

New Jersey Court of Errors and Appeals.

WEST JERSEY RAILROAD COMPANY plain-
tiffs,

vs.

TRENTON CAR WORKS. defendants.

} *Writ of Error.*

Writ of Error.

[Filed May 18, 1866.]

State of New Jersey, ss.—The State of New Jersey to
[L. s.] our Justices of our Supreme Court of Judicature
greeting :

Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our said court, before the justices thereof, between Trenton Car Works, plaintiffs, and the West Jersey Railroad Company, defendants, in a plea of trespass on the case in trover and conversion, as it is said, manifest error hath intervened, to the great damage of the said West Jersey Railroad Company, as by their com- 10
plaint we are informed ; we being willing that the error, if any there be, should in due form be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then you cause a transcript of the record of that judgment, and all things concerning the same, to be brought before the judges of our Court of Errors and Appeals, at the city of Trenton, on the second Tuesday of March next, and this writ, that the record and the proceedings aforesaid being inspected, we may further cause to be done thereupon what of 20
right and according to the law and custom of the state of New Jersey ought to be done.—Witness Henry W. Green,

president judge of our said court, at Trenton, this sixth day of March, in the year of our Lord eighteen hundred and sixty-six.

A. BROWNING, *Att'y.*

W. S. JOHNSON, *Clk.*

The answer of the justices within named, the record and proceedings within mentioned, we certify and send to the Court of Errors and Appeals, in a schedule to this writ annexed, as within we are commanded.

10

M. BEASLEY, *Ch. J.*

New Jersey Supreme Court.

Trenton Car Works

vs.

The West Jersey Railroad Company.

} *On postea
and
verdict.*

B. & C. VANSYCKEL, *Att'ys.*

As yet of the twentieth day of May, A. D. eighteen hundred and sixty-five.

20 Witness,

MERCER BEASLEY, esq., *Chief Justice.*

CHARLES P. SMITH, *Clk.*

30 Mercer county, ss.—West Jersey Railroad Company was summoned to answer unto the Trenton Car Works of a plea of trespass on the case for trover and conversion, &c.; and thereupon the said plaintiffs, by B. & C. Vansyckel, their attorneys, complain, for that whereas the said plaintiffs heretofore, to wit, on the thirteenth day of September, in the year of our Lord one thousand eight hundred and sixty-three, at Camden, to wit, at Trenton, in the county of Mercer, and within the jurisdiction of this court, were lawfully possessed, as of their own property, of certain goods and chattels, to wit, one passenger railway car, lettered Cape May and Millville Railroad, of great value, to wit, of the value of ten thousand dollars, and being so possessed thereof, the said plaintiff,

afterwards, to wit, on the day and year aforesaid, at Camden, to wit, at Trenton, in the county and within the jurisdiction aforesaid, casually lost the said passenger railway car out of their possession, and the same afterwards, to wit, on the day and year aforesaid, at Camden, to wit, at Trenton, in the county and within the jurisdiction aforesaid, came to the possession of the said defendants by finding; yet the said defendants, well knowing the said passenger railway car to be the property of the said plaintiffs, and of right to belong and appertain to the said plaintiffs, but contriving and fraudu- 10
lently intending craftily and subtly to deceive and defraud the said plaintiffs in this behalf, have not as yet delivered the said passenger railway car to the said plaintiffs, although often requested to do so, and have hitherto wholly refused so to do; and afterwards, to wit, on the day and year last aforesaid, at Camden, to wit, at Trenton, in the county and within the jurisdiction aforesaid, converted and disposed of the said passenger railway car to their own use.

And whereas, also, the said plaintiffs afterwards, to wit, on the day and year last aforesaid, at Camden, to wit, at Trenton, 20
in the county and within the jurisdiction aforesaid, were lawfully possessed, as of their own property, of certain other goods and chattels, to wit, one passenger railway car of great value, to wit, of the value of ten thousand dollars; and being so possessed thereof, the said plaintiffs afterwards, to wit, on the day and year last aforesaid, at Camden, to wit, at Trenton, in the county and within the jurisdiction aforesaid, casually lost the said last mentioned goods and chattels out of their possession, and the same, on the day and year last aforesaid, at Camden, to wit, at Trenton, in the county and within the 30
jurisdiction aforesaid, came to the possession of the defendants by finding; yet the said defendants, well knowing the said last mentioned goods and chattels to be the property of the said plaintiffs, and of right belonging and appertaining to them, but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiffs in this behalf, hath not as yet delivered the said last mentioned goods and chattels to the said plaintiffs, although often requested so to do, and hath hitherto wholly refused so to do.

And afterwards, to wit, on the day and year last aforesaid, 40

at Camden, to wit, at Trenton, in the county and within the jurisdiction aforesaid, converted and disposed of the said last mentioned goods and chattels to their own use, to the damage of the said plaintiffs of ten thousand dollars, and therefore they bring their suit, &c.

And the said defendants, by John P. Stockton, their attorney, come and defend the wrong and injury, when, &c., and say, that they are not guilty of the said supposed grievances above laid to their charge, or any or either of them, or
 10 any part thereof, in manner and form as the said plaintiffs have above thereof complained against them, and of this they put themselves upon the country, &c.

And the said plaintiffs do the like.

Therefore let a jury thereupon come before the Chief Justice, or some other justice of the Supreme Court of the state of New Jersey, at a Circuit Court to be holden at the city of Trenton, in and for the county of Mercer, on the second Tuesday of January, A. D. eighteen hundred and sixty-six, by whom, &c., and the same day is given to the parties aforesaid, there, &c.
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And now, at this day, to wit, the twenty-seventh day of February, A. D. eighteen hundred and sixty-six, before our said Supreme Court, at Trenton, come the parties aforesaid, by their attorneys aforesaid, and the said justice before whom, &c., having sent hither his record had before him in these words, to wit, "Afterwards, that is to say, on the second Tuesday of January, in the year of our Lord one thousand eight hundred and sixty-six, at Trenton, in the county of Mercer, within named, before the Honorable Mercer Beasley,
 30 Chief Justice of the court within mentioned, according to the form of the statute in such case made and provided, come as well the within named the Trenton Car Works as the within named the West Jersey Railroad Company, by their respective attorneys within mentioned, and the jurors of the jury, whereof mention is within made, being summoned, also come, who, to speak the truth of the matters within contained, being chosen, tried, and sworn, say, upon their oath, that the said the West Jersey Railroad Company is guilty of the promises laid to their charge in manner and
 40 form as the said the Trenton Car Works have within complained against them, and they assess the damages of the said

the Trenton Car Works, by reason thereof, over and above their costs and charges by them about their suit in this behalf expended, to three thousand seven hundred and twenty-seven dollars and eighty cents, and for those costs and charges to six cents.

Therefore it is considered that the said the Trenton Car Works do recover against the said the West Jersey Railroad Company their said damages, by the jurors aforesaid, in form aforesaid, assessed at three thousand seven hundred and twenty-seven dollars and eighty cents, and also the sum of 10 seventy-six dollars and thirty-five cents, for their costs and charges aforesaid, by the court now here adjudged to the said plaintiffs and with their assent, which said damages, costs, and charges in the whole amount to three thousand eight hundred and four dollars and fifteen cents.

Judgment signed this twenty-seventh day of February, in the year of our Lord one thousand eight hundred and sixty-six.

M. BEASLEY, *Ch. Just.*

I, Charles P. Smith, clerk of the Supreme Court of the state of New Jersey, do hereby certify the foregoing 20 to be a true transcript of the record of judgment in the above stated cause, as the same remains of [L. s.] record in my office.—In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at Trenton, this fourteenth day of March, A. D. eighteen hundred and sixty-six.

CHAS. P. SMITH, *Clk.*

Bill of Exceptions.

NEW JERSEY SUPREME COURT.

West Jersey Railroad Company

ads.

The Trenton Car Works.

} *In trover.*

30

Afterwards, to wit, at a Circuit Court, held at the court-house, in the city of Trenton, in and for the county of Mercer,

on the tenth day of January, in the year of our Lord eighteen hundred and sixty-six, before Mercer Beasley, esquire, Chief Justice of the Supreme Court of New Jersey, appointed to hold the said Circuit Court, according to the form of the statute in such case made and provided, the aforesaid issue, so joined between the said parties as aforesaid, came on to be tried by a struck jury of the county of Mercer aforesaid, for that purpose duly empaneled, good and lawful men of said county. At which day came there as well the said plaintiffs
 10 as the said defendants, by their respective attorneys, and the jurors of the jury aforesaid empaneled to try the said issue, being called, also came, and were then and there in due manner chosen and sworn to try the same issue, *pro ut* the pleadings in this cause.

And upon the trial of that issue, the counsel for the said plaintiffs, to maintain and prove the issue on their part, offered the following testimony, *viz*: a certified copy of the charter of the Trenton Car Works, Laws 1863, p. 293, a certified copy of the charter of West Jersey Railroad Company, Laws
 20 1853, p. 39.

George A. Allen, being duly sworn, says—I reside in Flemington, am president of the Trenton Car Works; they did business in Trenton, but have sold out their works; they manufactured cars; the plaintiffs built and owned the car in question; the car came into their possession partly built, and they finished it; it was what might be called a first class passenger car; it was lettered, on the letter board, “Cape May and Millville Railroad;” the letter board is over the window on the outside; the Trenton Car Works shipped
 30 that car on the 12th of September, 1863, to myself at Millville; it was shipped here on the Camden and Amboy railroad; I took a shipping receipt for it from the railroad company; being shown receipt, this is the receipt—I got it from A. L. Worthington, the receiving clerk of the Camden and Amboy Railroad Company at their depot in Trenton; originally the receipt was written “by order Geo. A. Allen,” and and it was altered “to order Geo. A. Allen;” that receipt was altered at the time in the freight office by the clerk—there was a mistake in drawing it; it reads now as it was

intended to read ; it was altered at my suggestion ; I am not certain whether I saw Mr. Worthington sign it ; after that the car went from here to Camden ; it was taken from there, and run down the road by the defendants ; I went down on Monday morning to Camden, and Mr. Van Rensselaer, the superintendent of the West Jersey railroad, stated that they had put the car in their train, and run it down the road with passengers in it ; the car remained down the road, so far as, I know, for some length of time.

I demanded the car of Mr. Van Rensselaer—he did not 10 give it to me ; he told me to go to the agent of the Camden and Amboy railroad ; I went there, and they told me to go to Mr. Van Rensselaer and demand it ; I have not had possession of the car since.

Subsequently I called on Mr. Van Rensselaer again, and demanded the car, and he stated that the car had been left at Cape May by order of the president of Cape May and Millville railroad ; I have seen that car since on the track at Camden, where the West Jersey cars run in—I mean the 20 cars of the West Jersey railroad—it was in their train ; the lettering on the letter board had been changed—“ Cape May and Millville Railroad ” had been painted over on the letter board, and the words “ West Jersey Railroad Company ” substituted.

That car belongs to the Trenton Car Works—it has always belonged to the plaintiffs ; that car was worth \$3250—it has been worth more since ; cars appreciated in value, and that car, if I could have obtained it in 1864, when I attempted to get possession of it again, I could have realized from \$3800 to \$4000—that was what we could have got for it—that was 30 the market value ; at the time of the commencement of this suit, a car of that description would have brought as much as \$3800 or \$4000 ; after I went to the office of Camden and Amboy to demand the car, I went back to Mr. Van Rensselaer, and told him I had been sent back to him ; he told me the car was down the road, and I told him, when it came up, he should send it to me at Trenton ; he did not agree to send it to Trenton ; the car never came to Trenton, and I went again to Mr. Van Rensselaer, and he told me the car was down to Cape May, and kept down there by order of the 40

president of Cape May and Millville Railroad Company; I never gave the defendants the right to use this car in any way.

And being cross-examined on the part of the defendants, the witness says—this is the receipt I took at the time I sent the car—it has been in my possession ever since; I demanded the car of Mr. Van Rensselaer some time after Monday, I think on the following Tuesday or Wednesday; the car went
10 down on Saturday; I understood from Mr. Van Rensselaer that the car then was running up and down from Camden to Cape May in the passenger train.

The Trenton Car Works were incorporated March 18th, 1863—company organized soon after; it was on the 20th of May, 1863, Andrew G. M. Prevost became the first president, and continued president until some time in September, 1863, until the 26th of September, 1863, I think; Mr. Prevost was president at the time of the shipment of this car; I succeeded him as president—I think I was not elected until
20 the next meeting of directors after 26th; I was secretary of the company; I was the person who had the management of this car.

I made a demand of the defendants for this car after the first demand, a week or two after; the two demands were within a week or two of each other; the demand, on both of these occasions, was made of Mr. Van Rensselaer, at his office; I made a demand of the Camden and Amboy Railroad Company—I demanded it of the freight agent in Philadelphia, Mr. Freeman, I think; I made several demands of
30 the Camden and Amboy—I made the demand of Edwin Stevens, the president; I asked Benjamin Fish for the car—I don't remember any other persons; the demand upon Mr. Stevens was in writing, the others were verbal.

Being shown a paper—this is not the demand I referred to; I am not certain whether I made this demand—it is in the handwriting of Edward L. McIlvaine—he was a clerk of the plaintiffs at that time—he was authorized to sign my name to the paper at the time; when the car came into our possession it was partly completed; the labor which had been
40 expended on it was estimated in our purchase at \$286.34—this

was on the 29th of June, 1863; we got the car of A. G. M. Prevost, together with the shops, business, and materials.

He at that time was the president of the company; the fronts of the seats of the car were lined with crimson plush, and the backs with green reps; we bought the plush of Mr. Prevost with the other stock he had on hand when we bought him out.

We did not understand from him at that time where he got the plush—we did afterwards; when I shipped this car, I directed Mr. Waterman, who was our foreman, to take 10 charge of the car for the purpose of seeing that the journals did not heat, and if they did, to take it out of the train; I sent Waterman for that purpose alone.

I saw this car afterwards on the track of West Jersey railroad, on the side track opposite the depot, by the platform—it was down where they run their train; I don't know what company had it in use at the time.

And being re-examined in chief on the part of the plaintiffs, the witness says—as I understand, the West Jersey railroad extends down to the Glassboro' and Millville railroad.

Thomas J. Stryker, being duly sworn, says—I know Mr. Stevens, the president of West Jersey Railroad Company—he is an officer of the road—I mean John G. Stevens.

Jeremiah Van Rensselaer, being duly sworn, says—I am connected with the West Jersey Railroad Company—John G. Stevens is a director of said company, and one of the executive committee for two years, I think.

Thomas J. Stryker recalled.

The testimony of this witness as to declarations of John G. Stevens not admitted, on the ground that a director cannot bind the company by his declarations.

Quest. What reason did John G. Stevens give you for not giving up this car to the plaintiff? [Overruled, and exception by plaintiffs.]

Albinos L. Worthington, being shown shipping receipt—this

is my signature; I was receiving clerk of Camden and Amboy Railroad Company at Trenton; the words "to" and "by" are both in my handwriting.

Receipt dated September 12th, 1863, offered in evidence for plaintiffs—*pro ut* receipt. Plaintiff rests.

Trenton, Sept. 12th, 1863.

Received of Trenton Car Co. 1 passenger car, Cape May and Millville railroad, Millville, to order Geo. A. Allen, marked "pay here to Camden," which we promise to forward to the railroad station in Camden, subject to the conditions expressed on the back of this receipt.

A. L. WORTHINGTON,
Receiving Clerk.

Phila., April 16th, 1863.

Gentlemen,—Almost immediately after our last interview I had to leave the city, and have just returned. The great variety of detail kept us so long together the night of our meeting that we did not sum up matters as we might have done had we more time. However, I have no doubt Mr. Waterman has a very just idea of what we want in the fifteen cars you are to build. The raised roof and the apron between the cars you know were agreed upon, and I believe it was distinctly understood that we wanted the twelve wheel trucks. It occurred to me, however, that you did not name the additional price of the trucks above the eight wheel cars. Please let me hear from you. While articles of necessary use in the manufacture of cars is raising rapidly, it occurred to me that we would get some samples of plush. I have procured some green material at \$120 and \$130 per piece of 40 yards; as it will probably increase more and more, I thought well to ask you whether I might engage for you enough for our fifteen cars. If you think well of it please inform me, and I will give it attention, as you will doubtless wish us to express our wishes in regard to color, shade, &c., it occurs to me this would meet your approbation. Please advise me of your wishes.

Yours truly,

C. B. DUNGAN, 216 West Logan square.

Phila., April 28th, 1863.

A. G. M. Prevost, esq.

Dear sir,—Too late again yesterday. I found your draft for \$1000 to-day. I accepted it. The crates you will please retain until you get the flats made; be sure and mark them with title of company. Hereafter, upon advice, I will send a draft to you. The superintendent of the West Jersey Railroad Company loaded the platform cars sent last week, and a few miles down the journals fired, and had to be thrown aside. Will you not allow me to select the plush, provided 10 it does not cost over \$120 a piece of 40 yards long. Let me hear from you about this last matter, and if possible accede to it, as I wish to choose the color, if possible.

Yours truly,

C. B. DUNGAN.

Phila., May 1st, 1863.

A. G. M. Prevost & Co.

Gents,—Your note of 27th ult. reached me to-day only. I had paid the \$1000, with \$1.68 expenses of protest, which hereafter will be avoided by advice, or by making your 20 drafts on C. B. Dungan & Co. Or I will send you a check, if advised. You did not say anything about the plush. Please allow me the choice of this article.

Yours truly,

C. B. DUNGAN.

New York, May 6th, 1863.

Messrs. A. G. M. Prevost & Co.

Gentlemen,—Visiting New York to-day I found a choice chance of purchasing plush, and of course I put in and bought three cases at \$100, \$108, \$110. I paid for them, 30 and ordered their shipment to you at Trenton. I have forwarded me in Philadelphia several specimens of reps, &c., for the backs, and will select them also, and let you know the result. Should we like some changes in the backs, would you be willing that I should have some variety in this respect. These cars ought to make for you a good advertisement. I hope you are progressing satisfactorily; the time for commencing our work is approaching.

Yours truly,

C. B. DUNGAN. 40

New York, May 21st, 1863.

A. G. M. Prevost & Co.

Gentlemen,—In at Messrs. Stewarts this A. M., I bought four pieces of reps I consider both cheap and good. Perhaps it will be better to have some different articles for use on back of seats. These pieces will be sufficient for six or eight cars, I presume.

Yours truly,

C. B. DUNGAN.

10

Philadelphia, May 23d, 1863.

A. G. M. Prevost, esq.

Dear sir,—I have just returned from Millville, whither I was summoned by the sudden death of our engineer. The two freight platform cars I would like to have if you can recommend them, and will please state to me the price. I enclose to you the bill and receipt of A. T. Stewart & Co. for \$281.20 for reps. Have they been received, and how about the plush?

Yours truly,

C. B. DUNGAN.

20

Cape Island, Aug. 25th, 1863.

A. G. M. Prevost, esq.

Dear sir,—I have been unwell during the summer, or should have been in Trenton to see you. From what you said to me in our last interview at the Continental, I presumed you would have had a car or two ready for us before this time. Am I to be disappointed yet further. The want of iron has lost us the business of the summer, and I am about commencing a suit against the manufacturer for \$1000 30 per day for the last 40 days. It will be an interesting suit. Drop me a line to say how soon one of the cars will be here, as we are borrowing from our neighbors.

Yours truly,

C. B. DUNGAN.

Office C. May and Millville R. R.,

Philad., Sep. 9th, 1863.

Mr. A. G. M. Prevost.

Dear sir,—I came to the city this morning after one of the

hardest trials I have endured for any summer in my recollection. My difficulties arose from my failure to do two things that I engaged to do; one was to lay the iron for use to Cape May on our railroad by June 1st, the other was to furnish cars for use on this road. Both of these things, from causes entirely without my control, have been defeated. The first I overcome by running stages between the ends of the line, the other I could not overcome, as nothing would take the place of the cars on the road already laid. I have suffered almost martyrdom in doing this, and by my efforts endangered my health and my life, but knowing you had troubles too, I never said to you a word of complaint, but bore it all myself. I procured for you, and paid for the most costly material of the cars, and when you said you could not furnish them to me, I never said one word to you as to your having this in your possession. 10

I only mention these things to you to remind you how carefully I avoided giving you further trouble than I knew you had. And now, when I wanted the cars you have made for me so badly, and when I made so much of an effort to get to Trenton as I did last week when you were absent, and when Mr. Waterman promised me I should have the cars sent down at once, it does cause me much sorrow to find that you cannot send the car now finished without my seeing you and arranging for it. I did think I had convinced you of my disposition to do everything that was right to induce you to let the car come down, that I might show to the Camden and Amboy Co. that I had tried to fulfil my engagement by showing them the car you had made. It is impossible for me to come up to Trenton, and I hope you will not leave me in this unpleasant situation, but send the car at once. It has been the more unfortunate, as the West Jersey Co., from which we have been borrowing, have had some of their passenger cars burnt at Bridgeport. I trust you will send the car on receipt of this note, and oblige 30

Yours truly, C. B. DUNGAN.

Cape May, Sept. 7th, 1863.

A. G. M. Prevost, esq.

Dear sir,—Your note is at hand. My time is so very

much occupied down here as to prevent my getting to Trenton again. Please have the car sent down the road as soon as you can feel it to be safe to do so. Please see that it is well oiled and secured, and oblige

Yours truly, C. B. DUNGAN.

Philadelphia, Sept. 29th, 1863.

A. G. M. Prevost, esq.

Dear sir,—Mr. Allen, who represents your successor in business, left at my office recently a note charging me with
10 an attempt to avoid meeting him. Until then it had never occurred to me, and I am sure I cannot conceive why I should have avoided him, and his ungentlemanly note was put into my scrap basket, as it deserved. He has sent one of the cars forward, for which he wishes to charge me \$3250, without any allowance for the material used in the car, but which he acknowledges was the same purchased by me, and I appeal to you, hoping you may be able to arrange the matter without any further difficulty. Please inform me what you can do in the matter.

20

Yours truly, C. B. DUNGAN.

Office of the Cape May and Millville Railroad Co., No. 409
Walnut street,

Philadelphia, Oct. 20th, 1863.

Sir,—Until you suggested in your letter that I was endeavoring to avoid you, I had no disposition to give you any trouble in relation to the car you sent to me. This letter I tore up without reading it entire, and I refer to it now that you may learn a lesson. All I now desire is that you may allow me for the material I purchased for the cars, and which
30 you have used in their construction. As to your demand for the car from the Camden and Amboy Co., I can simply say that I can prove two things. (1) That you remarked yourself the car was consigned to Millville; (2) that your own agent and foreman took the car from the Camden and Amboy and the Millville Co's, and delivered it to me at Cape May. As if to complicate the matter, a Mr. Bastan has attached any balance in my hands, of which I requested my counsel here to give you notice.

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Yours respectfully,

C. B. DUNGAN.

Office of the Cape May and Millville Railroad Co., No. 409
Walnut street,

Philadelphia, Sept. 17th, 1863.

Sir,—After an unsuccessful pursuit of you for four days, I am about to give up the chase, satisfied that you are determined to avoid me. It would have been much better to have said so rather than keep me at great inconvenience and loss travelling around in pursuit. I have concluded to take our car home again to Trenton. If you choose to come there and pay for the three cars you say you want, they will 10 then be delivered to you. Your immediate attention to this matter is desired.

Respectfully your ob't sv't.,

G. A. ALLEN, *Sec'y.*

To C. B. Dungan, esq., Pres't.

Trenton. Aug. 27th, 1863.

C. B. Dungan & Co.

Gentlemen,—The one car is nearly finished—the seats are being fitted in, and all will be completed by next Thursday, I think. The two others will be done in two weeks. You 20 had better come up on Monday next. The directors and managers will then be here to arrange for the settlement for the car.

Yours truly,

A. G. M. PREVOST, Pres't

Trenton Car Works, Trenton, New Jersey.

Trenton Car Works, Trenton, Sept. 8th, 1863.

Mr. C. B. Dungan.

Dear sir,—I am sorry you could not have come up yesterday, as our secretary, Mr. G. A. Allen, was at the office. 30 If convenient, will you be kind enough to meet us at Philadelphia on Thursday next, at your office—if not, notify us when you can do so. The peculiar nature of the old companies' matters make it necessary that there should be some understanding with you in regard to the price and payment of this car now ready, and the four others in course of construction before shipping.

Office of the Trenton Car Works,
Trenton, Sept. 30th, 1863.

Dear sir,—I have been expecting a visit from you for a long time. We are very anxious for an order from you for ten baggage crates or more; also should like to build you one or more hand cars. Those we have built we got \$150 for. We can build any kind you want at prices to correspond with kind. Owing to want of any settlement with Mr. Dungan, we find ourselves much embarrassed for want of 10 room, and must get those passenger cars out of our shops. If he is not going to take them away soon we shall be compelled to find other purchasers. I have not yet obtained the car I spoke to you about, which was shipped to me. What have you done with it?

Respectfully your ob't serv't,
G. A. ALLEN, *Pres't.*

To J. Van Rensselaer, esq., Sup't., &c.

And thereupon the counsel for the defendants, to maintain and prove the issue on their part, gave in evidence, as 20 follows:

1. The charter of the West Jersey Railroad Company. *Laws of New Jersey of 1853, p. 39.*
2. The charter of the Millville and Glassboro' Railroad Company. *Laws of New Jersey of 1859, p. 210.*
3. Supplement to last charter. *Laws of New Jersey of 1860, p. 255.*
4. Charter of Cape May and Millville Railroad Company. *Laws of New Jersey of 1863, p. 228.*

Charles B. Dungan, being duly sworn, says—I reside in 30 Philadelphia, am a railroad contractor; I constructed the Cape May and Millville railroad from Cape May to Millville; know the car in question.

I did own this car; a part of my contract with Millville and Glassboro' railroad, to construct road from Millville to Cape May, required me to furnish five passenger cars; this contract was made in spring of 1862.

I made a contract with A. G. M. Prevost for the construction of five passenger cars, for \$2250 each.

In a subsequent interview with Prevost, the price was increased \$100, on account of change in roof, making price \$2350—contract was in writing.

Being shown a paper—this is the contract, it is signed by A. G. M. Prevost, *pro ut* the contract.

Being shown a paper—this is a memorandum made at the time the increased price was agreed on, *pro ut* the same; the contract was made in fall or winter of 1862 and '3—cars 10 to be completed 15th May, 1863; in spring of 1863, arrangement made with Prevost, and with his consent, I went to New York, and procured of A. T. Stewart & Co. plush and reps necessary for the use of these cars, the plush used for front of seats, and the reps for their backs.

Before doing this, my arrangement with Prevost was this, these articles purchased were to be paid for by me, and put in the cars in their construction, and the cost of the same to be allowed from price of cars.

This was done to secure the quality of the material, as 20 well as to furnish means of completing them more rapidly; this arrangement was made with Prevost in latter part of March, or beginning of April, 1863.

The material was bought and paid for by me of Mr. Stewart, and sent by him to Mr. Prevost, in Trenton, and the same material was used in this car; the first bill purchased was May 6th, 1863, and was paid for by me, \$2548, less 5 per cent. for cash, the net sum of \$2420.60; Mr. Stewart had not then an article of reps that suited me, but showed some samples on their way from Europe, and notifying me 30 of its arrival; I purchased them on 23d of May, 1863, the reps used in this car, for the net sum of \$281.20.

The amount of two bills, \$2701.80—I paid the bills by two checks on Philadelphia banks, one the Commonwealth Bank, the other on Corn Exchange Bank, and the last bill by check on Farmers and Mechanics Bank, Camden, New Jersey; this material was furnished under a distinct arrangement that it was to be on account of the five cars; I gave directions to A. T. Stewart & Co. to ship it immediately to Prevost, and I was advised by them it was done, and in a 40

subsequent interview with Prevost, he acknowledged its receipt.

The difficulty of getting work completed at that period, owing to want of labor, made delay until after time limited by contract, and the cars were not delivered by 15th of May, and the same thing delayed construction of road, so that I did not need cars till month of June; in June, Mr. Tenny gave me information of Prevost's failure, which led me immediately to see Prevost at Trenton; in this interview, Prevost informed me of his difficulties; it must have been the latter part of June or 1st July, possibly a little earlier, don't remember time distinctly.

Mr. Prevost informed me the whole of the cars could not possibly be done in time for our summer business; Mr. Prevost and Mr. Tenny then spoke of cars made at Troy, which I might purchase.

I then purchased of Tenny, at Troy, two cars, with the privilege of purchasing two more to meet my wants; this purchase was made with knowledge of Prevost, and partially with his aid, for which I paid \$3250 each. The bill for these cars was sent to me in the name of Mr. Prevost & Co., and that was the only further connection which Mr. Prevost had with that transaction.

In this last interview with Mr. Prevost, when he came to inform me of his difficulties, he informed me of having sold his establishment to Trenton Car Works, of which he was the principal stockholder and owner and president; that this company had possession of all his effects, as well as the effects of A. G. M. Prevost & Co., and the company would fulfil entirely the construction of these cars; wishing to procure four cars besides those I got at Troy, Mr. Prevost and myself, he acting as president of the company, agreed that the five cars should be finished as quickly as possible according to agreement, except as to price; he thought, he said, they would have to ask an additional price, no definite sum being named—I cannot remember whether I had this written contract with me at the time; in this interview, the plush and reps was spoken of between Prevost and myself, and Prevost said the company would carry out that agreement with reference to it precisely as it was understood when he was acting for himself alone; my fears were thus set to rest.

The next thing was a notice that one of these cars was ready for delivery, and I was requested by the party who gave me the notice to come to Trenton to see the car.

I visited Trenton, saw the car, examined it minutely, and suggested some slight alterations with reference to hooks, &c., and approving the car—it was to be sent to me at Cape May.

A few days after, while at Cape May, I was called on by Mr. Waterman, whom I had met in establishment with Prevost, and who was said to be their foreman; he stated he had brought the car to Cape May to be delivered to me; that it was at the depot, and he wished me to go over with him to see it; I went over with Waterman, and saw car and received it, and I think the key of it, from Mr. Waterman. 10

It was in the after part of the day; can't remember what day of the week—it was in September, 1863, after close of bathing season; it was the morning of next day when Waterman delivered me car.

Waterman then left, and returned to Trenton; I do not remember that anything was said by Mr. Waterman upon the subject of payment for the car—simply delivered it; a few days after Mr. Allen called on me, representing himself as president, or in some way connected with this company, and that he had bought out Prevost and his interest in Car Works Co., and presented me a bill for \$3250; he called on me in Philadelphia; some conversation took place, first in reference to increased price, assuming nothing definite until the subject of material furnished as part payment for the car was named. 20

Mr. Allen declined allowing the cost of this material, as he said it had been allowed Mr. Prevost when the company purchased his interest in the property. 30

This occasioned some warm discussion, and we separated; I did not at that time offer to pay difference between \$3250 and plush; shortly after this Mr. Allen drew a draft for \$3250 on me, which I refused to pay; I only met Mr. Allen once after that, and then had no conversation with him—it was in the office of West Jersey Railroad Company; I do not remember of any interview with Allen after draft.

Letter, dated September 12th, 1863, by Allen to Van Rensselaer, offered for defendant. 40

The other four cars were not furnished to me; I believe the plush I furnished Prevost was in the car I received, and it was so stated to me in shop of plaintiff; the car furnished me was painted green; I have seen frequently in possession of West Jersey Company four cars similar to this, painted green.

- Upon the organization of Cape May and Millville railroad, I was made president, and continued so until early in 1865; as such president, I had the general conduct of the road; 10 after I received car from Waterman, we used the car in the trains from Cape May to Camden and return, as a part of the Cape May and Millville portion of the cars running from Cape May to Camden; it remained in the possession of myself and the company until the first of January, 1864, when the company took charge of its own business; the car remained upon the road, running between Camden and Cape May, until then, when the superintendent of the West Jersey railroad, who was also superintendent of the Millville and Cape May railroad, informed me that he had purchased 20 four green cars, and this car was an odd one, and the West Jersey railroad, intending to sell their four cars to Camden and Amboy, to run through to Washington, and he wanted to know if I had any objection to this car being sold for that purpose; I answered I had not, if it could be so done as not to interfere with my right in the car in this controversy with Mr. Allen; the car was taken for that purpose, and the Cape May and Millville railroad were paid for the car by Camden and Amboy; I passed it to the Cape May road as one of the five cars to be furnished by me to them under my contract.
- 30 Being shown a paper—this is my contract with Cape May and Millville railroad.

The first signature is mine, the second is the signature of Thos. H. Whiting, president of Millville and Glassboro' railroad, with attestation of secretary, dated April 22d, 1862.

The contract was made by virtue of an extension of Glassboro' and Millville railroad. The agreement offered by defendant, and objected to by plaintiff.

Contract between Dungan and Prevost for construction of five cars, offered for defendant, *pro ut* the same.

- 40 Memorandum of increased price of \$100 additional offered and read.

While I was president of Cape May and Millville railroad, this car was not under control of West Jersey railroad, except in passing over their road from Camden to Glassboro' ; it passed over their road as the property of Cape May and Millville railroad.

Starting from Camden, we use, between Camden and Cape May, a short portion of Camden and Amboy road, turning into the West Jersey road outside of Camden, passing over it to Glassboro', 18 miles, thence over the Millville and Glassboro' road to Millville, 22 miles, thence to Cape May 10 over Cape May and Millville road, 41 miles ; these roads are now connected through—the same cars and oft-times the same engine used the entire distance ; this is brought about by an arrangement between the companies, each furnishing their share of the stock.

In going out of Camden, we run about three quarters of a mile over Camden and Amboy road. It is sixty-hundredths of a mile.

Up to time I ceased to be president, the Cape May and Millville and New Jersey road had no depot of their own at 20 Camden, but used Camden and Amboy depot.

On the 30th September I was notified that a claim was made by Trenton Car Works on Camden and Amboy for this car, when I addressed this letter to Mr. Fish. [Letter shown witness, and offered in evidence.]

And being cross-examined on the part of the plaintiffs, the witness says—the probability is that the suggestion about the plush originated with myself to Mr. Prevost ; my impression is that I wrote to him ; I think I saw him in person about the plush before I purchased it and sent it ; my 30 interviews with him were generally in Philadelphia—I cannot remember any interview with him in person about the plush before I purchased—my impression is I had an interview, but I don't recollect anything that passed ; I cannot say whether I wrote to him more than once about the plush ; the proposition, that the price of the plush was to be taken out of the price of the cars, was made by letter by me to Prevost. My impression is that Mr. Prevost acceded to the proposition by letter ; there might have been two or more

letters from Prevost with regard to it; the agreement was made in the spring before I purchased it; it was an understanding between him and myself that it was to be purchased on these terms; I have not that letter from Prevost; when I proposed to buy the plush, I proposed that it should be taken out of the price of the cars; there was some conversation with reference to the quantity, because we had some intention to extend the order to a larger number of cars; I think there was an interview between myself and Prevost
 10 before I bought it; I don't recollect where it took place; nothing was agreed upon as to quantity at this interview; Prevost has not paid me anything on account of the plush I furnished; he furnished me a lot of platform cars, for which he was paid—I cannot say how many platform cars he furnished me; he also furnished me some crates and box cars; I have no statement of the amount paid him on account of those cars—I did not keep an account between us; most of these cars were furnished me before I bought the plush—I think the crates were furnished afterwards.

20 When I came to Trenton to see Prevost, he said he had failed in business, and was not able to carry it on on his own account, and he thought he could introduce more capital into the business on his own account—this was before I purchased cars of Tenny; he did not tell me he could not fulfill his contract with me.

I said something to him at that time about his having my plush in his possession; I asked him about the plush, and stated my fears of loss, and his reply was, I need have no fear on that score, that the cars should come the same as if
 30 he had continued the business; this was in last of June, 1863.

I remember an interview with Prevost at St. Lawrence hotel, in Philadelphia, but not at Continental hotel; when Prevost said, at Trenton, that the price of cars was to be increased, I told him I was aware of increased price of materials; no price was agreed upon between me and Prevost after that; I am unable to recollect who sent me notice that this one car was ready; I think I did not have more than two interviews with Allen, and I remember distinctly but one interview; the interview I recollect was at my office, at
 40 407 Walnut street, Philadelphia, which was the office of the

Cape May and Millville Railroad Co. ; I don't remember any one being with Allen ; I am not certain I had any other interview with him.

The talk about the plush with Mr. Allen was at my first interview with Allen ; there is a very indistinct impression that I saw him before that ; this interview with him was the last talk I had with him about the plush ; this interview was after Waterman delivered me the car—it was within a week after the delivery of the car.

I don't remember that I received a letter from Mr. Allen 10 in reference to his chasing me ; I have no recollection of receiving a letter from Mr. Allen, dated September 17th, 1863.

Being shown a letter dated October 20th, 1863, by himself to Allen, says—this is my signature—I wrote this letter to Mr. Allen.

I have not the bill which Mr. Allen presented to me at the interview in Philadelphia ; he demanded \$3250 of me ; he declined to allow me my claim against Prevost ; Allen said he had nothing to do with Prevost or his contracts, and at the same time said he had bought Prevost out ; he insisted 20 upon payment of the full amount ; he said the company had no knowledge of the plush—that I had furnished it to Prevost.

I had but one interview with Prevost about plush after his failure, and that was at Trenton ; I have told all that I can remember that passed between Prevost and myself at that time ; when I went up to Trenton, after I received notice one car was ready, I saw Mr. Waterman ; I did not see any of the officers, they were absent ; the notice was that the car was ready, that was all, it was verbal.

I never got notice from Prevost that I could not have the 30 car until I arranged for it with the managers of the company.

Letter September 9th, 1863, from Dungan to Prevost—this is my signature—I wrote this letter to Mr. Prevost.

I received verbal notice that the car was ready within one week before I received the car ; I don't know whether I received this verbal notice before or after I wrote this letter to Prevost ; the verbal notice was the first information I had that the car was ready ; I asked Mr. Allen to deduct from the price of the car the whole bill for plush and reps.

Shortly after the interview at Philadelphia with Allen I 40 went to Cape May, and while absent at Philadelphia my son

informed me of the presentation of the draft; I never saw that draft—I do not know through what bank it came; I don't know who presented it—all I know is what my son told me about it.

I met Allen about two weeks after that in office of West Jersey railroad—I can't say whether Allen saw me; the sale of this car to Camden and Amboy was made in November, 1863—I don't know at what price; some of the members of the executive committee of our road, who belonged to the
10 Camden and Amboy, negotiated the sale; I had no power, as president, to make such a sale; I was present at the meeting of the executive committee at which sale was talked about; I don't know how it was paid for by the Camden and Amboy.

Benjamin F. Lee is Treasurer—he lives at Port Elizabeth, in New Jersey, Cumberland county; sometimes the same engineer runs through from Camden to Cape May.

Mr. Jeremiah Van Rensselaer is superintendent of Cape May and Millville, and also of West Jersey railroad; I am
20 not conducting this defence; I do not employ Mr. Browning; I have not been the agent of the West Jersey railroad to conduct this defence; the West Jersey railroad did not rely upon me to prepare their defence in this cause; the West Jersey Railroad Company has never relied on me to prepare their defence in this cause.

Being shown affidavit to postpone this cause at last term, dated October 3d, 1865—this is my signature to this affidavit; I have not given the West Jersey Railroad Company any indemnity in this suit; I have not given the defendant any
30 bond in respect to this transaction, or anything connected with it.

If the plaintiff recovers in this suit it will not affect me in any way upon any written agreement I have made with the West Jersey Railroad Co., or on any agreement written or verbal.

Waterman was at Cape May with the car from afternoon until next morning; I do not recollect whether this car came up in the train the next day or not, it may have been so; I sent the original bill for the plush and reps to Mr.
40 Prevost to show the cost of it.

When the difficulty sprung up between Allen and myself,

I ordered the car to remain at Cape May; this was a week or ten days after I got it; we used it a week or ten days, in running up and down, after we got it.

At my interview with Prevost, when he told me the company would carry out his contract, no time was fixed for delivery of cars to me.

When I saw Mr. Allen in Philadelphia, he asked me if I wanted any more cars; I told him the season was so far advanced that I could dispense with additional cars, but would want cars at another season, but would want no more that 10 season; I don't remember anything else that was said between us on that subject; Mr. Allen made no reply to my statement that I wanted no more cars.

I have looked for the letters that Prevost wrote to me about plush, and cannot find them; I have only one letter of Prevost's, dated January 24th, 1863—that is all the one I could find.

I have none of Mr. Allen's letters—I could not find any of them.

And being re-examined in chief, the witness saith—I 20 stated, in my cross-examination, that I remembered an interview with Prevost at St. Lawrence hotel, in Philadelphia, when this subject of the cars was discussed.

The memorandum I spoke of, when price was increased in consequence of elevated roof, was then made; Mr. Waterman was present with Mr. Prevost; I cannot recall the subject of the plush distinctly, what was said, or if anything was said—the whole subject was discussed at that meeting.

When Allen called on me in Philadelphia, he made no 30 complaint that car was delivered to me; there was no expression of dissatisfaction at that interview until the subject of plush was raised; I don't recollect his asking me how I liked the car; it was a common subject of remark that the car was approved, but whether it was stated then or not I can't say; as near as my memory serves me, Allen said he would not have delivered the car if he had known that this deduction was to be made; when he said the company had no knowledge of the plush, I said it was very strange that

the company had no knowledge of it, when it had been received by Prevost, their president.

I did not know then when Prevost was elected president of the company ; I knew nothing of the formation or existence of the company until my interview with Prevost in the last of June ; I meant to say, when I said that I was not an agent of defendant to conduct this defence, that I never was formally appointed an agent ; the directors requested me to find out what evidence I could for them ; my contract
10 with Prevost was personal to me only ; the company was not connected with it, except the marking of the car "Cape May and Millville Railroad," which was done by my direction.

I having this knowledge, the company requested me to aid in getting up defence ; my son was about fourteen years old when draft came—he is now in Philadelphia.

[Testimony of this witness as to contract about plush was objected to, and overruled by the court, it being in writing in form of letters.]

The meeting at St. Lawrence was early in the spring,
20 about the 1st of April, I can't remember whether before or after correspondence in writing about the plush ; when Allen saw me in Philadelphia, nothing was said about the way in which I should pay for car ; I did not promise to pay him half cash and half notes ; he did not ask me whose note, and I did not say the company's note.

Letter from Dungan to Prevost, dated April 16th, 1863.—
This is my handwriting.

Letter from Dungan to Prevost, April 28th, 1863, is mine.
1863. May 1st, letter is mine.
30 1863. May 6th, this is my letter.
1863. May 23d, this is mine.
1863. May 20th, this is mine.
1863. Aug. 25th, this is mine.
1863. Sept. 9th, this is mine.
1863. Sept. 7th, this is mine.
1863. Sept. 29th, this is mine.
1863. Oct. 20th, this is mine.

The several letters and papers shown to this witness were offered in evidence.

40 *Philip J. Gray*, being duly sworn, says—I reside in Cam-

den; I was at one time of the firm of A. G. M. Prevost & Co., unfortunately; A. G. M. Prevost and myself composed that firm; its business was car making in Trenton; I entered into partnership about 4th or 6th of February, 1863; partnership agreed to be concluded June 1st, 1863; I disposed of my interest to Mr. Prevost; my interest was pending between last of May and 18th of June, about which time I was finally out of the concern.

The negotiations between Prevost and the company were between 1st and 18th June; when I entered into partnership 10 with Prevost we assumed debts and obligations of A. G. M. Prevost, and when I sold to Prevost he assumed liabilities of our firm.

My knowledge of plush is derived from conversation with Prevost relative to our business; I did not see the plush myself; that plush, when I went out, I understand went over to Prevost; I think, when I retired, one car was standing up in skeleton; Allen and Prevost are brothers-in-law.

Orrin Waterman, being duly sworn, says—I was in the employ of A. G. M. Prevost—of A. G. M. Prevost & Co. and 20 of the Trenton Car Works; I was foreman for the manufacture of cars—I commenced in June, 1862, and left in December, 1863.

I was at St. Lawrence hotel, in Philadelphia, with Prevost and Dungan; I went there by request of Prevost, I think—it was after Prevost had made contract to build five cars for Dungan; Dungan made request that he should be permitted to furnish plush and reps, from the fact that he wanted it all from one place and one pattern—I think Prevost consented to that arrangement; it was to be furnished for lining the 30 cars that Prevost was to build for Dungan—enough was to be furnished for whole five cars—have no recollection that anything was said as to what house.

These articles, in pursuance of that arrangement, subsequently came to the shop—my impression is they came by Camden and Amboy railroad; Mr. Prevost received them—I don't know at what time they arrived.

Plush and reps were stored until we were ready to use them; two or three, I think three of the cars, were trimmed

with this plush—some of it was remaining when I left; I was foreman of car works; I cannot say positively whether plush and reps arrived before or after the company was organized.

One car was completed—it was trimmed with plush and reps Dungan sent; Dungan came to Trenton shortly after this car was finished—I cannot tell how he came to be there; Mr. Allen and I called on Dungan in Philadelphia—I can't say whether before or after Dungan was in Trenton; Allen
10 called to make some arrangement with regard to the price; in that conversation Allen gave him notice that car was finished and ready to deliver; I think the car was to be delivered at Cape May, to Mr. Dungan, I suppose, he being the purchaser; this car was delivered to him some days after this at Cape May; I can't say there was any formal delivery—I went down in the car—I took the car on Saturday from Trenton to Camden—I can't say what day of month; when I got to Camden I left car in depot; I put it in charge of a man in charge of West Jersey or Cape May cars, because it
20 was to go over West Jersey road.

I left a key with that person, so that he could get bell ropes through, in case I did not get there on Monday; I think I said it was to go down over the road Monday morning.

I got there on Monday morning, and found it in the train ready to go down; I went with it, and arrived at Cape May about noon.

I called on Dungan, found him at the office of Cape May and Millville railroad; I told him, I think, I had brought down the car; the next morning, when we started for Philadelphia, we came up together in this car to Camden.
30

I can't say whether Dungan and I went through the car, and examined it; I think he expressed himself pleased with the car; I think I had one key of the car with me—can't say whether I gave it to Dungan; when I got back to Camden, I did not do anything with it—I got out and left it.

I think I told Allen I went down to Cape May with it, and back to Camden; I think Allen asked me how Dungan liked it—I don't recollect that he made any complaint that I had delivered car to Dungan; I can't say whether I saw
40 Allen same day I returned, or day after—saw him at the car works.

And being cross-examined on the part of the plaintiffs, witness says—the car works sent me with the car to see that it run properly; they gave me instructions to take the car to Cape May, as I understood; they told me the car was for Mr. Dungan, to take it to Cape May; I have said repeatedly, since I have been in Trenton, that I had no instructions or authority to deliver this car to any one—that I went with it merely to see that the journals did not heat, and that is what I mean to say now.

When the car was ready to start from Trenton, I went to 10 the receiving clerk of Camden and Amboy railroad, and got a receipt for it, in which it was consigned to Dungan or to Cape May and Millville railroad; I took that receipt right away to Mr. Allen; Allen was not satisfied with that receipt—he said he was going to get it changed, and started to the office to do it.

If the journals of this car heated, I was to take it out of the train.

The car remained in Bordentown until I went down there and took it to Camden; Mr. Allen gave me two cards, and 20 I suppose directed me to tie them on the car; I had never before that taken a car away for the plaintiff; I do not recollect how soon I saw Mr. Allen after my return from Cape May—I don't think it was a week—I think it was the same day or the next day.

The interview between Allen and Dungan, in Philadelphia was before I went with car, probably a week before; Allen demanded \$3250 for the car—Mr. Dungan agreed to the price; Dungan agreed to pay half cash and half note for it—he said company's note; something was said about de- 30 ductions for plush; I think Allen said he had nothing to do with Prevost; I cannot say whether Allen refused to make any deduction on account of plush; this conversation was in Cape May railroad office in Walnut street.

The conversation at St. Lawrence hotel was in spring of 1863; that was the only time at which I was present at a conversation between Prevost and Dungan; when I started with the car I don't know that Mr. Allen was to follow me to see about it.

I am not positive anything was said by Dungan to Allen 40

about any other cars—nothing else was said between them at that time but what I have told, as I recollect.

And being re-examined in chief, the witness saith—I understood, at the conversation in Philadelphia between Allen and Dungan, that the car was to be delivered to Dungan at Cape May—I was ordered to go with car until I was satisfied it was all right—I was to go to Cape May if I considered it necessary to do so, that is if I considered it safe to leave it; if I considered it safe to leave it, I was to leave it to go ac-
10 cording to the directions on it.

John Fine, being duly sworn, says—I reside at Camden—am employed by Camden and Amboy; I was agent for transportation at that time—I speak of September, 1863—September 12th, 1863, was Saturday.

I have no recollection of a car sent down to Camden to be forwarded.

Car house at Camden burned January 29th, 1864; papers, way-bills, &c., were burned at that time; the papers of company were kept in office there, and burned at the time.

20 If a car came there consigned to be forwarded to Millville, Mr. Shubrick, as my assistant, would receive the manifest, and forward it—that is the mode of consignment.

And being cross-examined, the witness saith—the car comes in the hands of the West Jersey railroad when it reaches Camden.

Edward R. Shubrick, being duly sworn, saith—I am assistant forwarding agent at Camden for the Camden and Amboy Railroad Company.

A car consigned to Cape May and Millville railroad would
30 be immediately sent forward by West Jersey railroad as far as Glassboro', and then by Glassboro' and Millville railroad to Millville, and from there to Cape Island.

I have no recollection of that car; if the bill of lading is given to A. B. it appears by the bill of lading—the consignee's name goes through the whole way.

Albinos L. Worthington, being called again, says—we have

an entry of the shipment of this car; we have an entry, September 14th, 1863, of one passenger car, marked "Cape May and Millville Railroad," shipped by Trenton Car Company, consigned to John Fine to forward—three dollars freight on it paid here; this entry in the book was made by myself in my handwriting; the receipt bears date September 12th, and the entry was on the 14th; this book contains the direction of the car.

This paper contains a copy from the book, made by me.
[Offered in evidence.]

10

Being shown receipt to Allen—this is an unusual way to write a receipt, not our usual way of writing them; I think in the first place this receipt was given just as we have it in the book, without the words, "to order of George A. Allen;" as near as I can recollect, I think Mr. Fish and Mr. Allen came in the office some time after, and had this receipt altered—I can't say how long afterwards—four or five days, or perhaps a week afterwards; the alteration made, I think, was "by order of G. A. Allen" was put on, and afterwards "by" erased, and "to" put above; if we had re- 20
cepted so for it, it would have appeared in our books; that alteration must have taken place some time after entry in books; I can't say that any other person was present.

Mr. Fish and Mr. Allen came.

And being cross-examined, the witness saith—we always keep a memorandum; I cannot tell where original memorandum is; this is the original receipt I gave Allen—it was altered as I have said; I think all that was altered was to order of G. A. Allen; I can't tell why Millville does not appear in my book; it strikes me something was said to me 30
about this matter about two months after I gave it; I am in the habit of altering receipts which change the liability of our company when I am ordered to by authority; Benjamin Fish resides in Trenton; I think the car had been shipped some days before the receipt was given; I can't tell certain what day the car was shipped; no reason was assigned in my presence for changing this receipt; I can't recollect now that I saw the car—in all probability I did, or I would not have receipted for it.

I do not know how soon the car was sent away from Trenton after I gave that receipt; I say positively it was not altered the same day I gave it; we file away the memorandums for two or three months, and then, if they are not wanted, we file them away as old papers.

I can't recollect anything else in connection with this receipt for the car; I don't know that any receipt was given for car prior to this.

I don't recollect that Waterman came into my office, and
10 took a receipt for the car, and that receipt was changed.

I think Mr. Fish told me, about two months afterwards, there was some difficulty about the car; I did not give it any attention then—I won't be certain whether I looked at my books to see how it was entered; I did not recollect how or in what form Allen held this receipt until I saw it here in court—I had forgotten all about it until I saw this receipt.

Being shown duplicate receipt—I made this two months ago for purpose of this defence, at request of Mr. Fish; I have access always to the books I produced here yesterday;
20 the unusual thing in plaintiff's receipt is "to the order of Geo. A. Allen"; it is not unusual to put name of consignee on; I don't know who paid for it; I don't think it was paid at time the receipt was given; I don't know whether it was charged to Mr. Allen's account at that time.

Duplicate receipt, made by this witness, offered by plaintiffs.

And being re-examined in chief, witness says—the forwarding agent at Camden forwards it according to consignment; we would not put on the receipt the words "John
30 Fine, forward."

And being again cross-examined, witness saith—a paper goes through to show to whom the goods are consigned.

Jeremiah Van Rensselaer, being duly sworn, saith—I am superintendent of the Cape May and Millville, and of the West Jersey road—of Cape May and Millville since June 1st, 1863.

Being shown letter of G. A. Allen, dated September 12th, 1863,—I received this letter from Mr. Allen; my present recollection is very distinct that my attention was first called to this car late in September, 1863.

Being shown a letter of Mr. Fish,—I cannot with certainty state from this letter the time; my memory is very distinct that the first notice I got was from Mr. Fish, that a claim had been made on Camden and Amboy for this car.

I have not the slightest idea that Allen made a demand on me for this car on 14th of September, 1863; Allen did make a demand on me for the car—my impression is that it was after the month of September; I fix this, in some measure, from the letter I had in my hand from Mr. Allen, dated September 12th; I think the first time Allen said anything to me was some time in the month of October following.

My impression is that the car was on the Cape May and Millville railroad, in possession of Mr. Dungan, at the time the demand was made; at that time the West Jersey railroad had no power to deliver the car to Mr. Allen; subsequently the car came over the West Jersey railroad to Camden, and over the Camden and Amboy, by my directions.

Mr. Allen agreed with me that the car should not be attached as property of Dungan.

After the car was sent to Dungan, Allen had four more of like construction; I was authorized to purchase cars for use of joint line to Cape May; I purchased these four cars, on behalf of West Jersey railroad, of Mr. Allen—in meantime we had no immediate need of them; the Camden and Amboy applied to us for the use of these four cars, and they were turned over to them; Camden and Amboy still needed more cars; I applied to Mr. Dungan for permission to let them have the car in question—Dungan consented; I told Mr. Allen about it; he agreed that if Camden and Amboy got the car, he would not take steps to attach it, or take it out of their possession—this was in November, 1863—it was after the 18th; I fix this by a letter I wrote to my brother about it, of that date; the car, by my directions, was brought to Bordentown, and placed in possession of Camden and Amboy, and continues there at this time.

I know the Cape May and Millville road sold it to Cam- 40

den and Amboy, and received pay for it; the arrangement for this car was made by Camden and Amboy some eighteen months since; this car may have been run on our train since November, 1863; this arrangement was made in pursuance of the agreement of Mr. Allen.

Without any authority, except that of superintendent of West Jersey road, I proposed to Mr. Dungan that the West Jersey road should take that car and substitute another of equal value for it, so that we could have five cars uniform, and proposed to my brother that when the car came to Bordentown it should be lettered and numbered; I believe it was lettered before it was used by Camden and Amboy, under my supposition that West Jersey would buy it.

Upon some subsequent occasion, I presented a paper from Mr. Allen claiming the car to the executive committee of the West Jersey road; I submitted the paper I received from Allen to the executive committee, and was afterwards told by members of the executive committee that they did not approve of it, and ordered to restore the original lettering; I did not receive that order officially, but my impression is that I wrote to my brother ordering that lettering to be restored to the original form; I don't think it was changed—my impression is that it remained as it was.

I believe the car was under the control of Camden and Amboy when I gave directions to have the lettering restored—I do not know that West Jersey Railroad Company have ever purchased this car.

And being cross-examined on the part of the plaintiffs, the witness says—I have not the demand in writing of Mr. Allen which I laid before our board; I think it was in the form of a letter; I do not remember when it was received by me—it was some time in November, 1863; it was a demand addressed to me as superintendent of West Jersey road; I think this was before I had changed the lettering on the car; the lettering was changed about 20th November—the first that passed about purchasing the car by West Jersey road; I purchased cars for them sometimes, and made contracts; I never purchased cars except by orders of committee; I do not know if I have any of

Allen's letters—I have searched for them and can't find them.

Being shown copy of letter, dated September 30th, 1863, by Allen to witness, page 63—I do not specifically remember receiving this letter—I probably did—the matters referred to were subjects of negotiation with Mr. Allen.

I do not remember that I had any conversation with Mr. Allen about this car before that—from this letter I suppose I had; I did not remember the interview until I saw this letter. 10

I may be mistaken in saying that my first intimation about this difficulty was from Mr. Fish; I think nothing had been said by executive committee about purchasing this car before the lettering was changed.

We never assigned any special car to Cape May and Millville for this car; we run Cape May and Millville in connection with West Jersey; the West Jersey railroad is under control of Camden and Amboy.

The car in question was used very few days on the through road from Camden to Cape May—about two weeks; I know 20 the car was run on the through line, and I believe until Mr. Dungan ordered it discontinued.

We did not run it in connection with the four cars like it; I do not recollect that Mr. Allen came to my office about the middle of September, 1863, and spoke to me about this car; I do not remember that I sent him to Walter Freeman, agent of Camden and Amboy, as superintendent of the two roads; I arrange the trains—I give the agents directions about running—I control the number of cars; if I gave orders that particular cars should run, I presume they would be 30 obeyed; I make the schedules by which the trains run—the men who run the trains report to me at my office; I do not know that this car run over Cape May and Millville railroad, but have no doubt it was there.

I did not consider Mr. Allen was waiving any rights by giving the Camden and Amboy permission to take it; as superintendent of Cape May and Millville, I delivered this car to Camden and Amboy; I acted as Dungan's agent to January 1st, 1864, when Cape May and Millville road took possession of the works; I don't know that I told Mr. Allen 40 I was representing Cape May and Millville road; this car

was at Cape May at time of conversation with Allen—the lettering had not then been changed ; I have had an impression that the lettering had been changed then ; after this, I had car sent up from Cape May, and suggested to my brother to have the lettering changed ; I know Camden and Amboy gave Cape May and Millville road credit for this car ; the final settlement was about two months ago ; the transfer had been talked of for past eighteen months at different times ; it was talked of by me and some of the directors of the two
10 roads.

I do not recollect that the letter from Allen, which I laid before the board, was written by Mr. Allen in my office at my request.

I cannot say when I made known to executive committee that there was difficulty about car—my impression is that it was many months after the car came on the road ; it was some months after the Camden and Amboy got the car that I submitted the paper from Mr. Allen to our board ; that, I think, was the first time I said anything to our board about
20 it.

Camden and Amboy got the car about 20th November, 1863 ; my present impression is that Thomas Jones Yorke, John G. Stevens, and I think two or three others of the directors, told me they did not approve of my changing name ; they said I should not have had the car altered in that way, and requested or directed me to have it restored ; I think it was before this suit was brought that the directors told me this, but I am not certain—I don't know what year it was ; our board of directors keep minutes of their pro-
30 ceedings ; the demand or letter of Allen was handed by me to the secretary at the time of the meeting of the board ; our engineer did not run the train through from Camden to Cape May.

Road was opened August 22d, 1863, to Cape May ; starting from Camden, it run through to Cape May direct, by change of engines at Glassboro' and Millville ; it ran in same way coming back ; this continued the same way that season ; I can't say that any change was made that winter.

And being re-examined on the part of the plaintiffs, the

witness says—I think Mr. Dungan had possession of Cape May and Millville road from its commencement to January 1st, 1864; the company first took it in January, 1864; I was in Dungan's employ, so far as the Cape May and Millville road was concerned, until January, 1864; I considered the Cape May and Millville road in Dungan's control to January, 1864.

As superintendent of West Jersey road, I had no control of this car; Camden and Amboy have had possession of car ever since November, 1863.

10

And being again cross-examined on the part of the plaintiffs, the witness says—my impression is that Cape May and Millville was organized in spring of 1863; in August, 1863, Dungan was president of Cape May and Millville railroad; the roads were advertised as the West Jersey road and its connections, or connecting lines; the local advertisements were Cape May and Millville, but I do not know whether it was so in 1863; they were advertised as Cape May and Philadelphia railroad.

The cars in the trains which run from Cape May to Mill- 20
ville, over the Cape May and Millville road, were used for the purposes of the West Jersey road from Glassboro' to Camden in 1863, and were run through to Camden.

Richard F. Stevens, being duly sworn on the part of the defendants, saith—I am auditor of Camden and Amboy and West Jersey, and director of West Jersey—am not a member of executive committee of either; know car in question; this car was transferred to Camden and Amboy about eighteen months ago, to run on their through line; since that time, I can't say in whose control it has been; as settling 30
officer of Camden and Amboy, I have understood that this car belonged to Camden and Amboy.

I was appointed some time last year to fill vacancy occasioned by death of Gen. Cook, and a committee was appointed to settle affairs of Camden and Amboy and South Jersey roads; this car was settled for—I have the receipt for this car; receipt bears date November 14th, 1865; Benjamin F. Lee's signature is to it.

In settling accounts, the receipts of Cape May and Millville railroad were paid to Dungan up to January 1st, 1864.

Benjamin F. Lee, being duly sworn on part of the defendants, says—being shown receipt dated November 14th, 1865—I am treasurer of Cape May and Millville road—was elected December 10th, 1863; that is my signature to the receipt—it is for this car.

Receipt November 14th, 1865, offered in evidence.

Charles B. Dungan—recalled for defendants—being shown letter of April 16th, 1863,—I wrote this letter.

Letters April 28th, 1863; May 1st, 1863; May 6th, 1863;
10 May 23d, 1863; May 21st, 1863,—these are the letters I referred to in my examination in regard to the plush.

I had the entire control of Cape May and Millville road from its commencement to January 1st, 1864, at which time they were all passed over to Cape May and Millville road.

As soon as I received notice that Allen claimed the car of Camden and Amboy, I ordered the car to remain at Cape May; it did not come up after that, to my knowledge, until it was transferred to Camden and Amboy; the claim of Allen against West Jersey railroad came to my knowledge
20 probably eighteen months ago; until this suit was commenced, I knew nothing of this claim; on the 30th September, 1863, or the day previous, I heard of claim against Camden and Amboy.

Benjamin Fish, being duly sworn on the part of the defendants, says—I am one of the officers of Camden and Amboy railroad—have charge of the freight department.

Being shown plaintiff's receipt for car:—

Worthington is freight agent under me; I recollect Mr. Allen being at the station at the time I was, and we went
30 into Worthington's office.

Mr. Allen wanted the receipt altered to make the consignment to him; I think he had the receipt; I think I went into the office and gave Worthington directions to alter the receipt, and consign it to Allen—the alteration I believe was made; I think this is Worthington's signature—the receipt was for a passenger car; I can't say when that was, or how long after the receipt was originally given; Mr. Allen and I appeared to be at the freight station together, and he wanted

this car consigned to himself, and I went into the office and gave Worthington orders to do it.

And being cross-examined on the part of the plaintiffs, witness says—I think Mr. Waterman was there, but I can't say; I can't recollect that I saw Mr. Waterman hand Allen a paper before we went into the office; I do not know what Waterman was doing there, if he was there; I don't know where the car was at that time; I don't know whether I should have changed a receipt altering the liability of our company after the property had gone out of our possession. 10

I gave Mr. Waterman a pass, I presume, the same day to go to Camden, or for him to return—I can't say whether it was the same; I can't say whether Allen was present when I gave the pass; I gave Mr. Waterman a pass to go—I supposed he was going with this car—I gave this pass to Waterman at Allen's request; I don't know that he ever got passes, except for persons to go with his cars.

And being re-examined on the part of the defendants, witness (being shown a letter October 14th, 1863,) says—this notice was served on me. 20

Letter of October 14th, 1863, offered by defendants.

Jeremiah Van Rensselaer, being recalled by the defendants, says—the car did not come up the road to Camden from the time I first heard of this difficulty until Camden and Amboy got it.

And being again cross-examined by the plaintiffs, witness says—I mean from the time I got notice from Mr. Fish; I think all the letters Mr. Allen wrote me bore the appearance of having been pressed.

The several letters and papers shown to witnesses, and 30 proved by them, were offered in evidence.

The Trenton Car Works, Trenton, N. J., agree to construct 5 (five) passenger cars, 4 feet 10 in. gauge, or the compromise gauge of the following dimensions, &c., to wit, forty-two feet in length, (10) ten feet in width, (7) seven feet

high in the centre of the car; to seat (60) sixty passengers, to have half saloon and water closet in each car; to be well ventilated and lighted with 34 windows, with blinds or curtains to each window; passage way in centre (21) twenty-one inches in width, giving about four feet in length to each seat; platform, each end of the car, to be 2 feet 6 inches in width; seats to be finished with oak panels between the windows, to be either painted or finished oak or ash; mouldings, to be plain gilt; all the necessary hat hooks, stoves, lamps, and 10 seats, to be stuffed and covered with plush; seat backs to be hung so as to be reversed; panels on the outside to run up and down—the whole to be painted and varnished in the best manner; the top of the car to be finished with head lining of enamelled cloth; covered outside with tin or patent mastic roofing, as parties may desire; 8 wheel trucks, 33 inches in diameter—trucks to be built with swing beams, safety beams; springs to be rubber, or vahite, or the metallic compound spiral spring—such sizes as are commonly used under passenger cars; cars to be adjusted with com- 20 pound brakes; bottom of the car to be sealed over and deafened with machine shavings under the floor; materials to be of the best quality and well seasoned—the whole to be built in a good and workmanlike manner, finished and put on the track at Trenton, N. J., by the 15th day of May, 1863, for the sum of \$2250, each.

A. G. M. PREVOST.

Closed platforms.

Office of Trenton Car Works.

Trenton, Sept. 12th, 1863.

30 Dear sir,—We shipped, per express, to your address, this day, two of Howard's kerosene lamps, with all the fixtures and attachments complete for immediate hanging—intended to be placed in centre of the raised roof.

Our bill for the same is \$18.50, for which please remit check.

We should be pleased to receive your order for those crates.

We have two more passenger cars than Mr. Dungan wants at present, which we should be glad to complete for you in

accordance with your views. We should also like to build a dump marl car, as a sample similar to those you saw below.

Respectfully,

G. A. ALLEN, *Sec'y.*

To J. Van Rensselaer, esq., *Sup't.*

Office of the Trenton Car Works,
Trenton, N. J., April 27th, 1863.

Mr. C. B. Dungan.

Dear sir,—I am in receipt of yours of the 25th. Much obliged for meeting draft. We will pay all expenses accruing on the same on account of absence. We are obliged to pay cash for all our material, to get it promptly, which keeps us close to the wind. I would not have drawn, but was compelled by circumstances to do so. We will add the No. to your next, and those sent off also, if you wish. We are making good work for you, and will let nothing be undone which will in any way add to the progress of your work.

Office of the Trenton Car Works,
Trenton, N. J., April 29th, 1863. 20

Mr. C. B. Dungan.

Dear sir,—Your letter wishing me to notify you as to drawing, before doing so, was not received in time, or I should not have drawn the last \$1000. The expense I am willing to pay. The draft is at the Philadelphia Bank—will be due on Friday. Please protest if anything is wrong—I will make it right. We can send you your crates, or keep them housed here until we get your trucks made, which will be in a few days. The two box cars will be done this week, and be shipped at once. If you wish a baggage car you 30 must let us know in time.

Yours truly,

A. G. M. PREVOST.

November 14th, 1865.

The Camden and Amboy Railroad and Transportation Company.

To Cape May and Millville Railroad Company, Dr.

One through passenger car taken by C. & A. R. R'd, for Washington through line, \$3250

Correct, as weighed, measured, counted, inspected, named, or otherwise personally known by me.

Correct, as ordered and used for the company charged, and as to prices, the amount being thirty-two hundred and fifty dollars.

E. LOCKWOOD.

Payment ordered by
R. VAN RANSSELAER.

Amount, _____

Calculations correct.

R. M. STEVENS.

Received of the Camden and Amboy Railroad and Transportation Company thirty-two hundred and fifty dollars in full of above bill, \$3250.

BENJ. F. LEE, *Tr.*

Trenton, September 30th, 1865.

Dear sir,—Yours of 29th inst. received. I am not responsible for Mr. Allen's conduct towards you. I am out of the concern entirely, and have no voice in the management of its affairs.

Of course I shall be willing at all times to do anything in my power towards the liquidation of the balance due to you from me; and if you could suggest any plan by which I can aid you in this matter I am willing to do so. I telegraphed you to come up, thinking if you were here, possibly altogether might effect something. It is true the company used the material you furnished me in constructing the cars; but I sold the materials to the company, and they paid me for the same. I believe you can but aid me by settling

with the company for the cars without trouble, and perhaps I may be enabled to do something for you.

Yours truly,

A. G. M. PREVOST.

For C. B. Dungan, esq., Philadelphia.

Office of the Trenton Car Works,
Trenton, N. J., April 23d, 1866.

Mr. C. B. Dungan.

Dear sir,—Supposing you were at home, or that Mr. Bertain would know of your whereabouts, I drew on you for the 10 amount of the two cars now delivered, and for which you have receipt, sent also to Mr. Bertain's address. The draft is held for payment, though noted for non-acceptance. Please honor the same, or send me a check for the am't on Saturday, when it falls due. I would not have drawn, but my necessities for money compelled me. Your crates will be done by Monday—will be forwarded Monday evening to Camden, if the weather is dry enough to have the paint in order.

Yours truly,

A. G. M. PREVOST. 20

Office of the Trenton Car Works,
Trenton, N. J., April 25, 1866.

C. B. Dungan, esq.

Dear sir,—Enclosed is receipt for 10 baggage crates, as per order. Our means being limited for so much work as we are at present getting out, you will oblige by accepting a draft on you for the am't of bill, 10 crates. We can either send you these crates to Camden or retain them until we get your flat cars completed to put them on.

The box will be done next week, and will be forwarded at 30 once. I think you will find the crates well made and neatly built. We have taken extra pains with them, and only hope they will prove satisfactory.

A. G. M. PREVOST & Co.

Trenton, Aug. 27th, 1863.

C. B. Dungan & Co.

Gentlemen,—The one car is nearly finished; the seats are being fitted, and all will be completed by next Wednesday, I think.

The two others will be done in two weeks. You had better come up on Monday next. The directors and managers will then be here to arrange for the settlement for the car.

Yours truly,
A. G. M. PREVOST,
Pres'd't Trenton Car Works, Trenton.

10

Trenton Car Works.
Trenton, Sept. 8th, 1863.

Mr. C. B. Dungan.

Dear sir,—I am sorry you could not have come up yesterday, as our secretary, Mr. G. A. Allen, was at the office. If convenient, will you be kind enough to meet us in Philadelphia on Thursday next, at your office, or notify when you can do so.

The peculiar nature of the old companies' matters make
20 it necessary that there should be some understanding with you in regard to the price and payment of this car now ready, and the four others in course of construction, before shipping, in order that there may be no difficulty hereafter. Please reply at once.

Yours truly,
A. G. M. PREVOST,
Pres't Trenton Car Works, Trenton.

Orrin Waterman, who was recalled.

Day book and leger, being shown, witness said—these are
30 the books of original entries of A. G. M. Prevost & Co.; they are in the handwriting of my son, Geo. O. Waterman; he was then book-keeper.

The plaintiff proposes to prove that the plush was part paid for, by books of A. G. M. Prevost & Co. This offer was objected to by the defendants' counsel; the books here

admitted by the court, and the evidence excepted to by defendants.

May 30th, 1863, cars to amount \$2500, furnished by Prevost to Dungan; also, June 11th, 1863, cars to amount \$1600.

I am not positive whether I saw Mr. Fish with Allen when I got my pass—I think I did; I do not know whether Mr. Fish was there when I handed Mr. Allen the first receipt; I got the pass the day the car went down—I was near the freight station when I got it.

And being cross-examined on the part of the defendants, 10 the witness says—my son, George Waterman, is living in the lower part of the state, I think in Bricksburg, Ocean county; the day-book and leger are in his handwriting.

I only know they are books of A. G. M. Prevost & Co., and in the handwriting of my son; I know of no other books; I know there were books kept while A. G. M. Prevost was alone; I was not at the freight office of the Camden and Amboy road with Fish or Allen after I took this car away.

A. G. M. Prevost, being duly sworn on the part of the plaintiffs, says—I was one of the firm of A. G. M. Prevost & 20 Co.; these are our books; this is the book of original entries; I believe these books were correctly kept; we sent to Mr. Dungan the cars charged to him in this account—they were made by us; the prices charged are the prices agreed upon; the plush credited to Dungan in this account is the plush Dungan has spoken of; the credit is to C. B. Dungan.

May 18, 1863, taken from A. T. Stewart & Co's

bill, May 6, 1863, 8 pieces crimson plush, at \$100,	\$800	
10 do., at \$110,	1100	
6 do., at \$108,	648	30

\$2548

5 per cent off,

127.40

\$2420.60

Credit 148 yds. green reps,

\$296.00

5 per cent. off,

14.80

\$281.20

The date of this entry is May 26th; the bill of A. T. Stewart & Co. dated May 21st.

This account shows the true balance I owe Dungan—the balance is \$1091.80 in favor of C. B. Dungan.

Page 166, April 21, credit draft —,	\$1150
“ 182, “ 29, “ draft,	1000
“ 226, May 11, “ “	1350
“ 259, “ 28, “ “	

The first communication between Dungan and myself
 10 about plush was I believe in person—I think at St. Lawrence hotel, in Philadelphia; I think Mr. Waterman was present; there was nothing said there with regard to plush, except he, Dungan, said he would like to have something to say with regard to the plush, and he would look in the market, and I was to do the same; he wanted the privilege of selecting color and quality; that was all that passed at that interview about it—I next heard from him about it by letter.

Being shown letter April 16th, 1863.

This, I think, is the first letter I received from Dungan
 20 in regard to plush—this was after I had met him at St. Lawrence hotel; I did not meet him at St. Lawrence hotel more than once when anything was said about plush.

I think I did not reply to this letter—I find no letter in my letter-book in reply.

Shown letter April 28th, 1863—I think this is the next letter I received from Dungan; I don't think I replied to this letter right away.

Shown letter May 1st, 1863—this is the next letter I received from Dungan.

30 Letter May 6th, 1863—this is the next letter.

I think I did not answer any of these letters with regard to plush previous to receiving this; I think I did not see Mr. Dungan in person, from the time I saw him at St. Lawrence hotel, until I received this letter; I did not during that time receive any communication from him other than these letters.

I think I wrote no letter at all to Dungan in reference to this plush and reps; I kept letter-book—it is in court—I have searched it for copies, and cannot find them.

40 I think I saw Mr. Dungan at my car works the very day plush arrived.

The day that Mr. Dungan called at the office, I think he brought the first bill for \$2420 with him; I was surprised at the amount of the bill; I said to him, the bill was pretty large, and money was scarce, and I could not pay the bill at that present moment; his remark was to this effect, that he did not want money right away, and it could be arranged; on leaving the office, I took him down to the depot in my carriage, and I told him if he needed the money he should draw on me in three drafts at short sight, and he acceded to it, and we parted at that; after that, on the 11th of June, 10 I shipped Dungan two flat cars on account of that plush, amounting to \$1600; there never was any other arrangement between me and Mr. Dungan with reference to mode of payment for the plush; there never was any arrangement between me and Dungan that the plush and reps were to be payment of so much on cars to be made by me for him; I considered I owed Dungan for plush the day it arrived; Mr. Dungan never after that time said anything to me about the manner in which I was to pay him for the plush or reps.

I did not see Dungan again until I saw him with Mr. 20 Tenney at Continental hotel, in Philadelphia; I don't recollect that a word was said about that interview; I think the arrangement about Mr. Dungan's getting the four cars from Tenney was made at this interview at Continental hotel; I gave Dungan to understand that there was no possibility of my having cars ready at the time he said he wanted them; I applied to Tenney to furnish these cars for Mr. Dungan; Tenney acted at my request—I met Tanney at Continental by appointment—Dungan met us there—Dungan was to make payment to Tenney for them; the arrangement was 30 made, and Tenney furnished the four cars to Dungan, who, I suppose paid for them.

I have no recollection of Dungan, at that interview or at any time afterwards, asking me anything about the plush.

I think the Trenton Car Works bought me out about 9th July, 1863; they commenced business at same time they bought me out.

Being shown a paper dated June 29th, 1863—there was no written contract between me and the Trenton Car Works; there was no agreement whatever between me and the 40

Trenton Car Works that they should assume my contract with Dungan.

I never told Mr. Dungan, to my knowledge, that there was such an arrangement; I sold this plush and reps to the Trenton Car Works with the rest of the property; it is the same plush and reps scheduled in the bill and receipt to them; in making my sale to car works, E. J. Chamberlin and Judge McIlvaine acted on behalf of the company; after I sold out to car works, I never promised Dungan that car
10 works would pay him for plush and reps by allowing it on cars—he never asked me to do any such thing.

Letter of May 21st, 1863, was the next one after that of May 6th.

Letter of May 23d, 1863, was the next letter.

Being shown copy of letter of A. G. M. Prevost, president, to C. B. Dungan & Co., dated August 27th, 1863—this is a copy of a letter I sent to C. B. Dungan & Co.

September 7th, 1863—Dungan to Prevost; we received this letter from Dungan.

20 Letter Prevost to Dungan, dated September 8th, 1863—this is a copy of a letter sent by me to Dungan.

Letter September 9th, 1863—Dungan to Prevost; I received this letter from Dungan.

I did not write any further letters to Dungan than those produced here to my knowledge; I did not go to Philadelphia with Allen to see Dungan about this car—I had nothing to do with the car after it left the shops—it was placed in Mr. Allen's charge—I don't know anything about what was done with it of my own knowledge.

30 Mr. Allen went to Philadelphia before the car was shipped to see Dungan—I think Waterman went with him; I think Allen went after I received Dungan's letter, that he could not come up, and before the car was shipped; I saw the car before it started down the road; the day Waterman was to go with the car, he, Allen, and myself were in our office; Allen, when he came home from Philadelphia after his interview with Dungan, was not satisfied with the arrangement with Dungan, and it was determined that the car be shipped to order of Geo. A. Allen, and every precaution was taken
40 to have this done right, and these cards were written to show

that this car was shipped to the order of Allen ; as far as I can recollect, the words "to G. A. Allen" were written on the cards, and Waterman was instructed to tie them on the cars, and I think they were handed to Waterman; Allen was to follow Waterman on Monday; Waterman was to go to Camden on Saturday; Allen was to follow the car on Monday, and get a satisfactory settlement with Dungan, and then turn car over to him; Mr. Allen came down from Flemington on Monday morning, and went on to Camden.

My idea was that when Dungan got the four cars of Ten- 10
ney, that would be four under my contract.

Dungan and Tenney never, to my recollection, met me at Trenton.

Waterman was sent with the car in question to see if it run properly; he had no authority or direction to deliver it to any one; he was the foreman of the company—he directed the mechanical work; I don't think any authority was given him to make contracts for the company—he had no such power while I was president; our estimate was, that about \$200 worth of plush and reps together went into 20
this car at the price at which we purchased; I don't think Judge McIlvaine or Mr. Chamberlin knew from whom I purchased this plush—no questions were asked by them whether I had paid for it or not, and I don't know that I told them anything about it; I sold the property to the plaintiff July 9th, 1863, and that was the commencement of their doing business; everything I had sold before that was on my own private account or that of A. G. M. Prevost & Co.

And being cross-examined on the part of the defendants, the witness says—I don't recollect the date when car works 30
were organized—I presume that was the date; I became first president whenever it was organized; I continued president until about 1st October, 1863; all the stock had been subscribed on the day of the organization as far as the charter called for.

The company had a meeting of their board of directors, and a committee was appointed to value the property, and the property was then turned over to the company in the usual form.

There was quite a number of stockholders, can't say how many.

There was a board of directors between the time of organization and the time I sold out to them.

Mr. Allen was secretary and I was president; as far as there was any conducting of the business, I conducted it according to the by-laws of company.

I was paid in cash and stock for the property I sold the company—I don't know now in what proportion; I got from
10 \$15,000 to \$20,000 in money, I think, I won't say positively; the amount of cash I received was actual cash, and the stock I got was actual stock.

As president of the company, I talked to Mr. Allen about the shipment of the car, that it was to have been shipped in the way I have stated—that was all I had to do with it; on the day it was shipped I was in my office, as far as I recollect.

Being shown a letter, dated September 30th, 1863, from Prevost to C. B. Dungan—this is my letter; I mean to say
20 there was plush enough to line 14 or 15 cars; I have not the letter of September 29th, 1863, of Dungan to me.

Being shown letter September 29th, 1863, Dungan to Prevost—this is Mr. Dungan's letter to me; I don't recollect to have seen it since this suit commenced.

Letter, Dungan to Prevost, September 29th, 1863, read by Mr. Browning in evidence for defendants.

Letter of Prevost to Dungan, September 30th, 1863, in reply to above, read by Mr. Browning in evidence for defendants.

30 I was not in habit of drawing upon Dungan for any car I made him, unless he requested the car to remain on the track until he needed it.

Being shown letter, April 29th, 1863, from A. G. M. Prevost to C. B. Dungan—I wrote this letter to Dungan.

Mr. Browning read this letter in evidence for defendants.

Being shown letter, April 20th, 1863, Prevost to Dungan—this I wrote.

Mr. Browning read it to jury.

Letters, April 23d and April 25th, 1863, Prevost to Dungan,
40 read by Mr. Browning in evidence for defendants.

And being re-examined on part of the plaintiffs, the witness says—no business was transacted by plaintiff before the 9th of July, 1863.

I had no authority to make contracts for company without authority from the board—the by-laws required that the board should pass upon it first.

Affidavit of Charles B. Dungan, made to postpone this cause October 3d, 1865, offered and read by plaintiffs, *pro ut* the same.

William R. McIlvaine, being duly sworn on the part of the 10 plaintiffs, says—I was elected one of the directors of the Trenton Car Works at its organization; I was one of the committee appointed by the board to make inventory of the valuation of property purchased of Prevost—I think Mr. Chamberlin was the other member; I acted as committee in that respect.

Being shown inventory—this is the inventory I made, or properly the report of committee; I had no knowledge from whom Prevost purchased the plush, or where it came from; the company did not assume any contract made by Prevost 20 with Dungan as to cars or plush; I did not at that time know anything about the contract Dungan had made with Prevost—I may have heard it talked over, but I don't remember it—my son was employed to look over these matters, and I made the report upon his statement.

Elisha J. Chamberlin, being duly sworn on the part of the plaintiffs, says—I was elected a director of the car works after its organization; I assisted in making inventory spoken of by Judge McIlvaine; I did not know from whom Mr. Prevost had purchased the plush or reps; I did not know he 30 owed anything for it.

The car works did not assume any contract Prevost had with Dungan about cars or plush; I was at the works of the company on the day the car in question was shipped; I saw the car before it started from our works—it had cards on it; it had two cards on, one tied on door-knob at each end—on those cards the words "From Trenton Car Works" were printed, and the words "to Geo. A. Allen" were written,

and "Millville" or "Camden," I don't know which, was also written; I am not certain whether I or Waterman tied the cards on; Waterman and I were both there at the time—this was the same day the car started away; the car was sent from our works after the cards were tied on up to freight office of Camden and Amboy; Waterman went with the car to see the journals did not heat, and that it went through all right; Mr. Allen was to follow the car in a day or two—I am not certain as to time.

- 10 And being cross-examined on the part of the defendants, witness says—I am not a director of this company now; was a director until February, 1864—I do not recollect on what day I was made a director; I reside now in Hillsborough township, Somerset county—I resided in Flemington at time I was a director; I worked at car works also; I bought supplies for the company—my place was there every day.

I heard Mr. Allen give Waterman directions; I don't recollect seeing Prevost at that time; I think the car left works
20 a little after one o'clock, am not sure—I did not see it after that.

Geo. A. Allen, recalled for plaintiffs, says—the company was organized May 20th, 1863, but Prevost was not elected president until 25th.

The company did no business whatever from 20th May until 9th of July, except to perfect its organization and prepare for a purchase; I was elected a director at its organization, and made secretary May 25th, 1863; the company did not assume any contract Prevost had made with Dungan in
30 regard to cars or plush, or any matter.

I did not at that time know whether Prevost owed for plush, or from whom he got it; my first knowledge about it was from Mr. Dungan, when I went to see him a few days before car was shipped; I did not know at the time we purchased of Prevost what his contract with Dungan was—I think I had never seen the written contract between Dungan and Prevost until it was produced here.

Thomas J. Stryker, being duly sworn on the part of the

plaintiffs, and being shown receipt from Camden and Amboy to plaintiffs for car, says—I have seen this paper before; this paper was brought by Mr. Allen to me at the bank—I can't recollect by its date when it was, but my recollection was that Mr. Allen had just come from the freight office; I was a stockholder of car works to amount of \$1000; Mr. Allen talked with me in regard to the shipment of the car; my impression is that it was before the car was shipped; I don't remember whether he showed me this receipt before the consultation, or at the time of it; my impression is that the 10 receipt then was the same as now, precisely the same form, the word "by" stricken out, and the word "to" written over it; am cashier of Trenton Banking Company; I have examined the books of the bank to see if Mr. Allen drew draft on Dungan—no such draft passed through our bank in September or October, 1863—I have only examined those months.

Car works did their business through our bank; since this case has been on, one of the counsel for defendants asked me to look if such a draft did not pass through our bank. 20

And being cross-examined on the part of the defendants, witness says—Mr. Scudder asked me to make the search; Mr. Allen resides in Flemington.

George A. Allen, recalled for plaintiffs, says—I never drew a draft on Mr. Dungan for this car—I never drew a draft on Mr. Dungan—our company never did; our company did their banking business exclusively at Trenton Banking Company—I had sole charge of it; I went to see Mr. Dungan on Thursday prior to the 12th of September, 1863, and saw him at office of Cape May and Millville road, Philadelphia, and that is the only 30 time I ever had the pleasure of seeing Mr. Dungan until I saw him here last term; Mr. Waterman was with me in Philadelphia when I saw Dungan; I was introduced by Mr. Waterman to Mr. Dungan, who informed Mr. Dungan that I was secretary of the company that bought Prevost out; I told Mr. Dungan my business with him was to see how many cars his company wanted; that we had one ready to run out, and four were in course of construction, which would shortly be ready; he said he wanted but three at present; we then spoke

about price, and I informed him it would be \$3250; he remarked that was a considerable advance above what he had expected to get cars of Prevost for, but he finally consented to the price, and agreed to take three cars at that price; that having been concluded, he informed me that Prevost was indebted to him for a balance for plush and reps, and he wanted to know where we got plush and reps used in these cars; I informed him we had bought plush and reps of Prevost with the other materials.

- 10 He wanted to know if there was not some way in which the balance due him from Prevost could be arranged by us; I informed him there could not—that we had paid Prevost, and owed him nothing, and there was no way in our power to arrange it.

He then spoke of paying for this car that was ready to run out; he said they were in habit of paying half cash and half short note; I said to him, the company's note—he said yes, the company's note; I acceded to the proposition to take half cash and half company's note.

- 20 I supposed I was talking to Dungan as president of the Cape May and Millville railroad—their name was over the door; I supposed I was to have note of Cape May and Millville Railroad Company; I received information, before I left the city, that there might be some mistake as to what Dungan meant by the company's note; I understood that he might have meant the note of C. B. Dungan & Co.—I would not have taken the note of C. B. Dungan & Co. at that time.

- After I received this information, I wrote a note, and sent it by a boy to him, asking if he meant the note of Cape
30 May and Millville railroad, and if he did, I would ship car, but not otherwise; the messenger who took it brought me word Dungan had gone to Cape May, and would return on Monday morning.

I came home, and the conclusion with the different directors and members of the company that were consulted about it was to ship the car to myself—to ship it on the road directed to myself, and that on Monday I should go down and meet Dungan, and if he settled with me, and gave half cash and half note of Cape May and Millville railroad, I should
40 deliver car, and if not, I should bring it back to Trenton.

On Saturday, the 12th September, we had large cards, on

which were printed "The Trenton Car Works," and on Saturday, I took two of these cards, and addressed them to George A. Allen, Millville, and handed them to Waterman, with directions to tie them on car, and that he should go with the car up to the freight office and get receipt, and I would go to Fish's office and get a pass for him, and meet him at the freight depot; I saw Fish and got the pass, and went out with Fish on that day to freight depot; when we got to canal bridge, Mr. Waterman met us, and handed me this receipt, with the exception that the words "to order 10 Geo. A. Allen," "pay here to Camden," were not on it.

I told him the receipt was not according to instructions—that car was to be consigned to me, and the receipt should show it, and I walked straightway with Mr. Fish into the office in a very few minutes, and told Mr. Worthington the car was consigned to me, and the receipt must show it, and he must put it on receipt; Mr. Fish said, to make the thing all straight, you had better pay freight here yourself, and I said, very well, I will do so, and Fish said put on it "pay here;" the receipt was taken by Worthington, and he wrote 20 on it "by order Geo. A. Allen"—I told him it should be "to order of Geo. A. Allen," and he erased "by," and wrote "to" on the spot, and handed it to me.

The receipt has never been changed since; I took this receipt straightway down to Trenton Bank, and showed it to Mr. Stryker within half an hour after I got it; he was interested in company, and I was in habit of consulting with him; I don't think I consulted with him about shipping the car until I showed him this receipt; Waterman went with car to watch journals, to see they did not heat; he had no 30 other power at all—no direction or power to deliver it to any one; he did not, on return from Cape May, tell me he had delivered it to any one; I did not see him for several days after—I was in pursuit of Dungan.

I followed the car on Monday morning, in pursuance of arrangement made before car was sent.

On Monday I went down to Philadelphia to office of Cape May and Millville, and ascertained that Dungan did not come up on Monday morning; I watched to see him come up on Monday afternoon, but did not see him; I watched for him 40 on Tuesday morning, but did not see him; failing to see

him, I went to the office after the passengers had passed out ; I was informed at the office that Dungan had come up, but could not find him ; I followed him around from place to place until September the 17th—then I wrote him a note, and left it at the office of Cape May and Millville.

Letter dated September 17th, 1863, copy produced—letter from Allen to Dungan—read for plaintiffs.

Letter from Dungan to Allen, October 20th, 1863, page 131, read for plaintiffs.

- 10 I got a letter by the same mail from the counsel of Dungan, giving me notice of attachment ; that was the first time I had ever heard of Bastian.

Mr. Prevost had no power to make contracts without authority from the board.

- While I was in pursuit of Dungan, I traced him several times to West Jersey office ; I saw Mr. Van Rensselaer, and told him I wanted the car ; this was on the 16th or 17th of September, or both ; he said, as I held the Camden and Amboy's receipt for the car, I should apply to their company for
20 the car.

- I went to Freeman's office, and asked for the car, and he told me they had nothing to do with it further than Camden, and I must go back with it to Mr. Van Rensselaer, and I did so ; he (Van Rensselaer) informed me the car was running in their passenger train ; he said the car came down there, and they were in want of the car to use ; that they were not aware there was any difficulty about it in any way, and that they were running it in their train ; he said they were running it from Camden to Cape May ; he said, as soon as I
30 could see Dungan there would be no difficulty about it, it would all be arranged ; I told him I did not wish to see Dungan, I had given up all expectation of seeing him, and did not want to see him about it.

I requested him to send the car to us at Trenton ; I had not been to Trenton yet since I left on Monday morning ; I went up to Norristown before this, since Monday, in pursuit of Dungan, but did not find him.

- A few days after this, the car not coming to Trenton, I called on Mr. Van Rensselaer again, at the office of West
40 Jersey road, in Philadelphia ; I told him I had come for the car, and wanted it—that it had not come to Trenton ; he re-

quested me to address him a letter demanding the car, and he would lay it before their executive committee, and have the matter disposed of, and I wrote the letter there in his office, and left it with him, and kept no copy ; I can't fix the time except by one thing—I think I got Mr. Van Rensselaer's reply to this letter before I made the demand on Camden and Amboy.

Van Rensselaer's reply to my written demand was verbal ; he said Mr. Dungan was president of Cape May and Millville, and he had directed that car should be left at Cape May, and that they could not deliver the car to me.

Mr. Van Rensselaer, some time after this—he was frequently at our works, and I at his office—said that Camden and Amboy was in want of cars ; that they were bound to furnish their proportion of cars for through line to Washington by a certain time.

He asked me whether I would not consent, if the car came up here, not to interrupt their use of it, by replevin or otherwise ; I told him I was willing to oblige them, but was not willing to waive any rights of our company to the car ; 20 that if it was loaned to Camden and Amboy, I would not interrupt their use of it, but that I wanted it distinctly understood that it was ours, and that I would hold them responsible for use of it and all damages.

And being cross-examined on the part of the defendants, witness says—I don't recollect whether, on Monday morning, I went to Camden by Flemington train or staid over here one train.

Left Flemington about seven o'clock ; that train reaches Camden about 10½ o'clock ; if I laid over one train at Trenton, I would have reached Camden an one o'clock P. M. ; I do not recollect saying or doing anything in Camden on that day ; I won't state whether I was in Camden on that day or not—I don't think I ever inquired in Camden for the car.

All my demands, so far as Dungan and Van Rensselaer are concerned, were in Philadelphia ; I do not know at what time Cape May line left Philadelphia at that time ; I do not know at what time the early line from Cape May arrived in Philadelphia.

The first time I ever saw Van Rensselaer about the car was on the day I had the interview with Dungan before car was shipped.

The first interview I had with Van Rensselaer about the car, after it was shipped, was on the 16th or 17th September; I think I demanded it both on the 16th and 17th, at the office of the West Jersey Railroad Company, in Philadelphia; there were a number of persons in the office at the time; I would not undertake to say who they were—I saw persons
10 there; I can't fix the time of day when I made demand, nor whether in forenoon or afternoon with certainty—I did not make any memorandum of any of these calls.

When I went to Philadelphia on Monday, I searched for Dungan in office of Cape May and Millville Railroad Company; I went there as soon as I arrived; I went there again in afternoon—I did not see him; I watched when train arrived on Philadelphia side of ferry house.

Can't say whether I landed in Camden or Philadelphia when I went down—no person was watching with me; I
20 think, on one occasion, some one was from the office there wishing to see Dungan; I first ascertained at the office, on Tuesday morning, that Dungan had come to the city on that day; I was in a number of places that day after him; I would go to a place, and they would tell me he had just gone, and so I followed him; I don't recollect the time of day I sent the note to his office—some one was at the office when I called—I did not know any of them; I wrote the letter at the office of Cape May and Millville—telling Dungan I had been chasing him; I went to Van Rensselaer after I wrote
30 this letter; can't fix the time of day; can't remember whether I returned to Trenton that day; I don't recollect being in Trenton again that week at work—my impression is that from Philadelphia I went through to Trenton; I think I came to Trenton and staid over night at Prevost's, and next morning I went home; my impression is that I got home on Friday, am not certain.

I made a demand on Edwin Stevens for car in 1864—I have lost the copy of demand; I made another demand on Benjamin Fish, after the car got up here on their line—it
40 was on 2d February, 1864.

And being again examined in chief, the witness says—we elected a director to fill vacancy occasioned by Prevost's resignation September 26th, 1863, and he had ceased to be a stockholder then—I was elected president the same day; I do not set down in my diary where I am every day, only my engagements or appointments.

Letter of Allen to Van Rensselaer, dated September 30th, 1863, page 63.

Schedule and receipt of Prevost to car works.

Receipt offered of Camden and Amboy for freight on ship- 10
ment of car.

Duplicate receipt offered, made by Worthington.

I valued the car at our shops at Trenton—at Camden it was worth twenty to twenty-five dollars more on account of risk and expense of getting it there.

And being again cross-examined, the witness says—I never presented any bill to Dungan at any time—I sent no bill for \$3250 to his office.

I keep an account book of the company—I have one here; this car never was charged in our books any where—it never 20 has been—I have not the day-book here; no memorandum whatever made in our day-book about that car.

Plaintiff rests.

Jeremiah Van Rensselaer, being recalled for defendants, says—I would not of necessity have had any knowledge that the car was running in our train the week following September 12th—it might have been running and I not know it; I have not the least idea that Mr. Allen made this demand; I don't think Allen had any conversation with me about the car following September 12th, nor until Mr. Fish had informed 30 me the demand was made on him.

The morning line from Cape May arrived at 8:12—the evening train arrived at about 3½ o'clock at Camden.

I don't remember of any special call Allen made on me in reference to this car; I had a number of interviews with Allen about other matters, in which we spoke about this car incidentally.

To the Trenton Car Works.

The undersigned committee, appointed to take an account and valuation of the stock of Andrew G. M. Prevost, proposed to be transferred to the company—report, that an inventory and valuation has been made by E. J. Chamberlin, who was employed by your committee for that purpose, by which it appears there was on hand at the date of this report, June 29th, 1863, as follows, viz :

	Bolts, wrought iron, &c.,	\$8,241 40
10	Car springs,	1,660 12
	Car wheels,	892 00
	Steel,	35 00
	Chain,	135 60
	Cast iron, 65,885 lbs., at 4 cents,	2,635 40
	Axles at the locomotive works,	886 28
	Paints and oils,	161 00
	Merchant iron, 46½ tons, at \$92.50,	4,278 00
	Files,	57 12
	In closet,	7 55
20	Borax,	6 00
	Screws,	113 73
	Plush, &c.,	2,701 80
	Bolster springs,	532 00
	Lumber of all kinds 143,100 feet, averaged at \$30 per M.,	4,293 00
	Labor on caboose car,	115 96
	Labor on passenger car,	286 34
		<hr/>
		\$27,038 30

30 Your committee further report, that the construction account of the buildings, machinery and fixtures has been examined by them, a copy whereof is hereto annexed, and submitted herewith—the cost whereof, as per said account,

14,447 75

Your committee also report the amount paid to the state of New Jersey for the charter and copy,

33 00

Total amount to be paid to A. G. M. Prevost by the company,

\$41,519 05

40

Respectfully submitted,

WM. R. McILVAINE.

The undersigned further reports, that since making the above return, articles to the amount of two hundred and ninety dollars and twenty-one cents have been added to the construction account.

W. M. R. McILVAINE, *Committee.*

\$41,519 05

290 21

\$41,809 26

For value received, I hereby sell, assign, and set over to the Trenton Car Works all the stock and materials within 10 mentioned; and I hereby acknowledge full payment and satisfaction therefor to me made by them. Witness my hand, this ninth day of July, in the year of our Lord, eighteen hundred and sixty-three.

A. G. M. PREVOST.

Trenton, N. J., September 12th, 1863.

Received of Trenton Car Company one passenger car.
Millville and Glassboro' R. R.

Marked—which we promise to forward to the railroad station in Camden, subject to the conditions expressed on 20 the back of this receipt.

A. L. WORTHINGTON, *Receiving Clerk.*

SUPREME COURT,
Mercer Circuit, Oct. 7, 1865.

The West Jersey Railroad Company

ads.

The Trenton Car Works.

} *In case.*

[Filed October 3, 1865.]

Mercer county ss.—Charles B. Dungan, of the city of Philadelphia, being of full age, maketh oath and saith—that 30

he is for this purpose the agent of the West Jersey Railroad Company, the defendants in the above stated action; that as such agent, he, this deponent, has been wholly relied on by said company to prepare for the defence; that about the middle of September last, he, this deponent, was informed by Abraham Browning, the counsel of said defendant having said action in charge, that the time for the trial had been changed from the third Tuesday of said month of September, to one day in this present month, and either misunderstood him as to the day, or in some way not known to this deponent, understood that the said trial was for the *second* Tuesday of this month instead of to-day, the first Tuesday, and acted on that impression; that he, this deponent, received from Mr. Browning directions to call over at his office in Camden, at least one week before the time of trial, to make immediate preparation for such trial, and promised to do so; that this deponent postponed such call until yesterday, supposing that would be in time for the trial next week, as this deponent understood the time of trial, and yesterday started to call on Mr. Browning to make such preparation, but on the way was detained by business until too late, and again deferred the call for to-day, but, on returning home last evening at Germantown, learned that Mr. Browning had yesterday, in the absence of this deponent, called at this deponent's place of business in Philadelphia, and left directions for this deponent to be here to-day for the trial; and that this information, thus received, is the occasion of being here now; and this deponent further saith, that by reason of said misunderstanding, the said defendant is without preparation for trial; that Jeremiah Van Renssalaer and John Bastian, of the city of Philadelphia, are material witnesses for said defendant on the trial of said action, without whose testimony the said defendant cannot safely proceed to trial; that they reside without the jurisdiction of this court, and could not be served with process to attend; but this deponent supposes that their personal attendance can be procured at a later day in term, or at the next term, or their testimony taken on commission; that Philip J. Gray, of the city of Camden, in this state, is also a material witness for said defendants, but has not been sub-

pœnaed by reason of said misunderstanding on the part of this defendant.

And this deponent further saith, that this affidavit is not for delay, but simply to obtain a postponement for such time as that said witnesses can be procured to be here, as they probably would now be but for said misunderstanding.

C. B. DUNGAN.

Sworn and subscribed, in open court, this third day of October, A. D. 1865.

M. BEASLEY, *Ch. Just.* 10

Bill of Exceptions.

Whereupon the said counsel for the said defendants did then and there insist before the said justice, on behalf of the said defendants, that the said several matters, so produced and given in evidence on the part of the said defendants as aforesaid were sufficient, and ought to be admitted and allowed as decisive evidence to entitle the said defendants to a verdict, and to bar the said plaintiffs of their action aforesaid; and the said counsel for the said defendants did then and there pray the said justice to admit and allow the said 20 matters, so produced and given in evidence for the said defendants, to be conclusive evidence in favor of the said defendants to entitle them to a verdict in this cause, and to bar the said plaintiffs in their action aforesaid. But to this the counsel for the said plaintiffs did then and there object, and insist before the said justice, that the same were not sufficient, nor ought to be admitted or allowed to entitle the said defendants to a verdict, or to bar the said plaintiffs of their action aforesaid. And the said justice did then and there declare, and deliver his opinion to the jury aforesaid, that 30 the said several matters, so produced and given in evidence on the part of the said defendants, were not sufficient to bar the said plaintiffs of their action aforesaid; whereupon the said counsel for the said defendants did then and there, on the behalf of the said defendants, except to the aforesaid opinion of the said justice, and insisted on the said several matters as an absolute bar to the said action.

And the said justice did also then and there further declare and deliver his opinion to the said jury.

Charge.

1. That the furnishing of the plush and reps in the manner disclosed in the evidence did not, of itself, rest the title to the cars, or any of them, in Charles B. Dungan.

To which said opinion of the said justice the said counsel for the defendants did then and there, on the behalf of the said defendants, except.

10 2. That the question, whether the plaintiffs had ratified the delivery of the car in dispute was a matter for the consideration and decision of the jury; and thereupon the counsel of the defendants requested the court to charge that the conduct of George A. Allen amounted to a ratification, which the court refused.

To which said last mentioned opinion of the said justice the said counsel for the defendants did then and there, on the behalf of the said defendants, except.

20 3. That the jury must decide from the evidence to what point the defendants undertook to carry the car in question; whereupon the counsel of the defendants asked the court to charge that it was the implied contract of the defendants to carry said car to Glassboro', which was refused.

To which said last mentioned opinion of said justice the said counsel for the defendants did then and there, on the behalf of the defendants, except.

30 4. The counsel of the defendants asked the court further to charge that the fact of the car being in the possession of the foreman of the plaintiffs, in the manner described in the evidence, was conclusive evidence of his right to take the car from the defendants at the place of its destination, which was refused.

To which said last mentioned opinion of the said justice the counsel for the said defendants, in the behalf of the said defendants, did then and there, on behalf of the said defendants, except.

4 5. And further, to charge that the defendants never had any possession of the car for the purpose of delivering it to

any one, but simply to pass it over their road, which was refused.

To which said last mentioned opinion of the said justice the counsel for the said defendants did then and there, on the behalf of the said defendants, except.

6. And further to charge, that the receipt, if a consignment to any one, was a consignment to the Cape May and Millville Railroad Company, which was refused.

To which said last mentioned opinion of the said justice the said counsel for the said defendants did then and there, 10 on the behalf of the said defendants, except.

7. The said justice did further declare and deliver his opinion to the jury, that a conversion may consist in the taking of a chattel without the license of the owner, and by the party so taking it applying it to his own use. Was there such a taking and appropriation of the car in question by the defendants? It does not appear to be disputed that, for several days after the car came into the possession of Mr. Dungan, it was run between Camden and Cape May over the West Jersey railroad and the lower roads; that the car was 20 so run as a part of the complement of cars to be furnished by Mr. Dungan or the Cape May and Millville Railroad Company, under an agreement between him, or his company, with the defendants, and that this car, in common with the others so furnished, was used by the defendants for the accommodation of their local passengers, while it was passing and repassing on their road. Upon the assumption that the car then belonged to the plaintiffs, I regard this use of it by the defendants as a plain conversion of it on their part. The using of an article of personal property without the license 30 of the owner is a conversion; and so far has this doctrine been carried, that it has been held that if a man find an article, and use it, such act is wrongful, and amounts to a conversion.

You will observe that in this case, assuming that this car was the property of the plaintiffs, that each time the defendants put passengers into it, or otherwise meddled with it for their own ends, such act was wrongful so far as the plaintiffs were concerned, who had given them no such privilege. The only claim of right to which they pretended, 40

or now pretend, was and is that Mr. Dungan or the Cape May and Millville railroad put the car upon their track under an arrangement with them, and thus authorized its use by them. But this claim of right entirely fails if you shall decide that neither Mr. Dungan or the Cape May and Millville railroad were the owners of this chattel. Possessed of no legal right in this car, Mr. Dungan could obviously confer none upon either the Cape May and Millville railroad or on the defendants. Nor does it make any difference whether or no the
 10 defendants were aware that Mr. Dungan was destitute of all right in the article in question. It is not necessary to charge a person in law with the conversion of the property of another to prove that he was possessed of a knowledge that the act which he did with regard to such property was wrong. The rule of law has long been well settled on this subject: A man may pay full value in the purchase of an article, and act in entire good faith in taking it into his possession and appropriating it to his use, and yet, if it turn out that the party from whom he purchased it had no title, he is guilty
 20 of a conversion, as against the true owner, and is liable in damages in an action of trover.

In every case in which the inquiry arises whether a conversion has been committed, the only point to be settled is whether the defendant applied to his own use the property of another without his permission and without legal right. His motives for so doing, or the state of his knowledge with reference to the right of such owner are of no importance, and cannot in any respect affect the case.

Nor do I think, as was insisted in the argument, that a demand for the car, or a notice to the defendants that it did
 30 not belong to Mr. Dungan or to the Cape May and Millville Railroad Company, was requisite before a liability attached to respond in damages to the plaintiffs.

A demand or notice is only necessary in those cases in which the party sought to be charged came lawfully into the possession of the property. That was not the case here. The defendants did not acquire, after they had delivered the car, any right whatever to use it or to its possession. From the time specified, their entire dealing with the car, from the
 40 beginning to the end, was wholly tortious and without the

least color of right. If they were misled by Mr. Dungan or the Cape May and Millville Railroad Company into the belief that a right was given to them to use this car, that is their misfortune. But the delusion or misconception of the defendants cannot deprive the plaintiffs of any of their legal rights, one of which was to possess every article of their property wholly free from all use by others without their consent. To which opinion of the said justice the said counsel for the defendants did then and there, on behalf of the said defendants, except.

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And the said justice, under the charge and with the directions aforesaid, left the aforesaid issue, and the evidence so given on the trial thereof as aforesaid, to the said jury; and the jury aforesaid then and there gave their verdict for the said plaintiffs, and three thousand seven hundred and twenty-seven dollars and eighty cents damages. And inasmuch as the said several matters, so produced and given in evidence on the part of the said defendants, and by their counsel aforesaid objected and insisted on as a bar to the action aforesaid, do not appear by the record of the verdict aforesaid, the said counsel for the said defendants did then and there propose their aforesaid exceptions to the opinion of the said justice, and requested him to put his seal to this bill of exceptions containing the said several matters so produced and given in evidence on the part of the said defendants as aforesaid, according to the form of the statute in such case made and provided; and thereupon the said justice, at the request of the said counsel for the said defendants, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, on this sixth day of June, in the year of our Lord eighteen hundred and sixty-six.

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M. BEASLEY, *Ch. Just.*

Assignment of Errors.

[Filed June 16, 1866.]

IN THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW
JERSEY.

The West Jersey Railroad Company

vs.

The Trenton Car Works.

} *In error, &c.*

Afterwards, that is to say, on the day of
in the year of our Lord one thousand eight hundred and
10 sixty-six, before our Court of Errors and Appeals in the
last resort in all causes, as heretofore, at Trenton, in the
county of Mercer, come the said the West Jersey Railroad
Company, by Abraham Browning, their attorney, and say—
that in the record and proceedings aforesaid, and in the giv-
ing of the judgment aforesaid, there is manifest error in
this, that the declaration aforesaid, and the matters therein
contained, are not sufficient in law for the said the Trenton
Car Works to have or maintain their aforesaid action thereof
against the said the West Jersey Railroad Company.

20 And also there is manifest error in this, that the charge of
the justice to the jury, before whom the issue joined be-
tween the said parties was tried, in the several particulars
excepted to, as set forth and contained in the bill of excep-
tions of the said the West Jersey Railroad Company in the
record and proceedings aforesaid is illegal.

And also there is manifest error in this, that the refusal of
the said justice to charge the said jury, as requested by the
said the West Jersey Railroad Company, in the several par-
ticulars set forth and contained in the said bill of excep-
30 tions in the record and proceedings aforesaid was also illegal.

And also there is manifest error in this, that the several
opinions of the said justice, declared to said jury on the
trial of the said issue, to which exceptions were severally
made, as set forth and contained in said bill of exceptions
in the records and proceedings aforesaid, are contrary to law.

And also there is manifest error in this, that the judg-
ment aforesaid, by the record aforesaid, appears to have been

given for the said the Trenton Car Works against the said the West Jersey Railroad Company; whereas, by the law of the land, the said judgment ought to have been given for the said the West Jersey Railroad Company against the said the Trenton Car Works.

And the said the West Jersey Railroad Company pray that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for nought, and that they may be restored to all things which they have 10 lost by occasion of the said judgment, &c.

A. BROWNING,

Att'y of and of counsel with plaintiffs in error.

