

11879

No.

Supreme Court of Illinois

Fisher.

vs.

<sup>SB</sup>  
Clixee.

71641 7

Marshall  
Wm Fisher  
vs  
Levi F. Clixee

118

11879

Prepared

1851

1 April Term A D 1857

A Record of the Orders decrees judgments & proceedings of the Circuit Court of Marshall County Illinois, begun & held at the Court House in the Town of Lacon, in the aforesaid County on the third Monday being the 21<sup>st</sup> day of April 1857, Hon<sup>ble</sup> J. S. Dickey Judge of the ninth Judicial Circuit Presiding.

Be it Remembered that on the 5<sup>th</sup> day of April A D 1857, Levi F. Elisbee, the Plaintiff in this Cause sued out of the Circuit Court the following Summons, against Wm. Fisher, the Defendant in this Cause  
To Wit

The People of the State of Illinois  
To the Sheriff of Marshall County

Greeting  
We command you to summon William Fisher to appear before our Circuit Court, on the first day of the Term thereof, to be held at Lacon within & for the said County of Marshall, on the third Monday of April Inst. then & there in our said Court to answer Levi F. Elisbee, in a

Plea of Trespass on the Case -  
Damages Two Hundred & fifty  
Dollars, as he says

Hereof fail -  
not to make due return, of your  
doings hereon.

Witness John Burns  
Clerk of said Court, & the Seal  
thereof at Lacon this 5<sup>th</sup> day of April  
in the year of Our Lord One Thou-  
sand Eight hundred & fifty One

John Burns, Clerk

Upon which the following en-  
dorsement was made, viz  
Served the within by reading the  
same to the within named William  
Fisher, on the fifth day of April 1851.  
Lacon April 5<sup>th</sup> 1851.

G. L. Fort, Sheriff

Whereupon the said Plaintiff files  
his Declaration herein April 5<sup>th</sup> 1851,  
in the words & figures following to  
wit,

In the Circuit Court of  
Marshall County Illinois April Term A.D. 1851

Levi S. Clisbee Plaintiff in  
this Suit complains of William

(1) Rusher, Defendant in this suit  
of a Plea of Trespass on the case -  
for that - Whereas, the said Defendant  
heretofore to wit on the first day of Febru-  
-ary, A D 1850, at the County of Mar-  
-shall aforesaid, was the Owner per-  
-sonal occupant and Operator of a  
certain Ferry, across the Illinois River  
at the Town of Lecom, in the County  
of Marshall aforesaid, then & there by  
the said Defendant, being kept and  
maintained by the said Defendant  
under & by virtue of a License =  
from the County Commissioners  
Court, of the said County of Mar-  
shall, under the general Laws of  
the State of Illinois regulating =  
Ferries &c, and as such he the  
said Defendant, was bound to =  
furnish safe & speedy transporta-  
-tion, across said River, at the ferry  
aforesaid, of all passengers their =  
teams horses cattle & other animals  
as well as their goods, chattels &  
effects, and the said Plaintiff =  
avows that on the same day & year last  
aforesaid at the County aforesaid  
the said Plaintiff was the Owner  
of a certain horse of the value of  
One Hundred Dollars, also of a  
certain Buggy Wagon, of the value of

One Hundred Dollars and also  
of a certain One Horse, harness of  
the value of Fifty Dollars, which  
said Horse, Buggy & Harness the said  
Plaintiff then & there on the day &  
year and at the county aforesaid  
between daylight in the morning  
& dark in the evening at the request  
and by the consent of the said De-  
fendant placed upon the ferry Boat  
of the said Defendant, then and  
there, by him used, and occu-  
-pied as a ferry boat at the ferry  
aforesaid for the purpose of being  
transported across said River, at  
said ferry, from the west to the east  
Bank of said River & the said Defendant  
then & there, undertook & promised  
the said Plaintiff in consideration  
that the said Plaintiff would  
pay the reasonable & usual rate of  
ferriage, to the said Defendant, that  
the said Defendant would  
safely & speedily transport the said  
Plaintiff's Horse & Buggy & Harness  
across the said River, at the ferry  
aforesaid, and land the same  
without damage or unnecessary  
delay upon the East Bank of the  
said River, and the said Plaintiff  
then & there agreed to pay & promised to

Day the said reasonable & usual  
rates of ferrige. Yet the said Defen-  
-dant regardless of his promise and  
undertakings aforesaid did not nor  
would then & there safely & speedily  
transport said Plaintiffs Horse  
Buggy & Harness, across said  
River at the ferry aforesaid, but  
so managed & conducted his  
said Ferry Boat, and the transpa-  
-ration of the said Plaintiffs property  
above described therein that on  
the passage of the said Ferry, the said  
Horse Buggy & Harness, became and  
were thrown cast and precipitated  
into the Illinois River, and the  
said Horse was then & there, drown-  
-ed & wholly lost, And the said Buggy  
and Harness then and there became  
& were greatly injured & damaged  
& the said Plaintiff then & there  
lost the use of the said Buggy  
and Harness, for a long  
space of time, to wit for the  
space of three months, By means  
whereof the said Plaintiff has  
been greatly injured and dama-  
-ged, to wit at the County aforesaid  
& claims damages to the amount of

Two Hundred & Fifty Dollars.

And for that Whereas, also on the day & year and at the County aforesaid The Said Defendant, was the Owner occupant & Operator of a certain Ferry across the Illinois River, at the Town of Lacon, in the County aforesaid then & there by the said Defendant, being kept & maintained under & by virtue of a License from the County Commissioners Court, of the said County of Mc=shall, under the general Laws of the State of Illinois regulating ferries &c: and as such he the said Defendant, was bound to furnish safe & speedy transportation across said River at said the Ferry aforesaid, of all passengers their Teams Horses & Cattle, & other Animals as well as their goods chattels & effects and the said Plaintiff avers that on the same day & year last aforesaid, at the County aforesaid the said Plaintiff was the Owner of a <sup>certain</sup> Horse, of the value of One Hundred Dollars, also of a certain Buggy Wagon, of the value of One Hundred Dollars, and also of a certain One Horse Team, of the value of Fifty Dollars, which said Horse Buggy & Team the said Plaintiff then & there by his servant, agent & Bailee on the

day & year, and at the County aforesaid  
Between daylight in the morning & dark  
in the evening, at the request and by  
the consent of the said Defendant,  
placed upon the Ferry Boat of the said  
Defendant, then & there by him used and  
occupied as a Ferry Boat at the ferry  
aforesaid for the purpose of being trans-  
ported across said River, ferry from  
the west to the east Bank of the said  
River, and the said Defendant then  
and there, undertook and promised  
the said Plaintiff in consideration  
that - He the said Plaintiff by his ser-  
vant - Agent and Bailee as aforesaid  
would pay the usual & reasonable  
rate of Ferriage, to the said Defendant  
that - He the said Defendant, would  
safely & speedily transport the said  
Plaintiff's Horse Buggy & Harness -  
across the said River, at the ferry aforesaid  
and land the same without  
damage or unnecessary delay upon  
the east Bank, of the said River and  
the Plaintiff, then & there by his ser-  
vant, Agent and Bailee agreed &  
promised to pay the said usual & rea-  
sonable rates of ferriage.

Yet the said  
Defendant, regardless of his Promises  
& undertakings aforesaid did not  
nor would then & there safely &



Speedily transport said Plaintiffs  
Horse Buggy and Harness across  
said River, at the Ferry aforesaid  
But so managed & conducted  
his said ferry Boat & the transporta-  
-tion of the said Plaintiffs property  
above described, therein that on and  
during the passage of the said River  
at said Ferry, the said horse buggy &  
harness, by reason of the insufficien-  
-cy, imperfection and insufficiency  
of the said Ferry Boat, and by  
reason of bad and improper  
management of the same, became  
& were thrown east & precipitated  
into the Illinois River, and the  
said horse, of the said Plaintiff  
was then & there, drowned & wholly  
lost and said Buggy & harness, then  
and there became and were great-  
-ly injured & damaged, and the  
said Plaintiff then & there lost  
the use of said Buggy & Harness  
for a long space of time (to wit  
for the space of three months  
to wit) at the County aforesaid By  
means whereof, the said Plain-  
-tiff has been greatly injured and  
damaged & claims damages to  
the amount of Two Hundred & Fifty Dollars

N. H. Purple & Ramsey & Fleming  
Plffs Atty

Levi D Blisbee } In the Circuit Court of  
vs } Marshall County  
William Fisher } Illinois April Term A D 1837

Issue Simmons  
in the above entitled cause in  
press on the case Damages -  
\$ 250.<sup>00</sup> Returnable to the April  
Term A D 1837 of this County  
April 5<sup>th</sup> 1837.

John Burrus Esq. N H Purple & Ramsey & Fleming  
Clerk C C Mc Illis, Atty for Plff.

Clerk will issue Subenas  
in above cause on behalf of  
Plaintiff for  
John Day Levi Wilcox  
William B Blisbee Benjamin Hewitt  
Richard Vincore  
Joseph Kuhn } Returnable as above  
N H Purple & Ramsey & Fleming  
for Plff

Whereupon the said Plaintiff files his  
general Demurrer herein April 22<sup>d</sup> 1857 in the words  
& figures following to wit.

Levi Elisbee } Marshall County  
vs } Circuit Court  
William Fisher } April 9/57

And the said Defendant comes  
and says that as to the said Declara-  
-tion & each count thereof, the Plff his  
action aforesaid ought not to have  
& that said declaration & each count  
thereof is insufficient to authorize  
the Plff to maintain his action afore-  
-said, & by the law of the land, the said  
Def<sup>t</sup> is not required to plead or answer  
thereunto & this the Defendant is ready  
to verify Wherefore He prays judgment  
He

By Peter Fenn & Bangs

Whereupon the following Order is made  
by the Court in relation to the above Demurrer

Levi Elisbee } Trespass on the Case  
vs }  
William Fisher } This day came the  
Parties by their Attorneys & the defendant  
files herein his general demurrer, to  
Plaintiffs Declaration which demurrer

is overruled by the Court & leave is granted to Defendant to plead over -

Whereupon the Defendant files herein (April 24<sup>th</sup> 1837) his pleas

Levi J. Clisbee } Marshall Circuit  
                          } Court April Term 1837  
William Fisher }

And the said Defendant - By Peters Ferris & Bangs his Attorneys comes & defends the wrong & injury whereto & says that he is not guilty in manner & form as the Plaintiff hath in his Declaration alledged against him. & of this he puts himself upon the Country by

Peters Ferris & Bangs  
His Attornies

And the Plff likewise -

Purple & Ramsey for Plff

April Term 1857.

~~A Record of the Orders, Decrees, Judgments & Proceedings of the Hon. Circuit Court, of Marshall County, Illinois begun and held at the Court House in the Town of Leon in the aforesaid County on the Third Monday being the 21<sup>st</sup> day of April 1857. Hon. J. L. Dickey Judge of the Circuit in the judicial Circuit presiding.~~

Thursday morning April 24<sup>th</sup> 1857

Present as Before  
Among other things the followings were had in said Court,

Levi F. Clisbee } action on the case  
vs }  
William Fisher } Marshall Circuit Court  
April Term 1857

Be it remembered that on the trial of this Cause, the Plaintiff to maintain the issue on his part, introduced & read in evidence, the following order from the Records of the County Commissioners Court, of Marshall County to wit: "On this day, (September Term 1847) came William Fisher, and made application to the County Commissioners Court of Marshall County, that the Court, establish a Ferry across the Illinois River

at Lacon, the Town of Lacon, and it appearing to the Satisfaction of the Court that the said Fisher is a person qualified to keep a Ferry, and that he has for four weeks successively next preceeding the present Term of this Court, published his intention of making his application, at the present Term of this Court by causing a notice thereof to be published in the Illinois Gazette a Newspaper printed & published in the Town of Lacon County of Marshall and State of Illinois giving notice that he should make such application, at the present Term of this Court, and it appearing to the Court to be necessary, to establish a Ferry, across the said Illinois River, at the place aforesaid as applied for by the said Fisher, It is therefore ordered by the Court that a Ferry be and the same is hereby established, across said River at the said Town of Lacon, and that the sum of Twenty Dollars be & the same is hereby accepted, as a Tax upon said Ferry, for one year from this date, and that the said Fisher, pay the same to the Treasurer of said County of Marshall, and it is further ordered by the Court, that the Clerk of this Court under his hand & the Seal of

This Court, issue to the said Fisher  
a License authorizing and em-  
powering him his heirs & assigns  
to keep the said Ferry, upon his  
paying to the said Treasurer the  
said Sum of Twenty Dollars, and  
entering into bond with Hall Greg-  
ory & Wm Merryman, as his Sureties  
the said Hall & Gregory & Wm Merry-  
man being hereby approved, as  
such Securities in the penal Sum  
of Five hundred Dollars, payable to  
the County Commissioners, of Mar-  
shall County & their Successors in  
Office, Conditioned as the Law in  
such case made & provided." Plaintiff  
also introduced & read in Evidence  
a Bond in the words & figures fol-  
lowing to wit, "Know all Men by  
these presents that We William Fisher as  
principal, and H. S. Gregory & Wm Merry-  
man as Securities all of the County  
of Marshall & State of Illinois are  
held & firmly bound, unto the County  
Commissioners of Marshall County  
& to their Successors in Office in the  
penal Sum of Five Hundred Dollars  
for the payment of which well & truly  
to be made We bind Ourselves, our  
heirs, & Administrators firmly jointly  
& severally by these Presents, signed with

our Hands & Sealed with our Seals  
this <sup>the</sup> day of September A D 1847. The  
Condition of the foregoing Obligation  
is such, That Whereas the said Wm  
Fisher has obtained a License from  
the County Commissioners Court  
of said County to keep a Ferry across  
the Illinois River at the Town of  
Lacore, Now if the said Wm Fisher  
shall keep said Ferry according  
to Law then the foregoing Obligation  
to be void otherwise to be & remain in  
full force.

William Fisher Seal  
Hall & Gregory Seal  
Wm Merriman Seal

The Plff then called Joseph Fisher as  
a Witness, and offered to prove that on  
or about February 24<sup>th</sup> 1830, the Def<sup>t</sup> kept  
the Ferry as charged in the Declaration  
Def<sup>t</sup> objected to the Admission of this  
Evidence because the Plaintiff had  
not proved & did not offer or propose  
to prove that the Defendant had received  
a License or paid the Tax as stated  
required by the above recited Order, of  
the County Commissioners Court; The  
Court overruled the objection & decided  
that it was unnecessary for the Plain-  
=tiff to prove those facts to entitle him to



Recover the evidence was admitted the  
Deft-accepted to the admission The Wit-  
-ness then proceeded to testify that on or  
about February 3<sup>d</sup> 1830 Deft- kept & owned  
the ferry at Leon. That the witness came  
to the west side of the River, at the ferry  
landing on or about that day for the pur-  
-pose of crossing in Deft- Ferry Boat, to the  
~~west~~<sup>east</sup> side of the River, with a Horse  
& Buggy Wagon and Harnep, which he  
had borrowed of the Plff. That he drove  
the Horse & Buggy upon the ferry boat  
& when the boat was about half way  
across the River, the Horse backed &  
went off the Boat into the River, and  
the Horse was drowned, & Horse Buggy  
& Harnep went under the ice and  
were not found, & got out of the River  
till the month of May afterwards  
That the Defts ferry Boat was a good  
Boat, that it was decked over but  
was crowning, or highest in the mid-  
-dle, descending each way to the ends  
That he should judge it was six  
~~seven~~ eight, ten or twelve inches  
higher in the middle than at the  
ends, that there was no rails or chains  
at the end of the Boat to prevent teams  
or carriages from going off that there  
were two other carriages with Horses  
on the Boat, which were before him

That Witkeps Wife was with him  
& she got out of the buggy and left  
himself got out & stood by his horses  
head. That the horse once backed some  
& he held him & brot him forward, that  
soon after the horse backed again &  
that time went into the river as  
before stated, that the horse was  
tolerably gentle, that he had been to  
Peoria with the horse & Buggy, and  
was then on his return home to  
Lacou. That Gabez Fisher a Brother  
& Partner of Defendant, Frank Perry  
Wm Overmire, Gad Lowry & wife Wit-  
nep's wife & one person who had the  
forward team; But who was un-  
known to Witkeps came were upon  
the Boat at the time. Said J Fisher Over-  
mire & Perry were attending to the ferry  
Boat; & getting it over. Mr Fisher rem-  
arked that We had better get out and  
hold our Horses, and he helped Mrs  
Kuhn out of the Buggy that the head  
of the horse was checked up, & the Bridle  
reins hitched to the hook, in the  
Saddle, Witkeps thought the horse  
worth \$40. to \$50. That he stood by the  
horses head until he went over-  
board, and did not recollect hearing  
Fisher or any other person, request him  
to loose the horse from the Buggy -

Plaintiff then called John Jay who said the horse was worth about \$65 The Harness when it was lost was worth about \$12 & the harness not more than \$1.50 when it was found, that the buggy when it went into the River was worth about \$80 But when it was found, it was not worth more than \$25. William Blisbee testified to about the same, as to the value of the horse buggy & harness.

The Pff. then rested his case

The Def. to maintain the issue on his part, read in evidence an act of the General Assembly, of this State which is in the words & figures following to wit, An Act to establish a ferry across the Illinois River at the Town of Lacon, in the County of Marshall

In Force Feb 12 1849

Section 1 Be it Enacted by the People of the State of Illinois represented by the General Assembly That Wm Fisher Jabez Fisher and Nathaniel G Chapin their Heirs and Assigns be and they are hereby authorized to establish a Ferry and keep a Ferry across the Illinois River at the Town of Lacon

In the County of Marshall  
§ 2 They shall at all times keep on  
hand a sufficient number of good  
& sufficient boats so as to afford  
a safe and speedy passage to all  
persons wishing to cross with their  
Teams Stock Carriages or otherwise  
& a sufficient number of hands  
for that purpose

§ 3 The County Commissioners  
of Marshall County shall  
have power to fix & establish such  
rates of ferriage as they may think  
right & just and shall also  
have power to levy & collect from  
time to time such annual Tax on said  
Ferry as they shall think proper and Equitable  
Provided the same shall not be lower than  
other Ferries across said River similarly situated

§ 4 Should said Fishers & Chapin at any time  
hereafter make & construct a road  
across the Illinois Bottom opposite  
the said Town of Ligon. They may on  
the completion thereof so that the same  
shall be passable for teams and  
travelers during high water establish a  
toll gate thereon, & take such tolls from travelers  
and for all teams Carriages, Stock pas-  
sing thereon, as the County Commissioners  
of said County of Marshall shall fix

Fix and Establish, Provided, Said rates of ferrriage shall not be lower, than other ferries across the said River similarly situated.

§ 5 The Tax authorized to be levied & collected, by the third section of this act, shall be used & appropriated, to aid in the construction & keeping in repair, the road aforesaid.

§ 6 Said Fishers & Chapin or such of them as shall, with proper surety or sureties be deemed by said <sup>County</sup> Commissioners to be sufficient, or such other person or persons as shall be deemed sufficient, shall, before exercising any rights or privileges conferred or granted by this act, enter into bonds to the said County Commissioners in such penal sum of as said <sup>said</sup> Commissioners shall direct, conditioned that the said Fishers & Chapin their Heirs and assigns, shall at all times keep on hand a sufficient number of good & sufficient boats at said Ferry & a sufficient number of hands to afford a safe & speedy passage, to all persons wishing to cross together with their teams carriages & Stock, or otherwise which bond may be sued on by any person or persons aggrieved in the name of the County Commissioners of said County.

This Act to take effect & be in force  
from & after its passage.

Approved February 12<sup>th</sup> 1849

Defendant also read in Evidence an  
order of the County ~~Commissioners~~  
<sup>made at a term thereof held in for said County on the 6<sup>th</sup> day of March 1830</sup>  
Court approving of the bond filed under  
the said act & the bond, which order & bond are  
in the words & figures following to wit: Now

Comes into Court William Fisher and  
presents his bond for keeping a Ferry  
across the Illinois River at Lacon which  
is approved by the Court & ordered to be filed  
and recorded, and is as follows to wit =  
Know All Men by these Presents that We  
William Fisher, Silas Loveland and Ira  
E. Fern, are held & bound unto the  
County Court of Marshall, County Illi-  
-nois in the penal sum of Two Thous-  
-and Dollars for the payment whereof we  
and truly to be made <sup>do hereby</sup> We bind Ourselves  
Our Heirs Executors & administrators jointly  
and severally & firmly by these Presents  
Signed with our names & sealed with our  
seals, on the fifth day of December, in  
the year of our Lord one Thousand Eight  
hundred & forty nine Whereas by an act  
of the Legislature entitled an act to es-  
-tablish a Ferry across the Illinois River  
at the town of Lacon, in the County of

March 12th 1849  
Approved Feb 12th 1849  
William Fisher, Galley Fisher and Ma-  
thaniel G. Chapin, are authorized and  
their Heirs and Assigns, to establish and  
keep a Ferry across the Illinois River at  
the Town of Lacombe, in the County of  
Marshall. Now the conditions of  
the above obligation is such that  
if the said Fishers & Chapin their Heirs  
and assigns shall at all times  
keep on hand a sufficient number  
of good & sufficient boats at  
said Ferry & a sufficient number  
of Hands to afford a safe & speedy  
passage to all persons wishing to cross  
together with their Teams, Carriages and  
Stock or otherwise, according to the  
intent and meaning of these Pro-  
visions to said act, and shall in all  
respects comply therewith, then the  
above obligation to be void otherwise  
to remain in full force;

Approved

Silas Ramsey, Esq. Judge  
J. W. Pettit Associates  
Thos. Corben

William Fisher Seal  
Titus Loveland Seal  
Dra. J. Ferr Seal

Deft the called Isaac Springer  
who testified that he built the ferry  
Boat of Deft, that it was a strong well

4  
built boat was well decked, so  
that it could not be sunk, that the  
boat when built was not higher in  
the middle than at the ends, that in  
fact it was half an inch or an inch low-  
er in the middle, that the girders of the  
Boat had afterward sprung some, and  
thereby the boat or deck was made a little  
higher in the middle than at the ends. He  
could not tell how much as he had  
not noticed it positively it might be  
one two or three inches or thereabouts  
That the body of the boat was 13 feet wide &  
fifty two long, besides the Aprons which  
were four feet each, that the aprons when  
the levers were down, as when the  
boat was passing were about six or  
eight inches higher than the deck of the  
boat in the centre that the boat was provi-  
ded with ~~iron~~ railings of iron, iron posts  
of 1 1/4 inch & rods of half inch iron passing  
through the posts, that these have since been  
removed, & wooden railings substituted  
That the Boat would have been much safer  
if there had been a chain or Bar at the end  
to prevent the wagon from running off.  
That he knew nothing of the condition of the  
boat at the time Plaintiff's injury occurred

William Overmire testified that he  
was in the employment of Def. as



As one of the keepers & Operators  
of the ferry boat that when Kuhn &  
the others came upon the boat, & just as  
the boat was about to put out.  
Witwipes told the Passengers that they had  
better take their Horses from their  
Carriages, that the Owner of the forward  
team did so, that Mr. Lowry said his  
horse was a ministers horse, & had no  
bad tricks, & there was no need of un-  
-hitching him, & that Kuhn also  
did not take his <sup>horse</sup> from the buggy  
but he did not remember as he  
said anything, that the horse Kuhn had  
(the one that was lost) became restive  
and backed some, but was brought  
back to his place, that Mr. Fisher then  
spoke to Kuhn & told him he had  
better unloose his horse from the  
buggy, that Kuhn still did not do so,  
that when the horse backed, Kuhn  
stood by his horses head, & took hold of  
one of the bridle reins the same being  
hitched back upon the Hook in the saddle  
& pulled forward & thereby the horses  
head was pulled round, & back that  
the horse continued to back, Kuhn  
holding on & pulling on the check rein  
till the horse went off the boat into  
the river. said he had no doubt but  
Kuhn heard him & Fisher make the

Request to take the horse from the buggy  
That Mr Fisher & Witheps & Perry work-  
ed getting the boat over. That the river  
was all frozen over except a channel  
which was kept open for the passage of  
the boat. Kuhn made no reply when  
told that he had better take the horse off  
that he could not say positively that  
he heard the request, the wind was  
blowing hard from the South. Kuhn  
was on the South Side, & I & Fisher  
on the North Side of the horse at the  
time, but he believed he heard it, and

All the Evidence above recited which  
related to the unhitching or loosing  
the horse from the buggy, and the con-  
-versation above related, were objected  
to by the Plaintiff but the Court per-  
-mitted it to go to the jury subject to objec-  
-tions. The Deft then offered to prove that  
if Kuhn had complied with the request  
of the other Witnesses & taken the horse from  
the buggy, there would have been no  
risk or hazard to the horse & buggy. They  
also offered to prove that the ferry boat  
of Deft. was one of the best & safest ferry  
boats on the Illinois River. That it was  
not customary to have a chain or bar  
across the ferry boats on the Illinois  
River, to prevent teams from getting off  
such boats. That for many years he

The Ferry Boats running at this place have had no such bars or chains but the ends have been left open as this was that it is usual & customary at this ferry as well as at other ferries on the Illinois river for passengers with teams to take care of their horses & attend to them, & prevent them from getting off the boat on its passage over the river & that it is not customary for the ferryman to take care of the horses & teams. This evidence was objected to by the Plaintiff & the objection was sustained & the evidence excluded by the Court; & the Defendant excepted to the decision.

The Defendant also introduced some evidence to show the value of the property lost, & the injury sustained viz. that the damage to the buggy was about \$15, & the value of the horse \$45 or \$50. The above is all the material evidence given on the trial.

The Plaintiff requested the Court to instruct the Jury as follows

1) To Wit That if the Plaintiffs horse

1/ Buggy & harness was placed upon the  
Defendants' ferry boat, as stated in  
the declarations from the time they  
were so deposited they were in the custody  
of the owner of the Ferry, & he was bound  
to convey them safely across the River =  
unless prevented by the act of God, or  
the enemies of the State, or prevented  
by the Owner or his agent, & that if he  
failed to do so, he is liable to pay what  
damage the Plaintiff has sustained.

2/ That the Conversations between  
Gaber, Fisher & Overmire & Kuhn in  
relation to the losing the horse from  
the buggy, will be disregarded by the Jury

3/ That the Law granting a License  
to Gaber, Fisher, & others read in  
evidence by Mr. Peters has no applica-  
-tion to this case, that said Fisher & others  
had at the time of Plaintiffs loss  
acquired no rights or interests under  
said Law. They not having filed  
their Bond until the 6<sup>th</sup> March 1830  
Provided the Jury believe from the  
evidence that the Plffs' injury was  
sustained previous to the 6<sup>th</sup>  
1830.

Which instructions were  
given by the Court, & the Deft excepted to thereto,

The Defendant, requested the Court to instruct the jury as follows to wit,

1) If the Jury believe from the evidence that the Ferry Boat used by the Defendant, on the occasion in the declarations mentioned, was a good tight boat of sufficient strength & steadiness for the safe & speedy transportation of Plff or his servants, together with the goods & chattels, of Plff, in the declarations mentioned & that the said goods & chattels were lost without any negligence on the part of the Deft. They will find for the Deft.

2 That if the Jury, believe from the evidence that the Deft. took all reasonable care, & used all proper precaution in the attempt to transport the property of the Plff across the Illinois River, he is not to be held responsible for its loss & the Jury will find for the Deft.

3 That if the Jury, believe from the evidence that the property perished or was damaged, without the fault of the Deft. They will find for the Deft.

Repeal

Repeal

Repeal

4 If the Jury believe from the Evidence that the Deft. took usual care & caution for the safe & speedy transportation of the Plaintiffs property they will find for the deft.

5 If the Jury believe from the evidence that the damage or loss of the Plff occurred by the act of the Plff himself or his agent he cannot recover in this action

6 If the Jury believe from the Evidence that Kuhn so held the horse or pulled the reins of the horse as to cause him to go back or run off the ferry boat. They will find for the Deft a verdict for the Deft.

The Court refused to give the first second third fourth & sixth instructions but gave the fifth without any qualification but qualified the sixth so as to read as follows viz

If the Jury believe from the Evidence that Kuhn so held the horse or pulled the reins of the horse as to cause him to go back & run off the ferry boat & that the horse would not have backed off if Kuhn had not touched him. Then they should find for Defendant

Refuse

Give

Give as judge

The Defendant excepted to the decision of the Court refusing the said instructions & in qualifying the sixth instructions asked for by Defendant

The Defendant moved the Court for a new trial because the verdict was against law & evidence because the Court admitted improper evidence for the Plff. & excluded proper evidence of the Defendant from the Jury & because the Court gave improper instructions for the Plff & refused & qualified proper instructions asked by the Defendant. The Court overruled the motion for a new trial & the Defendant excepted to the decision.

Defendant also moved in arrest of judgment because the declaration shows no sufficient cause of action to entitle the Plff to recover. This motion in arrest was overruled & the Defendant excepted to the decision & prayed that this bill exceptions may be allowed, signed & sealed by the Judge & made part of the record in this cause, which is done.

L. Dickey

Copy of Judgment  
Levi J. Clisbee  
vs  
William Fisher } Respason the Case

This day this cause  
coming on to be heard, The Plaintiff  
appears by Ramsey & Purple his Attorneys  
& the Defendant by Peters Fern & Bahgo  
his attorneys & issue being joined a  
Jury comes to try the same to wit  
John S Hunt. Mr. Rowe John Wilson  
Timothy Atwood Nathaniel Gaulty  
Samuel Rogers James Sumner, Rufel  
E Heacock Vincent Bowman Joshua  
Powell, Chancery Gaylord, & Chester S Wood-  
ward, who being sworn well & truly to  
try said issue & having heard the evi-  
dence & having the instructions of the Court  
Retire to consider of their verdict who  
returning again say We the Jury find  
a verdict for the plaintiff and assess  
his damages at the sum of Eight five  
Dollars. Whereupon the ~~plaintiff~~ <sup>defendant</sup> moves  
the Court for a new trial which  
motion being overruled. Said Defen-  
dant thereupon moves in arrest of Judg-  
ment, which motion also is over-  
ruled by the Court. It is therefore  
considered by the Court that the



Plaintiff have & recover, of the Defendant his damages, aforesaid in form aforesaid, & assessed likewise his costs & charges, by him about his suit in this behalf expended & that he have execution therefor. Whereupon the Defendant prays an appeal to the Supreme Court, which is granted on Condition that he file with the Clerk of this Court within Twenty days, a Bond according to the Statute in such case made & provided with Sabez Fisher his surety therein for the sum of Two Hundred Dollars.

The Defendant having accepted to the opinion of the Court, tenders his said Bill of Exceptions which by agreement of the Parties is to be signed by the Court, in vacation.

### Appeal Bond

Know All Men by these Presents that We William Fisher & Sabez Fisher are held & firmly bound unto Levi F. Glisbee of the County of Marshall & State of Illinois in the penal sum of Two Hundred Dollars Current money of the United States for the payment of which

Well truly to be made We  
bind Ourselves Our Heirs, exec-  
utors & Administrators, jointly  
severally & firmly by these Presents  
Witness Our hands & seals, this fifth  
day of May A D 1837. The Condition  
of the above Obligation is such, that  
whereas the said Levi I. Elisbee did  
at a Term of the Circuit Court begun  
& held within & for the said County  
of Marshall, on the third Monday  
of April A D 1837, recover a Judg-  
ment against the above bounden  
William Fisher, for the sum of Eighty  
five Dollars damages & sixteen  
Dollars & ten cents costs, from  
which said Judgment of the said  
Circuit Court, the said William  
Fisher has prayed for & obtained an  
appeal to the Supreme Court of said  
State. Now if the said William Fisher  
shall duly prosecute his said appeal  
to the Supreme Court with effect and  
shall moreover pay the amount  
of the Judgment Costs, interest & dama-  
ges rendered & to be rendered, against  
him in case the said Judgment, shall  
be affirmed, in the said Supreme Court  
then the above Obligation to be void

Otherwise to remain in full  
force & virtue  
Attest  
J Burns, Clerk  
Wm Fisher Seal  
Sabez Fisher Seal

State of Illinois } Clerk's office circuit court May 31<sup>st</sup>  
Marshall County } 1851

I John Burns Clerk of said court do  
hereby certify that the foregoing is a true & perfect copy  
of the proceedings had in said court in the above  
entitled cause as appears of record in my office  
Witness my hand & the seal of said court  
the date above written

John Burns  
Clerk

Marshall Co.

Wm Fisher

vs,

Jessie F. Leisler

Apprent from Master

Clerks fee for making &  
certifying this transcript  
\$7.00 Wm Fisher Clerk

Five dollars herewith  
for the Supt Court

Filed June 9, 1851.  
J. Seland Clk.

Wm Fisher  
Supt Court

William Foster, appellant, & dist. below

vs.

Sam F. Tebbel, appellee, & Pff. below =

Appeal from Marshall -

Sup. Ct. June 7/57 -

And now comes the said Pff., appellant, & says that in the record & proceedings aforesaid, of the said Circuit Court, & in the recitation of the judgment aforesaid that is manifest error, & writ, the judgment of the said Circuit Court was for the Pff. below, when it ought to have been for the Dist. below =

And the Plaintiff, appellant, also assigns the following as errors in the said record & proceedings =

1- The Circuit Court erred excluding the evidence offered by appellant, & which was excluded =

2- The Circuit Court erred in giving the instructions as each of them, in behalf of the Pff. below =

3- The Circuit Court erred in refusing the instructions asked for by the Dist. below, & in giving the sixth with a qualification =

4- The Circuit Court erred in overruling the motion of Dist. below for a new trial =

5- The Circuit Court erred in overruling the motion of Dist. below in court of judgment =

Wherefore for the errors aforesaid, & for other errors in the record & proceedings aforesaid, appellant begs that the judgment aforesaid, may be removed, annulled & set aside, & he be restored to what he has lost by reason thereof &c. =

Arthur Peters for appellant =

And the said defendant Court and  
says that in the Record and proceedings  
and in the Rendition of the Judgment  
aforesaid there is no Error wherefore  
he prays that said Judgment may  
be affirmed

June 17<sup>th</sup> 1851

A. M. Temple  
Atty for App<sup>ts</sup>

William Fisher Deft. below, Appellant -

vs  
Levi F. Clisbee Appellee. Pff. below.

### Appeal from Marshall

This suit was commenced for the March T. '57, and was tried at that term & a verdict rendered for the Pff. The declaration contains two counts, charging that the Deft. was the owner & occupant of a ferry across the Illinois River at Lacore - that the Pff. by his servant <sup>went</sup> upon the ferry boat to cross the River, & Deft's boat was so managed & conducted that Pff's horse, buggy & harness were precipitated into the River, & the horse drowned & buggy & harness injured.

Deft. pleaded the general issue.

By the bill of exceptions it appears, that the Pff. <sup>proved</sup> the licensing of the Deft. to keep the ferry at Deft. T. of Marshall County Commissioners Court 1847 & the giving of a bond by Deft. &c. Also that one Kuhn came upon the boat in Feby. 1850 with Pff's said property, & while passing over the river, the horse became restless & backed off the boat into the river, & went under the ice, the horse was drowned & buggy & harness injured.

Deft. proved that his boat was a strong, well built & safe boat, well decked over, & that when Kuhn came upon the boat with others, Mr Fisher requested them to take their horses from the buggy, as matter of safety - that Kuhn did not do it - that the bridle or check reins were hitched back upon the

hook in the saddle - that Rubin pulled one of the check reins so as to pull the horse's head round & back &c.

Drft. also offered to prove that had Rubin complied with request to unloose the horse there would have been no risk or hazard - that the boat was one of the best on Illinois River - that it was not customary to have chains or bars across the ends of ferry boats - that it is usual & customary at this & other ferry boats for passengers to take charge of their own horses, teams &c. & is not customary for ferry-men to do it -

This evidence was objected & excluded & the decision excepted to.

The court also decided that all the evidence relating to unbiting the horse, was incompetent.

The court at request of P<sup>l</sup>ff. instructed the jury

1. That Drft. was liable for the loss at all events, unless occasioned by act of God, the public enemy, or the act of P<sup>l</sup>ff.
- 2<sup>d</sup> - That the conversation as to taking horse from the buggy &c. will be disregarded by the jury.



Deft. requested the Court to instruct the jury -

1. That if the Deft's boat was a good, tight boat & sufficiently safe for transportation of passengers, trunks &c, & the horse was lost without negligence of Deft,

2. That if Deft. used all reasonable care & diligence in attempting to transport the property;

3. That if the loss occurred without the fault of Deft;

4. That if Deft. took usual care & caution, they would find for Deft.

These instructions were refused & Deft. excepted.

The Court also refused to give the 6<sup>th</sup> instruction as asked, but qualified it, & Deft. excepted.

Motion in arrest of judgment & for new trial overruled & exceptions,

W. Fisher Appt.

vs.

G. F. Clisbee Appt.

Abstract.

Filed June 30<sup>th</sup> 1857

550  
27500