23/15

July 1843 #1317

Steam boats
Contracts

E. Little & Richard Tompkins
vs
Charles Semple, owner of Steamboat Meridian

County of St. Louis

} assumpsit

100 Kegs of nails, $539.37

Contract allowed re-shipping
Court still responsible for deliver
as stated in original contract even if re-ships.

E. Little & Richard J. Tombrins. Plaintiffs in error

vs.

Chas. Semple Deft. in error

In the W. Louis Court of Common Pleas

Jas. Smith, Wm. H. Smith, & John Cavender

Jas. Brotherton's Admr. to the use of ~~&~~ ~~Plaintiff~~ in error

~~Ad~~ vs.

Saml. Cover & John S. Thomson Defts. in error

In the W. Louis Circuit Court

~~In the W. Louis Court of Com~~

The Clerk of the Sup. Court will please issue writs of error in the above cases to the respective courts in the usual form

Wadson & Holmes
Attys for the Pltys in Error

E Little &
Richd J Tompkins
vs
Charles Semple

James Brotherton
admr &c
vs
Samuel Cover &
John S Thomson

Precipe

Filed June 10. 1843
H. L. Boon clk

Jas Brotherton's Admr. to the use of &c.
Vs.
Cover & Thomson

In the St Louis Circuit Court

Take notice that a writ of error has been sued out of the Sup. Court of Missouri, to the St. Louis Circuit Court, returnable to the next July Term thereof, at Jefferson City, Missouri, in the above entitled cause; when & where you may appear if you think proper

To Spalding & Tiffany
Attys for Defts

Wm. Holmes
Attys for Pltf.

Jas. Butherton's
Admr.
vs.
Sam Lowe & J. S. Thomson

Notice of Writ of
Error to Sup. Ct.

State of Missouri } ss.
County of St. Louis }

I Nathaniel Holmes make oath and say that I served a true copy of the within notice upon J. Spalding & Tiffany attorneys, or attorneys of record in said cause for the said deft. by leaving a copy thereof at their office in St. Louis in the County of Aforesaid, on the 17th day of June A.D. 1853

Sworn to & subscribed

Nathl. Holmes

1

State of Missouri. Sct: — To the Judge of the St. Louis Court of Common Pleas in said State: Greeting.
Whereas in the record and proceedings in a certain cause lately pending before you in said Court wherein E Little & Richard J Tompkins were plaintiffs and Charles Semple was defendant, manifest error hath intervened to the great damage of the said plaintiffs as by their complaint we are informed: Now we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, do Command you, that you send to us certified under your seal, the record and proceedings in the said cause, as fully as the same remains before you of record in said Court, so that our Judges of our Supreme Court may have the record and proceedings in the aforesaid cause, before them at our Supreme Court to be held at the City of Jefferson, in the County of Cole, in said State, on the first monday of July next, that being then and there inspected by our Judges aforesaid, we may cause to be further done thereon for correcting the error, what of right & according to law ought to be done.

Witness Hampton L Boon clerk of our Supreme Court at office, with his private seal, (having no official seal) the tenth day of June in the year of our Lord, One thousand eight hundred and forty three.

H. L. Boon.

State of Missouri
County of St Louis } sct. In obedience to this writ, I Nathaniel Paschall Clerk of the St Louis Court of Common Pleas, return the same with a transcript of the record and proceedings in the case therein mentioned, as the same remain in my Office, annexed hereto.

Given under my hand and the seal of said Court at Office in the City of St Louis this seventeenth day of June eighteen hundred and forty three.

N. Paschall, Clk

1317
Supreme Court (49)
July Term 1843.

E. Little &
Richard I Tompkins
vs } Writ of Error.
Charles Semple.

St Louis Court Com Pleas.

1317

Filed June 19. 1843.
H. L. Boon clk

26

Hudson & Holmes atty's

Ephraim Little & Richard J. Tombins. Pltfs. in Error
vs.
Charles Semple
Deft in Error

In the Supreme Court. July Term A.D. 1843

And now at this day come the said plaintiffs in error, by their attorneys, and make the following assignment of errors in said cause, to wit:

1st That the Court below erred in overruling the demurrer of the plaintiffs to the defendants pleas.

Wherefore the plaintiffs pray the Court to reverse the judgment of the Court below, and to remand the cause for further proceedings according to law.

Hudson & Holmes
Pltfs. Attys

In the Sup. Court
July Term
1843

Little & Tomkins
vs
Phas. Temple

Assignment of Errors
Hudson & Holmes
Attys, Attys

Filed July 28. 1843.
H. L. Boon clk

Little & Tompkins v. Semple

Error to St Louis C.C.P.

The plaintiffs brought an action of assumpsit in the St Louis Court of Common Pleas, against the defendant as one of the owners of the steamboat 'Meridian', upon a contract of affreightment. The plaintiffs shipped upon said boat, at Pittsburgh, one hundred Kegs of nails, of the value of five hundred and thirty nine dollars & thirty seven cents "to be delivered in good order, at the port of Galena, in the State of Illinois (the dangers of the river navigation, fire & unavoidable accidents excepted) to the plaintiffs or their assigns, they paying freight therefor at the rate of fifty cents per Keg, with privilege of reshipping." The nails were reshipped at St Louis upon the steamboat Illinois, with the privilege of deviating as far as Jefferson Barracks, which is about ten miles out of the direct course to Galena; the Illinois did deviate thus far, & after leaving Jefferson Barracks, on her voyage to Galena, whereby she struck a rock & sunk, & the nails were lost.

The defendant filed several pleas,

in substance averring that the said goods were shipped on the Meridian, with a privilege of reshipping the same, at any time during the voyage; & that during the said voyage, whilst safely conveying such goods, the did reship the goods on board the Illinois, a good & staunch boat, then bound upon & about to proceed to Galena, to be safely carried & delivered according to said contract &c.

To all these pleas there was a demurrer, the demurrer was overruled by the Court and the defendant had judgment on the demurrer. The sufficiency of the pleas is therefore the only question presented by the record, & this depends upon the construction of the words, "with privilege of reshipping", contained in the bile of lading.

~~It is contended~~

It is contended by the defendant in error, that the bill of lading containing the words "with privilege of reshippment", means, that the carrier will convey the

goods safely as far as it may be convenient for him to go, and with them faithfully perform the duty of a forwarding merchant, in putting them on board a proper vessel for the port of destination.

We do not take this view of the contract. The contract is an entire one, for the carrying the goods safely from Pittsburgh to Galena, & the consideration for the entire performance of the contract is fifty cents per Key. The privilege of reshipping, reserved in the bill of freight, enabled the defendant to carry the goods to the port of destination, either in his own boat or any other vessel - but in either event, did not discharge him from any liability not excepted in the contract. Had the ~~lessee~~ words "with privilege of reshippment" been omitted, the mere fact of reshipping the goods on another boat, unless in case of necessity, would have been a deviation & made him responsible. Story on Bailments 8562. Abbott on Shipping Ch 3. S. 1. 8. By the operation of this clause, he is at liberty to transship or reship on another boat, but his contract is not performed until the delivery of the goods at Galena. His compensation was not for such delivery

and his liabilities should be commensurate thereto.
The demurrer should have been sustained.

Judgment reversed & cause remanded

We concur
G. Tompkins

W. B. Napton

Scott J. absent

26.

Little & Tompkins
v.
Semple

Opinion of the Court

Napton

Aug. 1843.

Filed Aug. 9. 1843
H. L. Boon CR

M

Supreme Court

Little & Tomkins
vs.
Chs. Semple

July T. 1843

Little & Tomkins brought an action of assumpsit in the St. Louis Court of Common Pleas returnable to the February Term A.D. 1843 against Semple as one of the owners of the Steam Boat Meridian. The declaration contains two counts, the first alleges a Shipment by plaintiffs of a hundred Kegs of nails, on board said Boat at Pittsburgh, "to be delivered without de-"lay in like good order at the port of Ga-"lena in the State of Illinois (the dama-"ges of river navigation, fire and una-"voidable accidents excepted) unto the plain-"tiffs or their assigns, the paying freight "therefor at the rate of fifty cents per Keg, "with privilege of reshipping:" that the de-fendant re-Shipped the nails on board of the Steam Boat Illinois at St. Louis with privilege of deviation as far as Jefferson Bar-racks, ten miles out of the direct course of the voyage: that said S. Boat Illinois did deviate to Jefferson & afterwards pur-sued her voyage to Galena & on her way thither struck a rock & sunk, whereby the nails were lost. The second count sets forth the same contract & then alleges that the defendant never delivered the

goods at Galena although a sufficient time had elapsed but on the contrary so negligently carried the same that they were lost &c.,

The pleas were,

1 non assumpsit to both counts (withdrawn)

2 to 2nd count that said nails were shipped on the Mendician with a privilege reserved to said Boat to reship the same at any time during the voyage: & that during said voyage while the was safely conveying said goods, She availed herself of the privilege & reshipped the goods on Board the Steam Boat Illinois bound for the port of Galena to be safely carried and delivered according to the contract specified in said 2nd counts.

3 This plea was withdrawn & ran to the 2nd counts

4th plea to the first counts that said goods were re-shipped by the Mendician on her said voyage on board of the Steam Boat Illinois then bound for Galena to be delivered there according to the contract in said counts, without any privilege of deviation &c.

5th plea to 1st count, that when said goods were reshipped on board of the Illinois, they were so reshipped without any privilege of deviation &c.

6th. plea to 2nd count substantially the same

as 2nd plea above with the additional allegation that the merchan did safely re-ship the goods on the S. Boat Illinois a good & staunch boat & then bound & about to proceed to Galena.

A general demurrer was put to these pleas which on argument was overruled, & final judgment was entered for the defendants.

The only question arising on the record is the following, viz:

Where goods are shipped on board a boat with the privilege of reshipping, is the Boat bound for the safe delivery of the goods at the port of destination, or is she discharged on re-shipping them properly.

Points of dift. in error.

1 If no privilege of reshipment had been contained in the Bill of Lading the carrier would would still have had the right to re-ship, in case his own boat or vessel had been disabled

Abbott on Shipping 240
1 Phillips on Insurance 590

2 The privilege therefore in the Bill of Lading that defendant, the carrier, had a right to reship, must mean something further than such right as exists, when a ship is disabled, to send on the cargo by some

other vessel to its destination.

3 This latter right (of employing another vessel when it is impossible to complete the voyage with the first) is called "transhipment." The privilege reserved in the present Bill of Lading is termed "re-shipment," a second shipment — a repetition of the ~~act~~ original act of shipment of which the Bill of Lading is the evidence; and therefore a totally different thing from transhipment.

Abbott on Shipping 240, 243.
1 Phillips on Insurance 590
Stevens on Average 363
Hughes on Insurance 125, 172, 402
Smith's Mercantile Law 180, 239
(15 Law Library)

4 The true meaning of the Bill of Lading in question containing the privilege of re-shipment is, that the Carrier will convey the goods safely as far as it may be convenient for him to go, ~~and will then faithfully discharge~~ and will then faithfully perform the duty of the forwarding merchant, in putting them on board a proper vessel for the port of destination.

Supreme Court

Little & Tompkins
vs.
Chs. Temple

Brief & Points for
Deft in error

Spalding & Tiffany
attys

filed Aug. 9. 1843.
H. L. Boon clk

Ephraim Little & Richard J. Tomkins
Pltfs. in error
vs.
Charles Semple
Deft. in error

In the Supreme Court
July T. A.D. 1843.—

Wilson & Holmes Attys. for Pltfs.

Statement of the case.— Mems. E. Little & Co. of Galena, Illinois, the plaintiffs, purchased a quantity of nails of Mems. Smith Royer & Co. of Pittsburgh Pa., who shipped them to the plaintiffs on board the Steamboat Meridian, in which the defendant in error was an owner. The bill of lading recites that the goods are shipped, for whom it may concern, in good order, by Smith Royer & Co. on the board the Meridian, to be delivered, at the Port of Galena Ill. unto Mems. E. Little & Co. &c.; but before the attestation clause, these words are interlined, "privilege of reshipping". The Meridian arrives safely at St. Louis, and there reships the goods board the Steamboat Illinois, then bound for Galena. The Illinois sails for Galena, with the goods on board, running down to, & stopping at, Jefferson Barracks below St. Louis, on her way: and when she arrives at the Lower Rapids of the Mississippi, she strikes on a rock and is sunk. The nails arrive at Galena in a damaged condition. The plaintiffs make the customary protests, charging the loss upon the Meridian, and receive the goods. This action is brought to recover the loss. The defendant files several pleas, each involving a similar point. The plaintiff demurs: and judgment goes against him on the demurrer.

It is contended on the part of the plaintiffs that the contract of freightment as evidenced by the bill of lading was an entire contract between the plaintiffs (through Smith Royer & Co.) with

Ephraim Little & Richard J. Tomkins
Pltfs. in error

vs.

Charles Semple
Deft. in error

In the Supreme Court
July T. A.D. 1853.—

Wilson & Holmes Attys. for Pltfs.

Statement of the Case.— Mems. E. Little & Co. of Galena, Illinois, the plaintiffs, purchased a quantity of nails of Mems. Smith Royer & Co. of Pittsburgh Pa., who shipped them to the plaintiffs on board the Steamboat Meridian, in which the defendant in error was an owner. The bill of lading recites that the goods are shipped, for whom it may concern, in good order, by Smith Royer & Co. on the board the Meridian, to be delivered, at the Port of Galena Ill. unto Mems. E. Little & Co. &c.; but before the attestation clause, these words are interlined," privilege of reshipping". The Meridian arrives safely at St. Louis, and there reships the goods board the Steamboat Illinois, then bound for Galena. The Illinois sails for Galena, with the goods on board, running down to, & stopping at, Jefferson Barracks below St. Louis, on her way: and when she arrives at the Lower Rapids of the Mississippi, she strikes a rock and is sunk. The nails arrive at Galena in a damaged condition. The plaintiffs make the customary protests, charging the loss upon the Meridian, and receive the goods. This action is brought to recover the loss. The defendant files several pleas, each involving a similar point. The plaintiff demurs: and judgment goes against him on the demurrer.

It is contended on the part of the plaintiffs that the contract of freightment as evidenced by the bill of lading was an entire contract between the plaintiffs (through Smith Royer & Co.) with

the defendant (as one of the owners of the Meridian) to transport these mails from Natchez to Galena, & then deliver them in good order to the plaintiffs, with no other qualification than that contained in the words "[with] privilege of reshipping"; that without these words the contract must have been performed by the Meridian herself under penalty of the consequences of a deviation, if she reshipped the goods on board another boat; that these words were for that reason inserted, meaning that the carriers should have the privilege of performing his contract by using or employing another bottom, if found desirable, free of the ordinary legal consequences of a reshipment without leave, or necessity, viz. a deviation, which would make him liable even for subsequent losses by inevitable accident &c.; that the contract of the Meridian was not fulfilled & ended, when the goods were put on board the "Illinois", but that she was then employing the "Illinois" as her instrument and agent to execute her contract; and that the defendant, as an owner of the Meridian, continued as much responsible for the acts of the "Illinois", as for those of his own boat; and that it was a deviation in the Illinois, to go down to Jefferson Barracks out of the direct course, which made her principals, as well as her owners, liable for the subsequent losses.

The defendant contends that the reshipment was a complete fulfilment of the contract.

It is presumed the defts. Counsel will not dispute these points of law:

1st. That a transhipment from one vessel to another, except from necessity, is a deviation. 1 Phil. Ins. (2d ed.) ch. 12. §1, p. 483; Story on Bail. § 562.

2d. That a variation from the usual and direct course of the voyage, even but for a few leagues, is also a deviation. 1 Phil. Ins. 488, (ch. 12. §1); Hibbert et al. vs Shyn, cited in Delany vs. Stoddart, 1 T. R. 24.

3d That, in case of a deviation, the

carrier is liable for all subsequent losses even those happening from inevitable accident. Story on Bail. § 509; 1 Phil. Ins. 484; Abbott on Ships. 239, note (1): 218 note (1).

The only question intended to be raised by the demurrer was, as to what was the legal effect of the word "with privilege of reshipping": Is it perhaps rather a question of interpretation than of law. The plaintiff relies upon the following,

Point. 1st. That the whole effect of the above phrase is this: that if the carrier, for any reason, does not choose to carry the goods by the Steamboat "Alpha", he may carry them by the Steamboat "Omega", and the transhipment shall not be considered a deviation, as it otherwise would.

Dunseth vs. Wade et al. 2 Cammon's R. 285; a case precisely like this; Pelly vs. Royal Exchange Assurance Co, 1 Bun. R. 341; 348: in this case, in the opinion of Lord Mansfield, the case of Tierney vs. Etheridge is stated as authority, which was a case of insurance on goods from Malaga to Gibraltar & thence to England & Holland, with privilege of reshipping at Gibraltar on one or more British ships. There being no British ship in port upon her arrival, the goods were reshipped on board a store-ship, & were soon after lost in a storm. There was no pretence in this case that the contract of insurance terminated with the reshipment; and the parties proceeded at once to discuss the question, whether the putting of the goods on the store-ships was a deviation, or was covered by the policy, which it was admitted would extend to the goods on board any British ship with the privilege; and if the contract of insurance, then why not the contract of freightment. It is evident the whole purport of the privilege in this case was understood to be (the same as contended for above) merely that a reshipment would not be considered a deviation.

The contract is entire for the whole voyage. The rate of freight is agreed upon for the voyage. It is a bill of lading - a carrying directly from one port to another. It is not the

carrier is liable for all subsequent losses even those happening from inevitable accident. Story on Bail. § 509; 1 Phil. Ins. 484; Abbott on Ships. 239, note (1): 218 note (1).

The only question intended to be raised by the demurrer was, as to what was the legal effect of the word "with privilege of reshipping"; this perhaps rather a question of interpretation than of law. The plaintiff relies upon the following,

Point. 1st. That the whole effect of the above phrase is this; that if the carrier, for any reason, does not choose to carry the goods by the steamboat "Alpha", he may carry them by the Steamboat "Omega", and the transhipment shall not be considered a deviation, as it otherwise would.

Emseth vs. Walle et al. 2 Cammon's R. 285; a case precisely like this; Pelly vs. Royal Exchange Assurance Co, 1 Burr. R. 341; 348; in this case, in the opinion of Lord Mansfield, the case of Tierney vs. Etheridge is stated as authority, which was a case of insurance on goods from Malaga to Gibraltar thence to England & Holland, with privilege of reshipping at Gibraltar on one or more British ships. There being no British ship in port upon her arrival, the goods were reshipped on board a store-ship, & were soon after lost in a storm. There was no pretence in this case that the contract of insurance terminated with the reshipment; and the parties proceeded at once, to discuss the question, whether the putting of the goods on the store-ship was a deviation, or was covered by the policy, which it was admitted would extend to the goods on board any British ship within the privilege; and if the contract of insurance, then why not the contract of freightment. It is evident the whole purport of the privilege in this case was understood to be (the same as contended for above) merely that a reshipment would not be considered a deviation.

The contract is entire for the whole voyage. The rate of freight is agreed upon for the voyage. It is a bill of lading - a carrying - directly from one port to another. It is not the

ordinary case of a transportation between two distant ports, through several intermediate ports, where there is a consignee, and a new bill of lading executed by him, at each port, and where the bill of lading is from one to the next one, and not from the first to the last one directly. The deft. (or his agent) must be supposed to have known the legal effect of an ordinary bill of lading; that by such an one he would have bound himself to deliver these goods at Galena by the Steamboat Meridian alone; that if he transhipped them it would be a deviation, which would render him liable even for inevitable casualty. His boat was bound for the Missouri River, & might not touch at Galena on her voyage. He was willing to undertake the contract, but he wished the privilege of performing it, if he chose, by means of another boat. Had he intended to make himself liable merely for the delivery of the goods at St. Louis, or at any other intermediate point, would he not have given a bill of lading to that point merely? and fixed the rate of freight accordingly? Would not that rate depend upon the port of delivery, & the peculiar waters to be navigated? Surely, it could not have been intended that he might tranship the goods on any boat he might fall in with on the voyage, claim his freight, & be discharged from any further liability, or charge a pro rata freight, & on the rest of the voyage leave the plaintiffs to the mercy of a strange boat, both as to the rate of freight she would charge, and as to her capacity and trustworthiness for the undertaking, without any privity of contract whatever between the new parties to the new contract. It would be rather fanciful to suppose there may in was contained an appointment of the Meridian to be consignee at Port Anywhere, and a letter of instruction to abrogate his own contract at pleasure, and on behalf of the owners make a new one with any boat on any terms.

No.

In the Sup. Court.—
July Term A.D. 1843

Ephraim Little & Rich.d J. Jenkins

vs.

Charles Semple

Brief
of
Newton Mohun
Pltfs. Attys

filed aug. 9. 1843.
N. L. Boom clk.

State of Missouri * County of St. Louis, Ss:

Be it remembered that heretofore, that is to say, on the seventeenth day of January eighteen hundred and forty three, the following Declaration was filed in the office of the Clerk of the St Louis Court of Common Pleas, towit:

Declaration. State of Missouri, County of St. Louis, Ss: Ephraim Little and Richard J. Tomkins, vs. Charles Semple. In the St Louis Court of Common Pleas, Feby Term, 1843. The plaintiffs, Ephraim Little and Richard J. Tomkins, partners in trade doing business under the style and firm of E. Little & Co, complain of the defendant, Charles Semple, of a plea of Trespass on the case upon promises: For that the said defendant at and before the Contract herein after mentioned was and since has been, a part owner of the Steam boat Meridian, whereof Henderson McDonald was Master, then bound from the port of Pittsburgh in the State of Pennsylvania, for the Missouri River, and then was and since hath been, a common carrier of goods and chattels, and used to carry for gain and hire, the goods and chattels of all persons whatsoever requesting them, from Pittsburgh aforesaid to Missouri river aforesaid, and elsewhere: and thereupon the said plaintiffs, heretofore, towit: on the fourth day of April in the year of our Lord one thousand eight hundred and forty two, at Pittsburgh aforesaid, at the special instance and request of the defendant, part owner as aforesaid, and of said McDonald, Master as aforesaid, caused to be shipped on board of the said Steam Boat Meridian, whereof said defendant was part owner as aforesaid, divers goods and merchandize, towit, one hundred Kegs of nails, being ten thousand pounds weight, marked "L & Co," then in good order and well conditioned, of great value, to wit, of the value of five hundred and thirty nine dollars, and thirty seven cents, to be delivered without delay, in like good order, at the port of Galena in the State of Illinois, (the dangers of the river navigation, fire, and unavoidable accidents excepted) unto the plaintiffs, or their assigns, they paying freight therefor at the rate of fifty cents per Keg, with privilege of reshipping: And

in consideration thereof, and of the freight aforesaid, and reward in that behalf, he the said defendant, as part owner as aforesaid, then and there undertook and faithfully promised the said plaintiffs to take care of, and safely and securely, & without delay, convey and deliver the said goods and Merchandize as aforesaid, (the dangers aforesaid only excepted,) and although a reasonable time for carrying & delivering said goods and Merchandize as aforesaid has long since elapsed, yet the said defendant did not carry and deliver said goods and Merchandize as aforesaid, but on the contrary, ie shipped the said goods and Merchandize on board the Steam Boat Illinois at St Louis, in the County aforesaid, with privilege, of deviation as far as Jefferson Barracks, in said County, a great distance out of the direct course of the said voyage from Pittsburgh aforesaid to Galena aforesaid, towit, ten miles; and the said Steam boat Illinois by such permission of the said defendant, given by his lawful agents, having Control of said St. Boat Meridian, did deviate from the direct Course of said voyage as far as Jefferson Barracks aforesaid, with said goods & Merchandize on board: and the plaintiffs aver that afterwards, while on her voyage to Galena aforesaid with said goods and merchandize on board, the said Steam boat Illinois struck upon rocks, and was sunk, whereby the said goods and merchandize were greatly injured, damaged, and wholly lost to the plaintiffs, so that only a portion of them ever arrived at Galena aforesaid, and that portion in a damaged state: to the damage of the plaintiffs, as they say, the sum of six hundred dollars, and therefore they bring suit &c.

And also for that the said defendant, heretofore, towit, on the fourth day of April in the year of our Lord one thousand eight hundred and forty two, ~~was~~ was and since has been, a part owner of the Steam boat Meridian, and a common Carrier according to the custom of Merchants: And the plaintiffs aver that on the day aforesaid, they caused to be shipped on board of said Steam Boat Meridian, whereof one Henderson McDonald was Master,

thim lying in the port of Pittsburgh in the State of Pennsylvania, and bound for the Missouri river, at the special instance and request of said defendant, certain goods and merchandize, towit: one hundred kegs of nails, being ten thousand pounds weight, marked, "L & Co," in good order and well conditioned, of great value, towit: the value of Six hundred dollars, to be delivered without delay, in like good order, at the port of Galena in the State of Illinois, (the dangers of river navigation, fire, and unavoidable accidents excepted,) unto the plaintiffs, with privilege of reshipping: And the said defendant, in consideration of a reasonable freight to be paid therefor, towit: at the rate of fifty ~~dollars~~ per keg, undertook and promised the plaintiffs, to carry and deliver the goods and Merchandize aforesaid to them at Galena as aforesaid: Yet though a reasonable time has elapsed, the said defendant has never delivered said goods & Merchandize as aforesaid, but so negligently carried the same, and so wrongfully violated his contract, in the premises, that the same were damaged and lost to the plaintiffs, to the damage of the plaintiffs the sum of Six hundred dollars, and therefore they bring suit &c.

Hudson & Holmes, Plffs attys.

Whereupon the said Clerk issued a Summons in the words and figures following, towit:

Summons

County of St Louis, ss: The State of Missouri, To the Sheriff of St Louis County, Greeting: We command you to summon Charles Semple, if he be found in your County, that he be and appear before the Judge of our St. Louis Court of Common Pleas, on the first day of the next Term thereof, to be holden at the City of St. Louis, within and for the County of St. Louis, on the first Monday of February next, then and there to answer unto Ephraim Little and Richard J. Jonkins, of a plea of trespass on the case upon promises, to the damage of the plaintiff of the sum of Six hundred dollars: And have you then there this Writ.

Witness, Nathaniel Paschall, Clerk of our said Court, with the seal thereof hereto affixed, at office

in the city of St Louis, this seventeenth day of January, in the year of our Lord one thousand eight hundred and forty three.

Nathaniel Paschall, Clerk.

I acknowledge myself bound for all costs that may accrue in the above cause. Witness my hand and seal, at St Louis, this 17th day of January, 1843 Nathl Halsted Seal

Upon which said Summons the Sheriff made return in the words and figures following, to wit:

Sheriff's return. Executed this writ in the County of St Louis, on the 19th day of January 1843, by offering to read it and the declaration to Charles Semple, the defendant, which he refused to hear.

William Milburn Sheriff, By Henry B. Belt, Deputy.

And afterwards, at the February Term of said Court for the year eighteen hundred and forty three, to wit, on the twenty third day of February eighteen hundred and forty three, the following proceedings were had in said cause, to wit: Pleas filed. Little & Tompkins, vs Charles Semple: Pleas filed.

Which pleas are in the words and figures following, to wit:

Pleas St. Louis Common Pleas. Little & Tompkins vs Chs Semple. No 2. And for a further plea in this behalf, as to said second Count, the said defendant says that the said goods in said declaration mentioned were delivered on board the said steam boat Meridian as in said declaration mentioned, at said port of Pittsburgh, to be delivered without delay in good order at the port of Galena, in Illinois, (the dangers of river navigation, fire, and unavoidable accidents excepted,) to said plaintiffs or assigns, with the privilege then and there reserved to said steam boat Meridian to reship the same goods at any time during said voyage: and the defendant says that during said voyage, & while said Meridian was safely conveying said goods, according to said Contract, she did reship the said goods on board the steam boat Illinois, then bound for said port of Galena, to be carried and delivered to plaintiffs there, according to the Contract aforesaid, and this defendant is ready to verify whereupon he prays judgment &c. Spalding & Tiffany, attys for Deft.

And afterwards, at the same Term of said Court for the year eighteen hundred and forty three, towit: on the eighth day of April eighteen hundred and forty three, the following further proceedings were had in said Cause, towit:

Additional pleas, and demurrer to pleas filed.

Little & Tomkins, vs Charles Semple. Additional pleas, and demurrer to pleas filed by Consent of the parties.

Which additional pleas are in the words and figures following, towit:

Additional pleas

St Louis ~~Court~~ Common Pleas. Little & Tompkins, vs Chas Semple. No 4. And for further plea to said first Count in the declaration aforesaid, the defendant says that the said goods in the Count mentioned, were reshipped by the said Boat Meridian on her said voyage, towit: at St Louis, on board the said Steam boat Illinois, then bound for Galena, to be delivered there according to the Contract in said Count, without any privilege of deviation ~~of deviation~~ in manner and form as in said Count mentioned, and this he is ready to verify, wherefore he prays judgment &c.

No 5 And for further plea to said first Count, the defendant says that when said goods in that Count mentioned were reshipped, on board the Steam boat Illinois, they were so reshipped without any privilege of deviation, in manner and form as in that Count alleged, and of this he puts himself upon the Country &c.

No 6. And as to said second Count, the defendant says that the goods in that Count mentioned, were delivered on board said Steam Boat Meridian, as in said Count mentioned, at said port of Pittsburgh, to be delivered without delay, in good order at the port of Galena in Illinois, (the dangers of river navigation, fire, and unavoidable accidents excepted,) to said plaintiffs or assigns, with the privilege then and there reserved, to said Steam Boat Meridian, to reship the same goods at any time during said voyage, and the defendant says that during said voyage, and while said Meridian was safely conveying said goods according to said Contract, she did reship the said goods safely and in good order on board the good & staunch Steam Boat Illinois, then bound

and about to proceed to said port of Galena, to be carried and delivered to said plaintiffs there according to the Contract in said second Count mentioned, and this the defendant is ready to verify, wherefore he prays judgment &c. Spalding & Tiffany Attys for Deft.

And which demurrer is in the words and figures following, towit:

Demurrer

E. Little & Co, vs Chas Semple. St Louis Court of Com. Pleas. No— July Term, 1843. And as to the said pleas of the defendant by him above pleaded sixthly, ~~Sixthly~~, secondly and to the said second Count, and the said pleas by him fourthly and fifthly and to the said first Count above pleaded, the plaintiff says, that by reason of any thing by the defendant in those pleas alleged, he, the said plaintiff ought not to be barred or precluded from maintaining and maintaining his action thereof against the said defendant; because he says that the said pleas are insufficient in law, and that the said plaintiff is not, by the law of the land, bound to answer the same, and this he, the plaintiff, is ready to verify, wherefore he prays judgment &c.

Hudson & Holmes, Pltffs Attys.

And afterwards, at the same Term of said Court for the year eighteen hundred and forty three, towit: on the eighteenth day of April eighteen hundred and forty three, the following further proceedings were had in said cause, towit:

Demurrer over-ruled and nonsuit.

Ephraim Little & Richard J. Tompkins, vs Chas. Semple. And now at this day come the parties aforesaid by their respective attorneys, and thereupon all and singular the premises pertaining to the plaintiffs demurrer to the defendants pleas by him secondly, fourthly, fifthly, and sixthly above pleaded, are submitted to the Court, which being seen and heard, and by the Court here fully understood, for that it appears to the Court, that said pleas so as aforesaid by said defendand secondly, fourthly, fifthly and sixthly above pleaded, and the matters and things therein contained, in manner and form as they are above pleaded and set forth, are sufficient in law to bar and preclude the plaintiffs from having and maintaining their said action thereof

against him, therefore, it is ordered that said demurrer be overruled: Therefor, it is considered by the Court that said plaintiffs take nothing by this suit, but that the defendant go thereof without day, and recover against said plaintiffs his costs and charges in this behalf expended, and have thereof execution.

State of Missouri,
County of St Louis, } ss.

I, Nathaniel Paschall, Clerk of the St. Louis Court of Common Pleas for said County, certify ~~that~~ the foregoing to be a true and correct transcript of the record and proceedings in the case of Ephraim Little & Richard J. Jonkins vs Charles Semple, as the same remain in my office.

In Testimony whereof, I have hereto set my hand, and affixed the seal of said Court, in the City of St Louis this sixth day of June, in the year of our Lord one thousand eight hundred and forty three.

N. Paschall, Clerk

ST. LOUIS COURT OF COMMON PLEAS

Ephraim Little &
Richard J. Jenkins } Plaintiffs in error

vs

Charles Semple, Defendant in error