and carrying the same to Chicago unreasonably delayed taking and carrying such grain and that by such delay the Plaintiffs suffered damages by the decline and fall in price of said grain the Plaintiffs are entitled to recover such damages under the fifth count of their declaration and in finding such delay unreasonable the jury will be authorized to take into account any evidence showing that defendants did carry grain belonging to other parties brought to the depot after grain of Plaintiffs was delivered at such storehouse before they carried the grain of Plaintiffs.

14th If the jury find that the defendants received the grain to be carried they were bound to carry the same without any unreasonable delay and will be liable for such delay whether the Plaintiffs were ready and willing to pay compensation for carrying or not unless the defendants objected to carrying it for that reason.

15th If the jury find from the evidence that no objection was ever made by the defendants to the non payment by Plaintiffs of any compensation for freight and that no lack of readiness or willingness on the part of the Plaintiffs to pay such compensation has been shown by defendants such facts may be considered by the jury as evidence of readiness and willingness on the part of Plaintiffs to pay such compensation.

16th The defendants as common carriers had a lien upon the grain of the Plaintiffs for the freight of such grain and if it appears by the evidence that the grain of Plaintiffs was delivered by the defendants to King to whom the said grain was consigned such delivery to King by the defendants in the absence of proof to the contrary is good evidence to prove a payment of such freight to the defendants before the delivery of said grain by the defendants to King and if the jury find from the evidence that such freight was paid such payment in the absence of all evidence to the contrary is good evidence to show a readiness and willingness on the part of the Plaintiffs to pay such freight

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17th The question of readiness and willingness not having been controverted or contested by the parties in this cause the jury will be authorized to find such readiness and willingness from slight evidence and may take into consideration for that purpose any circumstances tending to show either payment of such freight or that such question of willingness and readiness in the plaintiffs was not raised by the defendants during any of the transactions in question in this cause.

18th If the jury find from the evidence that the defendants received the grain of the plaintiffs from warehouses where it had been stored by the plaintiffs and did receive all the grain offered by the plaintiffs at different times between the months of July and December 1854 and did carry the same to Chicago then the jury will be authorized to regard such acceptance from time to time as evidence of such delivery to the defendants as they required and if the jury also find that the defendants unreasonably delayed to carry such grain so delivered then the defendants are liable for all damages sustained by the plaintiffs by reason of such unreasonable delay

In the giving of which instructions on the part of the Plaintiffs numbered one. two. three. four. five. seven. eight. ten. eleven. twelve. fourteen. fifteen sixteen. seventeen and eighteen and each and every of them the defendants by their counsel objected The Court overruled the said objections and gave said instructions to the jury.

To which decisions and rulings of the Court in overruling the said objections and giving the said instructions the defendants by their counsel as to each of the said instructions then and there excepted

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The following instructions numbered 1 to 8 inclusive were then asked on the part of the defendants to the jury viz

1st That under the issues in this case the Plaintiffs to establish the liability of the defendants as common carriers for a refusal to receive and transport the Plaintiffs grain must prove that the Plaintiffs offered and tendered the said grain at the defendants freight station or usual place of receiving and loading grain, and if they have failed to prove such offer or tender the defendants are not liable for such refusal

2d That the defendants under the law were not obliged to furnish cars for the use of the Plaintiffs and were not under any legal obligation to take freight from a private warehouse, but were only under legal obligations to take freight when tendered at their depot or usual place of shipping freight and if the Plaintiffs have failed to prove such tender of freight at the usual freight house of the Rail Road Company, the Plaintiffs cannot recover in this action.

3rd That unless the Plaintiffs have proven from the evidence that there was at the time when the Plaintiffs had their grain in store ready for shipment, such an universal custom established, for them to accept and receive freight for transit from the warehouses in which their grain was stored, as constitutes that usage a general law, the defendants were under no legal obligation to accept and receive the same at such warehouses and in order to make such usage a law binding on the defendants it must have been

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so long and uniformly acquiesced in that the jury would be constrained to say that the usage, as law, entered into a contract and formed a part thereof, if this action had been brought upon a contract instead of being an action on the case, and if the Plaintiffs have failed to prove such law by the existence of such usage the jury must find for the defendants.

4th That if the grain of the Plaintiffs had been tendered or offered to the defendants for transportation at their usual place of receiving and shipping freight on their Rail Road yet the said defendants were under no legal obligation to accept and receive the same for transportation unless they had at the time of such offer the necessary cars and furniture for the transportation of the same

5th That the defendants as common carriers owed an equal duty to the whole public in the transportation of freight on their Rail Road, and the law requires them to transport for all persons offering freight at the proper place and at reasonable hours according to their ability and they would have had no right to transport the grain of the Plaintiffs to the exclusion of the farmers who came and tendered their freight

6th That the farmers who came and offered their freight at the freight house and at the cars of the defendants were entitled to a preference over the Plaintiffs who requested that the cars of the defendants should be sent to their private warehouse to load.

7th That if the jury believe from the evidence that the Plaintiffs offered their grain, for transportation to the defendants at their depot, or the usual place of receiving grain for transportation upon their Rail Road cars and also believe that the defendants at the time of such offer had the ability to transport the same yet if the Plaintiffs have not proven that they tendered, or offered to pay the defendants for such transportation or that they were ready and willing to pay for the same the defendants are not liable in this action, and the jury have no right to presume a readiness and willingness to pay but there must be proof showing the same or the Plaintiffs cannot recover in this action.

8th If the jury believe from the evidence that the Plaintiffs tendered to the defendants grain to be transported to the City of Chicago at the proper place of tendering the same in Rockford and the defendants refused to receive and transport the same because they the said defendants had not the facilities for the transportation of such grain; or if they refused to receive and transport such grain because the same could not be discharged at the city of Chicago then the Plaintiffs cannot recover in this action, as the defendants were under no obligation to furnish cars or other storage for the storage of grain in Chicago nor to transport freight for the Plaintiffs or others beyond the capacity of their road.

Of which said instructions so asked on the part of the defendants the Court gave to the jury those numbered one, three, four, five seven and eight and over-

[13462-58]
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ruled the motions of the said defendants to give the instructions asked by them numbered two and six. to which rulings and decesions of the Court in overruling the defendants motion and refusing to give the said instructions the said defendants by their counsel then and there, as to each of said instructions excepted.-

After the rendition of the verdict by the jury the defendants by their counsel filed their motion for a new trial in the words and figures following to wit

Winnebago County Circuit Court

Galena and Chicago Union Rail Road Company
ads
Wm G Rea and
Daniel Dow

motion for new trial

And the said defendants by Loop and Lathrop their attorneys come and move the Court now here for a new trial in this cause for the following reasons -

1st The verdict is contrary to law -
2d The verdict is contrary to the evidence
3rd The verdict should have been for the defendants instead of the Plaintiffs
4th The damages are excessive
5th The Court erred in the admission of testimony on the part of the Plaintiffs and admitted improper evidence on their part
6th The Court allowed the Plaintiffs to give evidence of damages upon an improper basis
7th The Court erred in giving to the jury the instructions asked on the part of the Plaintiffs
8th The Court erred in refusing the 2d and 6th instructions asked by the defendants
9th The verdict of the jury is wrong in law and in fact and is not justified by the evidence in the cause

Loop and Lathrop
Attys for defendants

51246-59

After argument upon the motion for a new trial the Court overruled the same, and rendered judgment upon the verdict, to which ruling and decision of the Court in overruling said motion for a new trial and rendering judgment upon the verdict, the defendants by counsel then and there excepted and the said defendants prayed that their several exceptions be allowed and that this their bill of exceptions be signed and sealed by the judge and made part of the record in said cause, which is done accordingly

William Brown Seal
Acting as Circuit Judge

and afterwards Writ on the 10th day of November
A.D. 1853. an appeal Bond was filed in this
cause in and pursuance following Writ

Know all men by these presents, that the Galena and Chicago Union Rail Road Company as principal, and Thomas D. Robertson, as security, are held and firmly bound unto William G. Rea and Daniel Dow in the penal sum of six thousand dollars lawful money of the United States, for the payment of which, well and truly to be made the said Galena and Chicago Union Rail Road Company binds its self, and the said Thomas D. Robertson binds himself his heirs, executors and administrators, jointly, severally and firmly by these presents.

Witness the hand of the President of the said Galena and Chicago Union Rail Road Company, and the Corporate seal thereof and the hand and seal of the said Thomas D Robertson, this 8th day of November A.D. 1855,

The condition of the above obligation is such that whereas the said William G. Rea and Daniel Dow did at the September term of the Circuit Court held in and for the County of Winnebago, in the State of Illinois A.D. 1855, by the consideration and judgment of the said Court, recover a judgment against the above bounden Galena and Chicago Union Rail Road Company for the sum of four thousand nine hundred and fifty dollars damages, besides costs, from which judgment the said Galena and Chicago Union Rail Road Company has taken an appeal to the Supreme Court of the State of Illinois, Now, if the said Galena and Chicago Union Rail Road Company shall well and truly pay or cause to be paid the said judgment and all costs and damages and interest in case the judgment shall be affirmed in the said Supreme Court, and shall duly prosecute the said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Seal

John P. Turner President

Thos. D Robertson (Seal)

W. H Larrabee

Secretary

1846-61

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State of Illinois
Winnebago County } ss

I Charles H Spafford Clerk of the Circuit Court in & for said County do certify that the foregoing is a true copy of the Record of the Judgment in a certain cause lately depending in said Court wherein William L Ren & Daniel Dow are and Plaintiffs and The Galena and Chicago Union Rail Road Company are Defendants as appears from Records & files of My Office

In Testimony whereof I have hereunto Set my hand & affixed the Seal of said Court at Rockford in said County this 27th Day of June A D 1856

Charles H Spafford Clerk

Fees 45 folios @ 45 cts
cert & Seal .25
@ 45.25

S 12466-52

No 57

Galena & Chicago
Union R R Company
v
M. F. Rae et al

Appeal

Filed June 1 1856
S. Leland
Clerk

Filed 17th June 1856
S. Leland
Clerk

The Galena & Chicago
Union Rail Road Company
vs.
William B. Ray &
Daniel Dow

Error to Winnebago

The plaintiffs in Error
submit for the consideration of the Court
the following points and authorities—

The action, in the Court below, was case,
founded upon the legal liability of the
Rail Road Company, as Common Carriers,
to receive and transport the grain of
the plaintiffs below from the R.R. Station
at the City of Rockford to the City
of Chicago, in the fall of the
year 1854.

The evidence is voluminous,
and as a correct decision of the case
in this Court depends in a great measure
upon the facts in proof, it will be
necessary to make a careful examination
of the same.

That the defendants below were
Common Carriers of the kind of freight
which the plaintiffs below were desirous
of transporting, or have carried
was not denied on the
trial, and is not denied here.
The evidence exhibits one of the strongest
proofs to be found of the immense increase

2 10466-63

in the agricultural products of the Country adjacent to the Rail Road which its construction occasioned; and, as this Road was the Pioneer one, it will be proper for us to look back to the situation and condition of things as they existed when the road was first opened as far West as Rockford.

The evidence shows that between the grain shipping seasons of 1853 & 1854, the Road had been opened West from Rockford to Freeport. It also shows that during the year 1853, there was no lack of transportation facilities on the road for the grain & other products of the Country from Rockford — and it shows another astounding fact, that in 1854 there was twice as much grain to ship from Rockford as in 1853.

These facts are sufficient to show that no one, sanguine as he might have been of the beneficial influence of Rail Road communications from the interior of the State, could upon any principle of reason, or from any past experience of the Country, have imagined the extent of demand which was made upon the Road in 1854, doubling as it did in a single year. And although the means of transportation on the road were vastly increased during that year, as the evidence shows, yet the immensely greater increase in the products of the Country seeking the means of transportation, far

for some length of time in the fall of 1854 exceed the utmost capacity of the Road.

In entering upon the argument of this case I propose to lay down what I apprehend to be the legal duties and liabilities of the Rail Road Company as Common Carriers, and in what manner the law Makes them liable, and what will excuse them from liability.

1 In order to make the R.R. Co liable for a refusal to receive & transport the plffs. grain it must be proven that the grain was offered at this usual place of receiving such freight

See Statute of 1849. Purples Statutes, p. 1070. Sec. 35.

2. It must appear from the proof that the plaintiffs offered to pay for such transportation, or that they were ready & willing to pay.

Angell on Carriers, Sec 123 & 4. 418. 356
Story on Bailments S. 508
Edwards on Bailments p. 540-1

The only cases in which a tender, or such proof, has been dispensed with, are cases of loss, or failure to deliver goods &c. which the Carrier has actually received and undertook the delivery of

Angell on Carriers 124 & Note. 356. 418.
Edwards on Bailments p. 541.

The evidence in this case shows no receipt by the R.R. Co. of any grain which they failed duty to deliver

(12466-65)

3 If the evidence established the facts of the tender & offer of the freight at the proper place, and the actual tender of Compensation, then the R. R. Co. would not be liable if they have shown that they were properly using all the facilities they had legitimately in the discharge of the duties which as Common Carriers they owed to the Public

Angell on Carriers Sec. 125, & Notes.
Story on Bailments " 508. & authorities there cited.
Johnson Vs. Midland Railway Co. 6 Eng. R. & C. Cases page 47. 50. 51. See same case 4 Wels. & H. 367.

That they were thus using their facilities the testimony of the following Witnesses shows.

Abstract, page 4. Chester Spaulding. Page 6, same.
" " 10 Horace Miller
" " 18 — Whitmarsh, Page 19, same
" " 21 B.P. Woodworth
" . 22 N. Rising

The duty of the R.R. Co, as Common Carriers was to furnish Equal facilities to all, and to all portions of their road; and the law would not justify them in taking all the freight from one Station, leaving the others without facilities — Neither would it Justify them in taking all the plaintiffs freight while others were equally entitled

to the benefit of such facilities as the Rail Road afforded.

4th The evidence shows that at all times the Rail Road was well equipped with rolling stock & furniture for the performance of their whole duty as Common Carriers; and that it was only for a short time, and with an unprecedented Amount of freight for transportation, that they were unable to carry the whole that was offered.

We have no law requiring them to furnish facilities commensurate with the demand, and without any Statute on the subject they were only under legal obligations to furnish the plaintiffs such facilities as they had — the plaintiffs taking their proportion of the same with others, in proportion to the extent of their necessities for the same —

But in New York, where such a Statute exists, the Supreme Court have decided that an unusual quantity of freight urged upon a Rail Road is a good legal excuse for delay in transporting & delivering —

See the case of Wilbur & Hubbard vs. My & E. R.R. Co. 19 Barbour 48 et seq.

And the same Case 2 Kernan 245.

Parsons Vs. Hardy 14 Wend. 215.

Dodds Vs. Cobb 12 Barbour 320.

Parsons on Cont. 659 & 60. Story on Bail. 508.

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5. The plaintiffs complains of the fact that farmers were allowed to load Cars on the track from their wagons-
The evidence shows that that was done to some extent, and it also shows that such had been the rule and practice of the Company from the time their road was first operated; and it also shows that such had been the practice during the year 1853, when the plaintiffs went into business, and that they must have known of the practice when they commenced buying grain; and the R.R. Co. most clearly had the right to establish and adhere to such an uniform rule. And there is no principle of Justice which could deprive the farmers of that privilege and oblige them either to store their grain at expensive rates in awaro houses, or compel them to sell to speculators like the plaintiffs at just such prices as they chose to pay.

The evidence also shows that the grain so loaded by the farmers was in sacks, and that the plaintiffs grain was in bulk, and that there was no storage or means of discharging grain in bulk at Chicago; and that all the grounds of the Company in Chicago were filled with sacks of Grain, and the tracks in and near the City were continually filled with loaded Cars of Grain in bulk, waiting an opportunity to unload

See the testimony of the following named Witness-

Abstract page 9. R. S. King,
" " 10 Horace Miller,
" " 21 B. P. Morrow,
" " 22 Nath'l Rising

The plaintiffs below also complain that the Rail Road Company took and shipped the grain bought up in a boat from Oregon.
The evidence shows that the boat came up with one or two loads, and that it was unloaded into the Cars on the Rail Road track. It is proper perhaps, to make this explanation in relation to that matter. Oregon lies on Rock River 25 miles below Rockford. Rockford at that time was the nearest Rail Road Station, and the farmers of that section made use of the boat to transport their grain to the Rail Road. Many of them being the several owners of each boat load.
The evidence in relation to the boat will be found in the printed abstract - to wit,

Abstract, page 2 Chester Spaulding,
" " 13 D. Stewart,
" " 18 Ira Benjamin

$12466-67

The Plaintiffs below also complain that Cars were sent Empty East from & by the Station at Rockford.

There were many witnesses examined on that subject, and their testimony on that point will be found in the abstract ~~xx xxxxxx~~ upon the pages following-

Abstract,	page	1,	(at bottom)	Curtis Spaulding,
"	"	4	(near top)	"
"	"	4	(in middle)	"
"	"	4	(near foot)	"
"	"	7	(near middle)	"
"	"	13	(near foot)	A. T. Stuckney
"	"	13	(in middle)	D. Stewart,
"	"	19		Lowry
"	"	19		Dame
"	"	21	(top)	Crowell
"	"	21		Woodworth
"	"	20	(top)	T. Benjamin.

An Examination of this testimony will show that Capt Turner, the President & Superintendent of the Road had, as was clearly his duty, directed a distribution of the freight Cars to the several Stations on the road; and that Cars were sent to Rockford from the West, and loaded there, and that Cars were sent from Rockford, & Stations west of there to Cherry Valley, Belvidere, Marengo & other Stations East, to supply the wants of such Stations.

It will be noticed that Freeport was at this time the ~~terminus~~ western terminus of the Rail Road, and that City &

Rockford were receiving from the East vast quantities of Merchandize, Lumber, Coal and other freight, greatly disproportioned to the amount of produce to be sent East as compared with other Stations of less size and importance, hence the absolute public necessity for such distribution of Cars as Capt Turner directed, and as the testimony of W Woodworth, the Station Agent, and the Clerk & Track-master, Kirkpatrick shows was made.

It is a fact worthy of notice that on the part of the plaintiffs below they made proof of the pains taken by the Rail Road Company to ascertain the amount of grain & produce requiring transportation, and they prove that Captain Turner visited Rockford, and the several warehouses there, and conversed with the grain buyers on the subject with a view of learning the extent of the want of transportation and of furnishing the same to the utmost extent of the ~~capacity~~ ability of the Company; and that proof shows an other important fact, and that is that there was not at that time any Storage for grain in Chicago, and that Warehouses were then being erected for that purpose. Does this show negligence on the part of the Company? Does this show forgetfulness on their part of the interests of the Country which they were endeavoring to accommodate?

There is one part of this case which for the credit of a portion of the witnesses for the Plaintiffs below I would gladly avoid, but it is so connected with the case, and with the Plaintiff's fiction of a claim for damages that I cannot properly avoid mentioning it; it is the labored effort to prove that some men had been so debased in soul, so lost to all the qualities which constitute true Manhood, as to bribe a Miserable Irish Employee of the Rail Road Company from his duty, and allow them to steal Cars to load with their grain. Their names are worthy of an immortality of infamy, and I feel that I should do them great injustice if I did not parade them here in the highest Judicial tribunal of Our State, anxious as they have been to swear to the facts which entitle them to such infamous celebrity. See the abstract -

Abstract, page 10, Miller,
" 14 Stickney,
14 Sterling,
16 Godfrey
17 Crawford
17 Whitmarsh -

But I take great pleasure in this connexion in being able to state that the Plaintiffs below in this Suit have never

descended from their high position as gentlemen & business men to engage in any such contemptible practices – They abhor and spurn it, and I hope & believe that they equally pity and despise the men who were willing thus to proclaim their own villany.

All of that evidence shows upon its face that no responsible individual connected with the Rail Road Company had any knowledge that any such practices were going on, and there is no kind of intimation that the Agent knew of it ever, but on the contrary all of the evidence shows that he did not know.

On the first page of the abstract it will be seen from the testimony of W. Spaulding that he and Mr. A. J. Lowry sold 2000 grain (2800 bushels) to A. W. Ramsey of Pennsylvania –

I will now refer the Court to all of the Evidence on the subject,

Abstract, pages 1. 2 & 3. Chester Spaulding,
" " 12 Levi Dilloway
" 13 Stickney
" 18 & 19 A. J. Lowry.

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After thus referring to all of the evidence on the point this explanation may be proper.

1st The evidence shows that Spaulding was one of the firm of N. M. Warner & Co. the owners of the Warehouse in which the Pfaff & Low stored grain.

2d That M. Lowry was also a grain buyer and stored in the same Warehouse.

3d That the universal practice of the Rail Road Company was to distribute Cars to the several warehouses in proportion to the business at each, and that the individuals storing grain in such Warehouses divided the Cars among themselves, the Rail Road Company having nothing to do with such division, and indeed having no knowledge of whose grain any Cars thus sent to a ware house was to carry.

On page 19 of the abstract Lowry swears to the shipping of the Ramsey grain, and shows that the Cars sent to the Warehouse were used for that purpose; but it was not by direction of the R. R. Co, but by arrangement among the persons storing in that Warehouse.

By reference to Spaldings testimony (See abstract, pages 4 to 6,) the Court will discover a statement of the number of the number of Cars furnished to that warehouse of Wm. Warner & Co. (where Rea & Dow store their grain) from the 25th July to 22d Nov. and I apprehend that an examination of that statement will show that the plaintiffs below had no reasonable ground of complaint -

The attention of the Court is also called to the testimony of W.B.P. Woodworth, the station agent at Rockford (See Abstract page 21) showing that from the first day of Sept. to the 15th Nov. there were shipped from Rockford of Loaded Cars 839,
That there were at that time 19 different firms engaged in the grain business there,
and that the numerical proportion to
Each would have been 44,
And that this firm of Rea & Dow had 173,

It is now confidently submitted that this statement of figures shows, beyond the possibility of just doubt or question the untruthfulness of the pretence of Rea & Dow that invidious preference had been made against their interests by the Rail Road Company

213461-70

Many Exceptions were taken to the opinions of the Court in the admission of Evidence among them will direct the attention of the Court to Spauldings testimony on the 6th page of the Abstract, in relation to the proof of partnership between Rea & Dow- In that instance the decision of the Court was clearly erroneous.

On the 7th & 8th pages, in the testimony of King, the attention of the Court is particularly directed to the exceptions there taken.
The questions objected to relate to the prices of grain in the Chicago Market at different periods in the fall of 1854, and I insist that each and every one of the questions were improper -

The plaintiffs below proved extra Storage paid by them on grain in Rockford; and they proved that grain at Rockford was worth more in the cars than it was in the Warehouse, or on the Stand; and they proved that the price of grain declined in Chicago. All of this proof was objected to, but allowed by the Court, and Exceptions were duly taken to the Courts ruling.
There was no other proof made of any damages, and this species of proof was relied upon by the plaintiffs, and upon it the Verdict of the Jury was based.

That that is not the proper measure of damages in such case is ~~xxxxxxxxxx~~ shown by the following authorities -

Story on Bailments Sec. ✡ 545.
14 Wend. 215.
1 Parsons on C. 659
2 Greenleaf Ev. Sec. 253 to 6.
5 Wend. 535 - 538.
6 Hill 648.
Sedgwick on Dam. Ch. 3 - Sec. 58. 112
7 Hill 67. 624.
6 Bing. 716
2 McLean 422
14 Johns. 170
11 Watts 418.
19 Johns. 241
5 Denio 206
5 Wend. 535.
20 " 223
18 " 229
21 " 342
11 Barbour 368
6 " 424
4 Com. 130

The great case however, practically illustrating the whole doctrine on the subject, and enforcing it with almost unequalled power of reasoning, and with great learning and research, is that of Wibert & Weber vs. The N. Y. & Erie Rail Road Co. 19 Barbour's Supreme Court Reports, N. Y. 36

(D46-71)

The following Condensed Statement upon the Errors assigned shows the reasons which induce me to believe that the same are well assigned, and that the Judgment should be reversed.

If this judgment, upon such a state of facts, can be sustained, then the business of Carrying by Rail Road is too perilous to Justify prudent Men in Engaging in the business, or investing their Money in the Construction of these great improvements which are fast making Illinois the great State of the Union.

James L. Loop
Atty for Plffs in Error

G & C. U. R.R. Co. }
vs }
Rea & Dow }

1 The first assignment of Error is based upon these grounds-
The action is case, not assumpsit - The evidence all tends & is intended, to show a legal liability on account of the refusal to receive the grain at Rockford for transportation -
The variations in the market value in Chicago are consequently improper as a basis of damages. Had the R.R. Co. received the grain, & then unreasonably delayed the delivery at Chicago it is possible that the evidence would have been proper - but even that is doubtful under the Authorities, especially where where it is shown, as in this case, that an unusual quantity of freight was rushed in upon the road. See 19 Barbour 34. 2 Kernan (N.Y.) 245. 6 Eng. Railway Cases 50-1.

2 The second - The evidence of values in Rockford, in the two conditions named, was improper, 1st, because it was not a proper mode of arriving at a Market value, being mere matter of fancy and chance - grain there being as likely to advance as to decline by delay, and the evidence shows no uniformity of difference in price; And 2nd - The market price in Rockford could not, in any possible way, be used legitimately to show the damages.

3d The same reasons apply to the 3d, as to the evidence of prices &c. at Freeport, with this additional reason that Freeport was neither the place of delivery or departure.

5246-72

4th The fourth is in reference to the pltffs instructions.
The 1st instruction is wrong in this—
It assumes that a request to transport freight, without a tender of it at depts usual place of shipping, would impose a legal obligation to receive & transport it; And all of the evidence shows no offer of freight at the Depot, but only requests to have cars sent to private warehouses to load.

The 2nd instruction is wrong in this—
It attempts to, & declares a legal liability based upon a private custom of the R.R. Co.
Such custom could not create such liability unless it had been so long and uniformly acquiesced in as to make the usage part of the law of the land. (Dixon Vs. Dunham 14 Ill. 324)
Had this action been upon contract it is possible that such an usage might have been proper to be proved as tending, impliedly, to establish an agreement on the part of the R. R. Co. to continue so to receive &c; but such custom, if shown, could not legally authorize the jury to find an offer or tender of freight at the proper place.
Nor instruction wrongfully assumes too, that depts would be liable upon tender or offer of freight, without tender of Compensation.

The 3d instruction assumes a state of facts which there is not a word of testimony tending to show, And is calculated to mislead the jury—they not distinguishing between the liability after an actual receipt of the freight, and a refusal to receive it.

[illegible]

The 4th instruction is nearly similar to the second, having all its faults, and all of the objections to the second apply to it.

The 5th instruction, if it correctly states the law was improperly given in this case because there was no evidence of any such state of facts. It was shown that farmers bringing their grain to the Depot in bags, were allowed to load it into the cars, and that they always engaged their cars days a head. And that such had been the universal Custom of the R.R. from the time it went into Operation; and that Read Dow knew of that Custom years before they Commenced the grain business at Rockford. The evidence also shows that the plffs grain was in bulk, and that it was impossible to discharge it, in that condition, in Chicago, for want of Storage. It assumes also that notice of Compensation was necessary

The 7th instruction is Mischievously wrong. It denies all power in the R.R. Co. to establish rules for their own government. They had the Legal right to make the custom or rule in relation to the farmers freight in bags, and the plffs, knowing of such rule when they Commenced Business, have no right to Complain of it. And the shape of the instruction is unfair & Calculated to mislead the Jury.

$12466-7

The 8th instruction is similar to the 7th, and equally wrong. They both assume the same untruth as the basis of the doctrine declared.

The 9th instruction, is based upon the same notions as the second & 4th — and declares that a deposite of grain in a private warehouse, with notice to the Rail R. Co. is a sufficient delivery at the Depot — The objections to No 2, apply to this.

Reference

The 10th instruction falsely assumes partiality & preferences by the R. R. Co. The evidence all shows that the Company distributed their cars fairly to all the warehouses in proportion to their business; and the Court had no right to give an instruction assuming that true which was palpably false.

The 11th instruction is wrong. The R. R. Co owes an equal duty to all, and they would have no right to take 100,000 bushels of grain for one man & keep the balance of the Community waiting for the reason that that freight had been first offered. If that instruction is the law Rix & Dow might have claimed all the cars loaded at Rockford during that season — they must give equal privileges to all.

$12412-75

The 12th instruction is like the 2d & 4th, on the delivery at Ware house & Notice &c., and is of course wrong.

The 13th (Refused) is the same as 12th only a little more so. It is a Ware house delivery & presumption.

The 14th instruction is wrong in this - It assumes that the R.R. Co. had received grain to transport, which the evidence shows not true - It also assumes that after so receiving ~~that~~ they had unreasonably delayed the delivery, which is equally untrue. There is not a word of evidence tending to show such fact.

The 15th, wrongfully states as the law that readiness & willingness to pay freight may be presumed by the jury from previous dealings, when there is not a word of testimony, anywhere, on the question of Compensation.

It directs the jury to presume the existence of one fact from an other of the existence of which there is no evidence.

The legal liability, in any given case, could not be fixed by proof of previous readiness and willingness - The Carrier has a lien on the freight, but that fact does not make him liable for a refusal to receive it - It can only attach by reason of proof of an actual offer to pay, or proof of readiness & willingness.

[12466-76]

The 16th instruction is much the same as the 15th, and apsumes the same Erroneous legal proposition -

The 17th instruction is to the same effect, and apsumes that because of the fact of readiness & willingness not having been particularly contested on the trial they (in substance) are authorized to presume it.
We supposed that that question was fully considerably contested by the plea of not guilty -

The 18th instruction is substantially the same as the 2nd & 4th, apsuming that because the R.R. Co. had previously received grain at the warehouse, they were liable in this action for not receiving all deposited there.
The objection to this has been sufficiently pointed out in the 2nd.

5th. The fifth apignment of Error is the refusal to give Defts instruction

The 2nd instruction, declares that no legal liability attached to Defts by refusing to send Cars to a private warehouse -
The instruction is Law; and the refusal of the Court to give it is equivalent to instructing the other way.

S12466-77

The 6th instruction, was refused – It declares that the farmers offering their grain at the Depot were entitled to a preference over the Plff who requested Cars to be sent to their warehouse.
The R.R. Co. had no right to refuse the freight so brought & tendered, and they would have been liable for refusing & taking Plffs freight –

The Evidence does not show a tender of a bushel of grain to defendants, but a Continual dunning for Cars to be sent to their warehouse to load.

6 to 11

The sixth Error assigned is the refusal of the Court to grant a New trial –
It should have been granted because the Evidence did not establish any legal liability on the part of Defts – no tender of grain at the Depot is shown – No offer, or readiness or willingness to pay Compensation – And it absolutely & positively is shown that the defendants took the grain as fast as possible with the facilities they had.
The Rail Road had but recently been put in operation to Rockford, & the Company as well as the whole Community were astonished at the vast amount of

produce & offered for transportation;
and the Company had not then sufficient
rolling stock & furniture to transport the
same as rapidly as they would have desired;
And at the same time there was no chance
to discharge the grain in Chicago.
The evidence shows that during the time of
the complaints the spaces between the
side tracks on the road in Chicago were
entirely filled with grain in sacks, and
that no grain in bulk could be discharged
into warehouses, and that the freight
trains were compelled to remain 4 miles
out Chicago for several days because
there was not room for them on the
side tracks in the City.
The Evidence shows beyond controversy
that every facility & power of the R.R. Co.
was put in requisition to forward the
freight, and that the Cars were divided
according to the business of the several
ware houses.
There were 19 different firms buying
grain in Rockford.
From 1st Sept. to 15 Nov. 1854, 839 Cars
were loaded there. The average to each
firm would have been 44, and the
testimony shows that Rea had 173—
And yet the Court gives instructions
based upon an assumption of partiality
against him.
If the rule of damages were correct
the Verdict should not have been sustained on account of
the Excessiveness of the damages—the Evidence shows nothing
to justify any such amount.

$12466-79

The Court will observe from the Evidence in the case, that the Warehouse of Wm. Warner & Co. (and the other warehouse in which Rea & Dow stored grain) was upon a side track, and not upon the main track of the Rail Road ~~track~~ Co. and the plaintiff in error insists, that it was not bound to go off its main track to seek for freight; but that when freight was offered for transportation upon its track it was legally bound to give such freight the preference

139

Salem Co. Supervisors
v
Rea & Dow

For authorities see
Bacon's Abr. 3d
19 Ves. 24 5

57

Sup. Court.

G. & C. U. R. R. Co.

vs.

Rue & Dow

Points &
authorities -

J. L. Loop
for Rl'ffs.

Filed May 18 1857
D. Leland
Clerk

In Sup. Court.

Galena & Chicago
U. R. R. Company
vs
Rea & Dow

No. 57.

It is Stipulated between the parties that this suit shall not be taken up for argument before the 19th day of May next.

Dated April 23d 1857.

J. L. Loop
Atty for Plff in Error

Sam M. Wright
Atty for Defts in Error

[12466-21]

~~57~~
57

G. & C. M. R. R. Co.

vs.

Rea & Doz

Stipulation

Filed April 23 1857

L. Leland
Clerk

WRIT OF ERROR.

STATE OF ILLINOIS, Supreme Court, } ss. **The People of the State of Illinois,**

To the Clerk of the Circuit Court for the county of Winnebago **Greeting:**

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of Winnebago county, before the Judge thereof, between William L. Rea & Daniel Daniel Dow

plaintiffs and the Galena & Chicago Union Rail Road Company

defendants it is said manifest error hath intervened, to the injury of the aforesaid Defendants as we are informed by their complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the Second Monday in June next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. ~~SAMUEL H. TREAT,~~ Walter B. Scates Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 27th day of June in the Year of Our Lord One Thousand Eigh Hundred and Fifty-six.

L. Leland
Clerk of the Supreme Court.

By J. B Rice Deputy

5/12466-98

No 57

Galena & Chicago R.R. Company
vs
Wm G. Rea et al

Writ of Error

This Writ of Error is to operate as a Supersedeas and as such is to be obeyed by all concerned.—

L. Leland Clerk
By J. B. Rice Deputy

Filed June 27. 1856
L. Leland
Clerk

Know all men by these presents that the Galena and Chicago Union Rail Road Company as principal and Thomas D Robertson as security are held and firmly bound unto William G Rea and Daniel Dow in the penal sum of six thousand dollars lawful money of the United States for the payment of which well and truly to be made the said Galena and Chicago Union Rail Road Company binds itself and the said T D Robertson binds himself his heirs executors and administrators jointly severally and firmly by these presents—

Witness the hand of the President of the said Galena and Chicago Union Rail Road Company and the corporate seal thereof and the hand and seal of the said Thomas D Robertson this 24th day of June A D 1856

The condition of the above obligation is such that whereas the above named ~~Galena and Chicago Union Rail Road Company did~~ William G Rea and Daniel Dow did at the September term of the Circuit Court held in and for the County of Winnebago in the State of Illinois A D 1855 by the consideration and judgment of the said Court recover a judgment against the above bounden Galena and Chicago Union Rail Road Company for the sum of four thousand nine hundred and fifty dollars damages besides costs, to reverse which said judgment the said Galena and Chicago Union Rail Road Company has sued out a writ of error from the Supreme Court of said State, which said writ of Error is made a supersedeas, now if the said Galena and Chicago Union Rail Road Company shall duly prosecute said writ of Error, and pay whatever judgment may be rendered against said Company and abide the order and

S 12466-83

and judgment of said Supreme Court in the premises then this obligation to be void, otherwise to remain in full force and effect

John B Sumner Seal

Attest
W M Larrabee
Secretary

Thos. D. Robertson Seal

Witness to the signature
of T D Robertson
W J Garrard

In the Sup. Court

Sal & Chi. Nor. R.R.
Company
vs
H. G. Rawdon

Bond
for Supersedeas

File 2 June 24 1856
L Leland
Clerk

(48-1143)

The Galena & Chicago
Union Rail Road Company
vs
William B. Rae & Daniel Dow

I suppose it to be well settled law that Common Carriers like the defendants are required by Law to receive freight when properly tendered to them for carriage, and to transport the same, for them to be paid either in advance or upon delivery at the place to which it was transported, according to the rules and customs of the Carrier, and that if the Rail Road Company refused to transport freight for dfts in its proper order and at the proper time they are liable —

The Evidence does show that Dfts had a large quantity of grain to be transported to Chicago, that they applied to have it freighted by Pltffs, that great delay occurred in shipping the grain, that the grain of others was received & shipped while the grain of Dft was waiting shipment, various reasons are urged why Pltffs under this state of facts have incurred no liability, these I propose to notice —

5/2466-85

(over)

1st It is said that a delivery of the grain in a warehouse in Rockford, to which the Pltffs had laid a side track, for the purpose of receiving grain was not such a delivery as would impose any obligation upon pltffs to transport the grain; what is the reason of the law? Stage Coaches in the old times were compelled to stop & take passengers at every convenient stopping place along the way Lines of Canal Boats are required to take freight from any ware house on the Canal The rule seems to be that the Carrier shall take freight wherever he could do so without inconvenience, and there is no reason why a different rule should be applied to Railroads. Those warehouses which have been built near the Depot of the Company, and to which the Company have run side tracks, for the purpose of receiving and discharging freight are part of the machinery necessary for the practical working of the Road in carrying freight, and become by the action of the Company part of the "Station" of the Company.

They are also "sidings, stopping places for receiving freight" precisely within the words of the statute.

Purple's Statutes Part 2d page 1070. Sec 35. Might not freight be put on board a Car because it stood on a side Track? Might not a passenger get on board while the

train was on a side track? —

2 — The whole case shows that there was abundant proof of the readiness & willingness to pay the freight —

1st the RR Co. had a lien on the freight for transportation —

2d It was the custom for the consignee in Chicago to pay the freight

3d The Plffs did freight the Defts Corn and made no complaint that there was no freight money tendered —

4th — When Cars were demanded by defts. the Plffs never pretended that they were withheld because the freight was not paid or tendered — They have waived all right of saying now that the defts grain was not transported because the freight was not tendered in advance to allow the Company to do this would be to allow them to practice a fraud upon the Defts —

3 — The Company were bound to have facilities for the transportation of freight and it is no answer to say that they were using all their facilities —

Purple Stat 2d Part Page 1070 — Sec 35 —

but the question is not, were they using all their facilities, but were they giving the defts their rights. They may have

been using all their facilities and yet have treated defts illegally and oppressively -

The Evidence in this case shows that cars were being loaded by farmers for a long space of time after the grain of defts had been tendered to pltffs., and while it was waiting shipment see the evidence of Miller, Coolidge, Godfrey, Bradford, Whitmarsh, Loomis & others -

The evidence does not show or tend to show as pltffs insist that the farmers had engaged cars for some length of time ahead, sometimes they had for one day ahead but not longer, nor is it true as insisted by pltffs that the evidence shows that grain in sacks could be shipped and that grain in bulk could not - The evidence does not show that there were not abundant facilities in Chicago for storing grain in bulk, witnesses King, Miller, Rising & Woodworth are the only witnesses on the point & their testimony does not show what is stated by pltffs, Loaded cars were seen standing on the tracks in Chicago - Woodworth does not speak as of his own knowledge - But the evidence does show that while defts grain was waiting, cars were daily loaded upon the tracks, not only by farmers, but by persons who had

purchased from farmers and were loading with grain which had been purchased ~~from farmers~~ after the grain of defts had been waiting shipment for months and Plffs refused to ship defts corn if they should pack it & bring it to the Depot - See testimony of Silloway -
If this practice of preferring one class can be justified to ~~the~~ extent that it was done in this case, it can be justified to an extent that will prevent a given class from sharing in the benefit of the road at all -
see Sandford vs Batawissa R.R. Leo pamphlet filed herewith -

The Evidence also shows that the Oregon boat was unloaded always without delay while the grain of deft was waiting for shipment, here is a fact which is without explanation in proof, the explanation given by plaintiffs counsel is clever, but if it is a matter of fact it is a pity that there is nothing in the record to sustain it -

The Evidence shows that cars were let to persons who paid for the chance, the R.R. Employees were in the habit of letting the cars to those who would pay a bonus - The Plffs have disposed of this point by a very Eloquent & Labored

S 1246-81

attack upon the witnesses, not alledging that they are not credible, but only that they have acted meanly - I submit that this has nothing to do with the question, the witnesses are not on trial, the fact is that the employees of the Road were in the regular habit, some of them, of receiving a bonus for cars from others and defts were compelled to wait for this the Company is responsible - more than one agent of the Company did this - see testimony of Horace Miller, A.N. Stickney, J.S. Sterling, E.D. Godfrey, & Wm J. Serow -

The rule of damages in this case was the difference in the price of grain in Chicago at the time this grain was shipped and at the time it ought to have been -

Sedgwick on measure of damages 370-373-
Brandt vs Bowley 2 Barn & Adolph. 932 -
Sangamon & Morgan R.R. Co v Keevy 14 Ill. 157-8

The case in the 19th Wendell states the rule differently but in the Court of Appeals the rule of damages laid down is not affirmed - See same case in 3 Kernan

There was no proof that of prices at Freeport for the purpose of fixing the

measure of damages - There was proof that grain was worth 10 cents more on the cars, such proof was proper for the purpose of explaining the other testimony the bonus paid for cars, grain shipped by purchasers in the name of farmers &c for this purpose the proof was competent -

There can be no reasonable distinction taken between the liability of the company in case when the freight is actually on board the cars as in 14 Ill - 157 - and a case when the freight is brought to them and it is their duty to receive it, and this remark applies to the objection to 3° instruction -

14 - mend 215 -

The objection to 1st Instruction is not well taken, the word offer as there used is synonymous with tender -

As to the 2° & 4th Instructions by customarily receiving freight from this warehouse Pliffs made it a siding or place of receiving freight within the language of the Law which makes it their duty to receive freight at such places -

Purple's Stat - part 2 page 1070 - sec 35 -

As to the 5th instruction there was evidence showing that grain buyers shipped

{12411-88}

grain in the farmers names to the exclusion of defts and that in one instance at least the agent of the Road knew of it - see testimony of John G. Whitmarsh -

As to the 7th & 8th Instructions - The Pltffs had no right to make such a rule - see the pamphlet case herewith filed -

Pltffs say that defts knew of such a rule when they commenced business and had no right to complain of it - There is evidence tending to prove any such state of facts - If they might give a preference to farmers so as to make their grain worth 10 cents per bushel more than grain of defts, they might exclude defts altogether -

The objection urged to the 10th Instruction is utterly groundless, the Instruction assumes nothing the facts are left to the jury to determine

The 11th Instruction he is right, he who first tenders freight acquires priority of right -

As to the 14th Instruction it states the law and leaves the fact to the jury - But the grain may fairly be said to have been received by plaintiffs when it was placed

for them in the place where they usually received grain -

20 Howa 354 -

Lobden vs Downe 5 Beh 41 -

Phillips vs Earl 8 Pick 182 -

Pickford vs Grand June R.R. 12. M & W. 766 -

As to 15th Instruction - The fact that Defts had shipped large quantities of grain by the Road of Pltffs was in proof, no pretence is set up that they ever failed to pay freight, the agents of Pltffs, when cars were demanded, never objected that freight money was not ready, it was surely right for the jury to consider these facts in determining the question of readiness to pay freight -

Pickford vs Grand June R.R. Les. 8. M. & W. 372.

As to the motion for new trial, the questions of fact were fairly submitted to the jury - they might believe from this evidence that defts grain was not carried forward in its order, that the Oregon boats took precedence of them, that the Freight buyers took precedence of them, the farmers and those who used their names took precedence of them, at one time any body who would give a bonus for a car took

[124-77-89]

precedence of them -

By reason of the delay in shipping Defts grain they lost 10 cents per bushel, in addition to this were compelled to pay a large sum for extra storage I submit that the verdict of the jury is not unsupported by the evidence - certainly it is not one of those cases where the verdict is so plainly & palpably against the testimony as to justify this Court in setting it aside -

Bldgood

The reference to the general rail road law to enforce the idea that these plaintiffs in error were bound to carry all the freight offered whether they had the means of transportation or not; is met by the denial that that law has any reference to the Galena Rail Road - but is in that regard confined to such companies as might be organised under that law,

Much stress is placed upon the fact that petty bribes were received by some of the laborers of the company (and this company has 700 employees of one grade or another) for furnishing cars; I have no desire to defend the practice of giving or receiving bribes - but it cannot be presumed that the rail road company would for an instant tolerate such practises, nor did it - the guilty parties were discharged as soon as

as such conduct was discovered – but surely no argument should be drawn from such conduct, by which the rail road company, should be held to have given a preference, to the parties who bribed its servants, against its interests; so as to involve the company in this suit, and compel it to answer for a preference given; when the fact of the bribes to the servants shows that the company did not intend any such preference.

All the instructions for plaintiffs below proceed upon the assumption, that the grain in the private warehouse was tendered to the defendants below, and calculated to mislead the jury. This warehouse was replenished daily, and if the demands of its owners had been complied with, the whole equipment alloted to Rockford, would have been monopolised by this warehouse, and the rest of the public left without any advantages whatever, of transportation on the rail road –

E. Peck –
for Appellants

S 12466-80

The Galena & Chicago Union R. R. Co.

vs.

Rae & Dow

Argument

Cook

Filed May 18. 1857

S. Leland

Clerk

New & Dow
cas
Y & C R R Co

A Brief Abstract of the testimony in this cause with a reference to the pages of the deposition where found

Pltffs Testimony

C Spalding Proves that Pltffs had a large quantity of grain stored in Warehouse of H. M. Warner & Co Proves delay in taking it off, refusal of applications by plaintiffs for cars and by Witness for them to and Preference given to Farmers

R. J. King 48 Price of grain in Chicago when Pltffs grain reached there, and when it should have reached there, and their applications by himself Lewis & others for facilities to take off the grain

Horace Miller. 54 Prefers Union Farmers also the purchase of a car of Malt

E Pike 57 Prefers to Farmers, demand of cars by Lord and Corbett to Farmers

I. B. Coolidge 55 Prefers to Farmers

H. H. Bowles 59 Prefers Union by depts to freight in carrying their freight

L. Sillonay Amt of grain Stored with Warner & Co demands made on Agts of depts for cars and interviews with Farmers respecting the getting off the grain

Sidwell

Promise of Turner to furnish me and pack
ers. Theo Mott refused to take P[lff]'s grain
at the depot stand it must be shipped for
warehouse. Also that Mott & Woodworth had
Pres had [illegible] the Co and must buy
his grain at the depot

L. Stewart 64 Preference to farmers was told farmers had the Preference. Bought grain and had it shipped & can in farmers name

A. N. Stebbins 65 Plff grain stood with Remington Preference to Farmers Purchase of cars Preference to Boat for Oregon. Preference to Ramsey

G. N. Moffatt 68 Plff was buying grain in fall 1864

J. S. Harley 69 Preference to Farmers and Purchase of cars

A. L. Renwick 71 Preference to Farmers

W. L. Renwick 71 Preference to Farmers ~~with~~ grain worth from 10c to 17c more than in Store or warehouse hence Town demand cars

E. L. Godfrey 72 Preference to Farmers Bot a car grain worth 10c per bushel more or cars than in the store Plff had grain stored with with 1000 ~~bushels~~ bushels

J. P. Crawford 76 Preference to farmers hence town demand cars. Threatened to sue the Company principles

a Load, difference of Price on Load and what
Heat Ramsey got Cars immediately on last
Cart Supply

I C. Whitmarsh Represents to Farmers 10c per bushel
79 difference in Cars & in Warehouse but grain
and had it Shipped in Farmers named by
Jones Promised to Down Cars but Cart Supply

I Benjamin Represents to Farmers to Boat from Oregon
79 difference 10c per bushel but grain Shipped
in Farmers named

A Lowry Represents to Farmers 8c or 10c per bushel difference
82 Represents to Ramsey Supply as last Cart

I Same Connection between Down & Farmers Supply as
88 last Cart

W Loomis Represents to Farmers difference 10c per bushel
89

Lowry X by to Sale of Grain to Ramsey
85

Wm. Snow Represents to Farmers & Sale of Cars
85

I Benjamin Sold 5 Farmers of their Shipping facilities
85 Cars but Cart Supply Represents to Farmers
I Cars loaded or track in ord dy

I I. L Remington Grain Stored with him & pay de
manded of Cars & Pay him to furnish Cars

to Warehouse Reserved to Farmers Dover de
manded Cars

A Crowell Dover demanded Cars, Wms & O. to Truck Mrs
88 to Reserved to Farmers Supply Cars Ask to
Assigned

B. P. Woodworth Dover called for Cars reserved to Farm
89 ers Supply Cars Notify Farmers Adjacent to
Assigned

L Jackson Reserved to Farmers
91

G. W. Sanford Custom of Depts to receive freight at
92 Warehouse prior Commencement of business

N. Rising Custom to Grain of Depts Stored with Cars
92 Reserved to Farmers Conversation with Farmers

W. M. Warner Custom
94

C Spalding Custom
94 Depts Works

A Crowell had offered Cars to Warehouses which were
94 refused between 1st Aug & 1st Nov

B. P Woodworth Cars refused Grain buyers after Sept
94 1st

C Spalding Depts Commenced business in 1853 Farmers
95 then had reserved Warehouses at Rondout

Kirkpatrick Mills was discharged. 10 or 12 men worked
refused Case in 1854

X Dowd had asked for Cars & Hood Orders
to ship for Newcastle he brought his figures
to the depot

Summary of Jack Rowd & Plffs
and the witness by whom Rowd
1st Contends of depot, ~~to wit~~ Right of the Penna
Railroad, adjoining the Side tracks of the
depot Remington 86. Sanford 92. Rising 92
Barnes & Spalding 94

2d That Plffs had a large quantity of grain in
the Warehouse which they were desirous to
send East. Spalding 1 Silloway 60. Stirling
65. Gorley ~~62~~ 72 Remington 86. Rising 92
152 Old Kings testimony 48

3d That there was a great delay in getting the
grain to Market 152 etc. the testimony
of the last mentioned witness

4th That the Plffs had continually asking for
cars and demanding that the grain should
be carried forward Spalding 1st Rising 48.
Kirk 57. Silloway 60 Allerick 71. Wood
Pennock 71 Gorley 72. Crawford 76 Whit
neck 79 & Benjamin 79. Mowry 82
Loomis 89. Lewis 85 & Benjamin 85 Howard
88 Woodworth 89. Scattergood 91 Rising 92

S[12466-82]

6th — That the depot took off to Chicago the grain stored at Freeport Beaston 59 and that they gave a Receipt to the Oregon Bank Stebbins 65. I Benjamin 79.

7th — That Gen Lord testified Ruggles brought 76 Whitmarsh 79. Lowry 82. Hand 83. Harlow 88 Woodworth 89

8th — In respect to damages the Corporation owned in Chicago when road there was when the Road had been built Ruggles differed & voted on Case & in Whitmarsh & Renwick 71. Lowry 82 Whitmarsh 79 I Benjamin 79 Lowry 85 Loomis 89.

9th — To aggrieved damages Parmelee & Turner Ruggles 48. Silloway 60. Hand 83. Ruggles 92 Refused to receive Prop ~~et~~ grain at the depot insisted that they would receive it at the warehouse. Silloway ~~60 also~~ Subsequent refused to receive Prop grain at the warehouse because Ry had sued the Co Silloway Co Kirkpatrick & 95

Explanation in the above opinion they are all to the page of the Record but may be found on the abstract at the place where the figures in the margin herein appear at the margin of the abstract which where there is corresponding order

57

Rea & Bro
vs
S & L. R. R. Co

Affidavit of Posting

Filed May 18. 1857
L. Leland
Clerk

Effidavit the posting in the Sheriff's office on the within upon the posts of plaintiff's Corks. but the posts are found in the business of the district in connection or adjacent and the notice of said posting be found posted those designated under

Rea & Dow
Defts in Error
vs
The Galena & Chicago
U R R Company

Points for Defts in Error

Pltffs in Error were common carriers obliged to receive within their means of transportation and carry the grain of Defts in Error when offered by them to this point see 2 Sumner 221. 10th N H Reports 481, 1 Douglass (Mich) 1. 4 Barnwell & Alderson 32. Story on Bailments Sec 528. Edwards on Bailments 443. 2 Shower 127, 322. Angell on Comm carriers Sec 67, 124, 125 & 128.

Supposing such was their liabilities they were obliged to receive freight at the private Ware houses, where from their first commencement in business & had adopted the custom of receiving freight. by their own act they had made these Ware houses a part of their Depot, and a delivery at such Ware house, with Pltffs in Errors consent was a delivery to them at their Depot. They had by their own acts established a custom making them for such purposes a part of their Depot. 17 Ill 324. 2 Sumner 569, 20 Conn Reps 354, 23 Alabama Rep 720.

$12466-94]

The Plffs in Error were bound to give the Defts in Error a fair and equal use of their freighting facilities and had no right to make unfair and unequal discriminations in favor of Farmers Boat owners or the grain buyers of Freeport. 79 Eng Com Law Repts 253. 10 Meson & Welsby 320. 78 Eng Com Law Reps 255. 26 Eng L & Equity Reps 288. 3 Eng Railway Cases 193. 78 Eng Com Law Reps 587. 24 Penn (12 Harris) Reps 378

Defts in Error were bound to be ready & willing to pay the freight. This was all their obligations. Story on Bailments Sec 508. 9 Dowling Pat cases 766. 2 Eng Railway Cases 92.

Plffs in Error had a lien on the goods transported, and less proof of actual willingness would be necessary where it was shown that the property carried was afterwards delivered consignee. The presumption would be that the freight would be paid before delivered to them 1 Douglass Mich 1. 2nd Lord Raymond 866. 5 Barnwell & Ald 350 5 Bos & Pull 48.

Defendants Demands made to have the grain carried were made on Unbordinate. this was Proper. Plffs in Error were bound to have some persons present who could add for them at all times 12 Meeson & Welsby 171. 22 Eng Law & Equity Reps 202.

As to measure of damages: difference in price of grain in Chicago when it was received from what it was when it should have been received proper 17 Ill 167. 11 Ill 616. 2 Barnwell & Ald 932. 1st Exeq Reps 710. 3d Hill 333. 18 Eng Law & Equity Reps 55, 16 Ill 552.

19th Barbour 86. conflict with this but that is opposed to the other cases and the same case was decided in 2nd Kernan 476. by the N.Y. Court of Appeals who declined deciding the point whether the court below had decided correctly as to the measure of damages. Besides the evidence showing a refusal to carry freight for Rea. one of the Plffs, shows malice & oppression that would warrant exemplary damages

The rules of Law applicable to Stage owners & other Common Carriers on a small scale are not applicable to R.R. Companies. but the Courts in construing the liability of Rail Roads must look at their

5/12461-95

peculiar character. The tender of a small parcel which could be carried in the hand to an Expres Company would be by takeing it to the Agent of such Company and offering it to him at the place where he received such parcels 10.000 Bushels of grain could not be tendered in that way, and unless the Court, ~~exclude~~ hold that placeing the grain in a private Ware house from which the R R Compa had been accustomed to receive & load grain and requesting the company to take it from there a proper tender, The Court will in a great measure relieve Rail Roads from the obligation of receiveing and carrying grain in large quantities especialy when not in bags. That the peculiar characte of Rail-Road are to be taken into account in passing upon their liability see 3d Hermans

I will here call the attention of the Court to the fact that we have charged Plffs in Error with receiveing one grain and delaying its conveyance. We think there is abundance of evidence to support this branch of one case as well as the other.

G. M. Wight
Atty for Defts in Error

5 1.

Rea & Dow. Defts
in Error. ads
Salina & Chicago M.
& R Company. Plffs
in Error

Point for Defts in
Error

Page 1

Rea & Dow
vs
S & C. A R R Co } Action on the case

The gist of this action is the negligent delay of the defendants in carrying from Rockford to Chicago certain grain by the plaintiffs stored in several Warehouses adjoining defts Depot at Rockford

Paragraph 11th Pleadings

There are several counts some charging that the plffs offered the grain to the defendts for carriage and that the defendts refused to receive it. Some that the grain was delivered by the plff to the defendants and the carriage of it delayed to the plffs injury.
In one count great delay is charged in receiving and carrying the grain.
Two counts set out a custom in plffs to receive the grain at the Warehouses, and take it from there making a delivery to the Warehouse with notice a delivery to themselves. That plffs had a large amount of grain stored there gave notice to defendants, to receive and carry it, who greatly delayed doing so to the injury of the plffs

These counts set out several ways in which the Plffs were damnified and in several of them show

[12466-97]

Page 2

a decline in the price of the grain before it reached Chicago, and loss of profits thereby.

Facts

The defts were large grain buyers, in Rockford buying and sending their grain to Chicago for sale. That during the months of Sept. Oct & part of November they had a large amount of grain in store at Rockford which they were desirous to send to Chicago, that they were accustomed daily to call for cars at the Depot to take it off that the keepers of the warehouses were accustomed to call for cars for the Plffs, and that the Plffs were continually doing the same thing and that usualy some cars were furnished but not enough to carry off the grain of the Plffs as fast as they wished and requested it carried, consequently during the months of Sept & Oct. large quantities of grain had accumulated at the ware houses, These finaly were sent to Chicago in November, and a large part of the grain reached Chicago so late, that the Plffs were obliged to sell at very low prices, much lower than they would have done had it been received at the time Plffs wished it sent.

Paragraph 2nd

Evidence

While the Plffs so greatly delayed getting this grain to market. Their Depot at Freeport thirty miles west from Rockford was kept so entirely clear that at the time of this accumulation at Rockford, Their Ware houses at Freeport were cleared as often as once a week at most, at the same time the Company had a rule that farmers might bring their grain from home and have cars to load the same upon immediately the farmers shiped a large quantity of grain in that way, and so prevented the men, who had grain in the Ware houses from geting the cars. they otherwise would have got to carry their grain to market.

This preferance to farmers being made it became an object to buy grain of them and have them ship it. The farmers geting the grain on the cars in their own names. this made a difference of ten cents per bushel in the price of grain on the cars, and grain in the Ware house. Warehousemen and others sometimes also bought the privilege of having cars, of the Defendants servants by paying them a bonus for them.

A boat run from Oregon

Page 4th to Rockford and brought grain. 1000 bushells each time. This boad always found cars ready to take off the grain

Paragraph 3d The Plffs contend that the Defdt were bound to receive all freight offered for transportation and carry the same the Plffs being ready and willing to pay for such carryage

Argument 2nd Sumner. 221, 10 N.Y. 76, Reb 481, & 1 Doug (Mich) 1. 4th Barn & Ald 32. Story on Bailm Sec 508. Edwards on Bailm 748. Second Thomas 127, 332, Angel on Com Carriers Secs 67, 124, 125, 126.

Paragraph 4th They were bound to take it from the warehouses adjoining the Depot. They by their own mode of doing business have made the warehouse a part of their Depot. Had side tracks to them, were accustomed to load grain from them into their cars and by their mode of transacting their business had bound themselves to receive grain from the warehouses when requested to do so by the owner of such grain.

Pag 3 4th

17 Ills. 324. 2 Sumner 567. 20 Conn Reports 324. 23 Ala Reports 420.

Paragraph 1 2 4th

The Defendants were bound to use their facilities fairly & for the equal advantage of all customers, and could not be permitted such unjust discriminations as in the case of the Farmers, The Oregon boat and the Freeport Station

49 Eng Com Law Rep 253. 10 Meeson & Welsby 320. 78 Eng Com Law Reps 252. 26 Eng Law & Equity Reps 288. 3 Eng Railway Cases 193. 78 Eng Com Law Reps 388. 27 Penn Reps 378.

Paragraph 6 4th

Defendants. Plffs were bound to be ready and willing to pay for freight. Story on Bail Sec 508. 9 Dowling Pael Cases 766. 2nd Eng Railway Cases 592

Paragraph 7 4th

Defendants had a lien on the freight for its carriage and less proff of actual willingness should for that reason be required that they have such lien. (See 1st Doug (Mich) 1. 2nd Ld Raymond 866. 5th Barns & Ald 350. 3rd Bos & Pull. 78. The last case shows that lien defeats the right to sue in trover

5/24/66

Pag 6th

The case in Douglass that com carriers have no lien for carriage of stolen goods against the owner

Paragraph 8th

Demands were made on subordinates to have the grain carried 28 is the duty of such companys to have some person at all times ready to act for them. 12 Meeson & Welsby 771. 22 Eng Law & Equity Reps 202.

Paragraph 9th

The proper measure of damages was the differance in value of the grain when it reached Chicago and its market price there when it should have reached that point, to this might be added extra storeage extra commission & interest on the money invested during the delay. 14 Ill. 157, 11 Ill 616, 18 Eng Law & Equity Reps 55. ~~See~~ also in respect to damages, 16 Ill 552, 2 Barn & Ad 932. 1st Ored Superd 410, 3 Hills Rep 332.

19 Barbr 36. seems to establish a different rule, but that case is sustained by no authorities was taken to Court of Appeals and decided by that

Page 7. Court who in their decission refused to decide wheather the Court below was correct in respect to the measure of damages 2nd Kirsan 275.

Paragraph 10th The Errors assigned are.

1st The admission of evidence showing the price of grain in Chicago, in the fall of 1857.

Errors 2nd The admission of evidence showing the difference in price of grain on the cars and in the Ware house.

3d The admission of evidence showing the mode of transacting business by the Dept at Freeport.

4th In giving Plffs instructions. 1. 2. 3. 4. 5. 7. 8. 10. 11. 12 14. 15. 16. 17. 18.

5th In refusing Defts instructions 2 & 6.

6th In overruling Motion for New Trial.

Paragraph 11th The first point of Error questions evidence objected to as tending to show an improper measure of damages.

5/2466-10D

Page 8. The case of Barber 36. is relied upon by Defdts to support this assignment of error, We insist that the evidence was not only admisible but exceeding-ly proper, and tended to show the true measure of damages.

The case in Barber was taken to the Court of Appeals and was there de-cided by that Court on other grounds The Court expressly declining to decide that the measure of damages was im-proper. 2nd Herman 275,

This Court has decided in the case 14 Ill 167, that the measure ~~have~~ of dam-ages objected to by this assignment was the proper one; 11th Ill 616, 18 Eng Law & Equity Repts 55. are to the same point. 16 Ill 552. allows a good deal of latitude in estimating damages, In that case it was allowed the Plffs to prove the probable value of a crop, (never raised but destroyed when small) would have been worth had the same not been destroyed, but been permitted to mature.

Paragraph 12th The evidence respecting the value of grain in the cars & in the Warehouse was prop-er as showing the manner the Plffs were affected by the wrongful conduct of the Defdts who preferring the Farmers, and other persons in the manner they did. It is always proper to show how the

Pag 9. wrongful act of Defts affect the Plffs and we think the evidence was proper as tending to show a proper measure of damages.

The Plffs grain was wrongfully excluded from the cars of the Defts. and the Farmers grain admitted instead of it The Farmers grain was worth in consequence 10 cts per bushel more than Plffs grain while if Plffs grain could have been in the cars as it ought to have been his grain would have been worth as much as the Farmers.

It is proper to observe that this evidence does not vary the amount of damages from what the evidence referred to in the first assignment of Errors makes it.

Paragraph 13th 11 The evidence respecting the facilities afforded the Ware house men &c at Freeport was proper.

It was the duty of the Defts to give an equal advantage to the entire public and allow an equal use of their facilities to the whole public and proof that one week was the entire extent of their accumulations at Freeport while at Rockford, it took two months to get off their accumulations shows a partiality to Freeport and a denial to Rockford of such fair use of their facilities as must necessarily have injured the Plffs.

5/1246-101

Page 10th. particularly when it is understood that the business of the two places were nearly the same in amount.
To this point see the cases refered to above in Paragraph 5th on page 5.

Paragraph 14th. The giveing of the instructions asked by the Plffs presents some questions not embraced in the above assignments of Error 18 Instructions were asked by Plffs and 15 of them were given, and the giveing of these 15 Instructions is assigned for Error.
The 1st Instruction is not objectionable it merely states ~~as~~ what is clearly the rule of Law and was ~~by~~ applicable to the case, See the cases refered to above Paragraph 3 Page 7th.
The 2nd Instruction presents one of the principal points in the case and lies at the very foundation of our action, We contend that the Ware house of Warner and the other Ware houses were to a certain extent a part of the Defts Depot. that They had made it so Themselves. by their constant mode of dealing & adopted for the mutual convenience of Defts and all persons dealing with them. The evidence of Warner, Sanford, Rising & Spalding prove the customs and this Instruction is that if the jury find the custom to have

Page 11th existed in respect to the Ware houses that there a delivery at the Ware houses and notice to Defendants in pursuance of the custom would be evidence from which the Jury might find a tender of the freight by the Plffs to the Dfts. This instruction coupled with the Dfts third instructions which was given, we think just states the law on the subject and nothing more to this point see the cases refered to in Paragraph 4th Page 5th

Paragraph 15th The third Instruction is right it is that a delivery of the whole grain by Plffs and the carriage of a part by the Dfts. the obligation of carrying the whole in a reasonable time this we believe to be good law

Paragraph 16th The Fourth & 12th Instructions, were substantially the same that if the Jury find a custom as afore said a delivery at the Ware house and notice of the delivery with a carriage of a part is such evidence as would authorize the Jury to find a receipt of the whole and an obligation to carry the whole without delay,
As to these Instructions see the cases refered to in Paragraph 4th Page 5th

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Page 12 th 4

Paragraph 17th 4 The fifth seventh. 8. 10 & 11 Instructions are all to the point. That Defts were bound to give an equal use of facilities of their road to all persons alike and could not give one man or a set of men advantage over others in the use of their facilities but must treat all their customers alike. this idea is varied somewhat in the different instructions for the purpose of making it more clear to the jury. That the Instructions were correct. See the cases refered to in Paragraph 5 Page 5th.

Paragraph 18th 4 Instructions 6. 9. & 13 were refused. I think some of them were proper. and their refusal shows more precisely how the jury were instructed.

Paragraph 19th 4 Instruction 14. We think correct in law If a com carrier receives goods he must carry them and will be responsible for delay, and in such cases payment of freight or even readyness or willingness in shipper to pay is not material hovering undertaken the duty he must go through with it. About this We think there can be no question.

Paragraph 24th

The 15, 16 & 17 Instructions all relate to what will be evidence of a readiness and willingness to pay freight and are merely that the jury might take circumstances appearing in the case as evidence on that point, and that there being no question on the trial in respect to the fact, less evidence would be required than otherwise.

The jury were instructed that the Defendants had a lien on the goods carried for their freight and that if the jury found they were delivered to the Consignee at Chicago by Defts. The jury would be authorized to find the freight paid by the Consignee on such delivery there being no evidence to the contrary, and if the jury found the payment of freight by the Consignee such payment would be evidence tending to show readiness & willingness in Plffs to pay the freight.

It will appear by the bill of exceptions that Haig did receive the grain in Chicago from the Defts, and did sell it for the Plff.

The 7 Instruction of the Dft which was given was sufficient to prevent the jury from getting any loose ideas upon this point. We think these Instructions are correct in principal laid down & it is clear that where a party on trial does not controvert a fact such

Page 14th fact may be proved by slighter evidence than would otherwise be required. This we believe to be a universally acknowledged principal of Law.

The Defts had a lien on the goods and were accustomed to carry freight without advance payment, and in fact carried all this freight and never once objected, That Bliff had not tendered the freight or offered to pay it, and the fare presumption is that The Bliff & Defts both understood that the freight was to be paid in Chicago.

As to the doctrine, that Com carriers have a lien. See the cases refered to in the 8th Paragraph Page 6th.

Paragraph 21st The 18th Instruction is merely as to the delay of the Defts in carrying the grain and we think is good Law. And we think no question arrises on any the Instructions but the 2d 4. 6. 7. 8. 10. 11. 12. 15. 16 & 17.

Paragraph 22nd The Defts also assign for Error, that two Instructions asked by them were refused, being their 2nd & 6th Instructions The Defts second Instruction is that the Defts were not under any legal ~~obligations to take~~

obligations to take any freight from a private Ware house, but parties in order to impose on them the obligations of carrying freight must bring their freight to the Depot of the Defts. This Instruction were there no other in the cause might appear proper but in the sense intended by the Defts would be well calculated to mislead the Jury, and induce them to believe that the Plffs could not right-fully recover.

By the word Depot it is clear that the Defts meant a house belonging to themselves where they received their smaller freight and intended to exclude the Ware house in which Plffs grain was stored, and which Plffs contended they by their course of dealing and management had made a part of their Depot for receiving freight and that by it, the Court was asked to instruct the Jury that they were to disregard the evidence before them in respect to customs

It appears to us when we take into account the character of business which Rail Road Companies are called upon to do and their usual way of doing it, and the fact of their almost universal custom to receive heavy freight particularly grain & other produce at private Ware houses that the principal sought to be established by this instruction would go very far to

Page 16th discharge R.R. Companys from all liabil
ity to receive freights; or would impose upon Shipers the performance of such onerous conditions as would amount to such discharge of liability. A principal which We think the Courts will be slow to establish.

It is proper in this connection & proper to add that the Court of Appeals of New York, have decided that the rule of liability of Stage Coach owners does not very clearly express a liability of Rail Road Companys. Who being a class of persons or carriers sui generis the law imposes on them peculiar liabilities in conformity of their character & Vernam.

Paragraph 23d The 6th Instructions of Defts is to the same point, but differently worded and contends that the Farmers had a preference because they brought their grain to the Depot while the Plffs had theirs at the grain Ware houses

The same answer may be made to this as to the other refused Instructions and it may be added that the Farmers were allowed this preference as the proof shows under a rule which the Company had adopted in favor of Farmers and that the privilage of bringing-

Page 17. their grain to the same place to be shiped had been refused, the Plffs because they did their business through a Ware house and must ship from there; thereby showing most clearly, that they had adopted the Ware houses as a part of their Depot for such purposes.

Paragraph 2 ½ pt. The denial of the motion for a new trial is assigned for error the grounds of the motion have all been considered above except one "that the damages are excessive". It is true that the damages are quite heavy and a verdict for less would have been justified but there was evidence before the court that the Plff had a large quantity of grain on hand from 40,000 to 60,000 bushells. That there was considerable delay in respect to the transportation of the whole of it that the price of a part at least of it was affected to the extent of ten cents per bushel by the conduct of the Depot that the extra storage amounted to from $5-00 to $7-00 and he contend that the delays would entitle Plff to a considerable claim for extra interest and that there was evidence for the jury to find the whole amount of damages altho perhaps a verdict of $2000 or $2,5-00

S12446-1951

Page 18th 11 would have been better justified by the weight of evidence, still there was evidence for the jury to find the damages, and We think the Court will not take from the Jury their province of judging of the weight of evidence

Paragraph 25th 4 We understand that where there is no evidence tending to show the Recovery proper and that the damages have been suffered the Court will set aside the verdict unless there is Everdence of partiality, malice or oppression but where there is evidence tending to prove the damages found though the evidence is not conclusive the Court will not disturb the verdict.

~~It is proper to add~~ In this case the Court Paragraph 26th 4 will find evidence of Malice and oppression in the testimony of Silloway and Kirkpatrick the Defts in one case refuseing to take grain any where but at the Warehouse and in the other insisting it should be brought to Defts freight house.

Jas M. Wight
Attorney for defts in Error

5-7.

Galena Chicago Union
Rail Road Company
vs
Rea & Dow. Defts
in Error

Argument for
Defts in Error. Affd
below

Submitted by
J. M. Wright

Filed May 18. 1857
S. Leland
Clerk

From Lewis Cass
U. S. Senate

To be returned without failure to Stuart W. Douglas

SANFORD

vs.

The Catawissa, Williamsport and Erie Railroad Company, et al.

Sup. Court.

State of Pennsylvania.

In Equity.

Opinion of the Court, delivered March 22d, 1856.

By LEWIS, Chief Justice.

King & Baird, Prs. No. 9 Sansom St., Philada.

S [illegible]

SANFORD

vs.

THE CATAWISSA, WILLIAMSPORT AND ERIE RAIL ROAD COMPANY, AND FRANCIS WILSON PAUL, JOHN S. KING, N. B. KIDDER, HENRY B. BENNETT, SAMUEL G. HATHAWAY, GEORGE W. HALLOCK, WILLIAM H. MORRELL AND EDWARD T. HUBBELL, carrying on business under the name of the INTERNATIONAL EXPRESS COMPANY.

Supreme Court.

State of Pennsylvania.

In Equity.

Opinion of the Court delivered March 22, 1856, by LEWIS, Chief Justice.

It is provided by the Act of 16th June, 1836, that the Supreme Court, and the several courts of Common Pleas, shall have the jurisdiction and powers of a Court of Chancery, so far as relates to the supervision and control of all corporations other than those of a municipal character. The equity powers of our courts in respect to individuals are circumscribed within a limited sphere. Gilden *vs.* Mernin, 6 Wharton, 522. But over corporations their equity jurisdiction is general and unlimited. In the exercise of it, they possess all the power and jurisdiction of a Court of Chancery by bill, injunction, or otherwise, as the equity of the case may require. Commonwealth *vs.* Bank of Pennsylvania, 3 W. & S. 193. Railroad corporations must necessarily possess very extensive powers to enable them to carry into effect works of great magnitude, and it would be most prejudicial to the interests of all persons with whose property they interfere, if there were not a jurisdiction continually open and ready to exercise its power for the purpose of keeping them within that limit which the Legislature has thought proper to prescribe for the exercise of their powers.

S[illegible]

If they go beyond the power which the Legislature has given them, and in a mistaken exercise of those powers, interfere with the property of individuals, the Court is bound to interfere. Agar *vs.* The Regents Canal Co., Cooper's Rep. 77; Dun River Navigation Company *vs.* North Midland Railway Co., 1 English Railway Cases, 153.

Although a railroad company is a private corporation, in one sense of the term, it is one in which the public have a very great interest; and the paramount object of the Legislature, in creating such a corporation, is the interest of the public. It is upon the ground that such companies are incorporated for public use, that the power given to them to take private property for the construction of their roads, against the will of the owners, has been sustained.

The Legislature possesses no constitutional authority to authorize the seizure of private property, for *private* purposes, even on giving just compensation. The power of the Legislature to authorize municipal officers to tax the people of cities, boroughs and counties for the payment of subscriptions to railroad corporations, has been sustained on the ground that "a railroad is a public highway for the public benefit." Sharpless *vs.* Philadelphia, 9 Harris, 169.

The nature of this peculiar and improved class of highways, makes it indispensable to the public safety, that the transportation on it should be placed under the strict regulation of one controlling head. This necessity has lead to the usual grant of power to provide cars and locomotives, and to embark in the business of transporting freight and passengers. When this power is assumed, the company becomes a common carrier, and thus exercises a sort of public office, and has public duties to perform. It is bound to receive and carry all the goods offered for transportation, and is liable to an action in case of refusal without sufficient cause. New Jersey Steam Navigation Company *vs.* Merchants' Bank, 6 Howard's U. S. Reports, 382. Even lateral railroads established by law for the purpose of enabling the proprietors to

convey their minerals to the public thoroughfares, may be used by the public generally, on payment of the established rates of toll. Act of 5th May, 1832.

It is true that a private railroad may be constructed on the land of the proprietors. In such a case the public have no more interest in it, nor control over it, than they have over any other improvements which men make on their own lands. But whenever a charter is granted for the purpose of constructing a railroad, and the corporation is clothed with the power to take private property, in order to carry out the object, it is an inference of law, from the extent of the power conferred, and the subject matter of the grant, that the road is for the public accommodation. The right to take tolls is the compensation to be received for the benefits conferred. If the public are entitled to these advantages, it results from the nature of the right, that the benefits should be extended to all alike, and that no special privileges should be granted to one man or set of men and denied to others. The special stipulations inserted in charters for the purpose of securing these rights, are placed there in abundance of caution, and affirm nothing more than the common right to equal justice, which exists independent of such provisions.

Of this character is the declaration in the charter of the railroad company now before us, which requires it to transport articles "in the order in which" it, "shall be requested to transport the same," "so that equal and impartial justice shall be done to all owners of property" "who shall pay or tender the toll and freight due under this act." The supposed necessity for such provisions in charters granted in this country, and in England, proves nothing more than that the law makers in both countries were aware of the difficulty in holding large corporations to those common obligations of justice which individuals feel bound to acknowledge without legislative enactment.

An Express Company, engaged in the business of transporting small packages, has as good a right to the benefits

of the railroad as the owners of the packages possess in person. It is impossible that they can all appear in person to claim their rights, and it is sufficient that they are represented by agents who are intrusted with their goods, and have a special property in them. The business of carrying what is called "express matters," has recently grown up, and is productive of great public advantage. The objection to carrying such matter, on the ground of the novelty of the business, has nothing in it deserving serious consideration. If all the improvements of this progressive age are to be excluded from railroad transportation because they were not in existence when the charters were granted for the roads, the public would soon be deprived of the chief value of these important works. The law is not so unreasonable in its constructions. The rights of express agents or carriers have been fully recognised in this respect in England. They are entitled to equal benefits with others, and no exclusive advantages can be granted to others to their injury. 10 Mees & W. 397; 3 English Railway Cases, 193; 49 Eng. Com. Law Rep., 253; 73 Eng. Com. Law Rep. 588.

The Railroad Company defendants, on the 28th October, 1854, entered into a contract with the International Express Company, giving to the latter "for three years, the *exclusive* right of the railroad for all express purposes, at the various stations on the road, or so far as the said Company control the matter, and shall continue so to control the same. Provided nevertheless, that nothing in this contract shall be construed to restrain the said Railroad Company from carrying any freight, baggage, or passengers, at their advertised rates, for any individual or individuals, company or companies whatever." In pursuance of this contract, the Superintendent of the Railroad Company, on the 30th October, 1854, gave to Howard & Co., an Express Company, written notice that "An arrangement had been made with the International Express Company, which gives to that Company the exclusive right of this road for all express pur-

poses; that the Company take the route on Monday, Nov. 6th, and that this Railroad Company will not carry the express matter or messengers of any other persons or Company after Saturday, Nov. 4th." The explanations to be found in the answer and in the evidence, show that the Railroad Company is willing to carry the express matter of Howard & Co., in their *freight trains*, which go at less speed than their passenger trains, but that its purpose is to give to the International Express Company the exclusive privilege of transportation in their *passenger trains*. The Railroad Corporation has no right to do this. The power to regulate the transportation on the road does not carry with it the right to exclude any particular individual, or to grant exclusive privileges to others.

Competition is the best protection to the public, and it is against the policy of the law to destroy it by creating a monopoly of any branch of business. It cannot be done, except by the clearly expressed will of the legislative power. Limited means may perhaps limit the amount of business done by a Railroad Company, but it can never furnish an excuse for appropriating all its energies to any particular individuals. If it possessed this power, it might build up one set of men and destroy others; advance one kind of business, and break down another, and might make even religion and politics the test in the distribution of its favors. Such a power in a Railroad Corporation, might produce evils of the most alarming character.

The rights of the people are not subject to any such corporate control. Like the customers of a grist-mill, they have a right to be served, all other things being equal, in the order of their applications.

A regulation, to be valid, must operate on all alike. If it deprives any persons of the benefits of the road, or grants exclusive privileges to others, it is against law, and void.

Let the contract between the Railroad Corporation and the International Express Company he declared null and

void, and be cancelled and delivered up; and let an injunction issue, restraining the Railroad Company from carrying on business in pursuance of the said illegal contract.

Decree to be drawn for these purposes, according to the prayer of the bill; with costs to be paid by the defendants.

ST. GEO. T. CAMPBELL,
For the Complainant.
J. CADWALADER,
J. M. READ,
For the Defendants.

IN SUPREME COURT.

GALENA AND CHICAGO UNION RAILROAD COMPANY, Appellant,
vs.
WILLIAM G. REA and DANIEL DOW, Appellees.

Error to Winnebago.

This was an action on the case, commenced by Rea & Dow against the Rail Road company.

The declaration was filed on the 10th day of April, 1855, containing 8 counts.

At the April term, 1855, (April 30th,) a demurrer was filed to each count of the declaration, and was sustained as to the 5th, 6th, and 7th counts, and overruled as to the residue, and leave was granted the pl'ffs to amend their declaration.

The fifth count was not amended.

The sixth and seventh were amended.

The defendants pleaded the general issue.

Each count of said declaration charges the Railroad company, as common carries, with negligence in not receiving and transporting the grain of Rea & Dow from Rockford to Chicago, in the fall of 1854.

The cause was tried at the September term of the Circuit Court of Winnebago county, 1855, and resulted in a verdict against the Railroad company for $4,950 damages, and the cause is brought to this court ~~by appeal.~~ writ of Error

The evidence and instructions are preserved in the bill of exceptions, and are substantially as follows:

Chester Spaulding on the part of the plaintiffs below, testified that he was a warehouse man in Rockford in 1854; was one of the firm of U. M. Warner & Co., and occupied the warehouse of U. M. Warner & Co., near the depot of the defendants; that the defendants constructed a side track running by the warehouse, and grain was loaded immediately from the warehouse into the cars on said side track.

That the pl'ffs were engaged in buying grain at this place, from August to November, 1854; they stored most of their grain at witness' warehouse.

From the 1st to the middle of September pl'ffs had stored at this warehouse from 30,000 to 40,000 bushels of grain.

Mr A G Lowrey also stored grain at that warehouse.

Witness and Lowrey sold some grain to a Mr. Ramsey at our (the) warehouse the last of Sept or 1st of Oct, at the time that pl'ffs had 30 or 40,000 bushels of grain at our house.

We had all in the house that we dared to put into it.

At this time the plaintiffs stored at Risings and at Remington's warehouses.

The reason of grain accumulating there was, we could not get cars to take it off;—Plaintiffs commenced storing in July or August, 1854.

The warehouse is situated on the G & C U R R track.

Capt. Turner was at that time superintendant of defendant's railroad. He was out here several times.

The company shipped grain from our warehouse.

Up to the fore part of August the R R co. took off the grain as fast as it came in, and continued to do so until the grain began to come in after harvest.

Has known of plaintiffs calling for cars to take off this grain; they applied to the man in the depot and men out doors; the plaintiffs called for cars almost every day after grain began to accumulate, and I have frequently called for cars to ship pl'ffs grain; I did not always get cars; during this time there were occasionally empty cars on the track.

A car load is about 300 or 350 bushels.

I called for cars on Seymour before he left, and on Woodworth afterwards, and on Kirkpatrick, track master; there was a man there they called Matt (Mathew Berry) before Kirkpatrick was track master.

I cannot give day and date when I called upon any of the agents for cars.

Sometimes we got all the cars we were entitled to at our warehouse, dividing the cars between the several warehouses.

Sometimes they sent off empty cars, saying that Mr. Turner had directed them to send some of the cars to other stations; at the time cars were so sent away the plaintiffs had a large quantity of grain at our warehouse which they wanted shipped.

I know of cars being loaded with grain which came up in a boat from Oregon.

I have known them to save cars for the freight of the boat when it came up, to be loaded from the boat.

At one time when the boat came the pl'ffs had grain which they wanted shipped; there is but one time that I remember distinctly of—it was in Sept or Oct; pl'ffs then wanted cars; had no conversation with agents about it.

I know of farmers loading cars from wagons on the track; a good many came in and loaded from their wagons in that way that I don't know who they were; I remember Leach loaded corn, and J McNeil loaded some wheat.

Cars were loaded from wagons, on the track by farmers, several times when we wanted to get cars to get our grain away; farmers loaded cars very frequently, sometimes a majority of the cars would be loaded on the track from grain brought directly in.

I don't remember any times when we could not get cars, but there were times when they furnished cars to farmers to be loaded on the track as they drew in their grain, when we could not get all the cars we wanted; have known cars to be run on the side track to stand until grain could be drawn from farmers. It was so with Leach; he had a car standing two days; Leach had a car standing on the track which he was two days loading; the plaintiffs all this time had grain in the warehouse which they wanted to ship, and were all this time calling for cars; a large amount of grain of the pl'ffs was in the storehouse from middle of August to October.

On the first of October we charged them extra storage on 16,000 bushels which had laid over from August.

On the first of November we charged them extra storage on 8,000 bushels.

We took in grain and charged a certain price per bushel if shipped within thirty days, and if it remains in store more than thirty days we charged extra, one cent per bushel.

The pl'ffs took into our warehouse in the month of September 16,000 bushels more than they shipped during that time.

I do not remember the amount of extra storage; could tell from my book.

When the agents let the farmers have a majority of the cars, we complained to them, the agents.

I went to agents to get cars to ship pl'ffs grain and grain of others stored in our warehouse; agents then said it was a rule of the company to give to farmers the preference.

Some days no cars were loaded from the track, and some days a majority; don't think it was often that a majority of cars were loaded from the track.

I know of cars being promised us and then loaded by others; sometimes farmers would get them sometimes other warehouse men and sometimes both would get them; this happened while pl'ffs had this large amount of grain.

I know of other grain dealers buying grain of farmers at this time and they getting the farmers to secure the cars.

I bought grain of a farmer and shipped it in his name at this time.

I do not know that the agents of the company knew of it before or afterwards.

I was one of the warehouse firm of U. M. Warner & Co. We were engaged in buying grain at this time.

The extra storage charged pl'ffs on 1st October was

On Corn,	11,000	bushels.
" Wheat,	2,500	"
" Oats,	1,789	"

The extra charge was one cent per bushel.

The extra charge on the 1st Nov. was

On Corn,	8,000	bushels.
" Wheat,	894	"
" Oats	1,870	"
" Barley,	53	"
" Rye,	47	"

The extra charge was one cent per bushel; there was no charge for extra storage Dec. 1st; the extra charges made were for the quantities which had remained in store for a month previous.

The plaintiffs had the greatest quantity of grain in store from the middle of September to the first of October; they then had about 30,000 bushels.

During the month of October much of this grain was shipped; they had not as much in store on the 1st of Nov, as on the 1st of Oct.

I think they had from one-third to one-half less on the 1st of Nov. than on the 1st Oct.

On the 25th of August, 1854,

Corn was worth in Chicago - -	$0,50
On 12th Sept, Wheat, - - -	1,18
" 31st " Corn, - -	54
" 16th Oct, Corn, - - - -	52
" 31st Sept. Wheat, - - -	1,08

Cross Examined:

I went to the agents of the Railroad co. to get cars to take off grain at our warehouse; I don't remember that I ever called on the agents for cars for Rea & Dow by name.

I called upon Seymour upon several occasions; I went into the office and asked him, Seymour, how many cars we could have at our house; I don't know that I ever told any agent that I wanted cars for Rea & Dow; I have frequently told Mr. Woodworth that I wanted to ship grain for Rea, and frequently told him that I wanted cars for Rea; it might have been half a dozen times and it might have been forty; I remember of having had a good many conversations with him.

I cannot tell the precise language that we used at any one time.

I have said to him that our house was full and we wanted cars to ship it off; I don't remember the precise answer that he made.

The account of grain at our office was kept with W. G. Rea alone.

Dow bought some of the grain that was receipted in the name of Rea.

Dow & Rea both told me that they had an interest in the grain; I proposed to them to keep the account in the name of one of them.

There was never a time but what I should have let Dow draw out any grain, so receipted for, upon his order.

I do not remember of any other person buying grain at that time for Rea.

There have been instances of one person buying grain and storing the same in the name of some other person.

Robert Lake bought grain there.

The way I know that Rea & Dow had an interest in this grain was that they both told me so.

I suggested to them that it would be a convenience to keep the books in the name of Rea instead of both; they said it would make no difference whether the account was kept in Rea's name or in the names of both; I think both parties told me so.

The first account I find of pl'ffs' storing grain is July 14th, and I think this item is for oats that Rea held over, 11,000 or 12,000 bushels.

The second item is August 7th.

Storage	Wheat, - -	1,214 bushels.
"	" - -	980 "
"	Corn, - -	8,053 "

These items are in the name of Wm G Rea.

I do not know that Dow ever had interest in this grain; I think this 8,053 bushels of corn came into the storehouse during the month of July.

I do not know that I can tell what they said together about owning the grain.

I have heard them talking about shipping and purchasing grain.

Sometime in Sept. Dow complained to Rea that he was buying more corn than they could get rid of.

I would not say whether he said *we* or *you* must stop buying.

I understood that Rea & Dow were partners from their own statement.

I have heard Mr Dow frequently say that he and Rea were partners in the grain business.

It was about the time they commenced business. He said that he and Rea were buying grain in partnership.

Rea & Dow both spoke to me about getting storage for grain.

Mr. Lowrey and myself sold Mr. Ramsey some grain—from 2,500 to 3,000 bushels. The books will not show what time the sale was made; the grain was wheat.

Last fall there were 7 or 8 warehouses along on the track.

The pl'ffs stored grain at other warehouses after ours was full.

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I cannot say the number of cars that were loaded at our warehouse per day; I do not think it would average three per day.

I believe that I have known three cars per day loaded from farmer's wagons, but not often; I have known two loaded so per day.

The plaintiffs stored grain at Remington's, and at Rising's, and at Godfrey's warehouses.

Sometimes we got at our warehouse one car per day, sometimes 2, 3 or 4 cars per day; there were several days when our warehouse got no cars.

Some of the other warehouses were full but most of them were receiving some, and were prevented from receiving the amount we might have received; we had more grain than we could get away in August; in September it increased.

I think some 8 or 10 empty cars were sent away in one day.

I think that most of the grain that the plaintiffs were then receiving at our warehouse was on contracts made with individuals in the country, but I don't know certainly.

I believe they received about 3,000 bushels of wheat from one man.

I do not know the number of cars which our house was furnished with for three or four months previous to receiving plaintiffs grain, or before harvest; I do not think that upon the average we loaded four cars per day after August.

The company took the grain away as fast as received, until the rush came on in the fall.

The most grain was received in the month of September, 1854; there was more grain shipped from here in 1854 than in 1853.

I do not remember whether we had trouble to get off grain in 1853.

We shipped about twice as much grain from our warehouse in 1854 as in 1853; I think about twice as much grain was shipped from this place in 1854 as in 1853.

Between the fall of 1853 and 1854 the Rail Road had been extended west to Freeport.

Last fall, for several days, quite a number of empty cars were sent east from this place; one day I think some eight or ten cars were sent from here east, empty.

I cannot say whether we had cars at our warehouse to load that day.

I know that it frequently happened that for a day we had no cars to load.

I cannot say whether the empty cars sent away came here loaded or not; I saw them standing empty on the track in the morning.

I have sometimes been told that I could have a number of cars, and did not get so many by one or two.

I have told the agents that I wanted cars to ship grain for Rea, and sometimes I was told I could have some, and at others that I could not have any.

I have also spoken to Matt Berry about cars.

There were not many days but what I got more or less cars.

Sometimes our warehouse would get as many cars as any other about the depot and sometimes it did not.

I do not know whether we had more cars than were furnished to Rising's warehouse; I think we had more than an other warehouse.

Between our warehouse and Rising's I believe the cars were usually divided equally; Rising's warehouse and ours are about the same size; ours a little the largest.

I don't think there was any warehouse but what had one car to our four.

I do not know of the railroad company ever holding back any cars from our use when the cars were empty and not appropriated to some other use, except when the empty cars were sent east.

The pl'ffs shipped the last of their corn from our warehouse on the 22d Nov., 1854, and the last of their oats were shipped in December.

The cars loaded with grain at our warehouse and those loaded for and shipped in Rea's name, are as follows:

	Cars shipped.	*No. for Rea.*
1854.--Nov. 22	4	4
21	3	3
20	1	1
18	4	4
16	4	4
15	4	4
14	3	2

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13	2	1
11	1	1
10	3	2
9	1	
8	2	1
4	2	1
3	1	
1	4	2
1854.--Oct. 31	1	
30	1	
28	1	1
27	2	
24	2	1
23	1	
21	2	
19	4	3
18	1	1
17	2	
16	3	2
14	3	2
13	2	1
12	3	2
11	1	1
10	2	1
9	2	1
7	2	1
6	3	1
5	2	1
4	2	2
3	1	
2	3	1
Sept---30	2	1
29	1	
28	2	
27	2	1
25	2	1
23	4	3
22	1	1
21	2	2
19	3	2
18	1	
16	3	1
15	1	1
14	1	1
13	4	1
12	4	1
11	1	1
9	1	1
8	2	1
7	4	2
6	2	1
5	3	2
4	2	
2	3	2
1	2	1
August---30	4	3
29	3	2

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28	6		2
25	2		1
24	5		4
23	4		2
22	4		3
19	6		4
18	1		
17	6		4
16	4		2
15	4		2
12	2		
11	2		2
7	2		2
3	2		2
4	2		
2	6		5
1	2		
July---31	3		3
27	3		3
26	4		4
25	4		4
Whole No.	219	*For Rea,*	133

44
17 The last date in this list, July 25, 1854, is the date of the first shipment of the plaintiffs grain from our ware house. It was all shipped in the name of W. G. Rea.

"Car loads" average about 325 bushels.

It was some time in August that complaint was first made for want of cars to take off grain; the complaint was universal among the grain buyers; during the rush we shipped as much grain as we ever had during the same length of time.

We had more cars furnished us from the middle of July to 1st of November than had been furnished for two or three months previous.

Here the cross examination closed and the witness was re-examined on the part of the pl'ffs.

The counsel for the pl'ffs asked the witness this question:

"Did you deal with the pl'ffs as being jointly interested in said grain which the said Dow attended to the receiving and shipping?"

To which question the counsel for defts objected—the objection was overruled by the court, and the witness was directed by the court to answer; to which decision of the court, overruling the said objection, the defendants by their counsel then and there excepted.

The witness answered—"I always considered them partners; I don't know whether both were present when I suggested the keeping of the account in Rea's name; the suggestion was made to both of them in one day, about the time they commenced storing.

The witness further stated in answer to interrogatories on the part of the pl'ffs, that the business of Dow was at the warehouse attending to securing and shipping the grain. I do not know that the railroad agents knew that Rea and Dow were interested together in the grain.

The counsel for the pl'ffs then asked the witness the following question:

You spoke last night several times about empty cars having been sent eastward—did you at that time ask them for cars to send forward this grain?

The deft by counsel objected to this question—the court overruled the objection and directed the witness to answer; to which decision of the court the defts then and there excepted.

The witness answered: "Yes sir, I did."

The pl'ffs then put the following question to the witness: "At the time these cars went east, was there a large quantity of this grain in store waiting to send east?"

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The defts by counsel objected to this question—the court overruled the objection and directed the witness to answer; to which decision of the court the deft's then and there excepted.

The witness answered: "Yes there was a large quantity, about 12 or 14,000 bushels."

The pl'ffs then put the following question to the witness: At the time these farmers and others were loading cars upon the track, was Rea & Dow furnishing 'grain at your warehouse to be taken forward?"

The defts by counsel objected to this question; the court overruled the objection and directed the witness to answer; to which decision of the court the defts then and there excepted.

The witness answered, "They were not furnishing much."

The pl'ffs then put the following question to the witness, "Was or was not your warehouse full at the time these cars were being loaded on the track?"

The defts by counsel objected to this question—the court overruled the objection and directed the witness to answer; to which decision of the court the defts then and there excepted.'

The witness answered, 'Our warehouse was pretty full; I know that the storage we had for Rea & Dow was occupied.

The pl'ffs then put this question, 'At the time these cars were being loaded, did you ask for cars for Rea and Dow?'

To which the witness answered, 'I asked at this time for cars for the house; I do not remember that I asked for Rea & Dow in particular, but I might have done so; Dow asked for cars to take forward grain.'

The witness further said: When grain is shipped, a bill of lading is made out and sent by the conductor; we never saw the bills of lading made by the rail road company.

48 The witness was then re-cross examined by defts, and said: I have heard Dow ask the agent inside and out for cars to ship grain at the time these cars were being sent away; Woodworth said he was ordered to send them to some other station; I also heard Dow ask Matt on the track one day when cars were sent away; Matt said the same that Woodworth did, that they were ordered to send the cars somewhere else, that they were directed to send them to some other station; empty cars have always since I have known the road been sent away to a greater or less extent, but believe I have never known empty cars sent away to so great an extent as at the time complained of.

The plaintiffs then introduced as witness, Reafus S King, whose testimony was as follows:

I resided in Chicago in 1854; was a commission merchant; I dealt in that character with the pl'ffs from spring of 1854 to January of this year. The grain was shipto me in the name of W. G. Rea, but I was cognizant of the fact that Dow was a partner; I have a memorandum of grain shipped by the pl'ffs from 28th of June to January.

It shows about 32,000 bushels of corn. Also, of Wheat, perhaps, 10,000 bushels.

The plaintiffs then asked the witness the following question, Will you state the range of price of corn at Chicago from the 15th of July until the 30th of November, 1854.

The defts by counsel objected to this question—the court overruled the objection and directed the witness to answer; to which decision and ruling of the court the defts then and there excepted.

49 The witness answered: I made sales in Chicago as follows:

July	20	50 cents per bushel.
"	25	52 do.
"	28	53 do.
August	3	50½ do.
"	8	50 do.
"	16	54 do.
"	18	55 do.
"	19	60 do.

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" 23	59	do.
Sept. 7	57	do.
" 4	62	do.
Oct. 13	53	do.
" 20	56	do.
" 24	56	do.
" 30	53	do.

The pl'ffs then asked the witness the following question:

What was the range of prices after this until the 31st of November from your recollection?

The defts by counsel objected to this question; the court overruled the objection and directed the witness to answer; to which decision and ruling of the court the defts then and there excepted.

The witness answered, 'From recollection I could state that there was scarcely any market for corn during the month of November, and the price was nominally from 48 to 50 cents per bushel.'

The witness continuing his testimony, said:

'I received of corn from the pl'ffs during the month of November as near as I recollect, over 10,000 bushels; I think nearer 15,000 bushels.'

The pl'ffs then asked the witness the following question: Could you have made sale for pl'ffs of 20,000 bushels more of corn during the month of October and September, than you received of plaintiffs at the prices stated by you during those months?

The defts then and there excepted.

The witness answered, I could have sold any amount furnished.

The pl'ffs then asked the witness the following question, What became of this 10 or 15,000 bushels of corn received of plaintiffs during the month of November?

The defts by counsel objected to this question; the court overruled the objection and directed the witness to answer; to which decision and ruling of the court the defts then and there excepted.

The witness answered, I sold the corn *I* think in January at the highest prices *I* could get; prices 50 cents; which netted to them over storage and other charges about 47 cents per bushel, probably 46 cents; the other prices named by me were nett, that is, the owners received that without any deduction for storage or other charges.

The pl'ffs then asked the witness this question, Did you have any conversation with Mr. Turner in relation to getting in the grain of pl'ffs?

This question was objected to by the defts—the objection overruled by the court and the witness directed to answer; to which decision and ruling of the court the defts then and there excepted.

The witness in answer said, *I* had a conversation with Mr. Turner; *I* cannot state the time; *I* called on him several times about cars to get in the grain of these parties and others at Rockford.

The pl'ffs wrote to me in relation to getting forward this grain; *I* communicated to Mr. Turner what they had written; the pl'ffs requested me to see Mr. Turner; *I* also called on him for other parties; *I* cannot now state just what was said; the substance was arrangements were made by which cars would be furnished to all stations on the road.

*I*n November arrangements were made by which the railroad company furnished cars for the delivery of the grain at the rate of 4,000 or 5,000 bushels per day.

I think no promises were made by Mr Turner, but he stated that arrangements were being made to bring forward all the grain as fast as they could; I knew a Mr McCullup connected with the railroad; he was acting in the capacity of master of transportation; I applied to him for cars to get off this grain; I cannot state the time; it was about the time I applied to Mr. Turner; probably about or during Sep. and October; when I called on McCullup, I stated to him the situation of these parties; I cannot state exactly what I said, it was the subject of conversation at different times; it was the importance of getting forward the grain; I spoke of this in particular because I was interested, having made advances on the same.

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I do not remember that Mr. Turner or Mr. McCullop gave any excuse for not especial furnishing cars for the pl'ffs; I remember of something; I remember of something being said in connection with them, that Rea and Dow had sued the company; one of them said that the company would not run cars to the house where this grain was stored, that they must bring their grain to the depot: they gave us a reason why they would not run their cars to the warehouses, the suit having been commenced by them; it was owing to the state of the case and both for my interest
52 and the owners of the grain that Turner furnished the cars after my conversation with him in November.

The witness was here shown a memoradum by the pl'ffs, which he recognizes as an account of sales made by him of Oats for pl'ffs, from this witness states the quantity of Oats when received and the prices at which the same were sold.

Received Nov. 14th and 23d, 3,445 bushels. Sold at thirty cents per bushel.

The pl'ffs here exhibited to the witness certain printed papers, purporting to show the market prices of the several kinds of grain in Chicago through the months of September and October; they purported to have been issued by a commission house in Chicago but not by the witness; and before the exhibition of these papers the witness stated that he did not recollect the price of oats during that period, and that he had no memorandum by which he could tell.

After the examination of these papers the plaintiffs asked the witness this question: What was the price of Oats through the month of September in Chicago?

The defts objected to this question—the court overruled the objection and directed the witness to answer; to which decision and ruling of the court the defts then and there excepted.

The witness answered,—that the averaged price was thirty-three cents per bushel.

Plaintiffs then asked—What was the price of Oats through the month of October in Chicago?

The defts objected to this question—the court overruled the objection and directed the witness to answer; to which decision and ruling of the court the defts then and there excepted.

The witness answered,—The same as for September.

Witness was then cross-examined by defts:—The substance of the conversation with Mr. Turner when I called on him in September, was that he was making arrangements for increased facilities to forward grain from Rockford, and he said he was making and would make an increase of facilities of forwarding grain from Rockford; we all of us knew that there were not cars to furnish; in the conversation with Tur-
54 ner and McCullup, the general reason assigned was that they could not furnish cars to send to Rockford; they gave me no other reason, and always said that they would furnish increased facilities as soon as they could.

In November, Turner said they would take special pains to get grain in.

The prices I have given are what I have sold grain for; I sold at the warehouse all except that sold in November; the last sales were on board of ship; the person to whom the grain was sold, paid the expense of shipping; grain sold in Chicago brought the prices I have above mentioned with very little variation; parties buying generally pay storage; there was a lack of warehouse room generally; I heard the complaint time and again that the cars were left out four miles, because they could not get in; the impression was that cars were left out for want of facilities in the company.

I think the fault was partly on the side of R. R. Com. and part for want of storage.

When the cars were left out four miles, the side tracks in town were filled with loaded cars.

Horace Miller

The pl'ffs then introduced as witness, Horace Miller, who testified as follows,—I caused grain to be hauled to the depot at Rockford; I loaded probably from wagons some six or eight cars in all; the company furnished me cars to stand on the

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track while I hauled grain from home, about 7 miles, to load them; we usually loaded a car a day when we were hauling; in no case did we use more than an afternoon and the day ensuing.

Two cars were loaded for Mr. Sears and one for Mr. ——

In the six or eight I designed to embrace all that I had anything to do with, including these three; there must have been as many as eight in all.

There was a great rush of grain at this time; car loads averaged about 300 bushels.

I had grain at this time in Rising's warehouse which I could not get cars to get off, and that was the reason why I loaded my grain on the track; I never loaded but two cars in any one day; we had four teams engaged in hauling to each car; we never loaded but one car a day of our own grain.

These six or eight cars were loaded with wheat; I knew that the pl'ffs were then buying grain, they stored in Warner's warehouses.

Upon cross examination by defts, the witness testified as follows:

Had two cars in one day, one for myself and for Johnson; my own and sons grain was 800 bushels; Barrows had some of the cars; the reason given why I could not have cars to take my grain off from the warehouse was that they had not the cars to spare.

It was three or four weeks between the time I got the first and the last of the six or eight cars mentioned as loaded by me on the track; each car when loaded was shipped into Chicago.

I generally spoke for a car the day before I wished to load it, and I generally got one when I so applied for it.

In one instance a car was obtained the same day that it was applied for; my son Clark said he paid a bonus to Matt to get that car; he said he paid a quarter of a dollar, and I think he said that Mr. Barrows also paid as much as he did towards it.

I engaged several cars for farmers about this time; I think the warehouses were then full; these cars that were loaded by myself and other farmers on the track were sent out in the next regular train after they were loaded, and all the grain so loaded was in bags.

When a car load of grain was shipped for me I generally followed on the next day or two to take care of it; I found the side track much filled up in Chicago with loaded cars and bags piled on the ground between the tracks; there was difficulty and delay in discharging grain in Chicago at that time, on account of storage, particularly for grain shipped in bulk; my grain being in bags I unloaded a car in a few hours, and took my grain off on trains from the cars which I unloaded on the track.

J. B. Coolige

The plaintiff then introduced as a witness Jcel B. Coolige, who testified as follows:

I know of cars being loaded on the track; I shipped the corn from my farm in
56 that way: I loaded nine cars on the track; I hauled my grain from home, four and
57 one half miles; I was allowed from morning until 6 P. M., to load a car; I made an arrangement for cars with Mr. Seymour before I went to Chicago; I asked Mr. Seymour (then station agent) if I could have one or two cars a week to ship my corn; he said he thought I could; I loaded these cars in the fore part of September; my grain was all in Chicago before the 20th of September; I always got a car when I applied, but once.

Upon cross examination by defts, the witness testified as follows:

Some time I applied two or three days in advance for cars; I paid no bonus for cars.

Elisha Kirk

The plffs then produced Elisha Kirk as a witness, who testified as follows,—I shipped one car load of grain from the depot that I brought down here from my place; I shipped only one load; I bought some grain, can't say how much, two or three car loads.

The first I shipped being that which I loaded on the track; was grain that I loaded myself; I engaged the car several days before I was to use it, and before I brought down my grain from home.

At this time there was a good deal of grain in the warehouse at Rockford; I saw Mr. Dow make an effort to get cars; in October he applied to Mr. Turner to get cars; he said it was corn that he and Rea had that they wanted to ship; the way

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I got the car was, I went to Matt and asked him for the car; I think I did not give him anything for a car; I gave him something for helping to load; I do not know that I ever gave Matt anything because he let me have a car; the grain that I bought I put into a storehouse and sold it here; Burgess offered ninety cents per bushel in the storehouse and one dollar and ten cents per bushel on the cars; grain at this time was worth more in the cars than for storage; I sold mine with an understanding that I should get a car to ship it in.

Upon cross-examination by defts the witness testified as follows:

'The company promised me a car several days before I got it; I called on Matt for a car; I told him that I wanted to ship grain that I had raised; he said I could have one; at the time I loaded this car on the track there was a car loading at La Row's warehouse; no cars were loading at Warner's or Rising's warehouse as he recollects.

I have bought wheat and stored it, and sold it while in store at Rockford; I heard the conversation Mr. Dow and Mr. Turner had about getting off grain; Mr. Turner told Dow that they did the best they could, that they had to furnish for
58 all, and that he must be patient; that they would do all in their power to get
59 off the grain.

The plaintiffs then produced as a witness, John K. Brewster, who testified as follows:

I reside at Freeport, Illinois; I was engaged in the grain business at that place in the months of September and October, 1854; I had a warehouse their then.

The plffs then asked the witness the following question:

Was there any delay at Freeport in furnishing cars to ship grain from Freeport during months of Sept. and October?

The defts by his counsel objected to the question—the court overruled the objection and directed the witness to answer; to which decision and ruling of the court the defts then and there excepted.

The witness answered,—We did not experience much delay at that time; later in the season we had some trouble; sometimes when grain came in freely it would be a week before we could get our grain off; we usually could ship our grain in 3 or 4 days and these seasons was a delay of over a week; grain did not accumulate much during those months.

Witness further testified, that the costs of transportation on cars from Freeport to Chicago in 1854, was 10 cents per bushel, on wheat 12 1-2 cents per bushel; I cannot tell the relative amount of grain shipped from Freeport and from Rockford.

Grain was brought to Freeport to Market from a large district of surrounding country, as far west as Savanah, thirty five miles, and a portion of Green county, in Wisconsin, came to Freeport; Freeport is on the railroad and 30 miles further from Chicago than Rockford.

There were nine or ten firms engaged in buying grain at Freeport last fall; there were seven warehouses there; I have been in the streets at Rockford during that time and saw grain coming in, but can form no estimate of the relative amount received here as compared with Freeport.

Upon cross-examination by defts the witness testified as follows: 'My warehouse was the second largest one in Freeport. Sometimes we had four or five cars in a day; sometimes one and some days not any; when we did not get cars the agent said he had no cars for us at that time.

In November, more grain came into Freeport than in either September or October; we did not have 10,000 bushels of grain at our warehouse at any one time in October; I do not think that any other house there had that amount on hand at any one time.

Upon re-examination by pl'ffs he said,—'I believe it is a rule with the railroad company to distribute cars among the warehouses according to the amount of business they are doing.'

Upon further cross-examination by defts, he said, 'I have heard other grain men complaining of the want of cars at that place.'

The plaintiffs then introduced as witness, Levi Silloway, who testified as follows:

61 'I went to work for U M Warner & Co., at their warehouse in Rockford, August 15th, 1854, and continued there until 1st of March last; the plffs stored grain there

during that time; there was a time that the warehouse was so full that it was incon venient taking in grain; the warehouse was filled the first of September;— Rea and Dow, and Lowery, and U. M. Warner & Co., were all storing grain there.

Rea and Dow stored a large quantity there; when the warehouse was so full I think Rea and Dow had about 30,000 bushels in store; the defts were receiving grain from day to day; would send their cars to the warehouse and have them loaded, but not every day; Rea and Dow had their turn with other buyers for cars at the warehouse; after the warehouse got so full I think the plffs rather hauled off and did not buy so much.

The warehouse was so full about four or five weeks; when pork began to come in I think the lower floor of the warehouse was mostly clear; that was about the first of Nov., the warehouse was then full overhead.

I do not know personally of the pl'ffs going to the railroad agents for cars; I have been myself for cars for the pl'ffs; the pl'ffs had their share of cars in proportion to other buyers.

The railroad agents knew that Rea had grain at the warehouse to ship; they were frequently told how full the warehouse was.

I remember of Capt. Turner being at the warehouse and talking about this grain; I told him that the house was full and Rea must stop buying.

Turner said no, tell them that they need not stop buying, that the next week he would furnish cars to take off their grain; this was in October. I told Rea and and Dow; both, what Turner had said, the facilities were not furnished; Dow did much of the buying at that time, they were then buying in some small parcels.

The next week after this conversation with Turner, three or four empty cars were sent east each day for three or four days. This conversation with Captain Turner was on Friday or Saturday. There was a time when the Rail Road Company said we must bag grain. At the time when we were so full, Rea and Dow had some bags, and I went over and asked Matt if he would receive the grain if they wouldbring it to the Depot; Matt said that he would not, they were doing business through the ware house, and must deliver grain there. In November Rea shipped a lot of grain through the Warehouse in the name of G. Grant, he was obliged to do so.

Woodworth and Matt said they would not ship for Rea unless he brought it to the Depot; they said Rea had sued the Company.

Sometimes when we called on the agents in the morning for cars, they would say I guess you can have, and then perhaps a farmer would come in and get a car, and we would not get so many.

62 Upon Cross examination by the defendants, the witness testified as follows:

No grain was shipped after the conversation about Rea's having sued the Rail Road Company in Rea's name alone. It was allshipped afterwards in the name of Rea and Brackett.

At some times we did not get any cars for three days; most of Rea and Dow's grain was kept on the upper floor of the warehouse; cars were loaded from above by spouts.

I expect this warehouse got its proportion of the cars, the cars were generally distributed among the warehouses according to the business done at them.

We knew when we applied for cars whose grain was to be shipped because the men storing in the warehouse each took turns for cars; the Rail Road Company distributed cars to the warehouses without reference to the owners of the grain in each warehouse; and the respective owners made their own distribution among themselves of the cars thus furnished to the warehouses by the Rail Road Company.

The witness was then re-examined by the Plaintiffs, and testified that

A Mr. Ramsey bought grain from the warehouse of Mr. Lowrey and Spaulding; this was in October; Ramsey said Turner said he might have the cars to ship it off; this grain was shipped to him one car the first day, and three cars the next day.

64 I think Mr. Dow was there when this grain was shipped. Grant's grain was shipped from the warehouse, the last of November.

The plaintiffs then introduced as witness Dugald Stewart, who testified as follows:

D. Stewart

(1346-122)

I was a grain buyer in Rockford in the fall of 1854, a good deal of grain was loaded on the cars on the track from wagons, from first of September to first of November, the warehouses were full of grain at this time. I would go sometimes and ask for cars and was told that I could not have them because grain had come in and farmers were entitled to a preference. I informed the agents what the condition of my warehouse was; the answer they gave me was that they would give each warehouse its turn. I know of different persons purchasing grain of farmers shipped on the cars. I did myself purchase of one man his grain, and gave him 6 cts a bushel more on account of its being on the car. I know Capt. Scott bought up wheat on a Boat from down the River; he could always get cars to unload his boat into soon as he came up, he usually brought 900 to 1000 bushels. Mr. Miller used to buy grain for the farmers union, as it was delivered on the track. I never tried to get cars by paying a bonus.

During the great rush of business here, they did not keep the cars employed to the full extent of their capacity.

I know of cars standing on the track before unloading, one day, and once I knew one to stand two days. It was loaded with lumber of my own.

This was at a time when I wanted cars to ship off my grain. The agents they were discharging freight and unloading as fast as they could; they had not sufficient help. I told them I thought they could get help if they wanted it.

Upon cross examination by defendants he said:

"The grain that I bought on the car was Barross', about the last of September or early in October. The Rail Road Company did not know that the wheat was mine. It was shipped in Barross' name, not in mine.

It was the practice of the Rail Road Co. to distribute the cars among the different warehouses, in proportion to the business at each. Risings and Warner & Co's. were the largest, and they generally distributed in proportion of two to the largest houses, to one to the smaller ones.

I have frequently seen empty cars pass here which came from the west of this station.

A. N. Stickney

The plaintiffs then introduced as a witnes, Albert N. Stickney, who testified as follows:

I was engaged in the warehouse business last fall, in the employ of Remington & Co. at Rockford. The plaintiffs stored grain in that warehouse. I commenced work there on the 4th of September; the plaintiffs had 1000 bushels of grain in there when I commenced.

They took in there between 3 and 4000 bushels.

66 This was taken in September, the most of it in the forepart of the month; the warehouse was on the track; this grain laid there until November. I have known of the plaintiff's asking for cars to take off this grain.

I have time and time again asked for cars to take off this grain.

Some of this grain was shipped out in September, and some in October; about two thirds was taken off in October, and the balance in November.

Remington & Co., and Lake and Potter, were storing in this warehouse also.

I know of cars having been loaded by farmers, from wagons, on the track; a good many cars were so loaded; cars were sometimes run up to our warehouse, and were then taken away to other warehouses.

I know something of cars being purchased. I got cars at two different times by paying a bonus; the first time I got one, and the second time I got two. One car was left at our warehouse near three days.

I have known of cars being taken empty from the west to the east; I have known this to happen half a dozen times.

At one time there were ten cars, and I have known of the company's taking empty cars east from this station.

It was a matter of frequent occurrence for cars to stand on the track for farmers to load. Cars also would stand to be loaded from the boat which came from Oregon.

Ramsey had his grain sent immediately; I helped sack it.

67 He lived at Greensburgh, Pa.; had 1200 bags; Plaintiffs had grain in Spaulding's warehouse, and in the warehouse of Remington & Co. while empty cars were going past, (east.)

Has known Dow asking for cars; not a day passed without his doing so.

S/3466-123

Cars sometimes lay three days at the warehouse.

Upon cross-examination by defendants, he testified as follows—

I know that farmers loaded cars from their wagons on the track.

Several times cars were left at our warehouse, and then removed to other warehouses, further up.

They came and took away one that was engaged.

We had engaged a car of Matt to take away this grain of Rea's, and after the car was left at our warehouse, they came and took it away to Stewart's warehouse.

On that day I think there was one or two cars loaded at Warner & Co's house.

Those was shipped from this warehouse of Remington & Co., during September and October, 8 or 9000 bushels.

Remington had some on hand when the last of Dow's was taken away.

I loaded three cars on the track with wheat.

I paid the bonus to Matt; he said there was a good deal of grain on hand, and every buyer wanted cars; he said he would not furnish cars without inducement.—I told him I would give him one dollar; he agreed to take it and let me have the car.

Mr. Woodworth did not know it, I think.

68 I think I had no conversation with Woodworth about these three cars.

I believe I paid Matt $1,50 extra for the other two cars. I never told Mr. Woodworth of this arrangement.

I have known four cars a day load at Warner & Co's ware house.

Rea and Dow stored at Remington's in the neighborhood of 4000 beshels.

The Plaintiff then introduced as witness, George N. Moffatt, who testified as follows:

I know that Rea and Dow were buying grain in the fall of 1854. I sold them some grain; I think it was in August or September; I cannot state the precise amount, think about 200 bushels; I delivered to them all I had to sell.

The corn that I delivered to them was left on the platform of Warner & Co's warehouse, out side for some time. I put it on the platform at this end of the warehouse; It was left there in that shape eight or ten days; I made an effort to have it put into the warehouse, but could not, because, as he said, the houses were all full; I left three loads standing there in bags, 40 or 45 bushels to the load.—This was the last of the grain that I delivered.

It was some three weeks or a month previous to that time, that I had delivered to them grain before this.

I think the last I delivered was in September; It was from the first to the middle of August that I delivered the first to the plaintiffs; I thing the warehouse was crowded when I delivered the first grain; it looked very full.

69 Upon cross examination by the defendants, witness testified as follows—

I know that it was as late as September that I brought some; I am sure that it was not in August that I brought the last; the three loads were brought on two different days.

I went to the lower part of the warehouse; did not go overhead.

I know that this grain laid on the platform eight or ten days, because I called for my bags three or four times, and saw them there.

The plaintiffs then produced as witness, James S. Sterling, who testified as follows:

I put two car loads of grain on the Road last fall; I delivered it on the cars; I raised the grain on my farm, about three miles from here. It was the last of October that I loaded the two cars.

A part of the grain was on the platform of the Rail Road depot, at the time I got the car.

I paid Matt a dollar for the car; I asked him for a car; he asked me how much I would give for a car; I told him a dollar; he said, give me the money; I did so, and he said there is a car.

The plaintiff then put the following question to the witness:

"Was there, or was there not, a difference in the price of grain in the car or in the warehouse?"

The defendants by counsel objected to this question: the court overruled the objection, and directed the witness to answer, to which decision and ruling of the court

21426-134

the defendants then and there excepted. The witness answered "there was a difference." The plaintiffs then asked this question—

"What was the difference?"

The defendants objected to this question—the court overruled the objection, and directed the witness to answer; to which decision and ruling of the court the defendants then and there excepted. The witness answered, "from three to five cents per bushel." Witness further testified as follows: "I sold the grain, and was to deliver it in Chicago. Matt did not know that I had sold the grain.

I got the second car the next day but one, about noon; the second car that I loaded, stood on the track one day certain, and I don't know but two days.

Upon cross examination by defendants, the witness testified as follows: "I had two or three wagon loads on the depot platform at the time I got the first car. I don't know how many loads it took for a car load. I got the second car about sunset; I went into the rail road office, and enquired if I could get a car, and the agent, Woodworth, sent me to Matt Berry. Matt showed me a car west of the depot; I paid him a dollar for the car; I paid it as a bonus for the car; I told Rea of it next day. Matt heard that I had told of this transaction.

I did not tell Mr. Woodworth that I had bought a car. I did not inform any one that I had sold this grain for which I wanted a car. Matt said "how much will you give me?"—spoke of five or ten dollars. I refused to pay that price, but offered him a dollar. I told Rea of it next morning. Matt had heard that I had told of it, and was not going to let me have a car. I had to do a little extra swearing to get one.

A. J. Pennock

The plaintiff then introduced as a witness, Andrew J. Pennock, who testified as follows:

"I delivered grain on the cars here last fall for James S. Sterling. I delivered also some for my brother; we loaded one car for him; I know nothing of my brother buying a car; the car that we loaded for my brother, we drew the grain from home after the car was furnished.

Upon cross examination by the defendants, the witness testified as follows:

"I was with Sterling when the car was bought; did not hear the bargain. When my brother had a car, he made an arrangement to have a car the next day. To load it we drew three loads apiece.

Have seen cars loading before Warner's warehouse. It was sometime in October that we loaded the car for my brother. It was probably two week before we loaded for Sterling.

Wm D. Pennock

The plaintiffs then introduced as witness, William D. Pennock, who testified as follows—

"I am the brother of the last witness examined; I loaded one car last fall. The plaintiffs then asked the witness this question—"Do you know whether there was a difference in the price of grain in cars and on the street?" The defendants by counsel objected to this question. The objection was overruled by the court, and the witness directed to answer—to which decision and ruling of the court, the defendants then and there excepted. The witness answered, "Grain was worth more on the cars." The plaintiffs then asked this question—"What was that difference?"—The defendants objected to this question—the court overruled the objection, and directed the witness to answer—to which decision and ruling of the court the defendants then and there excepted. The witness answered—"I was offered from 90 to 95 cents in the street, and $1,06 to $1,07 in the car.

Witness further testified—this was 25th of October; the wheat was of extra quality; I offered it to the plaintiffs. I do not know whether the storehouses at that time were full except what I saw. I think Warner's was full below, and Stewart's was also full. I heard Mr. Dow speak to the man behind the counter in the rail road office, for cars; he wanted to know if they were not going to let him have any. I do not remember the reply. This was either on the day I was loading the car, or on the day I engaged it. Dow at that time spoke about their letting the farmers have cars; I am not able to state the words; I remember of his calling for cars, and did not like it because the farmers could get them, and he could not. I do not remember whether there were then any other empty cars than the one I got; other farmers were loading cars at the time I loaded mine.

Upon cross examination by the defendants, witness testified as follows—

I engaged the car on the 23d of October; loaded it on the 24th, and it was started for Chicago on the 25th. I applied both to the agents in the office, and to Matt for the car. I loaded it with grain of my own raising. I told them how I wanted to load the car; the load weighed in Chicago 329 bushels.

$1046-125

E. L. Godfrey

The plaintiff then introduced as witness, E. L. Godfrey, who testified as follows—"I had a warehouse near the depot in Rockford, in 1854, and was engaged in buying grain. Rea and Dow had grain stored in my warehouse. I think they had grain there in September. It remained there about one month; they had about 1000 bushels of corn there. I applied for cars to take away the grain.

I know that at the time this grain was there, farmers loaded cars on the track.

I got a car one day by paying a bonus; I applied to a man called Mike; he was the man furnished by the rail road company to change about the cars on the rail road tracks.

I have heard Dow talking to the agents in September and October, for cars to take off his grain—the subject of the conversation was he wanted cars.

73 I believe there were cars loaded in the night; there was one loaded at my warehouse in the night; it was loaded with my grain. When I came to the warehouse in the morning the car was loaded. I cannot say how this was done; I left my partner there the night before; his name is Wormwood. I have informed the a-

74 gents of the practice of farmers selling their grain to others, and getting the cars to to take it off as their own.

The plaintiffs then asked the witness this question—"Was there a difference in the price of grain in the street and on board of the cars?" The defendants by counsel, objected to this question; the court overruled the objection, and directed the witness to answer—to which decision and ruling of the court the defendants then and there excepted. The witness answered, "there was a difference." The plaintiffs then asked the witness this question—"What was that difference?" The defendants by counsel objected to this question—the court overruled the objection and directed the witness to answer—to which decision and ruling of the court, the defend-

74 ants then and there excepted. The witness answered—"I paid ten cents per bushel more on board the cars than at the warehouse."

The plaintiffs then asked the witness this question—"Was there or was there not ten cents per bushel difference in the price of wheat on the cars and at the warehouse?" The defendants by counsel objected to this question: the court overruled the objection, and directed the witness to answer—to which decision and ruling of the court the defendants then and there excepted.

The witness answered—"There was that difference; I was buying at ten cents per bushel less at the warehouse than I paid on the cars.

Upon cross examination by the defendants, the witness testified as follows—"I got two cars the day I paid a bonus for one.

75 The day before I paid for the car, I made application to Matt for a car, and he said I could have one; and that car I got; and I also got the one I paid Mike for. I cannot state how many cars were loaded at Warner's warehouse this day. I cannot tell exactly what time Dow put his grain into my warehouse. I think it was in September.

His grain laid there, I think, about one month. Sometimes the rail road Company furnished cars to the several warehouses, and sometimes they were distributed according to the number of buyers. When Rea and Dow stored there I told them they must get their own cars to take off their grain.

I cannot say how many cars a week I averaged during the time Rea and Dow's grain was in our warehouse, at the time I paid the 25 cents bonus for the car, but I am not certain. I think it was in October sometime, that I paid the bonus for the car. I never said anything to Woodworth about it. Matt remained in business several weeks after this—I think he was discharged in November. Kirkpatrick succeeded him as track master. I told Mike I would give him a little something extra. There were times last fall when I had from $6000 to 8000 bushels of grain in my warehouse. There have been times, when on account of low prices we were not anxious to send off grain.

S. P. Crawford

The plaintiffs here introduced as a witness, Samuel P. Crawford, who testified as

76 follows:—"I frequently heard Dow asking agents of the Rail Road Company for cars. In September and October last, I heard Dow ask for cars, and he was put off. Dow said if he could not have cars he would sue the Company.

A large number of cars were loaded on the track from wagons during Sept. and Oct. I never paid a bonus for car but once. I paid that to Matt; I paid him one dollar; Matt was the track master.

I think cars have been loaded from the boat. Farmers were sometimes one day in loading a car.

Ten or 12 cars could be loaded in a day from Warner's warehouse.

L/2466-182

The Plaintiffs then put this question to the witness—

"Was there a difference in the price of grain in the cars and on the street—if so, what was that difference?" The defendants by counsel objected to this question: the court overruled the objection, and directed the witness to answer—to which decision and ruling of the court the defendants then and there excepted.

The witness answered—"There was a difference—grain was worth more on the cars than on the street, or at the warehouse.

76 The plaintiffs then put this question to the witness. "What was the cause of the difference in price?" The defendants by counsel objected to this question, the court overruled the objection and directed the Witness to answer, to which decis-
77 ion and ruling of the ccourt the defendants then and there excepted. The witness answered—"The reason was, that when we got grain in the car we thought we could get it into Chicago."

The plaintiffs put this question. "Was there, or not, a practice among grain buyers, to buy grain of farmers conditionally, if they would procure cars to put it on board?" Witness answered—"It was a very frequent occurrence to pay a bonus for cars at this depot—One dollar was the highest price. Stickney got three cars for me thus in a very few days.

The man that bought grain of Lowrey and Spaulding, got cars immediately.—I saw him and Turner together. I think I have seen empty cars going eastward *I* have heard Mr. Dow ask Mr. Turner for cars; the reply was that they would do the best they could to furnish cars.

Upon cross examination by the defendant the witness testified. "*I* do not know that the purchaser of the Lowrey and Spaulding grain ever said anything to Mr.
77 Turner about cars. *I* think, perhaps, four or five cars were loaded in one day. *I* cannot state the number of cars that he loaded He was nearly all day loading. *I* stored at Warner's storehouse. The grain sold by Lowrey and Spaulding was stored at the W. M. Warner & Co's. warehouse. *I* got no cars the day Ramsey's grain was loaded. *I*t was the last of October that Stickney got the three cars of Matt. *I* did not say anything about it to the Rail Road agents. *I*t was a common talk among the grain buyers that they could buy cars. *I* do not know whether Stickney made an application to Woodworth for cars.

The small warehouses got more corn in proportion to their business than the
78 large ones. *I* have never observed that in the distribution of the cars by the Rail Road Company, they distributed two to the large warehouses to one to the small ones.

I remember of Dow's asking very frequently of Woodworth for cars—at the same time Woodworth would say "go to Matt," and sometimes he would say they were doing the best they could.

I know that Rea and Dow have shipped grain by the cars. For the bonus to Matt, *I* paid for one car, and Stickney paid for other two.

78 One load of this grain was shipped in my name, and two in the name of Mandeville. There was about one week between the first and second shipments.

J. C. Whitmarsh

The Plaintiffs then introduced as witness, John C. Whitmarsh, who testified as follows—"I have seen cars loaded on the track; I have had farmers load several cars for me.

The plaintiffs then asked the witness the following question—"Was there or was there not a difference in price between grain on the cars and on the street—if so, what was that difference?" The defendants by counsel objected to this question; the court overruled the objection, and directed the witness to answer; to which decision and ruling of the court, the defendants then and there excepted. The witness answered—"The difference was ten cents per bushel." The witness further testified as follows: I once made a contract with a farmer for wheat, if he could get a car to put it on board of. I think Mr. Woodworth was the agent. I made the
79 arrangement with the farmer. I turned around and saw Woodworth. I told Mr. Woodworth to keep cool about it. The farmer got the car and shipped the grain in his name.

79 I got three or four car loads in this way.

This was sometime in October.

I know that Rea and Dow had a large quantity of grain on hand at this time.

I frequently heard Dow asking for cars.

I could not say how many cars the farmers loaded on the track in this way.—During September and October they loaded a good many. Some days they loaded four or five. They might have averaged one per day, but I do not think they averaged so many.

5/2466-127

I heard a conversation between Mr. Dow and Capt. Turner. Turner said that he thought in the course of next week he would furnish them all the cars they wanted. This Was at Rising's warehouse.

I remember that empty cars were sent away. I think that empty cars were sent away after this conversation between Dow and Turner, but I cannot state the time.

Upon cross examination by the defendants, the witness testified as follows:

79 The conversation between Turner and Dow, was in September. Turner though they would have cars in the course of a week or two. Turner said the reason why they had not sufficient cars, was that they could not get rid of the freight in Chicago. *I* was in Chicago—the tracks were not all filled but.

Matt came here in the summer, and stayed a long time; he was track master; his business was to change about and distribute cars.

I stored grain at Rising's and also at Warner's; these houses were of about the same capacity; there were about five or six smaller warehouses; where the larger warehouses got two cars the smaller ones usually got one.

It was Mr. Spicer that I bought the grain of, which was shipped in the car in hi· name. I told Woodworth to keep quiet, and I thought he could get a car. I als so told him I could get grain at a certain price, if he could get a car; this grain was shipped in Spicer's name, not in mine.

The plaintiffs then introduced as a witness, Ira Benjamin, who testified as fol. lows:

I was a grain buyer here last fall. I know that cars were frequently loaded by farmers on the track. I don't know that farmers got many cars. I think it would average one car per day that was loaded by farmers from wagons.

80 A boat came up here from down the river, loaded with grain that was unloaded directly into the cars.

The plaitiffs then asked the witness this question: "How long would the boat have to wait here before they commenced loading the cars out of it?"

81 The defendants by counsel objected to this question; the court overruled the objection and directed the witness to answer; to which decision and ruling of the court the defendants then and there excepted.

The witness answered, "they generally commenced immediately."

The witness further testified as follows:

"I bought grain of L. Jackson; this grain was loaded by Jackson on the track.

The plaintiffs then asked the witness this question:

"Was there or was there not a difference between the price of grain in the cars or

81 on the street; If so, what was that difference?"

The defendants by counsel objected to this question, the court overruled the objection, and directed the witness to answer; to which decision and ruling of the court the defendants then and there excepted.

The witness answered—"There was a difference; grain was worth from eight to ten cents per bushel more on the cars than on the street or at the warehouses.

Witness further testified there was part of a train of cars left standing in front of my warehouse three or four days after loaded. It was quite frequent that part of a train would be left two or three days after it was loaded. I have frequently heard Dow asking for cars in September and October. I was present at a conversation between Mr. Dow, and Mr. Turner; I think Mr. Turner rather flattered us that we would have bette. times. There was about the time of this conversation between Dow and Turner, empty cars sent east four or five per day, for several days; the

82 storehouses were full at this time.

Upon Cross examination by defendants, the witness testified as follows: "Jackson engaged the car to ship the grain that I bought of him; the grain was shipped in his name. I knew that if they knew that I had the car they would charge it to me.

The boat came up with two loads certain, and I think three times. At one time I think the boat came up at night and commenced loading on the cars the next morning; the grain in the boat came up in sacks.

Andrew Lowrey was then introduced as witness on the part of the plaintiffs, who testified as follows:

I was a grain buyer last fall; grain was occasionally loaded on the track.

Ramsey bought from Mr. Spalding and myself 2800 bushels of grain, he was about one week in shipping it; he got it off without any detention. I think the sale was made to Ramsey in September. Rea and Dow then had grain in the warehouse. The plaintiffs then asked the witness this question.

"Was there or was there not a difference in the price of grain on the cars or in the street or warehouses."

The defendants by counsel objected to this question, the objection was overruled by the court. and the witness directed to answer." To which decision and ruling of the court the defendants then and there excepted.

I believe there was a difference made sometimes of eight to ten cents per bushel.

82 Witness further testified. "I know nothing of persons getting cars by paying a bonus. I could not state whether the grain from the boat was loaded into the cars immediately or not.

83 I have seen empty cars going east.

Upon cross examination by defendants, he testified as follows:

I suppose Rea purchased grain from Grant on commission; we used all the cars that were sent to the warehouse to ship the grain—sold by us to Ramsey; the grain was stored by us in the warehouse before the sale. I do not know whether Rising's warehouse had any cars at this time. I cannot state the time the grain was sold by us to Ramsey.

The plaintiffs then introduced as a witness James Dane who testified as follows:

"I was present at a conversation between Mr. Dow & Mr. Turner; Turner was in Rising's warehouse; we were telling him how full the warehouses were, & how slow they were getting the grain away. Turner said they were making arrangements in Chicago by which he thought they would be able to receive grain there next week as fast as they wanted to ship.

83 Shortly after this, I saw empty cars going east; I think four per day.

Upon cross examination by defendants, he testified as follow:

"Turner said the reason why they could not furnish more cars was, that they were filled up in Chicago, and that they were fitting up some new warehouses in Chicago which would be ready the next week. Mr. Turner said in this conversation, that they were doing as well they could. I know were there a number of days

84 when the cars loaded here were not sent off east, and the reason given by the agent at the time for not sending them was that the side tracks in Chicago were full, and they had no room for them, and no place to discharge the grain. When the empty cars were sent east I understood from the agents that they were to supply the station at Marengo.

Mr. Woodworth was the station agent at Rockford, at this time.

The plaintiffs then introduced as a witness, Warren Loomis, who testified as follows:

"I know that cars were loaded from wagons by farmes on the track. I had one car so loaded; I do not remember where the car stood when I got it; I think tha car was not on the track at Warner's warehouse.

I know nothing of any person paying a bonus for cars.

I sold grain to Lake; I had to procure a car to ship it in before I could sell the grain. The car stood then near the depot.

The plaintiffs then asked the witness this question: "Was there a difference in the price of grain in the cars, or on the street, or in the warehouses? If so what was that difference?"

The defendants by counsel objected to this question; the court overruled the objection, and directed the witness to answer; to which decision and ruling of the court the defendants then and there excepted.

The witness answered; "There was a difference; I got ten cents per bushel more on the cars than I could get offered at the warehouses, or on the street.

Upon cross examination by the defendants, the witness testified as follows:

85 "I went to the depot on Saturday and told Matt that I wanted a car to load with grain of my own raising, on Wednesday. I got the car and loaded it on Monday, the grain was shipped in my name. I never told him or any of the agents that Lake was to have the wheat.

The defendants by counsel, here further cross examined A. J. Lowrey, who testified as follows:

The contracts by Spaulding and myself, with Ramsey, for the 2800 bushels of wheat, was made on the 22d of September; the grain was shipped from the warehouse as follows:

September 27th, 1 car; 28th, 2 cars; 29th, 1 car; 30th, 1 car; October 2d, 1 car; eight cars in all for Ramsey.

[12466-129]

The plaintiffs then introduced as a witness William T. Lerow, who testified as follows:

"I keep a warehouse at the depot in Rockford. I know of a bonus having been paid for a car; I have seen cars loaded by farmers on the rail road track.

The plaintiffs then introduced as a witness, Franklin Benjamin, who testified as follows:

I was engaged in the warehouse business at Rockford, last fall. I kow that
86 the plaintiffs had grain in store here last fall. I have known of persons buying in grain, and shipping it as farmers immediately, while plaintiffs had grain in store I think the farmers would average more than one car per day, so loaded.

The day of the conversation with Mr. Turner at Rockford, seven cars were sent off, which had been so loaded, on the track.

I know of two cars having been so loaded on the track in one day; Clark loaded one of them, and Sterling the other.

The plaintiff then introduced as a witness Thomas J. L. Remington, who testified as follows:

I was keeping a warehouse at Rockford, in the fall of 1854; the plaintiffs stored grain with me. They commenced storing August 26th, they stored in all between 3 and 4000 bushels. We received the last for them, September 21st, the last of their grain was taken away as late as November 21st. The rest of plaintiffs grain remained in store three months.

The Railroad Company furnished cars to our warehouse when we had any.

86 I know the plaintiffs applied for cars almost every day, for cars, to take away this grain.

During this time the company furnished cars to farmers, to load on the track.—During this time I have known Dow to apply to Woodworth for cars; sometimes he referred him to the Track Master. Dow told Woodworth that they let farmer have cars to take off their grain, and kept plaintiffs in store. Woodworth said there
87 were more folks in the world than Rea and Dow; and all must be provide for; he thought them selfish. When the warehouses were the fullest, the company let the farmers have the worst cars to load on the track.

Rea and Dow paid me extra, for the grain that lay over one month, one cent per bushel. Some of their grain was in my warehouse three months, and some less. Plaintiffs paid me extra storage on 3564 bushels, one cent per bushel $35.64.

Upon examination he testified as follows:

I cannot state the amount of grain received into my warehouse, during the period
87 of the plaintiffs grain being in my warehouse. I cannot state the amount shipped from the warehouse during the time; but I should think about 3000 bushels. I think not over two car loads had been taken of plaintiffs grain. I think about ten cars were shippied in all. I think he got about his proportion of cars as compared with the other warehouses. I have seen as many as four cars loaded on the track in one day; other days not any. I cannot say that I have seen four on more than one day.

In October saw two cars loaded in one day on the track frequently; cannot say how often; cannot state the time when he has seen them; but thinks he has.

Days frequently elapsed when no cars were loaded on the track; perhaps half of the days there was no cars loaded; I could not swear that I have noticed any day when but one car was loaded on the track. I think I did not get any car on the day or week that Horace Miller got his two cars.

88 The pl'ffs then introduced as a witness, Augustus Crowell, who testified as follows:

I was in the employ of the railroad company as a clerk last fall in the railroad office at Rockford; I know of Dow calling at the railroad office for cars; he called almost every day; he came and wanted cars; I am mistaken; Dow did not come but a few times; it was the warehouse man; Dow came nearly every day for one or two weeks in the fore part of October.

Upon cross-examination by defendants, the witness testified as follows:

I have him come to me; I told him that I had nothing to do with the distribution of the cars; that he must go to the man out doors; I told him we had no cars when we had none; we had a great deal of grain to ship and but few cars. I have heard that they were full in Chicago; it was the instruction to divide the cars between the warehouses in proportion to the business of each; I have never known as many as four cars per day loaded on the track.

It was the custom to give the farmers a preference if they wanted to get cars to load from their wagons; It was the custom of the company to do so, and has been since I have known the mode of doing business on this road.

I think Rea had grain on hand when Kirkpatrick took Matt Berry's place as track master; along in October I think there may have been as many as one car per day loaded by farmers on the track.

89 Some of the empty cars were sent to Marengo to be loaded with grain; they were sent for that purpose; we had instructions to send cars to other stations.

Cars were sent from station to station on the road; it was always the practice.

I think cars were sent to this station from other stations and loaded here, and I suppose that the cars which were sent from here were loaded where they were sent.

I know of cars being sent from Freeport here and loaded here; I don't remember that any empty cars came from the east to this station during that time.

B. P. Woodworth

The pl'ffs then introduced as a witness, Benjamin P. Woodworth, who testified as follows—

I was in charge of the depot at Rockford as station agent from 19th September, 1854, during that fall; I have seen Mr. Dow there calling for cars quite frequently almost every day for sometime, about first of Oct.

The Railroad Company were in the habit of furnishing the cars to the warehouses.

Dow informed that he had grain to be shipped; cannot state the amount; a large quantity I think; I remember of Ramsey's shipping grain; the instructions were to send grain as fast as we could; I did so; Farmers had cars to load grain in bags on the track, and besides that, cars were loaded with live stock; cars were sent east to Marengo, Cherry Valley, Garden Prairie, &c.

Upon cross-examination by the defendants, the witness testified as follows:

90 These cars were sent to these stations east by the direction of Mr. Turner; we have frequently sent cars to other stations.

Cars were frequently left at this station from the west and were loaded here; When Dow applied for cars he sometimes got them and sometimes he did not; I did not know anything of the firm of Rea and Dow; the grain was all shipped in Rea's name; I think he got his full proportion of cars from this point if not more; we distributed the cars between the warehouses; I have been engaged on this road over three years; it has been the intention and the practice as long as I have known the road to allow farmers to load a car on the track when they brought grain enough for a full load.

The following statements shows the number of cars freighted at this depot from Sept. 1st to Nov. 15th, 1854.

Whole number shipped,	839
Number of grain buyers, calling a fir n a single buyer,	19
The average to each would be	44
Rea shipped during this time	173

This statement includes all the cars loaded with grain, but does not show separately the number loaded by farmers.

I know John C. Whitmarsh; I did not know of his buying grain of a farmer to be loaded on the track and shipped in the farmer's name; I never allowed any grain buyer to ship grain in the name of the farmer; Matt Berry was discharged from the

91 position of track master, and Kirkpatrick was appointed in his place; I have heard a great many stories of his selling the privilege of cars, but I never knew anything of it; it was never done with my knowledge or consent.

One reason of so much trouble about cars was that grain was shipped to Chicago faster than they could receive and dispose of it there; the side tracks in Chicago were filled with loaded cars and they could not discharge for want of storage and room; I was in Chicago almost every month, sometimes oftener; we made the best use we could of all the facilities of the road to take off freight for every one.

After the commencement of this suit I had a conversation, in which I expressed an unwillingness to take Rea's freight from the warehouse, but I never refused to take it for him.

On the 16th of November Rea had nine cars; it was after these last nine cars were shipped that I told some one that I would not ship any more grain for Rea; my instructions came from the master of transportation.

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Perhaps I may have told Dow or some one three or four times that I would not ship any more grain for Rea; I received instructions after the 1st of December; the instructions were to have them bring their grain to the depot for shipment.

The plaintiffs then introduced as a witness, Lewis Jackson, who testified as follows—

I am a farmer, and three miles from Rockford; *I* shipped two car loads of grain of my own raising last fall; *I* loaded them from waggons on the Railroad track.

92 *I* saw other farmers doing the same; *I* hauled my grain from home for the purpose of loading it; know nothing of any one paying a bonus for cars; *I* gave a large apple, but not as pay.

The plaintiffs then introduced as a witness, G. A. Sanford, who testified as follows—

That he built, in company with W. A. Dickerman, the warehouse occupied by N. Rising, and that it has always been the practice of the railroad company to receive freight and load cars directly from the warehouses. A side track was constructed by the railroad company, and the warehouses stood upon it so as to load directly from them on to the cars on the track.

The plaintiffs then introduced as a witness Nathaniel Risings, who testified as follows—

I was engaged in the warehouse business at Rockford last fall; cars were loaded directly from my warehouse; it has been the practice to load cars at the warehouse; I stored for the plffs 19000 bushels; we commenced storing for the plffs on the 9th August, 1854; they had in my warehouse at one time 5,000 bushels; I charged them for storage 1¼ cents per bushel; they paid me for extra storage on 4,000 bushels at one cent per bushel.

I know that the plffs frequently called for cars to take off their grain; I called for cars almost every day; I know that some cars were loaded by farmers from waggons on the track; cannot state how many.

The plffs then asked witness this question—Was there or was there not a difference in the price of grain on board of the cars and on the street, or at the warehouse—if so, what was that difference?

The defts by counsel objected to this question—the court overruled the objection
93 and directed the witness to answer; to which decision and ruling of the court the defts then and there excepted.

The witness further testified as follows—The Farmer's Union shipped some grain; I stored some grain for the Union; they had some considerable grain shipped on the track; Horace Miller was their acting agent; Capt. Turner was here during the time the pl'ffs had this grain in store; there was a conversation with him in my warehouse about getting off grain from this point.

Turner said that in a week or 10 days they could furnish facilities to take off all the grain in store. There was something said by him to the effect that they need not stop buying grain.

Upon cross-examination by defts, witness testified as follows—

I mean that Mr. Turner held out inducements to the buyers to keep on buying; that we need not stop on account of being afraid that the grain would not be taken away.

He came to my warehouse and inquired how much grain we had in store; I suppose he also went to other houses; he said they had not room in Chicago to store the grain, but said that the railroad company and also a Mr. Gibbs were making arrangements for the storage of grain.

I was in Chicago during the fall; I think in the fore part of November; there
94 was then a good deal of freight from the railroad there; some was unloaded in sacks on the ground.

I saw a good many cars loaded standing on the track there.

I have asked for cars for Rea; my warehouse and Warner's were entitled to an equal number of cars.

I received grain in store for the plffs from time to time, from August 9th to some time in November.

The plffs then introduced as a witness, U. M. Warner, who testified—That it had been the habit of the railroad company to load cars directly from his warehouse on the side track running by it. That the warehouse was completed and used in the summer of 1853, and had been so used since that time; that the warehouse occupied by Rising was used about the same time.

Chester Spaulding was then recalled by the plffs, and testified as follows—It has always been the custom of the railroad company to load cars directly from our warehouse, on the side track running by it, since the warehouse has been used for storing grain.

Here the evidence closed on the part of the pl'ffs.

The defendants then called as a witness Augustus Crowell, who testified as follows—

While I was clerk in the railroad office, and between the first of August and the first of November, 1954; I have been around and offered cars to freight at the several warehouses, when they refused to load any on account of the low price of grain in Chicago.

Benjamin P. Woodworth was called upon by defendants, and testified as follows—

95 I have called on the grain buyers to know if they wanted cars to load; I do not remember who; I called on them when we had cars to spare which were not called for; I have had them refuse to load cars in the fall of 1854.

Upon cross-examination by the plaintiffs, he testified as follows—After the first of September I have had the warehouses refuse to receive cars for loading to Chicago.

Chester Spaulding was then called upon by the defendants, and testified as follows—

Our warehouse commenced business at the depot in June, 1853.

Rea and Dow commenced business in buying grain in the winter of 1853 and 1854.

During the season of 1853 the farmers were allowed to load grain on the cars from their wagons on the track, as that has always been the practice at this point since.

I should think that Rea and Dow had as much of all other kinds of grain as they had of corn.

The company, after grain began to come in after harvest, furnished greater facilities than they had before.

Kirkpatrick was then called as a witness by the defendants, and testified as follows—

I am employed at the depot in this town; am track master; I have been acting as track master at the Rockford station since 11th Oct, 1854; Mat Berry was my predecessor; he was discharged at that date.

96 I have many times during the fall of 1854 called upon Spaulding, at Warner's warehouse, to see if they wanted cars, and been refused.

Upon cross-examination by plffs, he testified as follows—

I have see Dow asking for cars; I had orders not to ship grain for Rea unless he brought it to the depot; this was after I understood he had commenced this suit.

The foregoing was all the evidence given in the cause.

The following instructions, numbered one to eighteen inclusive, are asked on the part of the plaintiffs to the Jury, viz:

1st. The defendants being common carriers were bound to receive all freight within their means of carriage, which might be offered them for transportation, (such freight so offered not being objectionable,) and to transport the same to the point on the road required by the person offering the same. And if the Jury find from the evidence that the pl'ffs did offer the said deft'st authorized agents such freight for carriage, within their means of transportation to be carried by them, and were ready and willing to pay for such transportation, and that the def'ts refused to receive and carry the same, the pl'ffs will be authorized to recover of the defts such damages as they may have sustained by reason of such refusal.

2d. If the Jury find from the evidence that it was the custom of the defendants to receive freight at the warehouses at the depot, upon notice given them by the owners of such freight, and that the pl'ffs had freight at the said warehouses, or some of them, which they were desirous of having carried over said defts railroad to Chicago, and were desirous and ready to deliver the same from the said warehouse upon the track adjacent thereto, and that they gave notice of such facts to the defts, such evidence will authorize the Jury to find an offer or tender of said freight to the defendants, such as would raise the obligation of the defendants to carry such freight.

3d. If the Jury find from the evidence that the pl'ffs delivered their grain to the defts, to be carried on their railroad to Chicago, and that said grain was received by defts for the purpose, such receipt by the defts, of such grain, imposed upon them the obligation of carrying the grain with all reasonable despatch, and that if there was any unreasonable delay by the defendants to carry such grain, the Plaintiffs are entitled to recover of the said defendants the damages they suffered by such delay.

4th. If the Jury find from the evidence that it was the general custom of the defts to receive freight at their warehouses at the depot when the same was left there, and notice thereof given to the defendants, and that upon such notice the defts were accustomed to receive and carry such freight, and that the pl'ffs grain was deposited in such warehouses and notice given the defendants thereof, and that the defts did take and carry a part of such grain, such evidence would authorize the Jury to find such a receipt of the whole grain as would impose upon them the obligation to carry the whole of the plff's grain in a reasonable time.

5th. The defts as common carriers were bound to treat all of their customers and persons transacting business with them in a fair and impartial manner, and had no right to make and use partiality and preferences to one set of men over another, or to one man over another which operated to the prejudice of the persons against whom the preferences were made—and if the Jury find from the evidence that the defts did use such partiality in the use of their facilities in favor of persons other than the pl'ffs, and that the pl'ffs in consequence of such partiality were unable to get their grain to Chicago in a reasonable time, and that such delay operated to the injury of the pl'ffs, then the Jury will be authorized to find for the p'ffs such damages as they sustained by reason of such preference. Provided the Jury at the same time find that the grain of pl'ffs was legally tendered by the pl'ffs to the defts, or received by them for carriage.

6th. The defendants as common carriers were bound to receive and carry freight in the order in which it was offered to them—provided said freight was suitable to be carried by said defendants, and had no right to receive and carry freight of one person until all freight previously received had been previously carried, unless they had facilities to carry both; and if the jury find from the evidence that grain belonging to other persons which was offered and received after the grain of the pl'ffs had been offered and received by defts, was carried to Chicago before said grain of pl'ffs, and that such preference delayed to carriage of pl'ffs grain, and that pl'ffs sustained damage by such delay, the pl'ffs are entitled to recover of the defts such damage as they so suffered.

7th. The defts in the exercise of their duties as common carriers, had no right to adopt rules which would give one class of persons a preference over another and thereby give such favored class an unfair advantage over other persons; and if the Jury find from the evidence that such unfair and discriminating rules were adopted, and that the enforcing of such rules prevented the pl'ffs from getting their grain to market in a reasonable time and as soon as they would have been able to have done if such rules had not been made, and that the pl'ffs suffered damages by such delay, the pl'ffs are entitled to recover of defts such damages as they may have sustained by such delay.

8th. The defts in the exercise of their duties as common carries were not authorized to carry freight belonging to one class of persons in preference to carrying the same kind of freight for persons belonging to another class; and if the jury find from the evidence that the defendants did carry freight belonging to other persons, (which freight was offered or received after freight belonging to pl'ffs had been offered and received,) before the freight belonging to pl'ffs was carried, on pretence that the owners of such belonged to a favored class, as aforesaid, and that in consequence thereof the carrying of the pl'ffs grain was unreasonably delayed, and that pl'ffs be entitled to recover of the defendants such damages as they may have suffered by such delay.

9th. If the Jury find from the evidence that the warehouses in which the pl'ffs grain was stored were situated on side tracks at the depot grounds of the defts in Rockford, and that it was the practice of defendants to use such side tracts in sending their cars to said warehouses to be loaded, then a delivery of grain by the pl'ffs in such warehouses and notice thereof to the defts, is a sufficient delivery to the defts depot.

10th. If the Jury find that the defts used partiality towards other persons in carrying their freight in preference to carrying the freight of the pl'ffs, and that such freight

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was offered and received as the freight of the pl'ffs was offered and received, and that such preferences caused unreasonable delay in carrying the freight of the pl'ffs, and that such delay injured the pl'ffs, the pl'ffs are entitled to recover of the defts such damages as they sustained.

11th. The defendants were required by law to give a preference to the different persons applying and offering freight to be carried according to the priority of time at which such freight was offered, and if the Jury find that the defts refused to give such preference to the pl'ffs, but carried freight offered for carriage after the freight of the pl'ffs was offered, and that the freight of the pl'ffs was properly offered or received by defts, and that such preference caused unreasonable delay to the plaintiffs in getting their grain to market, and that they were injured thereby, the plaintiffs are entitled to recover such damages as they suffered of the defts.

12th. If the jury find from the evidence that it was the custom of defts to receive freight at the warehouses, a deposite of freight at a warehouse where defts were accustomed to receive such freight for the purpose of being carried by defts, would be a delivery to defts, if defts were notified of such deposite and took away a part of the freight there deposited and did not object to such delivery at such warehouse.

13th. If the Jury find from the evidence that the defendants were accustomed to receive grain at the warehouse of U. M. Warner & Co., and to treat a delivery at such warehouse as a delivery to themselves, and that pl'ffs did deposit a large amount of grain at said warehouse and gave notice of such delivery at said warehouse to defts and requested them to carry the same to Chicago, and that defts instead of promptly and speedily taking such grain into their cars and carrying the same to Chicago unreasonably delayed taking and carrying such grain, and that by such delay the pl'ffs suffered damages by the decline and fall in price of said grain, the pl'ffs are entitled to recover such damages under the fifth count of their declaration, and in finding such delay unreasonable the Jury will be authorized to take into account any evidence showing that defts did carry grain belonging to other parties, brought to the depot after grain of plaintiffs was delivered to such storehouse before they carried the grain of pl'ffs.

14th. If the Jury find that the defendants received the grain to be carried, they were bound to carry the same without any unreasonable delay and will be liable for such delay whether the plaintiffs were ready and willing to pay compensation for carrying or not, unless the said defendants objected to carrying it for that reason.

15th. If the Jury find from the evidence that no objection was ever made by the defts to the non-payment by pl'ffs of any compensation for freight, and that no lack of readiness or willingness on the part of the pl'ffs to pay such compensation has been shown by defendants, such facts may be considered by the Jury as evidence of readiness and willingness on the part of the plaintiffs to pay such compensation.

16th. The defts as common carriers had a lien upon the grain of the pl'ffs for the freight of such grain, and if it appears by the evidence that the grain of pl'ffs was delivered by the defts to King, to whom the said grain was consigned, such delivery to King by the defts, in the absence of proof to the contrary, is good evidence to prove a payment of such freight by the defts to King; and if the Jury find from the evidence that such freight was paid, such payment, in the absence of all proof to the contrary, is good evidence to show a readiness and willingness on the part of the pl'ffs to pay such freight.

17th. The question of readiness and willingness not having been controverted or contested by the parties in this cause, the Jury will be authorized to find such readiness and willingness from slight evidence, and may take into consideration for that purpose any circumstances tending to show either payment of such freight or that such question of willingness and readiness in the plaintiffs was not raised by the defendants during any of the transactions in question in this cause.

18th. If the Jury find from the evidence that the defts received the grain of the plffs from warehouses where it had been stored by the pl'ffs, and did receive all the grain offered by the pl'ffs at different times between the months of July and December, 1854, and did carry the same to Chicago, then the Jury will be authorized to regard such acceptance from time to time as evidence of such delivery to the defts as they required, and if the jury also find that the defts unreasonably delayed to carry such grain so delivered, then the defts are liable for all damages sustained by the pl'ffs by reason of such unreasonable delay.

Of the foregoing instructions on the part of the plaintiffs, the Court gave those numbered 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 14, 15, 16, 17, and 18. To the giving of each of which the defendants excepted.

The following instructions, numbered 1 to 8, inclusive, were asked on the part of the defendants, viz:

1st. That under the issues in this case the plaintiffs to establish the liability of the defendants as Common Carriers, for a refusal to receive and transport the plaintiff's grain, must prove that the plaintiffs offered and tendered the said grain at the defendant's freight station, or usual place of receiving and loading grain, and that if they have failed to prove such offer or tender, the defendants are not liable for such refusal.

2. That the defendants under the law were not obliged to furnish cars for the use of the plaintiffs, and were not under any legal obligation to take freight from a private ware-house, but were only under legal obligations to take freight when tendered at their Depot or usual place of shipping freight, and if the plaintiffs have failed to prove such tender of freight at the usual freight house of the Railroad Company, the plaintiffs cannot recover in this action.

3d. That unless the plaintiffs have proven from the evidence that there was, at the time when the plaintiffs had their grain in store ready for shipment, such an universal custom established for them to accept and receive freight for transit from the ware-houses in which their grain was stored, as constitutes that usage a general law, the defendants were under no legal obligation to accept and receive the same at such warehouses; and in order to make such usage a law binding on the defendants, it must have been so long and uniformly acquiesced in, that the Jury would be constrained to say that the usage, as law, entered into a contract and formed a part thereof, if this action had been brought upon a contract instead of being an action on the case. And if the plaintiffs have failed to prove such law by the existence of such usage, the Jury must find for the Defendants.

4th. That if the grain of the plaintiffs had been tendered or offered to the defendants for transportation, at their usual place of receiving and shipping freight on their Railroad; yet the said defendants were under no legal obligation to accept and receive the same for transportation, unless they had, at the time of such offer, the necessary cars and furniture for the transportation of the same.

5th. That the defendants, as common carriers, owed an equal duty to the whole public in the transportation of freight on their Railroad, and the law requires them to transport for all persons offering freight at the proper place and at reasonable hours, according to their ability, and they would have had no right to transport the grain of the plaintiffs to the exclusion of the farmers who came and tendered their freight.

6th. That the farmers who came and offered their freight at the freight house and at the cars of the defendants, were entitled to a preference over the plaintiffs, who requested that the cars of the defendants should be sent to their private ware-house to load.

7th. That if the Jury believe from the evidence, that the plaintiffs offered their grain for transportation, to the defendants at their Depot, or usual place of receiving grain for transportation upon their Railroad Cars, and also believe that the defendants, at the time of such offer, had the ability to transport the same,—Yet, if the plaintiffs have not proved that they tendered, or offered to pay the defendants for such transportation, or that they were ready and willing to pay for the same, the defendants are not liable in this action. And the Jury have no right to PRESUME a readiness and willingness to pay, but there must be PROOF showing the same, or the plaintiffs cannot recover in this action.

8th. If the Jury believe from the evidence that the plaintiffs tendered to the defendants grain to be transported to the City of Chicago, at the proper place of tendering the same in Rockford, and the defendants refused to receive and transport the same, because they the said defendants had not the facilities for the transportation of such grain; or if they refused to receive and transport such grain because the same could not be discharged at the City of Chicago, then the plaintiffs cannot recover in this action, as the defendants were under no obligation to furnish cars or other storage for the storage of grain in Chicago, nor to transport freight for the plaintiffs or others, beyond the capacity of their road.

Of the foregoing instructions asked by defendants, the Court gave those numbered 1, 3, 4, 5, 7 and 8, and refused those numbered 2 and 6, to which refusal the defendants excepted.

After the rendition of the verdict, the defendants moved for a new trial, which motion was over-ruled.

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