

No. **12096**

Supreme Court of Illinois

Dixon.

vs.

Dunham.

71641  7

Joseph A. Smith
William Dyer
Plff in rem

John H. Dunham
Def in rem

The Plaintiff in rem alleges
the following errors -

1. The Court erred in granting
the Demurrers to Plaintiff's
applications -
2. The Plea filed by said被告 was
a good defense to the action
notwithstanding facts alleged
in Repleading -
3. The application was not a good
warrant to issue & said Court
has been on said action

Answer & Say

And the said defendant says there is no such error
in said record as is supposed, & he prays the said
judgment may be affirmed

Grant Goodrich
for Def.

Common Pleas

John H. Danhain

William Dixon

For the purpose
of obtaining the decision of the Supreme
Court the parties agree to present to
the Supreme Court the following
judged case in relation to Case now
pending in Cook County Court of
Common Pleas

The Plaintiff & replied cer-
tain goods of the Defendant & filed an
Ordinary Declaration in reply. To
which Defendant filed following

Cook County Court of Common Pleas

William Dixon

John ^{ads} H. Dunham

And the said defendant for a further plea in this behalf by special leave of the Court here first had and obtained, says that at the time when he in the said declaration mentioned & for a long time previous thereto there existed and was established a custom and usage of trade in the City of Chicago ~~and the County~~ of Cook and State of Illinois among the masters and owners of propellers steamboats and vessels and the forwarders, wharfing men and business men of the said City of Chicago and which said custom and usage of trade at the time when he in the said declaration mentioned and for a long time previous thereto was well established known, certain, uniform, reasonable and not contrary to law and well known to the said plaintiff and which said custom and usage of trade this Defendant in fact says, was as follows to wit that the goods chattels & merchandise forwarded to, coming into and shipped into the said port of Chicago in & upon propellers, steamboats and sail vessels from Buffalo in the State of New York & from other ports and places should be delivered upon such dock and wharf in the said City of

of Chicago as should be selected by the said propeller, steam boat and sail vessel and that a delivery of goods, chattels and merchandize upon such dock and wharf so selected as aforesaid should constitute a delivery of the said goods and chattels & merchandize so shipped as aforesaid to the respective consignees and consignees of the same and that at the time when &c & for a long time previous thereto the masters and owners of propellers, steam boats and vessels had been accustomed to deliver and the forwarders, wharfing men and business men of the said City of Chicago had been and were accustomed to receive goods and chattels and merchandize so delivered as aforesaid

And the said defendant further saith that at the time when &c in the said Declaration mentioned the said Defendant as Master of the Steam propeller boat and vessel called the "Illinois" engaged and employed in carrying and transporting goods and chattels to Chicago in accordance with and subject to said custom and usage of trade & which was well known to said Plaintiff the said goods and chattels in the said declaration mentioned were shipped in and upon said propeller (as alleged in said declaration) and the said Defendant at the time when &c was lawfully possessor of said goods & chattels in the said declaration mentioned and which said goods were brought

wrong

were brought into the said port of Chicago in &
upon said Propeller and at the time when
he in the said declaration mentioned
were delivered by this defendant upon
the wharf and docks of Dole Ramsey
He was houseman and forwarder of the
said City of Chicago and in the said
City of Chicago to the said plaintiff
& for the said plaintiff & which said dock
and wharf at the time when & in said
declaration mentioned was and had
been selected by this Defendant as Master
of said Propeller for the delivery of the goods
chattels & merchandize coming into the port of
Chicago in & upon said Propeller "Illinois"
to the respective consignees and consignees of the
said goods, chattels & merchandize according
to and in pursuance of said custom and
usage of trade of which said selection and
delivery the said plaintiff then & there at the
time when & in said declaration mentioned
had notice & the said plaintiff then and
there refused to accept the same upon such
delivery and pay the freight and charges
thereon for the transportation thereof
and that as such Master of said Propeller
Illinois he held and retained the said
goods & chattels in the said declaration men-
tioned for the said freight & charges due
thereupon for the transportation thereof
of all of which the said plaintiff then
and there at the time when & had
notice

And this be the said Defendant ready to verify
Wherefore he prays judgment if the said
plain ought to have or ~~be~~ maintain his
aforesaid action thereof against him
and he also prays a return of the said
goods and chattels together with his
costs - in this behalf according to the
form of the Statute in such case
made and provided to be adjudg-
ed therein &c

2^d And the said Defendant for a further plea
in this behalf by leave of the Court here-
first had and obtained says a ctio
non because he says, that at the time
when &c in the said declaration men-
tioned and for a long time previous there-
to, there existed and was established
a custom and usage of trade in the City
of Chicago in the County of Cook & State of
Illinois among the masters and owners
of propellers, steam boats and vessels sail-
ing to and from Chicago aforesaid and
among the forwarders, wharfing men
and business men of the said City
of Chicago and which said custom
and usage of trade at the time when
&c in the said declaration mentioned
and for a long time previous there-
to was well established known and
certain uniform reasonable and not
contrary to law and well known to the

Custom
& Usage

10076-27

said plaintiff & previous to the time when he required in & by the said plaintiff and which said custom and usage of trade this Defendant in fact says was as follows, that the goods, chattels and Merchandise brought to Chicago over propellers, steam boats and vessels from other parts and coming into and shipped into the said Port of Chicago in & upon said propellers, steamboats and sail vessels should be delivered upon such dock and wharf in the said City of Chicago as should be selected by the Master of the Propeller, Steamboat and sail vessel in which said goods, chattels and Merchandise should be brought and to which said dock and wharf the said propeller, steamboat and sail vessel should run and that a delivery upon such dock and wharf so selected as aforesaid should constitute a delivery of the said goods, chattels and Merchandise so shipped as aforesaid to the respective consignee and consignees of the same and that at the time when & for a long time previous thereto the Masters and owners of propellers, steamboats and vessels had been accustomed to deliver and the wharfing men, forwarders and business men of the said City of Chicago had been and were accustomed to receive goods, chattels and Merchandise so delivered as aforesaid of all which the said Plaintiff then and there well knew at the time of shipping said goods and chattels in said declaration mentioned

And the said Defendant further saith that
before the time when &c in the said de-
claration mentioned the said Defendant
as Master of the Steam Propeller boat and ves-
sel called the 'Illinois' received said
goods and chattels to be transported to and
delivered at Chicago in accordance with and

Subject to said Custom and usage of Trade and
at the time when &c in said declaration
mentioned was lawfully possessed of said
goods & chattels in the said declaration men-
tioned and which said goods and chattels
were brought into the said port of Chi-
cago in & upon said propeller Illinois
and at the time when &c in said declara-
tion mentioned & the Defendant then &
there offered to deliver said goods and
chattels in the said declaration mention-
ed upon the Wharf and dock of Dole Runney
& Co. warehousemen and forwarders of the
said City of Chicago & in the said City of
Chicago to the said plaintiff & for the said
plaintiff and which said dock and wharf
at the time when &c in said declaration
mentioned was and had been selected
by this defendant as Master of said pro-
peller Illinois for the delivery of the goods
chattels and Merchandise coming into said
port of Chicago in and upon said propeller
Illinois according according to and in pursu-
ance of said custom and usage of Trade
and which said dock and wharf said pro-

seller at the time when & ran and that
the said Plaintiff then and there at the
time when & in said declaration mention-
ed had notice of said delivery upon said
dock and wharf and refused to accept
the said goods & chattels in the said de-
claration mentioned upon such delivery &
to pay the freight thereon and that as
such Master he held and retained the said
goods and chattels in the said declaration
mentioned for the freight and charges due
thereupon for the transportation of the said
goods and chattels, of all of which the
said Plaintiff then and there at the
time when & had notice. And this he
the said defendant is ready to verify.
Wherefore the said prays judgment of the
said Plaintiff ought to have & main-
tain his aforesaid action thereof against
him & he also prays a return of the said
goods & chattels together with his costs in this
behalf according to the form of the Statute
in such case made & provided & be
adjudged to him &c

Arnold & Lay. Atty for Deft.

To which the Plaintiff filed the
following Replications

Cook County Court of Common Pleas

John A. Durnham
vs.
William Dixon

Replevin.

For replication to the said first plea of the said defendant, above pleaded, the said Plaintiff says precludi non se, because he says that prior to the said time when &c, in said declaration mentioned, to wit, on the 28th day of June, A. D. 1852, to wit, at Buffalo in the state of New York, the said Plaintiff, who was then doing business on a certain dock and wharf in the Port of Chicago, in said County of Cook, shipped on board the said propeller of which said defendant was master, and the said defendant as such master then and there received, and said Plaintiff then and there delivered the said goods & chattels in said declaration and plea mentioned, on board of said propeller, to be transported from Buffalo aforesaid to Chicago aforesaid, for said plaintiff, ^{there to be} and ^{to the said Plaintiff and} delivered the same for said plaintiff, under and upon the terms & conditions mentioned in a certain bill of lading, ~~which~~ said bill of lading was & is in substance & to the effect following, viz.

No-

Buffalo June 28th 1852

Shipped in good order & well conditioned by A. R. Cobb & co as Agents & Forwarders for account & risk of whom it may concern, on board the Propeller Illinois, whereof is master, now lying in the Port of Buffalo and bound for Chicago, the following articles, marked and numbered as in the margin, and to be delivered in like good order, at the Port of (the dangers of navigation only excepted) unto the Consignee named in the margin, or to assigns, paying freight & charges.

In witness whereof the Master or clerk of said
 hath affirmed to two bills of lading both of this tenor
 and date, one of which being accomplished, the other to stand
 void.

J. H. Furham	27 Boxes Fish 'bad order'		
Chicago		128.60 @ 50	64.25
	Boston R.R. Chgs		19.28
	Cooperage much needed		2.00
			<u>\$ 85.53</u>



for J. H. Furham	87 Bags of Coffee	13.556	
	50 " " "	10.250	
		<u>23.812</u>	@
			<u>\$ 119.06</u>
			<u>\$ 204.59</u>
	Deduct Cooperage		2.00
			<u>\$ 202.59</u>

And the said plaintiff avers that said de-
 fendant brought said goods & chattels to Chicago
 aforesaid, on said propeller, and that said
 plaintiff then & there tendered to said defendant
 the said freight and charges thereon, in said bill
 of lading mentioned & stipulated for the said
 transportation thereof, to wit. The sum of two hun-
 dred & two dollars and fifty nine cents, & requested
 & required the said defendant to deliver the same
 on his, the said plaintiff's dock & place of business
 in said port of Chicago, as by the terms of said
 bill of lading he was bound to do, which the said
 defendant then & there refused to do, but on the
 contrary thereof, then & there wrongfully detained
 the same from said plaintiff, which is the identical
 wrongful detention, in said plaintiff's declaration com-

pleaded of, and thus he is ready to satisfy, wherefore
he prays judgment &c.

Goodrich & Yerville
Plff's Atty's.

For replication to the said second
plea of the said defendant, above pleaded, the said
plaintiff says 'precludi non', because he says that
prior to the said time when &c in the said declaration
mentioned, to wit, on the 28th day of June A. D. 1852, to wit,
at Buffalo in the state of New York, the said plaintiff
who was then doing business on a certain dock & wharf
in the port of Chicago, in said County of Cook, & of which
the said defendant then & there had notice, shipped
on board the said propeller of which said defen-
dant was master, & the said defendant as such
master, then & there received from said plaintiff, &
said plaintiff then & there delivered ^{to the said defendant} the said goods &
chattels in said declaration & plea mentioned, on
board of said propeller, to be transported from Buffalo
aforesaid to Chicago aforesaid, for said plaintiff, &
then to be delivered to said plaintiff, under & upon the
terms & conditions mentioned in a certain other bill of
lading, which said bill of lading was & is in substance
& to the effect following, viz.

No.

Buffalo June 28. 1852

Shipped in good order and well condi-
tioned by A. R. Cobb & Co, as agents & forwarders for ac-
count and risk of whom it may concern, on board
the propeller Illinois, whereof is master, now lying
in the port of Buffalo, bound for Chicago, the
following articles, marked & numbered as in the margin

and to be delivered in like good order, at the port of
 (the dangers of navigation only excepted) unto
 the consignee ~~named~~ ^{named} in the margin, or to assigns, pay-
 ing freight & charges.

In witness whereof the Master or Clerk of
 said hath affirmed to two bills of lading, both
 of this tenor and date, one of which being accomplished,
 the other to stand void.

J. H. Dunham	27 Boxes Fish 'bad order'		
Chicago		12,860 a 50	64.25
	Boston R.R. Chp		19.28
	Cooperage - much needed		2.00
			<u>\$85.53</u>

	87 Bags Coffee	18.556	
	Chicago 60 " "	10.258	
		<u>28.812</u>	50
for J. H. Dunham			<u>\$204.59</u>
	Direct Cooperage		<u>2.00</u>
			<u>\$202.59</u>

And the said Plaintiff avers that
 said defendant brought said goods & chattels
 to Chicago, aforesaid, on said propeller, and that
 said Plaintiff then & there tendered to said defen-
 dant the said freight & charges thereon, in said
 bill of lading mentioned & stipulated for the said
 transportation thereof, to wit, the sum of two hundred
 and two dollars and fifty nine cents, & requested
 and required the said defendant to deliver the same
 at his the said Plaintiff's dock & place of
 business and in said Port of Chicago, as by
 the terms of said bill of lading he was bound
 to do, which the said defendant then and
 there neglected and refused to do, but on

The contrary thereof, then and there wrongfully
detained the same from said Plaintiff, which
is the identical wrongful detention in said
declaration complained of, and this the plain-
tiff is ready to verify - wherefore he prays
judgment &c -

Goodrich & Scoville
Plff's Atty -

To which Defendant demurred - the Court
overruled the Demurrer. To which Defen-
dant excepted - And the question to be
presented to Supreme Court is
whether the Replications ^{as alleged} are a good
Answer to said Pleas. If so judge-
ment is to be for Plaintiff - if not
for Defendant. Either party who
wishes to plead over.

Goodrich & Scoville
Plff's Atty

Arnold & Lang
Def's Atty -

⁸⁰
Supreme Court

William Dixon

John H. Durham

Record

Prepared

Filed June 29. 1853.
L. Leland Clk.

Sup. Court

William Dixon - Ref. in rem

v

John H. Dunham Ref. in rem

Yards

Dunham, upheld certain goods from
Dixon -

Dixon was the Master of
Pro Fuller, Illinois, in which
Dunham at Buffalo, N. Y. was
an ordinary Bill of Lading - Certain
goods to be conveyed to Chicago -

Dixon brings the goods to Chicago -
& claims them on the Wharf
of Dale, Ramsey & Co - & gives
notice to Dunham -

Dunham refuses to receive them
at Dale, Ramsey & Co - & demands
a delivery to him in person -
Capt. Dixon, claims - &
Dunham refuses the goods.

To the declaration in Replein
Sixon Rhads. 2 Plus.

1. Plea - usage & Customs - among Masters,
& owners of Steam boats, propellers,
etc -
Well-established, known, Certain
uniform & reasonable &
not contrary to law - & well
known to plaintiff.

which was.

that goods etc. shipped from
Buffalo to Chicago, should
be delivered upon such dock &
1. Wharf in Chicago - as propellers
etc. should use to, & right
select etc.

& that a claim there
constitutes a good claim.

2. Off Sixon - engaged in this trade
carrying goods subject to such
Customs & usage -

3. Goods shipped subject to said Customs

4. Goods delivered to Benjamin on
D. R. & Co. Wharf, in pursuance
of such Customs -

5. This debt was the housing plow.
of Defendants Property.
6. Def. had notice of such thing - &c -

2. How -

Sets up the Custom & usage
Ans that Def. knew it.
& shipped his goods subject
to it.

Ans Chlm & offer to
Chlm in accordance with
the Custom. &c -

Replication -

Sets up - Bill of Lading -
& nothing more -

The question is -
Whether the Customs & usage

Set up in Plas - is a Valid
Custom -

1. It enables parties to carry
freight much cheaper
than otherwise -
2. It is greatly for convenience
of Commerce -

Wayne v. S. B. Linn. Dist.,
16 Ohio R. 421.

"Bills of lading, when the terms by usage
have acquired a particular significance
parties will be presumed to have used
them in that sense."

The question in this case was, precisely
the same as at bar - ~~Whether~~
Whether a docking at the usual
loading place of Steamers, was
sufficient - under Customs to
that effect.

Sowry & Phipps -
8 Pithy. 361.

1 Grumbly En. Sec. 292 -
2 do. " 251.

3 days of grassy } 9 Wheaton 581-
Custard - }

Phibbs
1000. Mamm 1200.

3. Bar. Ab. 728-

What is the
Germinis of
a Woyge }

Strong R. 1. 10 -
1 Peter R. 1. 10 -

5 Coud R. 695.

Wm. Dixie

Mr. H. Sumner

Prof

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Dixon
vs
Durham 3

Custom

Customs should be sparingly adopted
2 Summ 569
officer of custom to determine obligations arising
upon implication, not upon express stip-
ulations - Express contract cannot be varied by custom
2 Sum 569. Bill of lading is a contract

1 Danf 149. 2 Danf 129-30

Under bill of lading, bound to deliver to consignee
5 Term 205- or 215
See Jeremy vs Cams - 63.

6 Term 320. Custom cannot vary contract

1 Olay 603
18 Dick 16
20 150

See 10 Blup 90 as to authorities

2 Cross 249
by Malt 262

Custom not retrospective

Cost more to carry goods from wharf, than from Bay for

Legislation

Goods always have consignment

Dunham

ad

Dixon

⁸⁰
Wm. Dixon
vs
Jos. H. Durham

1853

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Prepared

12096

1853