No. 13977

# Supreme Court of Illinois

Culliver

vs.

Adams Express Co.

71641 7

Recd. Nov. 1st 1865 of P. E. Hosmer
Atty of Geo. Gulliver five dollars &
fifty cents costs of copy of record
in case of Geo. Gulliver vs Adams
Express Co. to take to Supreme
Court

J. N. Venn Clk

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

# FIRST GRAND DIVISION.

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| GEORGE GULLIVER *vs.* ADAMS EXPRESS COMPANY. | **NOVEMBER TERM, 1865.** *Error to Washington.* |

## ABSTRACT.

This was an action of assumpsit, September Term, 1865, Washington County Circuit Court, to recover $300, sent by Plaintiff in September, 1863, by Defendants, from Richview, Ills., to Trenton, Ills., in an envelope addressed to Harmon Konon, to be kept by Konon for Plaintiff.

Declaration has a special count *vs.* Defendants as common carriers, and count for money had and received. Plea, general issue, and issue joined; tried by jury, and verdict for defendants; motion for new trial, because verdict contrary to law and the evidence; motion overruled and excepted to, and judgment rendered for defendants, and Bill of Exceptions filed.

Plaintiff proved by one Walker that plff. sent by him $300 from Vicksburg to Nashville, Ills., to be expressed from there to Harmon Konon, Trenton, Ills., to be kept by said Konon for Plaintiff, that he brought the money to Nashville, Ills., and gave it to A. G. Boyd, who counted it and sealed it up in an envelope, with a few lines addressed to Konon, and addressed it to Harmon Konon in his presence, and gave him, witness, a receipt therefor as agent of Nashville and Richview Express Co. Said Boyd, as a witness, makes the same statement as Walker [illegible] to counting the money and sealing it up and addressing it on the envelope, and added that he was the agent of Nashville and Richview Express Co., and that he gave said package with enclosure so addressed, to Wm. Shipley, who was the Nashville and Richview Express Co., that evening, that is September 23d, 1863, or the next morning.

Wm. Shipley stated that he received said package and delivered the same to the defendants' agent at Richview just as he received it from said Boyd. Books of defendants, kept at Richview, are introduced, which show, Sept. 26th, 1863, the receipt of such a package.

Plaintiff proved by T. B. Needles that defendants were common carriers in Sept. 1863, between Richview and Trenton, Ills., and by Harmon Konon that being informed by letter from plaintiff that he had expressed $300 to witness at Trenton, Ills., he applied once in October and once in November to defendants' agent at Trenton, Ills., who told him each time there was no package for him; that he, witness, had lived 22 years in Clinton county, 8 miles from Trenton; that he and plaintiff, about 1st February, 1864, applied to agent at Trenton, when the agent gave them a package, which on being opened a few minutes after, contained no money, but slips of brown paper instead, whereupon they returned to said agent and showed to him the package. Said package, with enclosure, was produced on trial, and identified by witnesses Walker, Boyd and Shipley, and Konon and McGuire, and is here on file in this cause, marked (A.)

Defendants introduced C. Gibbs, who says he acted as Express agent Sept. 26th, 1863, while the regular agent was sick; that he received and forwarded said package from Richview as he received it, and made said entry in company's books. Defendants introduced —— McGuire, who stated he was defendants' agent at Trenton, Ills., in Sept. 1863, and is yet; that said package came to Trenton, and he tried two months to find Mr. Konon before he could find such a man; that in February, 1864, Konon and plaintiff came to him and he gave them said package, and after a while, about one hour he thinks, they came back and showed said package opened, and containing brown paper; that Konon never applied to him at any time for said package except with plaintiff as aforesaid; that when delivered, said package did not appear to have been tampered with, and he delivered it in good condition with no marks upon it that it had been opened, and that Konon said he had called in to his wife for it when witness was not at home. On cross-examination, stated that said package should have come from Richview to Trenton in 24 hours, if all connections were made; cannot say when it did come; somewhere between latter part of September and middle October, 1863; would go into the hands of two messengers at least between Richview and Trenton, remaining at Odin till train came from the East. Defendant asked for 5 instructions, which were given; verdict for defendants.

## ERRORS ASSIGNED.

1st. The overruling motion for new trial.
2d. Verdict contrary to the evidence.
3d. Verdict contrary to law.
4th. Giving judgment for defendants.

P. E. HOSMER, *Plaintiff's Attorney.*

George Gallier
U.S.
Natural Gas
Company

Abstract

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|---|---|
| GEORGE GULLIVER<br>*vs.*<br>THE ADAMS EXPRESS COMPANY | **IN SUPREME COURT.**<br>*November Term,* 1865.<br>PLAINTIFF'S BRIEF. |

The verdict is manifestly against the evidence, and great injustice done, and a new trial should have been granted. Scott *vs.* Blumb, II Gil., 595. Gordon *vs.* Crooks, XI. Ills., 142.

It is clearly proved that a package containing $300 was delivered to defendants, and that the package, when delivered by them to consignee, contained no money, and the witnesses testifying to these facts are unimpeached and uncontradicted.

The jury must have mistook the evidence and misunderstood the law, especially defendants 3d instruction, and therefore a new trial should be granted. Schwab *vs.* Gingelick, XIII. Ills, 697.

A jury may not arbitrarily disregard the testimony of an unimpeached witness. Robertson vs. Dodge, XXVIII. Ills., 161.

P. E. HOSMER, Att'y for Pl'ff.

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Geo Gulliver
vs
Adams Ex. Co.

Abstract & Brief

13977

Filed Nov. 9. 1865
N. Schneider Clk

State of Illinois } S.S.
Washington County }

1st Pos

At a Circuit Court begun and held at the Court House in the Town of Nashville County of Washington and State of Illinois on Monday the 4th day of September in the year of our Lord One Thousand eight hundred and sixty five present. The Hon Silas L Bryan, Judge of the Second judicial Circuit in said State, J. Perry Johnson State Attorney, James H. Sawyer Sheriff and John [illegible] Circuit Clerk Officers holding said Court.

Pleas and Proceedings had in the Circuit Court in and for the County of Washington and State of Illinois, in a certain Cause heretofore pending in said Court, between George Gulliver and the Adams Express Company.

Be it Remembered that heretofore to wit: On the 29th day of March A.D. 1865 Comes George Gulliver, per J. E. Hosmer his Attorney, and files his declaration in the Words and Figures following to wit:

State of Illinois }
Washington County }

George Gulliver } Washington
vs. } Circuit Court
Adams Express Company } April Term 1865

Adams Express Company defendant in this suit was summoned to answer unto George Gulliver plaintiff in this suit of a plea of Trespass on the case upon promises and thereupon the said plaintiff per Hossmer his Attorney, complains For that whereas the said defendant heretofore to wit: On the 25th day of September 1865 was a common carrier of goods & chattels for him from Richview in said County to Trenton in the County of Clinton, State of Illinois and being such carrier the plaintiff then at said County of Washington at the request of said defendant caused to be delivered to said defendant certain good & chattels of said plaintiff to wit: Three hundred dollars dollars lawful money of the United States of the value of Three hundred dollars to be taken care of & safely and securely conveyed by the said defendant as such carrier from said Town of Richview to said Town of Trenton, then to be safely & securely delivered by said defendant to one Harman Konon for a certain reward

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to be paid to said defendant, in consideration whereof the said defendant as such carrier then & there received said goods & chattels accordingly and became bound by law and undertook and promised the plaintiff to take care of said goods and chattels, and safely and securely to carry and convey the same from said Richmond to said Trenton, and there to deliver the same safely and securely to said Harman Konon as aforesaid.

Yet the said defendant did not take care of said goods & chattels, nor safely and securely carry and convey and deliver the same as aforesaid, but on the contrary, the said defendant so negligently conducted and misbehaved in regard to said goods & chattels in his said calling of common carrier, that by reason thereof, the said goods became & were wholly lost to said plaintiff. And whereas also said defendant heretofore to wit, at the County of Washington State of Illinois on the 1st day of March 1865 was indebted to said plaintiff in the sum of $400.00 for so much money before that time by said defendant had & received to & for the use of said plaintiff and being so indebted said defendant in consideration thereof afterwards to wit

4th

On the day and year before said, in the County aforesaid, undertook & then & there promised the said plaintiff to pay him the said last named sum of money upon request.

Yet said defendant altho often requested so to do has not paid said plaintiff said sum of money or any or either of them or any part thereof, but has refused & still refuses so to do to the damage of said plaintiff of $400,00 & therefore he sues &c

P. E. Hosmer
Atty pro plf

Which declaration was indorsed as follows, to wit:

Account Sued on.

Adams Ex. Co Dr
To George Gulliver
Sept. 25th 1863 To failure to carry & deliver goods & chattels & Money as common Carrier $350,00
March 1st 1865 To Money had & rec'd $50,00

George Gulliver
vs
Adams Ex. Co.
Assumpsit
April Term 1865
Damages $400,00
Ck plea issue
P. E. Hosmer
Atty.
Filed March 27th 1865
J. N. Verner Clk

Whereupon summons was issued in the words

and figure following, to wit:

State of Illinois } S.S.
Washington County }

The People of the State of Illinois

To the Sheriff of said County Greeting:

We command you to summon Adams Express Company if it be found in your County to appear before the Circuit Court of Washington County on the first day of the next Term thereof to be holden at the Court House in Nashville, in said County on the second Monday in the month of April next, then and there to answer George Gulliver in an action of Trespass on the case upon promises

damages $400 ov.

And hereof make due return to our said Court as the law directs.

Witness John N. Vernor, Clerk of our said Court and the judges Seal thereof, at Nashville, this 27th day of March A.D. 1865

John N. Vernor, Clerk

(Seal)

Which summons was stamped with 50 cents internal Revenue Stamps & cancelled and was indorsed as follows, to wit

6th

George Gulliver
vs
Adams Express Co.

Summons Returnable
April Term 1865.

Copy of Sheriffs Return:
Served by reading and
leaving copy to J. J.
Vandyke Adams Express
Agent at Ashley Ills
March 29th 1865
J. H. Sawyer Shff.
for W. McCracken Dept.

Service 100
22 Miles 110
Ret 40

Served by reading the same and leaving a copy of the same in the hands of J. J. Van Dyke agent of said defdt at Ashley Washington County Illinois 29th March 1865. The President of said Adams Express Company being a resident of, not found in said County of Washington. J. H. Sawyer Sheriff. By W. C. McCracken Dept.

And at the April Term A.D. 1865 the following Order was made in the following Cause to wit:

George Gulliver }
vs } Assumpsit.
Adams Express Company } And now at this day April 11th 1865 the Court gives leave to Sheriff to amend his return and on motion of Defendants by their attorney time to plead is extended. The Deft moves the Court

for continuance which motion is allowed at the costs of defendants &c

And afterwards to wit At the September Term A.D. 1865 the following Order was made with following cause to wit:

George Gulliver }
vs. } Assumpsit.
Adams Express Co. } And now at this day September 7th A.D. 1865 comes the said plaintiff by Hosmer his Attorney and the said defendants by Ormsbeny their Attorney. This cause is called and submitted to a Jury for trial. The Jury being called come to wit. H.H. Talbot, W.S. Shaw, William Patterson, Henry Kreighoff, Freeman Burnett, B. Bingham, V. Fre, H.P. H. Morgan, Rosea Moore, Wm. Lee, Adam Eyack & J.C. Martin twelve good and lawful men, who being duly empanelled tried & sworn to try the issue joined and after hearing the evidence arguments of Counsel & Directions of Court retired to consider their Verdict and after due deliberation returned into Court the following Verdict to wit: We the Jury find for the defendant.

Whereupon the plaintiff Gulliver moves for a New Trial because the Verdict is contrary to law & the evidence which motion the Court refuses

It is therefore ordered by the Court that the defendant do have and recover of and from the said plaintiff all his proper costs &c

8th

herein specified and that execution be awarded therefor &c

Copy of Plea

State of Illinois } In the Circuit Court
Washington County } of Washington County
April Term 1865.

George Gulliver
vs } Case.
The Adams Express Co.

And now comes the sd Deft by O'Melveny its atty. and defends the wrong and injury when &c where &c. and says it did not undertake and promise in manner and form as the the said plf hath thereof in his declaration alledged against it. And of this the sd Deft. puts itself upon the Country &c

H. K. S. O'Melveny
atty for Deft.

and Plf doth the like

P. E. Hosmer

Copy of Instructions given by the Court.

That in all cases it is incumbered on the plf to make out his case so as to satisfy the Jury by proof that he is entitled to a Verdict and unless you are so satisfied in this case Your Verdict should be for the deft.

Given

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The Court instructs the Jury that if the plf by his agent, agreed and contracted with the Richmond & Nashville Express Co. to convey the package of Money and loss did occur by the carelessness of that Company, then the Defts here are not liable & you should find for the Defts

Given

The Court instructs the Jury that unless they believe from the evidence that the weight of the evidence is that while the Package was in the Defts possession, it was broken open & the money taken, you should find for the Defts

Given

That from all the facts and circumstances in evidence if you believe that the weight of the proof is that either no money was in the pacage when delivered to the Defts or that it was abstracted after it was handed over by Defts to Conan, you should find for the Defts.

Given

If the Jury believe from the evidence that the Package which said plaintiff delivered to the defendant was delivered to Conan, the pers to whom it was addressed

19th

without being opened, and in like condition as when delivered to Deft then your Verdict should be for the Deft

Given

And on the 8th day of September A.D. 1865 the said plaintiff filed his Bill of Exceptions in the words and figures following to wit

State of Illinois }
Washington County }

George Gulliver }
vs. } In Washington
The Adams Express } Circuit Court
Company. } Sept. Term 1865.

Be it Remembered that the cause was tried by a Jury at said Term Sept. 7th Judge Bryan presiding. Plf. introduced Thos. J. Walker who stated as a witness that Plf. sent by him from Vicksburg three hundred dollars to Nashville Illinois to be sent by Express from the latter place to Harman Honon at Trenton Illinois to be kept by said Honon for said Gulliver, that the witness brought said money to Nashville Illinois & handed the same to A.G. Boyd agent of Nashville & Richmond Express Company latter part of Sept. 1863 who counted the

same & put it in an Envelope with a line
addressed to said Konon. Inclosed please find
three hundred dollars on receipt of which please send
me your receipt Go Black River Camp Sherman
near Vicksburg George Gulliver 48 Reg. Ill
infantry. & sealed said Envelope in his
presence & addressed it to Harman Konon
Trenton Illinois Witness is shown an En-
velope, which he identifies as the one in
which said money was sealed, Witness
states that said Boyd gave him a receipt
which is shown and identified by Witness

Office of the Nashville and Richview
Express Company.

Nashville Ills September 24th 1863

Received of George Gulliver one Package
sealed, said to contain three hundred dollars
addressed to Harman Konon Trenton Ill
to be forwarded to Adams' Express Company
at Richview, Illinois.

A G Boyd
Ex Agent

On Cross Examination witness states that
said Boyd sealed up, said Envelope con-
taining the said money in his presence to
the best of his recollection & knows the address
was put on in his presence. Plf introduced
A.G. Boyd who stated that he was in Sept.
1863 agent of Nashville & Richview Express

12th

Company that Wm Shipley is that Company that Thos J. Walker brought to him $300 which at request of Walker he counted & put in an Envelope and addressed the same to Harman Tomon Trenton having sealed the Envelope in presence of Walker as he usually sealed such packages with sealing wax but used no stamp on same that he gave said Walker a receipt which is shown & stated by him to be the one he gave & is inserted above witness further stated that that same evening he gave said package containing said money so sealed and addressed to Wm Shipley witness identified the Envelope produced on the trial as the one delivered to Shipley containing the money Pltff introduced Wm Shipley who stated that he was in Nashville & Richmond Express Company and that he received from Mr Boyd his Agent said Package & delivered the same to the Agent of the Adams Express Company at Richmond Illinois in the same condition he received it from Boyd & thinks he took no receipt some times took receipt & sometimes did not. Pltff introduced the books of Adams Express Company kept at Richmond in Sept 1863 which has an Entry showing the receipt of a Package from Nashville & Richmond Express Company purporting to be $300.

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addressed to Harman Konon Trenton Illinois
26th Sept, 1863 Plf proves by J. B. Nudler that
Adams Express Company in Sept 1863 were
common Carriers between Richview Illinois &
Trenton Illinois that in Sept 1863 his father
was agent & the book referred to above was
the Book kept by him as such agent of said
Company, but that at date of the entry in said
Express book he believed his father was sick and
C. Gibbs acted in his place & the entry was in
the hand writing of C. Gibbs, but his father
when sick supervised all done by Gibbs & others
for him as Express agent & the Company
knew he was doing business that way.
Plf introduced Harman Konon who state
that he is a Farmer living about 8 miles
from Trenton was notified by letter from Plf
that he had sent him by Express to Trenton
$300. in Sept 1863 & in October & also Nov-
ember he went to Trenton & Enquired of the
Agent of the Adams Express Company there if
there was any package for him and was told
there was none Each time, & about 1st of Feb. 1864
he & Gulliver Plf who had come home went to
Trenton & the agent of defts then gave to witness
a package addressed to witness marked $300. which
is the one exhibited on the trial to the Jury & re-
f. above

Sept

that he and Plf broke open the same in few minutes after its receipt and no money therein but strips of brown paper instead with the few lines mentioned by Mr. Boyd referred to above & inserted, that when received the Package had no outside appearance of having been tampered with but witness thought it too light. the paper in it was as stated witness had received money by Express before, has lived 22 years in Clinton County Illinois owns a farm worth 5 or 6000 $ that after opening package he & Plf went right to Trenton agent & shewed it to him. Plf here closed. Deft introduced C. Gibbs who stated that he acted for J. B. Needles as Express agent of the Adams Express Company at Richview Illinois in Sept 1863 and to the Entry in the book of the Company kept by said Needles & states that that Entry was made by him witness that he transmitted said Package as he rec'd it from said Shipley, the Nashville & Richview Express Company, did not count or see the money counted if any was in Envelope, sometimes gave receipts to Shipley & sometimes did not, does not know whether did in this case or not. Deft introduced McGuire who states that in 1863 in Sept & is now agent of defts at Trenton Illinois that said package came to Trenton & he tried for about 2 months to find

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Harman Konon before he could find such a man, as he usually did in case of Soldiers packs that he was told such man lived neighbor to _____ near Macoutah that he then sent him word of this package, that said Konon never applied to him for said package that he recollects till about 1st Feb. 1864 when Konon & Gulliver came & he gave them the package the Envelope of which is now in Court & shown witness, that he give it to Konon as it was addressed to him, that they went off & after a while about an hour he think they came back shewed the Envelope with the lips of brown paper therein & no money & said, that was the way they found it on opening it, witness says that Konon did not apply to him at Trenton in October or Nov. 1863 for said package, or at any time before he & Gulliver came as before stated, that when he delivered said package he did not notice any thing in its appearance to indicate that it had been tampered at anytime and that he delivered it in good condition without any mark upon it, that it had ever been opened The Plaintiff when he came back with the package open said that he did not believe the money had ever left Nashville But that the plff told him that Konon informed him he had called upon the witness for it when witness was not at home On cross Examination witness states that said

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Package should have come from Richview to Trenton in 24 hours if all connections in order & made by the trains, cannot say when it came to Trenton sometime between latter part of Sept. & middle of Oct. 1863 did not examine books, is Express agent at Trenton did not think of it or he could give the date and has the books there, says at time Gulliver & Konon were at Trenton something was said about Konon being there before & enquiring of Witness wife for a package, that package going from Richview to Trenton would go into the hand of two Messengers at least remaining at Odin until train came from the East.

This was all the evidence on both sides. Defts. ask for the following instructions which were given as above. The jury retire & return their verdict in favor of defts. which verdict is given in the order above. Plf. moves for a new trial, which is refused by the Court to the decision of the Court overruling said motion for a new trial. Plf. at the time excepted & prays that this bill of exceptions reduced to writing at the time be signed & filed as a part of the Record in said Case. Court give Judgment for Costs in favor of defts. on the said verdict to which Judgment Plf. excepted at the time

and files his Exceptions

Silas L. Bryan (Seal)
Judge of 2d Judicial Circuit

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Which Bill of Exceptions was indorsed as follows.

George Gulliver
vs
Adams Express
Company

Bill of Exceptions
Filed Sept 8th 1865
J. N. Vernor Clk

State of Illinois }
Washington County } ss.

I John N. Vernor, Clerk of the Circuit Court in and for said County of Washington hereby certify the foregoing to be a true and complete Copy of Record including Declaration with precipe on back of Declaration Summons, Plea, Judgment, Bill of Exceptions with Papers referred to therein and that the Envelope and content herewith sent, Marked by me (K) is the identical Envelope referred to in this Case

In testimony whereof I hereto sign my name and affix the Seal of said Court at Office this Third day of October A. D. 1865.

John N. Vernor Clerk

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State of Illinois
1st Grand Division
Supreme Court

George Gulliver
Plff in Error
vs
Adams Express Company
Deft. in Error

In Supreme Court
To Nov. Term 1866

Assignment of Errors

And now the said George Gulliver Plff in Error comes & says there is manifest error in the rec[illegible] & proceedings in this suit to wit

1st Court erred in overruling motion for new trial

2d Verdict contrary to the evidence

3d Verdict contrary to the law

4th Court erred in rendering judgment for defendants

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By reason whereof the Plf prays that said judgment be reversed &c

P. E. Hosmer Plf

Joined in Error
A B & Co Attorney for Def'ts in Error

George Cullivier
vs
Adams Express
Company

In Supreme Court
For Term 1865

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court in pursuance of the Laws of this State, dated this 9th day of October A.D. 1865

P. E. Hosmer

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George Sullivan
vs
Adams Express
Company

Copy of Recor-
&c

Clk will please
issue scire facias
for defts, & oblge
&c

P. E. Hosmer
Atty. Pro. Pltf.

Filed Oct. 11-1865.
N. Johnston Clk

Paid by P. E. Hosmer Esq. $5.00