

No. 14430

# Supreme Court of Illinois

Steele

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vs.

County of Rock Island

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76  
STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 223

Co of Ross  
Island

75  
Steele

14430

Supreme Court of Illinois  
April Term, A.D. 1863.

The County of Rock Island, Appellant  
vs

Joseph Steele, Appellee

Appeal from Verdict

Transcript of the Record



will issue a Summons In said cause in a plea that the  
said defendant render unto the said plaintiff the sum  
of Eight hundred dollars which the said defendant owes  
to and unjustly detains from the said plaintiff to his  
damage One thousand dollars returnable to said  
term of said court and directed to the Sheriff of  
said county to execute

Nov 16<sup>th</sup> 1861

Chas M Osborn

Plffs atty

And afterwards to wit on the day and year aforesaid  
a Summons issued out of said court in said cause  
in the words and figures following to wit

State of Illinois  
Rock Island County } P The People of the State of Illinois  
To the Sheriff of Rock Island County Greeting:  
We command you to Summon the County of Rock Island  
to be and appear before the Circuit court of Rock Island county  
on the first day of the next term thereof to be holden at the  
Court House in Rock Island in said Rock Island county on  
the second Monday of January next then and there to  
answer unto Joseph Steele of a plea that it renders unto  
said Joseph Steele the sum of Eight hundred dollars  
which the said county of Rock Island owes to and unjustly  
detain from the said Joseph Steele to his damages in the sum  
of One thousand dollars as he says and have you then  
and there this writ and make return thereon in what manner  
you execute the same Witness Edward Mc Bowman clerk  
of the said court and the seal thereof affixed at Rock Island  
this Eighteenth day of November in the year of our Lord one  
thousand eight hundred and sixty one

(Seal)

Edward Mc Bowman Clerk

Upon which summons <sup>(3)</sup> the following endorsement by the Sheriff to wit:

State of Illinois } I have duly served the within  
Rock Island County } by leaving a copy of the same with  
Joseph Coust clerk of the county court of said county and  
of the Board of Supervision of said county while the said  
Board was in session this 19<sup>th</sup> day of November  
AD 1861 as I am herein commanded.

David Leaves Sheriff

and afterwards to wit and the 31<sup>st</sup> day of December 1861  
the said plaintiff by his atty filed in said cause his declaration  
in the words and figures following to wit

State of Illinois } To the January Term of the  
Rock Island County } Circuit Court of said county  
and State AD 1862

Joseph Steele plaintiff in this suit complains of the  
County of Rock Island Defendant in this suit of a  
plea that the said defendant render unto the said plaintiff  
the sum of Eight hundred dollars which the said defend-  
ant owes to and unjustly detains from said plaintiff  
For that whereas heretofore to wit on the first day of March  
AD 1855 at the county of Rock Island aforesaid the said  
defendant made its seven writings obligatory num-  
bered as follows to wit No 34, 35, 36, 37, 38, 39 & 40 each  
of which said writings obligatory was sealed with the cor-  
porate seal of said defendant and now to the court here  
shown and each of the said writings obligatory bearing  
date the day and year aforesaid and then and there the  
said defendant by each of said writings obligatory acknowl-  
edged its self held and bound unto the Warsaw and Rockford  
Rail Road Company in the sum of One thousand dollars  
which the said defendant then and there promised to pay

(4)  
at the American Exchange Bank in the City of New York  
to the order of the president of the Warsaw and Rockford Rail  
Road or assigns Twenty years after the date thereof with inter-  
est at the rate of eight per cent per annum from the date  
thereof payable annually at the American Exchange Bank  
in the City of New York viz: on the first day of July in each  
year on the presentation and delivery of the respective  
interest coupons thereto severally adjoined. The said writings  
obligatory were redeemable at the expiration of twenty years  
from the date thereof, Attached to each of which said writings  
obligatory was a coupon in substance as follows to wit

Eight Per cent Stock

Rock Island County

State of Illinois

Rent Road Bond No

Pay the bearer Eighty dollars on the first day of  
July 1861 (meaning on the first day of July AD 1861)  
interest to that date

J M Gould

Judge of County Court Rock Island County

And the said plaintiff avers that the several numbers upon  
said coupons were the same respectively as upon the said  
writings obligatory to which the said coupons were sever-  
ally adjoined, which said writings obligatory were after  
the making thereof as aforesaid with the said coupons at-  
tached to wit: on the first day of March AD 1835 at the  
court aforesaid assigned enclosed and delivered to and  
ordered to be paid to the plaintiff by the President of the  
Warsaw and Rockford Railroad Company aforesaid of  
which the said defendant then and there had notice by  
reason whereof and by force of the statute in such case  
made and provided the said defendant became liable  
to pay to the said plaintiff the said sum of money,  
in and seven writings obligatory and in the said

Coupons thereto attached mentioned according to the tenor and effect thereof, and plaintiff further avers that on the day of the maturity of the said seven coupons to wit on the first day of July A.D. 1861 the plaintiff presented all and each of the said seven coupons above mentioned for payment at the said American Exchange Bank in the city of New York and demanded the payment therefor which was refused and the said plaintiff was then and there ready and offered to deliver the said coupons to the defendant but the said defendant refused and neglected to pay the said money to the plaintiff and neither did the defendant on said day and year last aforesaid or at any other time nor any other person for the said defendant pay to the plaintiff the money in said seven coupons specified nor any part thereof

Also for that whereas heretofore to wit on the first day of April A.D. 1856 said defendant made to three certain other writings obligatory mentioned respectively as follows to wit No 49 No 50 & No 37 each of which writings obligatory was sealed with the corporate seal of said defendant and now to the court shown and each of the said writings obligatory bearing date the day and year last aforesaid and thereby by each of said last mentioned writings obligatory then and there the said defendant acknowledged its self held and bound unto the Warsaw and Rockford Rail Road company in the sum of one thousand dollars which the said defendant then and there promised to pay at the American Exchange Bank in the city of New York to the Warsaw and Rockford Rail Road company or assigns twenty years after the date thereof with interest at the rate of eight per cent per annum from

6

The date thereof payable Annually at the American Exchange Bank in the City of New York viz on the first day of July in each year on the presentation and delivery of the respective interest interest coupons thereto severally adjoined The said last mentioned writings obligatory were redeemable at the expiration of twenty years from the date thereof Attached to each of which said last mentioned writings obligatory was a coupon in substance as follows to wit

Eight Percent Stock  
Rock Island County State of Illinois  
Rail Road Bond No

Pay the bearer Eighty dollars on the first day of July 1861 (meaning on the first day of July AD 1861) interest to that date \$80 J M Gould

Judge of County Court Rock Island County

Which said last mentioned writings obligatory were after the making thereof as aforesaid with the coupons attached to wit On the said first day of April AD 1856 at the county office said assigned endorsed and delivered by said Warsaw and Rockford Rail Road company to the plaintiff of all of which the said defendant then and there had notice by reason whereof and by force of the Statute in such case made and provided the said defendant became liable to pay to the said plaintiff the said several sums of money in all said three last mentioned writings obligatory and in the said coupons thereto attached mentioned according to the tenor and effect thereof And Plaintiff further avers that on the day of the maturity of the said last mentioned coupons to wit on the first day of July AD 1861 the plaintiff presented all and each of the said coupons last above mentioned for payment at the American Exchange Bank in the City of New

(17)

York and demanded the payment thereof which was refused and the said plaintiff was then and there ready and offered to deliver the said coupons to the defendant but the said defendant refused and neglected to pay the said moneys to the plaintiff and neither did the defendant on said day and year last aforesaid or at any other time nor any other person for the said defendant pay to plaintiff the money in said three last mentioned coupons specified nor any part thereof which said several sums of money in said first and second counts mentioned amount together to the sum of Eight Hundred dollars parcel of said sum afore demanded whereby an action hath accrued to said plaintiff to demand and have and from said defendant the sum of eight hundred dollars parcel of the said sum above demanded also for that heretofore to wit on the first day of August A.D. 1861 at the county of Rock Island aforesaid the said defendant was indebted to plaintiff in the sum of one hundred and sixty dollars for money before then lent and advanced to and paid lent out and expended for said defendant by said plaintiff at said defendant request and for money before that time had and received by said defendant to and for the use of said plaintiff also for so much money before then found to be due and owing from defendant to plaintiff upon an accounting before then had between plaintiff and defendant also for interest money upon the loan for clearance of divers large sums of money by plaintiff to defendant at the request of defendant for divers long spaces of time before then elapsed to be paid when the defendant should be therunto aforesaid requested and by reason of the said money being and remaining wholly unpaid an action hath accrued to plaintiff to demand

and have of and from Defendant the said money  
so demanded Yet the said defendant although often  
requested so to do hath not as yet paid the said sum of  
Eight hundred dollars above described or any part  
thereof to plaintiff but to do this has hitherto wholly neg-  
lected and refused to the damage of plaintiff one thou-  
sand dollars and therefore he sues &c

Chas M Osborn

Plffs Atty

Copies of the writs obligatory and coupons sued on  
are herewith filed, no recovery is sought under the third  
count except under them

Chas M Osborn

And afterwards to wit at the term aforesaid and on  
the 15<sup>th</sup> day of January 1862 the said defendant by  
its atty files a demurrer to said plaintiffs declaration  
in words in figures following

State of Illinois }  
Rock Island County } Of January Term AD 1862  
The County of Rock Island } of the Rock Island Circuit Court  
vs }

Joseph Steele } And the said Defendant  
by George W Pleasant and E J Wells its attorneys comes  
and defends the wrong and injury where &c and says  
that the said plaintiffs Declaration is and each of the  
sever counts thereof are insufficient in law And that  
the said Defendant is ready to verify Wherefore  
the said defendant prays judgment &c  
George W Pleasant &  
E J Wells atty for deft

And afterwards to wit on the 15<sup>th</sup> day of January AD 1862 being one of the days of said Term of said Court the following proceedings were had to wit

Joseph Steele

vs

Debt

The County of Rock Island } This day came the Plaintiff by his attorney who files an affidavit and enters his motion for a change of Venue in this cause whereupon on hearing same It is ordered by the court that said motion be sustained and Venue change to Henry County

State of Illinois

Rock Island County

I Edward W. Bowman Clerk of the circuit court of said county do hereby certify that the foregoing is a true perfect and full transcript of the record in said case and that the accompanying papers are all the files in said case Witness my hand and the seal of said court this 12<sup>th</sup> day of February AD 1862  
Edward W. Bowman  
Clerk

Plas before the Honorable Dr. A. Wilkinson Judge of the Sixth judicial Circuit in the State of Illinois at a regular term of the circuit court of Henry County in the State of Illinois begun and holden at the Court House in Cambridge on Tuesday the 4<sup>th</sup> day of March in the year of our Lord one thousand eight hundred and sixty two

Present Honorable Dr. A. Wilkinson Judge  
Amos Gould Clerk  
Adam W. Wemyss Sheriff



(11)

above demanded and as to the said first and second counts of said declaration verum non because the said defendant saith the said sum of one hundred and sixty dollars in the said third count demanded accrued to the said plaintiff if at all only by virtue of and for interest upon some of the said several supposed writings obligatory in the said first and second counts of said declaration mentioned and not otherwise

And the said defendant in fact further saith that the said several supposed writings obligatory were heretofore to wit on the first day of April A.D. 1836 to wit at Rock Island county aforesaid made and delivered to Messrs Cook Sargent and Parker Bankers at the City of Rock Island in the said county of Rock Island each as an escrow to be by them the said Cook Sargent and Parker delivered to the said Board of Directors of the said Warsaw and Rockford Railroad company only upon the express condition to wit Upon the production to them the said Cook Sargent and Parker of the certificate of the Chief Engineer of said Warsaw and Rockford Railroad company of the work actually completed upon the railroad of said Railroad company within the limits of said Rock Island county and not otherwise, and the said defendant saith that no such certificate of the said Chief Engineer was ever made or produced to the said Cook Sargent and Parker or either of them and that the work upon the said Railroad never was actually completed within the limits of said Rock Island county and that the said defendant is ready to verify wherefore the said defendant prays judgment &c

This I tender

E. J. Mills Deft's atty

4<sup>th</sup> Plea

And for a further plea &c the said defendant by like leave &c saith verum non because the said defendant

12

that the said moneys in the third account of said declaration  
 mentioned accrued to the said plaintiff if at all only by  
 virtue of and for interest upon certain of the second sup-  
 posed writings obligatory in the said first and second  
 accounts of said plaintiffs declaration mentioned  
 and the said defendant in fact saith that the said  
 supposed writings obligatory were and each thereof  
 was made and executed without any authority of  
 law and without any good or valuable consideration  
 whatsoever and that the said defendant is ready  
 to verify wherefore the said defendant prays  
 judgment &c  
Thos J Henderson  
Esq J Wells Defts attys

And afterwards to wit on the 12<sup>th</sup> day of March 1862  
 of the term of the court last aforesaid the following  
 proceedings were had in said cause to wit

Joseph Steele	}	Delet, Change of Venue from Rock Island County
vs		
The County of Rock Island		

At this day came the plaintiff by Osborne  
 his atty and the defendant by Henderson its atty and  
 motion of defendant leave granted to withdraw decla-  
 ration

And afterwards to wit and on the 12<sup>th</sup> day of March  
 1862 of the term last aforesaid the said plaintiff filed  
 his replication to said defendant 1<sup>st</sup> & 2<sup>d</sup> in  
 its words and figures following to wit

State of Illinois	}	of the March Term 1862 of the Henry County Circuit Court
Henry County		
The County of Rock Island		

Joseph Steele

vs

The County of Rock Island

Replication to 1<sup>st</sup>

Plea

And the said plaintiff by Chas M Osborn his attorney as to the said first plea of the said defendant whereof it hath put itself upon the country doeth the like, Chas M Osborn

Pliffs attorney.

Replication to 2<sup>d</sup>

Plea

And the said plaintiff by Charles M Osborn his atty as to the said second plea of the said defendant above pleaded whereof it hath put its self upon the country doeth the like Chas M Osborn

Pliffs atty

And afterwards to wit on the day and year last aforesaid the said pliff files his demurrer to said defendants 3<sup>d</sup> plea in words and figures following to wit

State of Illinois

Henry County

Joseph Steele

The County of Rock Island

In Henry County Circuit

Court March Term A.D. 1862

And the said plaintiff by Charles M Osborn his attorney says that the third plea filed by the said defendant herein is not sufficient in law wherefore by reason of the insufficiency of the said plea in this behalf the said plaintiff prays judgment and his debt aforesaid together with his damages by him sustained on occasion of the detention thereof to be adjudged to him &c Chas M Osborn

Pliffs atty

Demurrer to

4<sup>th</sup> Plea

And the said plaintiff by Charles M Osborn saith that the said fourth plea filed by the said defendant herein is not sufficient in law wherefore by reason of the insufficiency of said plea in this behalf

(199)

the said plaintiff's judgment and his debt  
aforesaid together with his damages by him sustained  
on occasion of the detention thereof to be adjudged  
to him &c

Chas M Osborn

Plffs atty

And afterwards to wit at the term last aforesaid and on  
the 4<sup>th</sup> day of March 1862 the following proceedings were  
had in said cause to wit

Joseph Steele

vs

Debt

The County of Rock Island } At this day came the parties  
by their attys, by leave of court the defendant withdraws his  
2<sup>d</sup> plea to plaintiffs declaration and also first plea so far as  
same applies to 1<sup>st</sup> & 2<sup>d</sup> counts of declaration and also  
third plea so far as applies to 1<sup>st</sup> and 3<sup>d</sup> counts of declaration  
Demurrer to 4<sup>th</sup> plea confessed by defendant and leave  
given to amend

And afterwards to wit on the 14<sup>th</sup> day of March 1862 of  
the term of said court aforesaid the said defendant by its  
attys files amended Pleas in said cause in words and  
figures following to wit

The County of Rock Island )

ads

Joseph Steele

And for a further plea in

this behalf and by way of Amendment to his 4<sup>th</sup> plea  
heretofore pleaded herein the said defendant by leave of  
the court &c as to the first count of said plaintiff's decla-  
ration with travari non because the said defend-  
ant saith that heretofore and before the making of  
the said several supposed writings delegating the

County court of said Rock Island county, at the  
 term hereof begun and holden on the 1<sup>st</sup> Monday in  
 December AD 1853 made and entered of record therein  
 a certain order in words and figures as follows to wit  
 " It appearing to the satisfaction of this court that  
 a majority of the legal voters of this county voted in  
 favour of a subscription by the county of One Hundred  
 thousand dollars to the Capital stock of the Warsaw  
 and Rockford Railroad company at an election held  
 for that purpose on the 8<sup>th</sup> day of November 1853 in pur-  
 suance of a former order of this county made on the 9<sup>th</sup>  
 day of September 1853 it is therefore ordered that  
 the county Judge of this county for and on behalf of  
 the county of Rock Island subscribe for One Hundred  
 thousand dollars of the Capital Stock of the Warsaw  
 and Rockford Railroad company said sub-  
 scription to be paid in the bonds of this county at par  
 redeemable within twenty years from the date of their  
 issue and to bear interest at the rate of eight per cent  
 per annum payable annually at the American  
 Exchange Bank in the City of New York and the  
 amount to be expended in conformity with the resolu-  
 tions of the Directors of said company heretofore passed  
 in relation to County subscriptions said bonds to be  
 signed by the county judge of this county and attested  
 by the clerk of the court with the seal of the county, attached  
 thereto and delivered and paid to such company  
 at such time and in such sums as the assessments  
 upon the stock of said company subscribed for by  
 individuals payable by order of the Board of  
 Directors of said company"

And the said Defendant further saith that afterwards  
 to wit on &c at &c John M Gould then county

(16)  
Judge of said Rock Island County without any  
authority other or further than the aforesaid order of the  
said County Court And without making any subscrip-  
tion to the Capital Stock of <sup>Said</sup> Railroad Company on behalf  
of the said County of Rock Island caused to be issued  
the said supposed writings obligatory in the said first  
counts of the said declaration mentioned

Whereupon the said defendant saith the said supposed  
writings obligatory were issued without authority of law  
and are not nor is either thereof the deed of the defendant  
And that the said defendant is ready to verify Wherefore  
the said defendant prays judgment &c

Thomas J. Henderson  
E. J. Wells Defts atty

And afterwards to wit at the <sup>of said court</sup> ~~City~~ <sup>last aforesaid</sup> and  
on the 25<sup>th</sup> day of March AD 1862 the following pro-  
ceedings were had in said cause to wit

Joseph Steele

vs

Doct

The County of Rock Island } On this day comes the plaintiff  
by Osborne his atty and the defendant by Wells its atty, the  
Plaintiff files his demurrer to 3<sup>d</sup> and 4<sup>th</sup> amended pleas and  
the Defendant moves the court to carry back the demurrer  
to the 1<sup>st</sup> and 2<sup>d</sup> counts of declaration Demurrer to 3<sup>d</sup> and  
4<sup>th</sup> pleas sustained and overruled as to 1<sup>st</sup> and 2<sup>d</sup> counts  
of declaration the Defendant abides by his third and  
fourth pleas and he saying nothing further judgment is  
rendered in favor of plaintiff as to first and second counts  
of declaration, issues joined on third count and also as  
to the assessment of damages on 1<sup>st</sup> & 2 counts and  
tried by the court a trial by jury being waived

(17)

And the court being fully advised in the premises finds the issue for the plaintiff and that he is entitled to recover of the defendant the sum of \$800, Debt and damages in the sum of one cent Whereupon It is considered by the court that the plaintiff have and recover of the Defendant judgment in the sum of Eight hundred dollars debt and in the sum of one cent as damages and also his costs in this behalf expended, And thereupon the Defendant prays an appeal to the supreme court of the State of Illinois which is allowed on defendant on defendant by J. J. Robinson President of the Board of Supervisors of Rock Island County executing Bond in appeal in the sum of One hundred and fifty dollars with said J. J. Robinson as security & defendant allowed till 10<sup>th</sup> day of June next to file Bond and Bill of exceptions

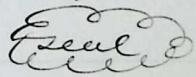
And afterwards to wit and on the 9<sup>th</sup> day of June the said defendant filed its appeal Bond in said case in the words and figures following to wit

Know all men by these presents that the County of Rock Island as principal and Thomas J. Robinson as security are held and firmly bound unto Joseph Stett in the penal sum of One hundred and fifty dollars for the payment of which well and truly to be made the said County and the said Thomas J. Robinson do hereby bind themselves jointly and severally firmly by these presents, The condition of this bond is such that whereas the said Joseph Stett at the March Term A.D. 1862 of the circuit court for the County of Henry in the State of Illinois recovered a judgment in the said court, against the said County

(18)

of Rock Island for the sum of Eight Hundred Dollars  
Debit and one cent damages and also for his costs by  
him in that behalf expended From which said judg-  
ment the said county of Rock Island hath prayed  
an appeal to the Supreme Court of the said State of  
Illinois Now if the said county shall duly prosecute  
its said appeal and in case the said judgment shall  
be affirmed shall pay the judgment costs interest  
and Damages adjudged by the said Supreme Court  
then this bond shall be void otherwise in full force &  
virtue In witness whereof Stillman W. Wheelock Chair-  
man of the Board of Supervisors of said Rock Island county  
hath hereto set his hand and the seal of the County Court of  
said county And the said Thomas J. Robinson hath also  
set his hand and seal this 6th day of June A.D. 1862

S. W. Wheelock Chairman Board Sup. R. I. Co

T. J. Robinson 

State of Illinois }  
Henry County } p. J. Amos Gould Clerk of the Circuit  
Court of said County do hereby certify that the above  
and foregoing is a true full and complete transcript  
and record of the proceedings had in said entitled  
cause (except Copy of the ~~last~~ ~~deputy~~ and ~~copy~~  
~~book~~) as appears from the records in my office  
In witness Amos Gould Clerk of said Court and the  
seal thereof at Cambridge this 28<sup>th</sup> day of February  
A.D. 1863



Amos Gould Clerk  
By W. D. Davenport Deputy

Supreme Court of Missouri  
April Term A.D. 1863

The County of Rock Island, Appellant  
vs  
Joseph Lule, Appellee

And now comes the said Appellant  
by G. H. Hawley, its Attorney, and says, that  
in the record, proceedings, and judgment  
aforesaid, of the said Circuit-Court  
there is manifest error in this to wit-

- 1<sup>st</sup> The said Circuit Court erred in overru-  
ling appellants Motion to carry back the  
damages to appellants third, and fourth  
pleas, to the first, and second Counts  
of Appellus declaration -
- 2<sup>d</sup> The said Circuit Court erred in  
sustaining Appellus damages, to Appel-  
lants third and fourth pleas -
- 3<sup>d</sup> The said Circuit Court erred in  
rendering judgment in favor of Appellee,  
on the first and second Counts of  
Appellus declaration

4<sup>th</sup> The said Circuit Court erred in not rendering judgment in favor of Appellant in said Cause

5<sup>th</sup> The said Circuit Court erred in rendering judgment in favor of Appellee in said Cause —

And for the errors aforesaid and for the Manifest other errors, in the proceedings and judgment aforesaid, the said Appellant prays that the judgment aforesaid may be reversed, annulled, and for costs held &c

J. B. Hawley  
Atty for Appellant

State of Illinois Supreme Court 3<sup>d</sup> Grand Division  
April Term A. D. 1863

And now comes the said Appellee by Charles M. Columbus his attorney and says that neither in the record proceedings or judgment of the Court is there any error and therefore he prays judgment and costs be cast ~~to~~ ~~him~~ affirmed and that he may recover costs herein

Charles M. Columbus  
Atty for Appellee

4<sup>th</sup> The said Circuit Court erred in not rendering judgment in favor of Appellant in said Cause

5<sup>th</sup> The said Circuit Court erred in rendering judgment in favor of Appellee in said Cause —

And for the errors aforesaid and for the Manifest other errors, in the proceedings and judgment aforesaid, the said Appellant prays that the judgment aforesaid may be reversed, annulled, and for costs held &c

J. B. Hawley  
Atty for Appellant

State of Illinois Supreme Court 3<sup>d</sup> Division  
April Term A. D. 1863

And now comes the said Appellee by Charles M. Columbus his attorney and says that neither in the record proceedings or judgment of the Court is there any error and therefore he prays judgment and costs be cast ~~to~~ ~~him~~ affirmed and that he may recover costs herein

Charles M. Columbus  
Atty for Appellee

223

Joseph Steele  
acts.

The County of Rock Island

Appeal from Henry

Copy of Record

Filed Apr. 23, 1863.  
Shelton  
Clk.

100  
 50  
 50  
 110  
 50  
 60  
 ———  
 415  
 5  
 ———  
 2050

**SUPREME COURT OF ILLINOIS,**  
*April Term, A. D., 1863.*

THE COUNTY OF ROCK ISLAND,—Appellant,  
 vs.  
 JOSEPH STEELE,—Appellee.

**ABSTRACT OF THE RECORD.**

- 1 PLEAS &c.,
- 2 November 18th, A. D. 1861, the appellee sued out of the Rock Island Circuit Court, his summons in debt against the appellant, returnable to the January Term following. Debt \$800, damages \$1000.
- 3 On the 19th of November 1861, the sheriff returned the writ served.  
 On the 31st day of December 1861, appellee filed his declaration in debt with two special counts and common counts.  
 The first special count (after the caption) is as follows :

"Joseph Steele, plaintiff in this suit, complains of the County of Rock Island, defendant in this suit, of a plea that the said defendant render unto the said plaintiff the sum of Eight hundred dollars, which the said defendant owes to and unjustly detains from said plaintiff. For that whereas heretofore to-wit, on the first

day of March A. D. 1855 at the County of Rock Island aforesaid, the said defendant made its seven writings obligatory numbered as follows, to-wit: No. 34, 35, 36, 37, 38, 39 and 40, each of which said writings obligatory, was sealed with the corporate seal of said defendant, and now to the Court here shown, and each of the said writings obligatory, bearing date the day and year aforesaid; and then and there the said defendant by each of said writings obligatory acknowledged itself held and bound unto the Warsaw and Rockford Railroad Company in the sum of one thousand dollars, which the said defendant then and there promised to pay at the American Exchange Bank in the City of New York to the order of the president of the Warsaw and Rockford Railroad or assigns twenty years after the date thereof with interest at the rate of eight per cent per annum from the date thereof, payable annually at the American Exchange Bank in the City of New York, viz: on the first day of July in each year on the presentation and delivering of the respective interest coupons thereto severally adjoined.— The said writings obligatory were redeemable at the expiration of twenty years from the date thereof attached to each of which said writings obligatory was a coupon in substance as follows, to-wit:

EIGHT PER CENT STOCK,

Rock Island County,

State of Illinois.

RAIL ROAD BOND NO.

Pay the bearer eighty dollars on the first day of July 1861, (meaning on the first day of July A. D. 1861) interest to that date.

J. M. GOULD,

Judge of County Court, Rock Island County.

And the said plaintiff avers that the several numbers upon said coupons were the same respectively as upon the said writings obligatory to which the said coupons were severally adjoined. Which said writings obligatory were after the making thereof as aforesaid, with

the said coupons attached, to-wit: On the first day of March A. D. 1855 at the county aforesaid, assigned, endorsed and delivered to and ordered to be paid to the plaintiff by the president of the Warsaw and Rockford Railroad Company aforesaid, of which the said defendant then and there had notice, by reason whereof and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in said seven  
5 writings obligatory, and in the said coupons thereunto attached, mentioned according to the tenor and effect thereof; and plaintiff further avers that on the day of the maturity of the said seven coupons to-wit, on the first day of July A. D. 1861, the plaintiff presented all and each of the said seven coupons above mentioned for payment at the said American Exchange Bank in the City of New York, and demanded payment thereof which was refused, and the said plaintiff was then and there ready and offered to deliver the said coupons to the defendant, but the said defendant refused and neglected to pay the said moneys to the plaintiff, and neither did the defendant on said day and year last aforesaid or at any other time nor any other person, for the said defendant to pay to the plaintiff the money in said seven coupons specified, nor any part thereof."

6-7 Second special count same in form as first count, and counting on coupons attached to bonds No. 49, 50 and 51, for \$80 each.

Third count, common money counts.

8 Stipulation that bonds and coupons filed with declaration were the only cause of action.

9 On the 15th day of January 1862 appellant filed its general demurr to plaintiff's declaration.

On the 15th day of January 1862, appellee filed affidavit and entered motion for change of venue. Motion sustained and venue changed to Henry County.

Feb. 12, 1862, certificate of transcript of Record by clerk of Circuit Court of Rock Island County.

Pleas before the Hon. Ira O. Wilkinson, Judge of the Sixth Judicial Circuit, at the regular March term of the Henry County Circuit Court, held on the 4th day of March 1862.

TO March 5, 1862, being one of the days of said term, appellant filed four pleas :

1st plea *nil dicit*.

2d “ *Non est factum*, as to 1st and 2d counts of declaration.

3d plea “and for a further plea &c. by like leave &c., the said defendant as to the sum of one hundred and sixty dollars in the said third count of the said II declaration above demanded, and as to the said first and second counts of said declaration, saith, *onerari non*, because the said defendant saith the said sum of one hundred and sixty dollars in the said third count demanded, accrued to the said plaintiff if at all only by virtue of and for interest upon some of the said several supposed writings obligatory in the said first and second counts of said declaration mentioned and not otherwise; and the said defendant in fact further saith that the said several supposed writings were heretofore to-wit on the first day of April A. D. 1856, to-wit, at Rock Island County aforesaid, made and delivered to Messrs. Cook, Sargent and Parker, Bankers at the City of Rock Island, in the said county of Rock Island, each as an escrow to be by them the said Cook, Sargent and Parker, delivered to the said Board of Directors of the Warsaw and Rockford Railroad Company, only upon the express condition to-wit :

Upon the production to them the said Cook, Sargent and Parker, of the certificate of the Chief Engineer of said Warsaw and Rockford Railroad Company of the work actually completed upon the Railroad of said

Railroad Company within the limits of said Rock Island county, and not otherwise, and the said defendant saith that no such certificate of the said Chief Engineer was ever made or produced to the said Cook, Sargent and Parker or either of them, and that the work upon the said Railroad never was actually completed within the limits of said Rock Island County, and this the said defendant is ready to verify, wherefore the said defendant prays judgment, &c."

4th Plea. "And for a further plea &c., the said defendant by like leave &c., saith *onerari non*, because the said defendant saith the said moneys in the third count of said declaration mentioned, accrued to the said plaintiff if at all only by virtue of and for interest upon certain of the said supposed writings obligatory in the said first and second counts of said plaintiff's declaration mentioned.

And the said defendant in fact saith that the said supposed writings obligatory were, and each thereof was made and executed without any authority of law, and without any good or valuable consideration whatsoever, and this the said defendant is ready to verify; wherefore the said defendant prays judgment, &c."

Afterwards and on the 12th day of March 1862, appellant by leave of court withdrew demurrer to declaration.

13 On same day appellee joined issue on first and second pleas, and filed general demurrer to third and fourth pleas.

14 March 14th 1862, appellant by leave of court withdrew 2d plea to appellee's declaration, and also 1st plea so far as it applied to 1st and 2d counts of declaration. And also 3d plea so far as it applied to 1st and 3d counts of declaration. Demurrer to 4th plea confessed and leave given to amend.

On same day appellant filed its amended plea, to-wit :

“And for a further plea in this behalf and by way of amendment to its 4th plea heretofore pleaded herein, the said defendant by leave of the court &c. as to the first count of said plaintiff’s declaration saith *onerari non*, because the said defendant saith, that heretofore  
15 and before the making of said several supposed writings obligatory, the county court of said Rock Island County at the term thereof begun and holden on the 1st Monday in December A. D. 1853, made and entered of record therein a certain order in words and figures as follows, to-wit:

“It appearing to the satisfaction of this court, that a majority of the legal voters of this county voted in favor of a subscription by the county of one hundred thousand dollars to the capital stock of the Warsaw and Rockford Railroad Company at an election held for that purpose on the 8th day of November 1853, in pursuance of a former order of this court made on the 9th day of September 1853, it is therefore ordered that the County Judge of this county, for and on behalf of the county of Rock Island subscribe for one hundred thousand dollars of the capital stock of the Warsaw and Rockford Railroad Company, said subscription to be paid in the bonds of this county at par, redeemable within twenty years from the date of their issue, and to bear interest at the rate of eight per cent per annum, payable annually at the American Exchange Bank in the City of New York, and the amount to be expended in conformity with the resolution of the directors of said company, heretofore passed in relation to county subscriptions; said bonds to be signed by the County Judge of this county, and attested by the clerk of this Court, with the seal of the county attached thereto, and delivered and paid to such company at such time, and in such sums, as the assessments upon the stock of said company subscribed for by indi-

viduals, payable by order of the Board of Directors of said Company.”

And the said defendant further saith that afterwards 16 to-wit, on &c., at &c., John M. Gould the County Judge of said Rock Island County, without any authority other or further than the aforesaid order of the said County Court, and without making any subscription to the capital stock of said Railroad Company on behalf of the said county of Rock Island, caused to be issued the said supposed writings obligatory in the said first count of the said declaration mentioned. Wherefore, the said defendant saith the said supposed writings obligatory were issued without authority of law, and are not nor is either thereof the deed of this defendant, and this the said defendant is ready to verify, wherefore the said defendant prays judgment, &c.”

March 25th 1862, Appellee filed demurrer to 3d and 4th amended pleas. Defendant moved to carry back demurrer to 1st and 2d counts of declaration.— Demurrer to 3d and 4th pleas sustained and overruled as to 1st and 2d counts of declaration. Defendant abides by 3d and 4th pleas, and judgment for plaintiff on 1st and 2d counts of declaration. Issue joined on 17 3d count, trial by court by agreement. Court finds issue for plaintiff and renders judgment for plaintiff in \$800 debt—damages one cent.

Defendant prays an appeal which is allowed, and defendant given until the 10th day of June 1862, to file appeal bond.

June 9th 1862, Appeal Bond filed.

**ERRORS ASSIGNED.**

1st. The Circuit Court erred in overruling appellant's motion to carry back the demurrer to appellant's 3d and 4th pleas, to the 1st and 2d counts of appellee's declaration.

2d. The Circuit Court erred in sustaining appellee's demurrer to appellant's 3d and 4th pleas.

3d. The Circuit Court erred in rendering judgment in favor of appellee on 1st and 2d counts of declaration.

4th. The Circuit Court erred in not rendering judgment in favor of appellant in said cause.

5th. The Circuit Court erred in rendering judgment in favor of appellee in said cause.

*J. P. Hawley*  
*Att'y for Appellant*

223-76

Co. of Rock Island

vs

Joseph Steel &

Abstract

Filed Apr 23, 1863

S Gilman

cm

Supreme Court of Missouri  
April Term A.D., 1863

The County of Rock Island, Appellant  
vs  
Joseph Steele, Appellee

The County of Rock Island, Appellant  
vs  
State Bank, Appellee

It is hereby agreed that the above  
cases shall be <sup>and disposed</sup> heard together,  
upon the Record, and abstracts,  
filed in the first named ~~above~~  
Case, in all respects as though  
Records and abstracts had been  
filed in each Case

April 23 1863

Chas M. Ostrom  
Atty for Appellee

J. B. Wainley Atty  
for Appellant

223

The County of Rock Island  
Appellants

vs  
Joseph Stule, appellee

vs  
Same, Appellants

State Bank

Stipulation

Filed Apr. 23. 1863.  
Island  
Clk.

SUPREME COURT OF ILLINOIS,

*April Term, A. D., 1863.*

THE COUNTY OF ROCK ISLAND,—Appellant,

vs.

JOSEPH STEELE,—Appellee.

ABSTRACT OF THE RECORD.

1 PLEAS &c.,

2 November 18th, A. D. 1861, the appellee sued out of the Rock Island Circuit Court, his summons in debt against the appellant, returnable to the January Term following. Debt \$800, damages \$1000.

3 On the 19th of November 1861, the sheriff returned the writ served.

On the 31st day of December 1861, appellee filed his declaration in debt with two special counts and common counts.

The first special count (after the caption) is as follows :

“Joseph Steele, plaintiff in this suit, complains of the County of Rock Island, defendant in this suit, of a plea that the said defendant render unto the said plaintiff the sum of Eight hundred dollars, which the said defendant owes to and unjustly detains from said plaintiff. For that whereas heretofore to-wit, on the first

day of March A. D. 1855 at the County of Rock Island aforesaid, the said defendant made its seven writings obligatory numbered as follows, to-wit: No. 34, 35, 36, 37, 38, 39 and 40, each of which said writings obligatory, was sealed with the corporate seal of said defendant, and now to the Court here shown, and each of the said writings obligatory, bearing date the day and year aforesaid; and then and there the said defendant by each of said writings obligatory acknowledged itself held and bound unto the Warsaw and Rockford Railroad Company in the sum of one thousand dollars, which the said defendant then and there 4 promised to pay at the American Exchange Bank in the City of New York to the order of the president of the Warsaw and Rockford Railroad or assigns twenty years after the date thereof with interest at the rate of eight per cent per annum from the date thereof, payable annually at the American Exchange Bank in the City of New York, viz: on the first day of July in each year on the presentation and delivering of the respective interest coupons thereto severally adjoined.— The said writings obligatory were redeemable at the expiration of twenty years from the date thereof attached to each of which said writings obligatory was a coupon in substance as follows, to-wit:

EIGHT PER CENT STOCK,

Rock Island County, State of Illinois,

RAIL ROAD BOND NO.

Pay the bearer eighty dollars on the first day of July 1861, (meaning on the first day of July A. D. 1861) interest to that date.

J. M. GOULD,

Judge of County Court, Rock Island County.

And the said plaintiff avers that the several numbers upon said coupons were the same respectively as upon the said writings obligatory to which the said coupons were severally adjoined. Which said writings obligatory were after the making thereof as aforesaid, with

the said coupons attached, to-wit: On the first day of March A. D. 1855 at the county aforesaid, assigned, endorsed and delivered to and ordered to be paid to the plaintiff by the president of the Warsaw and Rockford Railroad Company aforesaid, of which the said defendant then and there had notice, by reason whereof and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in said seven 5 writings obligatory, and in the said coupons thereunto attached, mentioned according to the tenor and effect thereof; and plaintiff further avers that on the day of the maturity of the said seven coupons to-wit, on the first day of July A. D. 1861, the plaintiff presented all and each of the said seven coupons above mentioned for payment at the said American Exchange Bank in the City of New York, and demanded payment thereof which was refused, and the said plaintiff was then and there ready and offered to deliver the said coupons to the defendant, but the said defendant refused and neglected to pay the said moneys to the plaintiff, and neither did the defendant on said day and year last aforesaid or at any other time nor any other person, for the said defendant to pay to the plaintiff the money in said seven coupons specified, nor any part thereof."

6-7 Second special count same in form as first count, and counting on coupons attached to bonds No. 49, 50 and 51, for \$80 each.

Third count, common money counts.

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FO March 5, 1862, being one of the days of said term, appellant filed four pleas :

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Upon the production to them the said Cook, Sargent and Parker, of the certificate of the Chief Engineer of said Warsaw and Rockford Railroad Company of the work actually completed upon the Railroad of said

Railroad Company within the limits of said Rock Island county, and not otherwise, and the said defendant saith that no such certificate of the said Chief Engineer was ever made or produced to the said Cook, Sargent and Parker or either of them, and that the work upon the said Railroad never was actually completed within the limits of said Rock Island County, and this the said defendant is ready to verify, wherefore the said defendant prays judgment, &c."

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viduals, payable by order of the Board of Directors of said Company.”

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June 9th 1862, Appeal Bond filed.

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3d. The Circuit Court erred in rendering judgment in favor of appellee on 1st and 2d counts of declaration.

4th. The Circuit Court erred in not rendering judgment in favor of appellant in said cause.

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*J. R. Hawley*  
*Att. for Appellant*

223

County of Rock Is 12,

vs

Joseph Steele

Abstract

Filed Apr 23, 1863

E Seland  
C/M