

No. 13266

Supreme Court of Illinois

City of Pekin

vs.

Newell

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 275.

City of Pekin
vs
Neivell

7861

State of Illinois, } Ottawa.
SUPREME COURT. } APRIL TERM, 1861.

CITY OF PEKIN }
vs. } ERROR TO TAZEWELL.
GEORGE B. NEWELL. }

ABSTRACT OF RECORD.

This was trespass on the case brought by Newell against the City of Pekin to recover the value of a horse killed by falling through a bridge, leading from the river bank opposite Pekin to the bluff, and tried before Harriott, Judge, and a Jury at the February Term, 1861.

The Declaration was as follows :

1st Court.

Record
page 4.

Plaintiff complains, &c., of the City of Pekin of a plea of Trespass on the case. For that whereas the said defendant before and on the 28th day of February, 1860, was the owner and proprietor of a certain ferry franchise extending across the Illinois River from said city of Pekin, in Tazewell County aforesaid, to the west bank of said River in Peoria County, and also of a certain wooden bridge, built, owned, and kept in repair by said City, and extending from said Ferry across the bottom land to the bluff on the west side of said river in Peoria county; said bridge being made and used for the benefit of, and in connection with said ferry, and together with said ferry used as a common public highway for all persons to pass, repass, &c., and for the carriage of passengers, &c., and that defendant was allowed by law to receive toll, and averred that said defendant being such owner &c., of said ferry and bridge as aforesaid, &c., received said plaintiff upon said ferry and bridge, together with a certain horse of the value of \$250, to be ferried, transported, and taken across said River and bridge from said City of Pekin to the bluff on the west side of the River in Peoria county, for a certain reward to wit: ten cents received by the defendant as toll for the carriage of said plaintiff and his horse across said bridge as aforesaid, and that by reason thereof the defendant ought to have carefully taken the said plaintiff and his said horse upon its said ferry and bridge across said river and bottom lands. But that defendant not regarding its duty in that behalf ferried and took the said plaintiff and his horse so negligently and unskillfully, that by and through the carelessness and unskillfulness of the defendant and its servants and the defective condition of said bridge, and for want of care on the part of the defendant to its duty in the proper construction and keeping in repair the said bridge the said horse of the plaintiff was suffered to fall through said bridge and was wholly lost, &c.

2d Count.

Record
page 6.

And, whereas also the defendant before and on the day and year last aforesaid was the owner and proprietor of a certain other ferry franchise extending across the Illinois river from said city to the west bank of the river in Peoria county, and also of a certain other wooden bridge, built, owned, and kept in repair by said city, and extending from said ferry across the bottom lands to the bluff, on the west side of said river in Peoria county, said bridge being made and used for the benefit of and in connection with said ferry, and together with said ferry used as a common public highway for all persons to pass and repass and for the carriage of passengers. their horses, &c., across and upon said ferry and bridge, and that defendant was accustomed and allowed to receive toll, and that it was the duty of the defendant to have and maintain said ferry and bridge, properly constructed and in good repair, and at all times safe for persons with their horses and other property safely to travel and pass over and across the same, and said plaintiff avers that the said defendant being such owner and proprietor of said bridge and ferry, and so bound to keep the same properly constructed and in good repair; received said plaintiff upon said ferry and bridge together with his horse of the value of \$250, to be taken across said River and bridge from said City to the bluff in Peoria county, for as certain reward paid and received by defendant as toll for the carriage of said plaintiff and his said horse across said ferry and bridge as aforesaid, that by reason thereof the defendant ought carefully and safely have ferried and taken said plaintiff and his horse across said River and bottom lands, but that defendant took said plaintiff and his horse so negligently, carelessly, and unskillfully, that by and through the negligence, unskillfulness, and default of said defendant, its servants and agents, and the defective condition of said bridge, and for want of care on the part of the defendant to its duty in the proper construction of and keeping in repair said bridge, the horse of the said plaintiff on the day and year aforesaid, while the said plaintiff was riding said horse moderately and carefully across said bridge as he had a right to do, was suffered to break and fall through said bridge, whereby said horse become wholly lost to plaintiff.

3d Count
9

The Third count is like the Second with exception that it avers that the city was the owner of a ferry franchise extending across the Illinois River from Pekin to the west bank of the River and of a wooden bridge, built, owned, and kept in repair by the city for the purpose of drawing and facilitating trade to, from, and across said ferry, which said bridge extends from said ferry on the west bank of said River across the bottom land to the bluff on the west side of said River in Peoria county, said

bridge being used by defendant in connection with said ferry as an appurtenance to said ferry, and designed for the accommodation and use of all persons desiring to cross said ferry in either direction with their horses and teams to and from said ferry, and for the carriage of passengers and their horses, property, and teams across and upon said ferry, that defendant was accustomed and allowed to receive toll, that the bridge was built, owned, and assumed to be kept in repair by said defendant in a fit state at all times for travellers with their said horses and teams, safely to pass and repass over and across the same, and that defendant at divers times after the building of said bridge and before the happening of the grievances herein complained, entered upon said bridge by its servants and agents, and made repairs thereon, by reason of all of which it became and was the duty of the defendant to have, maintain, and keep the said bridge properly constructed and in good repair, and at all times safe for all persons with their horses and other property safely to travel and pass over the same, and avers that said defendant being owner of said bridge and bound to maintain and keep the same properly constructed and in good repair, received the plaintiff with his horse to be ferried across said river for a certain reward paid and received as toll, and avers that said bridge was not safely constructed and kept in good and safe repair, and that by reason of the negligent and unskillful manner in which said bridge was built and kept in repair, the horse of the said plaintiff after having so crossed said ferry without fault of plaintiff, and while traveling moderately and carefully across said bridge as it was the right of the plaintiff and his horse to do, then and there broke and fell through said bridge and was wholly lost to plaintiff.

4th Count.

Record
page 13 &
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The Fourth count alleges that the defendant was the owner of a certain other bridge extending from the west bank of the Illinois River to the bluff, built, constructed, and kept in repair by said defendant, and by said defendant used as appurtenant to and in connection with said ferry franchise, owned and used by said defendant for the purpose of transporting passengers, horses, and other stock across said River, to and from said city of Pekin, at which ferry the defendant was in the habit of charging and did charge and receive toll, and that said bridge was so used for the purpose of inducing and facilitating travel to and from said ferry, and for the private benefit and advantage of defendant, and being so kept and used it was the duty of defendant to have and keep the same in good condition and repair, and safe for persons and horses to cross and pass over.— But that the bridge was not kept in good condition and repair,

but was wholly unsafe and so kept as to endanger the lives and property of persons traveling on and across the same, and that plaintiff entered from said ferry on said bridge as he had a right to do, and attempted to cross the same upon his horse, and that by reason of the carelessness, unskillfulness, and default of said defendant in constructing and keeping in repair the said bridge, plaintiff's horse while he was carefully and moderately riding him on said bridge broke and fell through said bridge, and was thereby killed, &c.

Demurrer
to 2, 3 & 4
Counts 16.

The Second, Third and Fourth counts were demurred to and special causes shown that the county did not show that the defendant had funds or was empowered to raise funds with which to repair said bridge, which demur was sustained and plaintiff abided by his Second and Fourth counts with leave to amend his Third count.

Demurrer
to amended
Counts 18.

The First count and amended count were then demurred to and demurrer overruled and the general issue pleaded.

Evidence.
Record 25.

Mrs. Potter—I reside in Peoria county, opposite Pekin, know plaintiff, first saw him in February, 1860. on the bridge opposite Pekin, crossed the ferry with him at Pekin, he was riding a dark-colored sprightly horse, I was on foot, I saw the horse go down through the bridge, he was going in a slow walk, I was at that time about three rods behind plaintiff, saw plaintiff jump off the horse, several boards went down with the horse, the horse hung several moments by his fore legs before he fell; I had crossed the bridge in the morning and saw no hole in the bridge at that time, saw the horse after he had fallen through, his back was broken by the fall, plaintiff held on to the bridle as long as he could. At the time the horse went down plaintiff was riding him along the traveled track where the wheels of the wagons run. The boards seemed to have no hold at their ends on the side stringer and when the horse stepped on them they tilted and let him through.

Act of Le-
gislation
page 25 &
26.

The plaintiff then gave in evidence the following act of the Legislature, which will be found on page 570 of the Laws of 1853.

An act to amend an act to amend the Charter of the city of Pekin.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, that the city of Pekin is hereby authorized to build and construct an embankment and plank road across the Illinois river bottom, opposite said city, and that the right of way over all lands belonging to the State of Illinois, be and is hereby granted to said city of Pekin

for the use of said road, one hundred feet in width, on such route as shall be adopted for said road.

§ 2. That the city of Pekin is hereby authorized to apply any money or moneys which she may have at her control for the purpose of building said road, that she may contract with any person or persons to construct said road and have the entire control of the same when completed, to make such rules and regulations for the management and perservation of the same, not contrary to the laws of Illinois, as said city shall deem best.

§ 3. That the city of Pekin is hereby authorized to subscribe and take stock in any rail or plank roads leading to and from the said city, not exceeding in all the sum of hundred thousand dollars; and that the said city be authorized to borrow such sum or sums of money as may be so subscribed, and issue her bonds for the payment of the same.

§ 4. That said city of Pekin is hereby authorized to levy such tax on the taxable property of said city as shall be sufficient to pay all interest as it accrues on any bonds she may issue for the above purpose.

§ 5. This act to be in force from and after its passage.

Approved February 12, 1853.

To the reading of which the defendant objected because it did not authorize the city to build the bridge in question, but the objection was overruled and an exception taken.

Proceedings
of city council
page 27.

The plaintiff then offered in evidence the following proceedings of the City Council of said city:

December 11th, 1852, the following resolution was adopted:

"Whereas a written contract has been prepared by the Mayor and by him presented to the Council for a road to be made by W. S. Maus as per proposal made by said Maus, and contract awarded to him by the City Council, therefore resolved that James Harriott, Mayor of the city of Pekin, be authorized to enter into the said contract for and on behalf of the city of Pekin, with W. S. Maus for the construction of a plank road and bridge across the Illinois river bottom opposite Pekin, said contract so made shall be binding on the city of Pekin."

Record 28.

A resolution was passed "that the city adopt as the location of the road to be built from the west bank of the river opposite Pekin to the bluff, the route surveyed by J. A. Nason in Octo-

ber last, a profile of which is on file in the Mayor's office, and known as the road now cut out and traveled, the ground to be cleared of stumps on the lower side of the road for 100 feet at least through from the bank to the bluff.

Record 28. January 5th, 1853.—The following resolution that T. N. Gill be appointed a committee to get the Charter of the city amended at the present session of the Legislature, so that the city can control the improvement in the bottom opposite the city when completed and secure the right of way.

Record 29. January 18th, 1853.—The following proceedings were had.

The committee appointed to examine the ferry report that Wm. Craiger proposes renting the ferry until the road through the bottom is completed, and agreed to give \$40 per month and charge such ferriage as the city directs, and to ferry Maus's men that may work on the road free, and committee were of opinion that it had better be rented, which report was concurred in by the council, and the Mayor authorized to contract accordingly.

Record 29. April 4th, 1853.—A resolution was passed appointing JAMES HARRIOTT superintendent of the road and bridge to be built by Maus across the bottom for the city of Pekin, defining his duties, &c.

Record 30, 31, 32. May 21st, 1853.—It was resolved that as Crager desired to be released from his lease of the ferry, that the lease should be transferred to Divinney and a contract leasing the ferry was entered into by the Clerk on the part of the city.

Record 34. July 19th, 1853.—The following proceedings were had. Mr. Gill from the committee to whom was referred the matter in relation to the embankment reported (and which was received by the Council) as follows:

The committee to whom was referred a work of making a bridge and embankment across the bottom, believe it is better to alter the original plan to a pile bridge the entire length above high water mark. Dr. Maus proposes to change the plan and complete the pile bridge for the sum of Twenty-seven thousand dollars.

Your committee have made every calculation that we are capable of making, and believe that the work will cost that amount, and recommend that the Council change the original contract with Dr. Maus from an embankment to a pile bridge, the piling to be ten feet apart, three rows of them, caps twelve

inches square and twenty-four feet long, railing on each side sufficiently strong and braced to protect teams, Provided he will enter into contract with the city for the above amount and release the city from all that has been done on the old contract, allowing the city of course for the money he has received on this plan instead of the old plan."

Pekin, July 18th, 1853.

Record 35. Thereupon the following resolution was adopted :

That the Mayor should appoint a committee of two to inquire into all matters connected with the costs of making a pile bridge across the bottom opposite the city above high water mark, and the best mode of constructing the same and report in ten days. A committee was appointed by the Council and reported that piles and lumber could be furnished for 12½ cents per foot.

Record 36. The following resolution was adopted :

Resolved, that the Mayor appoint D. P. Kenyon and Peter Weyhrich special committee to alter the contract with W. S. Maus, in relation to the work in the bottom opposite Pekin, from an embankment to a pile work above high water mark, provided the whole work will not cost over twenty-seven thousand dollars, and that they should report at next meeting a written contract with said Maus.

Record 37. September 1st, 1853.

The special committee to whom was referred the matter of altering the contract with W.S.Maus, for a pile bridge across the bottom opposite the city of Pekin, presented to the Council the contract of the said W. S. Maus, which was received, read, and approved, and ordered to be recorded. The contract is fully set out in the record and provides for the building of a pile bridge, such as described by plaintiff's witness, by said Maus for the city for the sum of Twenty-seven thousand dollars to be paid by the city.

Contract 37
to 40.

Record 40. September 14th, 1853.—It was resolved that the city engineers estimate for \$1200 on work done on the bridge opposite Pekin be allowed, and the Clerk ordered to draw an order on the city Treasurer for one thousand dollars, being for the above estimate less than 20 per cent reserved as per contract.

October 14th, 1853.

Resolved, that the certificate of the city engineer upon the contract of W. S. Maus with the city, authorizing a further es-

estimate of \$2200 less 20 per cent, be received and allowed, and the Clerk directed to draw an order on the Treasurer in favor of W. S. Maus for \$1760, the amount of estimate No. 3.

Record 42. November 4th, 1853.—A resolution was passed to allow Maus \$2000, it being the amount of estimate No. 4.

December 3d, 1853.—A resolution to allow said Maus \$2500, being amount of estimate No. 5, for the plank road in the bottom.

Record 43. On motion it was resolved that the Mayor appoint a committee of two to obtain the right of way for the plank road across the bottom opposite the city.

Record 43, 44. March 4th, 1854.—Maus was allowed one thousand dollars, being amount of estimate No. 8, on W. S. Maus plank road contract.

April 17th, 1854.—Maus was ordered by the clerk to be charged with \$5000 advanced to him on his former contract of February 8th, 1853.

June 2d, 1854.—The following resolution was introduced and concurred in by the Board, that the sum of one thousand dollars to Maus in addition to what he has had heretofore on his contract for building the bridge across the bottom opposite Pekin

August 11th, 1854.—One thousand dollars was allowed Maus to apply upon the timber by him purchased for the plank road and wages for his workmen.

April 21st, 1855.—It was resolved that an order be drawn on the Treasurer for \$1200, in compliance with the report of the bridge committee, to wit: \$300 per week commencing with the week on which said Maus shall resume work on said contract.

March 7th, 1856.—The Board rejected the application of Maus asking to be placed at his disposal the amount due on his contract on the completion of the bridge.

Record 46. The City Attorney was required to bring suit against Maus for his non-compliance with his contract.

March 24th, 1857.—The Council by resolution agreed to arbitrate the dispute between Maus and the city about the contract for building the bridge across the river bottom.

Record 50. July 13th, 1857.—The Bridge committee were required to investigate the matter of the bridge, and see what was necessary to make it permanent.

March 28th, 1858.—On motion it was ordered that Prettyman and Wagenseller be appointed a special committee to examine the work done on the bridge by Carey.

May 29th, 1858.—The clerk was ordered to draw an order on the Treasurer in favor of John Gridley \$1390.37 for April interest on bridge bonds.

Record 51.

September 23d, 1859.—A resolution was introduced extending the lease with H. G. Carey of the ferry one year from October 26th, 1859, at rate of \$70.00 per month, and in consideration that said Carey should put the bridge on the opposite side of the river in good repair, for the sum of \$350; the repairs to be done under the superintendence of the bridge committee and to the entire satisfaction of the City Council.

April 10th, 1860.—It was ordered that the clerk draw an order on the Treasurer in favor of H. G. Carey, for \$350, for work done on the bridge.

Record
page 52.

To the reading of all of said proceedings in evidence the defendant objected for the reason that the City Council had no authority to do the acts therein mentioned, which objection was overruled, to which the defendant at the time excepted.

Flory
Record 52.

Ralph Flory was called for plaintiff, said he was a horse farrier by profession, was called by plaintiff to examine his horse, about February 1860, the horse was then under the bridge spoken of by the other witnesses, on examination I found the horse's back was broken, that injuries were fatal and that he would die. I walked and led my horse across the bridge, I felt afraid of and did not consider it safe, the horse was a good horse, five or six years old, I advised the plaintiff to kill the horse. the bridge was sprung so as to let the plank slip off at the ends where the horse went down. To cross the bridge was the ordinary way of travel from the ferry to the bluff to the west side, the plank on the bridge were loose, not fastened down in any way.

Niles Cole
Record 53.

Niles Cole for plaintiff—I know plaintiff, saw him 28th of February, 1860, at Pekin, I always pay ferriage when I cross, I crossed at the same time with Newell, was behind him and passed him on the bridge, and was 100 and 20 rods ahead of him on the bridge when the horse fell through and heard plain-

ture it was liable to be out of repair, the plank was mostly oak, some white elm, there was no other way to get from the ferry to the bluff in a wet time except across the bridge.

Miles
Crandall
Record 56.

Miles Crandall sworn—I live about a $\frac{1}{4}$ or $\frac{1}{2}$ mile from the bridge, and I have known it since it was built, the horse was dead when I saw him, he was worth from \$160 to \$180, such horses were selling at \$200, I should not consider the bridge a safe structure, the plank are not fastened down, it is built of piles driven in the ground from 4 to 6 feet, is caped, piles 6 feet apart crosswise and 12 feet lengthwise, the planks had about 2 inches hold at the end of the outside stringer, I do not consider the bridge safe and never was, some of the stringers were sprung so that when a horse walked on the side the plank would tilt up. If there had been an earth embankment thrown up and planked it would have been safe, the plaintiff was a stranger in this part of the country.

Carollin
Record 57.

Xavier Carrollin sworn—I reside in Pekin, I am a carpenter, have observed the structure of the bridge, the stringers and piles are too light and ought to be braced, the stringers have no brace, the plank have about 2 inches to lay on at the ends, the stringers are liable to spring from the action of the weather, and there were no braces to prevent it, the bridge has not been completed, I do not know whether the stringers came off or not, I know how bridges ought to be built, the bridge is about 12 feet high, I do not consider the bridge safe.

D. M. Stevenson
Record 58.

The horse of plaintiff was a remarkably fine horse, well worth \$175, last saw the horse at Delavan, Calzwell county, Feb. 28th, when plaintiff was on his way to Peoria county by way of Pekin.

W. B. Parker
Record 60.

W. B. Parker was city clerk, city owned the ferry at time of accident, the ferry rented for more after the bridge was built than before.

Divinney
Record 60.

Divinney sworn—took Crager's lease off his hands and paid \$30 per month, the city took it away from me and leased it at \$70.

Carey
Record 60.

H. G. Carey—I rent ferry of the city at \$70 per month, I have repaired the bridge to the amount of about \$300 under the direction of City Council and they paid me for it.

J. H. Riblet
Record 60 61.

J. H. Riblet sworn—I have known bridge six years, it is set on piles driven into the earth about five feet, which overflows and is soft, never have thought the bridge safe since July, 1856, my wagon in going over it pulled up three planks, from the nature of the structure it cannot be safe. The foregoing was all the evidence.

Defendant offered no evidence but upon the closing of plaintiff's evidence moved the Court to exclude the same from the

Jury for the reason that it did not sustain the declaration, and there was no legal liability on the city to repair the bridge, which motion was overruled and an exception taken.

The Court, thereupon, give for the plaintiff the following instructions:

1st

If the Jury believe from the evidence that the defendant is and was on the 28th day of February, 1860, the owner of a ferry franchise across the Illinois River and running from the south-east bank of said river at the city of Pekin, to the north-west bank of said river opposite in Peoria county, and that for carrying passengers and their property across said river by said ferry, the defendant is allowed by law to receive, and does receive tolls, and if the Jury shall further believe from the evidence that the defendant is also the owner of a wooden bridge, leading from said ferry on said north-west bank of said river, across the bottom lands to the bluff, on said north-west side of said river. That said bridge was built and designed to be kept in suitable repair by said defendant and used as appurtenant to said ferry, and for the purpose of attracting travel to and across said ferry, and that repairs have actually been made from time to time by defendant upon said bridge, and if the Jury shall further believe from the evidence, that on or about the day above named the defendant received the plaintiff upon said ferry and bridge, to cross the same with a horse, the property of said plaintiff, and received toll therefor, and if the Jury shall further believe from the evidence that said bridge was not in good repair and safe for the passage of horses across the same, and that the plaintiff had not notice that said bridge was out of repair and unsafe, and that in attempting to cross same with his horse the said horse fell through said bridge and was killed, or so badly injured as to be rendered valueless or of little value to the plaintiff, because of the defective and unsafe condition of the said bridge and without any fault on the part of the plaintiff, the Jury should find for the plaintiff and allow him such damages as they shall believe from the evidence he has sustained thereby.

That whether the city had or had not sufficient legal authority to build and keep in repair said bridge, yet if it undertook so to do, and to invite travel across said bridge it was bound to do its work well and make said bridge safe and sufficient for the purpose designed, and if the Jury shall believe from the evidence that the city did build and undertook to keep in repair the said bridge and did the work so defectively that the plaintiff sustained the damage complained of thereby, without any fault on his part, the Jury should find for the plaintiff. To the

giving of which the defendant at the time excepted.

The defendant then asked the Court to give the Jury the following instructions :

1st The Court instructs the Jury that the city council of the city of Pekin had no right to build the bridge in question, or to expend money to keep the same in repair, and that no acts in relation to the management and control of the same of said city council are binding upon the Corporation, and that there being no authority on the part of the city to build said bridge, or to repair or keep the same in repair, the Jury will find the defendant not guilty.

The Court instructs the Jury that that there is no obligation upon the part of the city to repair the bridge in question, and they will find for the defendant.

Which the Court refused to give, to which the defendant at the time excepted.

New trial
Record 65.

The defendant moved for a new trial because the Court gave improper instructions and refused proper instructions, admitted improper evidence, and there was no legal liability on the part of the city to repair. The motion was overruled and an exception taken.

JAMES ROBERTS,
Attorney for Appellant.

State of Illinois, } Ottawa.
SUPREME COURT. } APRIL TERM, 1861.

CITY OF PEKIN }
vs. } ERROR TO TAZEWELL.
GEORGE B. NEWELL. }

ABSTRACT OF RECORD.

This was trespass on the case brought by Newell against the City of Pekin to recover the value of a horse killed by falling through a bridge, leading from the river bank opposite Pekin to the bluff, and tried before Harriott, Judge, and a Jury at the February Term, 1861.

The Declaration was as follows :

1st Court.

Record
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Plaintiff complains, &c., of the City of Pekin of a plea of Trespass on the case. For that whereas the said defendant before and on the 28th day of February, 1860, was the owner and proprietor of a certain ferry franchise extending across the Illinois River from said city of Pekin, in Tazewell County aforesaid, to the west bank of said River in Peoria County, and also of a certain wooden bridge, built, owned, and kept in repair by said City, and extending from said Ferry across the bottom land to the bluff on the west side of said river in Peoria county; said bridge being made and used for the benefit of, and in connection with said ferry, and together with said ferry used as a common public highway for all persons to pass, repass, &c., and for the carriage of passengers, &c., and that defendant was allowed by law to receive toll, and averred that said defendant being such owner &c., of said ferry and bridge as aforesaid, &c., received said plaintiff upon said ferry and bridge, together with a certain horse of the value of \$250, to be ferried, transported, and taken across said River and bridge from said City of Pekin to the bluff on the west side of the River in Peoria county, for a certain reward to wit: ten cents received by the defendant as toll for the carriage of said plaintiff and his horse across said bridge as aforesaid, and that by reason thereof the defendant ought to have carefully taken the said plaintiff and his said horse upon its said ferry and bridge across said river and bottom lands. But that defendant not regarding its duty in that behalf ferried and took the said plaintiff and his horse so negligently and unskillfully, that by and through the carelessness and unskillfulness of the defendant and its servants and the defective condition of said bridge, and for want of care on the part of the defendant to its duty in the proper construction and keeping in repair the said bridge the said horse of the plaintiff was suffered to fall through said bridge and was wholly lost, &c.

2d Count.

Record
page 6.

And, whereas also the defendant before and on the day and year last aforesaid was the owner and proprietor of a certain other ferry franchise extending across the Illinois river from said city to the west bank of the river in Peoria county, and also of a certain other wooden bridge, built, owned, and kept in repair by said city, and extending from said ferry across the bottom lands to the bluff, on the west side of said river in Peoria county, said bridge being made and used for the benefit of and in connection with said ferry, and together with said ferry used as a common public highway for all persons to pass and repass and for the carriage of passengers. their horses, &c., across and upon said ferry and bridge, and that defendant was accustomed and allowed to receive toll, and that it was the duty of the defendant to have and maintain said ferry and bridge, properly constructed and in good repair, and at all times safe for persons with their horses and other property safely to travel and pass over and across the same, and said plaintiff avers that the said defendant being such owner and proprietor of said bridge and ferry, and so bound to keep the same properly constructed and in good repair; received said plaintiff upon said ferry and bridge together with his horse of the value of \$250, to be taken across said River and bridge from said City to the bluff in Peoria county, for as certain reward paid and received by defendant as toll for the carriage of said plaintiff and his said horse across said ferry and bridge as aforesaid, that by reason thereof the defendant ought carefully and safely have ferried and taken said plaintiff and his horse across said River and bottom lands, but that defendant took said plaintiff and his horse so negligently, carelessly, and unskillfully, that by and through the negligence, unskillfulness, and default of said defendant, its servants and agents, and the defective condition of said bridge, and for want of care on the part of the defendant to its duty in the proper construction of and keeping in repair said bridge, the horse of the said plaintiff on the day and year aforesaid, while the said plaintiff was riding said horse moderately and carefully across said bridge as he had a right to do, was suffered to break and fall through said bridge, whereby said horse become wholly lost to plaintiff.

3d Count
9

The Third count is like the Second with exception that it avers that the city was the owner of a ferry franchise extending across the Illinois River from Pekin to the west bank of the River and of a wooden bridge, built, owned, and kept in repair by the city for the purpose of drawing and facilitating trade to, from, and across said ferry, which said bridge extends from said ferry on the west bank of said River across the bottom land to the bluff on the west side of said River in Peoria county, said

bridge being used by defendant in connection with said ferry as an appurtenance to said ferry, and designed for the accommodation and use of all persons desiring to cross said ferry in either direction with their horses and teams to and from said ferry, and for the carriage of passengers and their horses, property, and teams across and upon said ferry, that defendant was accustomed and allowed to receive toll, that the bridge was built, owned, and assumed to be kept in repair by said defendant in a fit state at all times for travellers with their said horses and teams, safely to pass and repass over and across the same, and that defendant at divers times after the building of said bridge and before the happening of the grievances herein complained, entered upon said bridge by its servants and agents, and made repairs thereon, by reason of all of which it became and was the duty of the defendant to have, maintain, and keep the said bridge properly constructed and in good repair, and at all times safe for all persons with their horses and other property safely to travel and pass over the same, and avers that said defendant being owner of said bridge and bound to maintain and keep the same properly constructed and in good repair, received the plaintiff with his horse to be ferried across said river for a certain reward paid and received as toll, and avers that said bridge was not safely constructed and kept in good and safe repair, and that by reason of the negligent and unskillful manner in which said bridge was built and kept in repair, the horse of the said plaintiff after having so crossed said ferry without fault of plaintiff, and while traveling moderately and carefully across said bridge as it was the right of the plaintiff and his horse to do, then and there broke and fell through said bridge and was wholly lost to plaintiff.

4th Count.
Record
page 13 &
18

The Fourth count alleges that the defendant was the owner of a certain other bridge extending from the west bank of the Illinois River to the bluff, built, constructed, and kept in repair by said defendant, and by said defendant used as appurtenant to, and in connection with said ferry franchise, owned and used by said defendant for the purpose of transporting passengers, horses, and other stock across said River, to and from said city of Pekin, at which ferry the defendant was in the habit of charging and did charge and receive toll, and that said bridge was so used for the purpose of inducing and facilitating travel to and from said ferry, and for the private benefit and advantage of defendant, and being so kept and used it was the duty of defendant to have and keep the same in good condition and repair, and safe for persons and horses to cross and pass over.— But that the bridge was not kept in good condition and repair,

but was wholly unsafe and so kept as to endanger the lives and property of persons traveling on and across the same, and that plaintiff entered from said ferry on said bridge as he had a right to do, and attempted to cross the same upon his horse, and that by reason of the carelessness, unskillfulness, and default of said defendant in constructing and keeping in repair the said bridge, plaintiff's horse while he was carefully and moderately riding him on said bridge broke and fell through said bridge, and was thereby killed, &c.

Demurrer
to 2, 3 & 4
Counts 16.

The Second, Third and Fourth counts were demurred to and special causes shown that the county did not show that the defendant had funds or was empowered to raise funds with which to repair said bridge, which demur was sustained and plaintiff abided by his Second and Fourth counts with leave to amend his Third count.

Demurrer
to amended
Counts 18.

The First count and amended count were then demurred to and demurrer overruled and the general issue pleaded.

Evidence.
Record 23.

Mrs. Potter—I reside in Peoria county, opposite Pekin, know plaintiff, first saw him in February, 1860, on the bridge opposite Pekin, crossed the ferry with him at Pekin, he was riding a dark-colored sprightly horse, I was on foot, I saw the horse go down through the bridge, he was going in a slow walk, I was at that time about three rods behind plaintiff, saw plaintiff jump off the horse, several boards went down with the horse, the horse hung several moments by his fore legs before he fell; I had crossed the bridge in the morning and saw no hole in the bridge at that time, saw the horse after he had fallen through, his back was broken by the fall, plaintiff held on to the bridle as long as he could. At the time the horse went down plaintiff was riding him along the traveled track where the wheels of the wagons run. The boards seemed to have no hold at their ends on the side stringer and when the horse stepped on them they tilted and let him through.

Act of Le-
gislation
page 25 &
26.

The plaintiff then gave in evidence the following act of the Legislature, which will be found on page 570 of the Laws of 1853.

An act to amend an act to amend the Charter of the city of Pekin.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, that the city of Pekin is hereby authorized to build and construct an embankment and plank road across the Illinois river bottom, opposite said city, and that the right of way over all lands belonging to the State of Illinois, be and is hereby granted to said city of Pekin

for the use of said road, one hundred feet in width, on such route as shall be adopted for said road.

§ 2. That the city of Pekin is hereby authorized to apply any money or moneys which she may have at her control for the purpose of building said road, that she may contract with any person or persons to construct said road and have the entire control of the same when completed, to make such rules and regulations for the management and perservation of the same, not contrary to the laws of Illinois, as said city shall deem best.

§ 3. That the city of Pekin is hereby authorized to subscribe and take stock in any rail or plank roads leading to and from the said city, not exceeding in all the sum of hundred thousand dollars; and that the said city be authorized to borrow such sum or sums of money as may be so subscribed, and issue her bonds for the payment of the same.

§ 4. That said city of Pekin is hereby authorized to levy such tax on the taxable property of said city as shall be sufficient to pay all interest as it accrues on any bonds she may issue for the above purpose.

§ 5. This act to be in force from and after its passage.

Approved February 12, 1853.

To the reading of which the defendant objected because it did not authorize the city to build the bridge in question, but the objection was overruled and an exception taken.

Proceedings
of city council
page 27.

The plaintiff then offered in evidence the following proceedings of the City Council of said city:

December 11th, 1852, the following resolution was adopted:

"Whereas a written contract has been prepared by the Mayor and by him presented to the Council for a road to be made by W. S. Maus as per proposal made by said Maus, and contract awarded to him by the City Council, therefore resolved that James Harriott, Mayor of the city of Pekin, be authorized to enter into the said contract for and on behalf of the city of Pekin, with W. S. Maus for the construction of a plank road and bridge across the Illinois river bottom opposite Pekin, said contract so made shall be binding on the city of Pekin."

Record 28.

A resolution was passed "that the city adopt as the location of the road to be built from the west bank of the river opposite Pekin to the bluff, the route surveyed by J. A. Nason in Octo-

ber last, a profile of which is on file in the Mayor's office, and known as the road now cut out and traveled, the ground to be cleared of stumps on the lower side of the road for 100 feet at least through from the bank to the bluff.

Record 28. January 5th, 1853.—The following resolution that T. N. Gill be appointed a committee to get the Charter of the city amended at the present session of the Legislature, so that the city can control the improvement in the bottom opposite the city when completed and secure the right of way.

Record 29. January 18th, 1853.—The following proceedings were had.

The committee appointed to examine the ferry report that Wm. Craiger proposes renting the ferry until the road through the bottom is completed, and agreed to give \$40 per month and charge such ferriage as the city directs, and to ferry Maus's men that may work on the road free, and committee were of opinion that it had better be rented, which report was concurred in by the council, and the Mayor authorized to contract accordingly.

Record 29. April 4th, 1853.—A resolution was passed appointing JAMES HARRIOTT superintendent of the road and bridge to be built by Maus across the bottom for the city of Pekin, defining his duties, &c.

Record 30, 31, 32. May 21st, 1853.—It was resolved that as Crager desired to be released from his lease of the ferry, that the lease should be transferred to Divinney and a contract leasing the ferry was entered into by the Clerk on the part of the city.

Record 34. July 19th, 1853.—The following proceedings were had. Mr. Gill from the committee to whom was referred the matter in relation to the embankment reported (and which was received by the Council) as follows:

The committee to whom was referred a work of making a bridge and embankment across the bottom, believe it is better to alter the original plan to a pile bridge the entire length above high water mark. Dr. Maus proposes to change the plan and complete the pile bridge for the sum of Twenty-seven thousand dollars.

Your committee have made every calculation that we are capable of making, and believe that the work will cost that amount, and recommend that the Council change the original contract with Dr. Maus from an embankment to a pile bridge, the piling to be ten feet apart, three rows of them, caps twelve

inches square and twenty-four feet long, railing on each side sufficiently strong and braced to protect teams, Provided he will enter into contract with the city for the above amount and release the city from all that has been done on the old contract, allowing the city of course for the money he has received on this plan instead of the old plan."

Pekin, July 18th, 1853.

Record 35. Thereupon the following resolution was adopted :

That the Mayor should appoint a committee of two to inquire into all matters connected with the costs of making a pile bridge across the bottom opposite the city above high water mark, and the best mode of constructing the same and report in ten days. A committee was appointed by the Council and reported that piles and lumber could be furnished for 12½ cents per foot.

Record 36. The following resolution was adopted :

Resolved, that the Mayor appoint D. P. Kenyon and Peter Weyhrich special committee to alter the contract with W. S. Maus, in relation to the work in the bottom opposite Pekin, from an embankment to a pile work above high water mark, provided the whole work will not cost over twenty-seven thousand dollars, and that they should report at next meeting a written contract with said Maus.

Record 37. September 1st, 1853.

Contract 37 to 40. The special committee to whom was referred the matter of altering the contract with W. S. Maus, for a pile bridge across the bottom opposite the city of Pekin, presented to the Council the contract of the said W. S. Maus, which was received, read, and approved, and ordered to be recorded. The contract is fully set out in the record and provides for the building of a pile bridge, such as described by plaintiff's witness, by said Maus for the city for the sum of Twenty-seven thousand dollars to be paid by the city.

Record 40. September 14th, 1853.—It was resolved that the city engineers estimate for \$1200 on work done on the bridge opposite Pekin be allowed, and the Clerk ordered to draw an order on the city Treasurer for one thousand dollars, being for the above estimate less than 20 per cent reserved as per contract.

October 14th, 1853.

Resolved, that the certificate of the city engineer upon the contract of W. S. Maus with the city, authorizing a further es-

estimate of \$2200 less 20 per cent, be received and allowed, and the Clerk directed to draw an order on the Treasurer in favor of W. S. Maus for \$1760, the amount of estimate No. 3.

Record 42. November 4th, 1853.—A resolution was passed to allow Maus \$2000, it being the amount of estimate No. 4.

December 3d, 1853.—A resolution to allow said Maus \$2500, being amount of estimate No. 5, for the plank road in the bottom.

Record 43. On motion it was resolved that the Mayor appoint a committee of two to obtain the right of way for the plank road across the bottom opposite the city.

Record 43, 44. March 4th, 1854.—Maus was allowed one thousand dollars, being amount of estimate No. 8, on W. S. Maus plank road contract.

April 17th, 1854.—Maus was ordered by the clerk to be charged with \$5000 advanced to him on his former contract of February 8th, 1853.

June 2d, 1854.—The following resolution was introduced and concurred in by the Board, that the sum of one thousand dollars to Maus in addition to what he has had heretofore on his contract for building the bridge across the bottom opposite Pekin

August 11th, 1854.—One thousand dollars was allowed Maus to apply upon the timber by him purchased for the plank road and wages for his workmen.

April 21st, 1855.—It was resolved that an order be drawn on the Treasurer for \$1200, in compliance with the report of the bridge committee, to wit: \$300 per week commencing with the week on which said Maus shall resume work on said contract.

March 7th, 1856.—The Board rejected the application of Maus asking to be placed at his disposal the amount due on his contract on the completion of the bridge.

Record 46. The City Attorney was required to bring suit against Maus for his non-compliance with his contract.

March 24th, 1857.—The Council by resolution agreed to arbitrate the dispute between Maus and the city about the contract for building the bridge across the river bottom.

Record 50. July 13th, 1857.—The Bridge committee were required to investigate the matter of the bridge, and see what was necessary to make it permanent.

March 28th, 1858.—On motion it was ordered that Prettyman and Wagenseller be appointed a special committee to examine the work done on the bridge by Carey.

May 29th, 1858.—The clerk was ordered to draw an order on the Treasurer in favor of John Gridley \$1390.37 for April interest on bridge bonds.

Record 51.

September 23d, 1859.—A resolution was introduced extending the lease with H. G. Carey of the ferry one year from October 26th, 1859, at rate of \$70.00 per month, and in consideration that said Carey should put the bridge on the opposite side of the river in good repair, for the sum of \$350; the repairs to be done under the superintendence of the bridge committee and to the entire satisfaction of the City Council.

Record
page 52.

April 10th, 1860.—It was ordered that the clerk draw an order on the Treasurer in favor of H. G. Carey, for \$350, for work done on the bridge.

To the reading of all of said proceedings in evidence the defendant objected for the reason that the City Council had no authority to do the acts therein mentioned, which objection was overruled, to which the defendant at the time excepted.

Flory
Record 52.

Ralph Flory was called for plaintiff, said he was a horse farrier by profession, was called by plaintiff to examine his horse, about February 1860, the horse was then under the bridge spoken of by the other witnesses, on examination I found the horse's back was broken, that injuries were fatal and that he would die. I walked and led my horse across the bridge, I felt afraid of and did not consider it safe, the horse was a good horse, five or six years old, I advised the plaintiff to kill the horse. the bridge was sprung so as to let the plank slip off at the ends where the horse went down. To cross the bridge was the ordinary way of travel from the ferry to the bluff to the west side, the plank on the bridge were loose, not fastened down in any way.

Niles Cole
Record 53.

Niles Cole for plaintiff—I know plaintiff, saw him 28th of February, 1860, at Pekin, I always pay ferriage when I cross, I crossed at the same time with Newell, was behind him and passed him on the bridge, and was 100 and 20 rods ahead of him on the bridge when the horse fell through and heard plain-

tiff call, looked back and saw him holding on to his horse whose hind parts were off the bridge, the plank by the springing of the outside stringers were not long enough to reach, and having no support would tilt with the horse's weight, several plank tilted and went through at the time the horse fell, the horse could not get up, was crippled in the back in some way, he was a valuable horse of light brown color, do not consider it a safe bridge, it is built of piles with square bents, and stringers from bent to bent. I think the stringers were sprung so that the plank were not long enough to reach. The piles are driven about four feet in the ground, the earth is very soft and at w.t times wholly impassable over that part where the bridge is. The bridge leads directly from the ferry to the bluff, there are three piles under each bent of the bridge, one at each end and one in the middle, the bridge has never been completed, there is nothing to brace the stringers to prevent them from springing and leaving the ends of the plank without support, according to my judgment the bridge was never safe, it is about twelve feet high from the ground, the piles are not very stiff, and the tremor of the bridge can be felt for a half mile when teams are crossing. I do not consider it a safe bridge for the purpose for which it was designed; it is over $1\frac{1}{2}$ miles long, I had a horse fall partly through the bridge a short time prior to the time plaintiff's horse fell through.

S. C.
Wheeler
Record 55.

S. C. Wheeler for plaintiff—I passed the bridge next day after the horse fell through, the horse was still living and I thought it ought to be killed, I thought it a fine horse worth \$175.00, I have been acquainted with the bridge ever since it was built, do not think the bridge was ever safe, it was not properly made, piles were driven into the ground and capped, stringers were laid on the caps and boards on the stringers without being fastened down. In walking behind a heavy loaded team one could hardly keep his feet for the vibration, this is the result of the slimness of the piles, I have seen stringers that had fallen off.

D Goodwin
Record 55.

David Goodwin sworn—I know plaintiff, he enquired the way to Elmwood on the day his horse fell through the bridge, he appeared to be a stranger in these parts, the horse was worth \$175, I crossed the ferry with plaintiff. he paid toll, it was ten cents for the horse and man, I knew the bridge at the time the horse was killed, the bridge was out of repair, it was because the bridge was out of repair that the accident occurred, there were no braces between the joints, and from the character of the struc-

ture it was liable to be out of repair, the plank was mostly oak, some white elm, there was no other way to get from the ferry to the bluff in a wet time except across the bridge.

Miles
Crandall
Record 56.

Miles Crandall sworn—I live about a $\frac{1}{4}$ or $\frac{1}{2}$ mile from the bridge, and I have known it since it was built, the horse was dead when I saw him, he was worth from \$160 to \$180, such horses were selling at \$200, I should not consider the bridge a safe structure, the plank are not fastened down, it is built of piles driven in the ground from 4 to 6 feet, is caped, piles 6 feet apart crosswise and 12 feet lengthwise, the planks had about 2 inches hold at the end of the outside stringer, I do not consider the bridge safe and never was, some of the stringers were sprung so that when a horse walked on the side the plank would tilt up. If there had been an earth embankment thrown up and planked it would have been safe, the plaintiff was a stranger in this part of the country.

Carrollin
Record 57.

Xavier Carrollin sworn—I reside in Pekin, I am a carpenter, have observed the structure of the bridge, the stringers and piles are too light and ought to be braced, the stringers have no brace, the plank have about 2 inches to lay on at the ends, the stringers are liable to spring from the action of the weather, and there were no braces to prevent it, the bridge has not been completed, I do not know whether the stringers came off or not, I know how bridges ought to be built, the bridge is about 12 feet high, I do not consider the bridge safe.

D. M. Ste-
venson
Record 58.

The horse of plaintiff was a remarkably fine horse, well worth \$175, last saw the horse at Delavan, Tazewell county, Feb. 28th, when plaintiff was on his way to Peoria county by way of Pekin.

W. B.
Parker
Record 60.

W. B. Parker was city clerk, city owned the ferry at time of accident, the ferry rented for more after the bridge was built than before.

Divinney
Record 60.

Divinney sworn—took Crager's lease off his hands and paid \$30 per month, the city took it away from me and leased it at \$70.

Carey
Record 60.

H. G. Carey—I rent ferry of the city at \$70 per month, I have repaired the bridge to the amount of about \$300 under the direction of City Council and they paid me for it.

J. H. Riblet
Record
60 61.

J. H. Riblet sworn—I have known bridge six years, it is set on piles driven into the earth about five feet, which overflows and is soft, never have thought the bridge safe since July, 1856, my wagon in going over it pulled up three planks, from the nature of the structure it cannot be safe. The foregoing was all the evidence.

Defendant offered no evidence but upon the closing of plaintiff's evidence moved the Court to exclude the same from the

Jury for the reason that it did not sustain the declaration, and there was no legal liability on the city to repair the bridge, which motion was overruled and an exception taken.

The Court, thereupon, give for the plaintiff the following instructions:

1st

If the Jury believe from the evidence that the defendant is and was on the 28th day of February, 1860, the owner of a ferry franchise across the Illinois River and running from the south-east bank of said river at the city of Pekin, to the north-west bank of said river opposite in Peoria county, and that for carrying passengers and their property across said river by said ferry, the defendant is allowed by law to receive, and does receive tolls, and if the Jury shall further believe from the evidence that the defendant is also the owner of a wooden bridge, leading from said ferry on said north-west bank of said river, across the bottom lands to the bluff, on said north-west side of said river. That said bridge was built and designed to be kept in suitable repair by said defendant and used as appurtenant to said ferry, and for the purpose of attracting travel to and across said ferry, and that repairs have actually been made from time to time by defendant upon said bridge, and if the Jury shall further believe from the evidence, that on or about the day above named the defendant received the plaintiff upon said ferry and bridge, to cross the same with a horse, the property of said plaintiff, and received toll therefor, and if the Jury shall further believe from the evidence that said bridge was not in good repair and safe for the passage of horses across the same, and that the plaintiff had not notice that said bridge was out of repair and unsafe, and that in attempting to cross same with his horse the said horse fell through said bridge and was killed, or so badly injured as to be rendered valueless or of little value to the plaintiff, because of the defective and unsafe condition of the said bridge and without any fault on the part of the plaintiff, the Jury should find for the plaintiff and allow him such damages as they shall believe from the evidence he has sustained thereby.

That whether the city had or had not sufficient legal authority to build and keep in repair said bridge, yet if it undertook so to do, and to invite travel across said bridge it was bound to do its work well and make said bridge safe and sufficient for the purpose designed, and if the Jury shall believe from the evidence that the city did build and undertook to keep in repair the said bridge and did the work so defectively that the plaintiff sustained the damage complained of thereby, without any fault on his part, the Jury should find for the plaintiff. To the

giving of which the defendant at the time excepted.

The defendant then asked the Court to give the Jury the following instructions :

1st The Court instructs the Jury that the city council of the city of Pekin had no right to build the bridge in question, or to expend money to keep the same in repair, and that no acts in relation to the management and control of the same of said city council are binding upon the Corporation, and that there being no authority on the part of the city to build said bridge, or to repair or keep the same in repair, the Jury will find the defendant not guilty.

The Court instructs the Jury that that there is no obligation upon the part of the city to repair the bridge in question, and they will find for the defendant.

Which the Court refused to give, to which the defendant at the time excepted.

New trial
Record 65. The defendant moved for a new trial because the Court gave improper instructions and refused proper instructions, admitted improper evidence, and there was no legal liability on the part of the city to repair. The motion was overruled and an exception taken.

JAMES ROBERTS,
Attorney for Appellant.

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City of Berlin

vs
Geo B. Russell
Abstract

Filed Apr 18. 1861
A. Deland
Clk

To a Circuit Court begun
and held at the Court House in
Tekin within and for the County
of Tazewell and State of Illinois,
on the first Monday of the month
of June in the year of our Lord
One thousand eight hundred and
sixty, Present, Hon James Harriatt
Judge of the 21st Judicial Circuit
of the State of Illinois, composed of
the Counties of. Mason, Tazewell &c
Hugh Fullerton States Attorney
Thomas C. Reeves Sheriff and
Mirville C. Young Clerk

Be it remembered that on the 19th day of May A.D. 1860, a precept was filed in the office of the Clerk of the Circuit Court of said County and State, which said precept is in the words and figures following to wit

George B. Newell } In the Circuit Court
The City of Sikeston } Frazarwell County Mo.
of the June Term 1860

Turpass on the case—
Damages \$500.00
The Clerk of said Court will issue

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summons in the above entitled suit
returnable as the law directs, also issue
as requested by Peff
Doria May 1860 } J. K. Cooper
To Merrill C. Young Esq. } for peff-

And now afterwards, to wit: on the
same day a summons was issued from the
office of the clerk of the Circuit Court of
said County, which said summons is, in
the words and figures, following, to wit:

State of Illinois }
Jazwell County } ss. The People of the State
of Illinois, to the Sheriff
of said County, Greeting:

We command you, that you summon
the City of Pekin, if they shall be found in
your County, personally to be and appear
before the Circuit Court of Jazwell County
on the first day of the next term thereof, to
be held at the Court House in Pekin, in said
County, on the first Monday of June next
then and there to answer unto George P.
Newell in plea of Trespass on the case
to the damage of said plaintiff as he says
in the sum of Five hundred Dollars,
and have you then and there this writ
with an endorsement thereon, in what

3

manner you shall have executed the same
 Witness M.C. Young, Clerk of the
 said Court and the seal thereof
 at Pekin aforesaid this 19th day of
 May 1860

Seal

Merrill C. Young Clerk Circuit Court
 per A.P. Griswold Deputy Clerk

Which said summons was returned on
 the 21st day of May A.D. 1860 with the following
 endorsement, to wit:—

State of Illinois }
 Tazewell County } I have duly served the
 within by reading the same to A.P. Griswold
 and J.E. Leonard this 19th day of May
 A.D. 1860.

J.B. Reeves Shff &c.
 by J.B. Reeves deputy

And now afterwards, to wit: on the
 25th day of May A.D. 1860, a declaration
 was filed in the office of the Clerk of the
 Circuit Court of said County, which said
 declaration is in the words and figures follow-
 ing, to wit:—

State of Illinois } set
 Tazewell County } In the Circuit Court
 of the June Term A.D. 1860

George B. Newell complains of
the City of Pekin of a plea of Trespass on
the case. For that whereas the said defendant
before and on the 28th day of February
A.D. 1860, was the owner and proprietor of
a certain ferry franchise extending across
the Illinois River from said City of Pekin
in Tazewell County aforesaid to the
west bank of said River in Peoria County
and also of a certain wooden Bridge
built, owned and kept in repair by said
City and extending from said Ferry across
the bottom land to the bluff on the
west side of said river in Peoria County,
said Bridge, being made & used for the
benefit of and in connection with said
Ferry. and together with said Ferry
used as a common public highway
for all persons to go, return, pass and
repass upon, in & by with horses, property
and teams; and for the carriage of passen-
gers, with their said horses, property and
teams across and upon said Ferry and
Bridge, said defendant then was and
still is accustomed and allowed by
law to take and receive toll, and said
plaintiff avers that the said defendant
so being such owner and proprietor of
said Ferry and Bridge as aforesaid

on the day and year aforesaid at
Tazewell County aforesaid, received
said plaintiff upon said Ferry and
Bridge together with a certain Horse the
property of the said plaintiff of great
value, to wit: of the value of Two hun-
dred and fifty dollars, to be ferried
transported and taken across said
river and bridge from said City of
Pekin in Tazewell County aforesaid, to
the Bluff on the west side of said river
in Peoria County for a certain reward
and fare, to wit: for the sum of ten cents
then and there paid by said plff. and
received by said defendant as toll for
the carriage of said plaintiff and his said
horse across said Ferry and Bridge as
aforesaid, and plaintiff avers that by
reason thereof the said defendant ought
carefully and safely have ferried, trans-
ported and taken the said plaintiff and
his said horse upon its said ferry and bridge
across said river and bottom lands. Yet
the said defendant not regarding its duty
in that behalf, ferried transported and
took the said plaintiff & horse so carelessly
negligently and unskillfully that by
and through the carelessness, negligence
unskillfulness and default of said

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defendant, its servants and agents, and
 the defective condition of said Bridge, and
 for want of care and attention on the part
 of Dft to its duty in the proper construction
 & keeping in suitable repair of the said
 Bridge, the horse of the said plaintiff
 on the day and year aforesaid at Poria
 County, to wit: at Tazewell County aforesaid
 was suffered to break and did break and
 fall through said bridge by means whereof
 said Horse was greatly injured inasmuch
 that the said horse then and there became
 and was rendered wholly useless, and a
 total loss to said plaintiff, to wit: at
 Tazewell County aforesaid

2^d

And whereas also the said defendant
 before and on the day and year last
 aforesaid was the owner and proprietor
 of a certain other ferry franchise, extend-
 ing across the Illinois river from said
 City of Pekin in Tazewell County aforesaid
 to the west bank of said river in Poria
 County, and also of a certain other
 wooden bridge, built, owned and kept
 in repair by said City, and extending
 from said Ferry across the bottom lands
 to the Bluff on the west side of said
 river in Poria County, said Bridge being

made and used for the benefit of, and
in connection with said Ferry, and together
with said Ferry used as a common public
highway, for all persons to go, return, pass
and repass upon, with horses property and
teams, and for the carriage of passengers,
with their said horses, property and teams
across and upon said Ferry and Bridge
said defendant then was and still is
accustomed and allowed by law to take
and receive toll: by reason whereof it
then and there became and was the duty
of said defendant to have and maintain
the said Ferry and Bridge properly
constructed & in good repair and at
all times safe for persons with their
Horses and other property safely to travel
and pass over and across the same, and
said plaintiff avers that the said defendant
so being such owner and proprietor of
said bridge and ferry as aforesaid, and
so bound to have maintain and keep
the same properly constructed and in
good repair, on the day and year aforesaid,
to wit: at Tazewell County aforesaid
received said plaintiff upon said Ferry
and Bridge together with a certain
other horse the property of the said
plaintiff of great value, to wit: of the

value of Two hundred and fifty dollars
to be ferried transported and taken safely
across said river and bridge from said
City of Pekin in said Tazewell County to
the Bluff on the west side of said river
in said Poria County for a certain fare
and reward then and there paid by said
plaintiff and received by said defendant
as toll for the carriage of said plaintiff
and his said horse across said Ferry and
Bridge as aforesaid, Yet said plaintiff
says that said defendant so negligently
and unskilfully constructed said Bridge
and kept the same in such bad repair
and unsafe that by reason thereof and
through the negligence, carelessness
unskilfulness and default of said
defendant its servants and agents in
constructing and keeping the same in
repair that the said Horse of the said
plaintiff while the said plaintiff (as
he had a right to do) was riding the
same moderately and carefully upon
and over said Bridge, without any
default on the part of said plaintiff
broke and fell through the same on
the day and year aforesaid at Poria
County aforesaid, to wit: at said Tazewell

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County by means whereof said horse
 was greatly injured, inasmuch that
 the same thereby then and there became
 and was wholly useless and unfit for
 service and a total loss to said peff
 and said plaintiff was forced and
 obliged and did then and there pay
 lay out and expend divers large
 sums of money, amounting in the
 whole to the sum of Fifty dollars,
 in and about taking care of and
 endeavouring to cure the bruises and
 injuries sustained by said horse, to wit-
 at Tazewell County aforesaid

3d And whereas also the said defendant
 before and at the time of the committing
 the grievance hereinafter mentioned
 to wit in at said Tazewell County, was
 and still is the owner of a certain
 other ferry franchise extending across
 the Illinois River from said City of
 Pekin in Tazewell County aforesaid
 to the west bank of said River in Peoria
 County, and also of a certain other
 wooden Bridge built, owned and
 kept in repair by said City, for the
 purpose of drawing and facilitating
 trade to, from and across said Ferry

" which said Bridge extends from said
 " Ferry on the west bank of said river
 " across the bottom land to the Bluff
 " on the west side of said River, in said
 " Peoria County, said Bridge being
 " used by defendant in connection
 " with said Ferry as an appurtenance
 " thereto, and designed for the accommodation
 " use of all persons desiring to cross said
 " Ferry in either direction with their
 " horses and teams to and from said
 " Ferry & in time and for the carriage of
 " passengers with their said horses,
 " property & teams across and upon
 " their said Ferry, said defendant then
 " was and still is accustomed and allowed
 " by law to receive and take & then did and
 " still does take and receive toll; and heff avers
 " that said Bridge was built owned &
 " assumed to be kept in repair by said
 " defendant and in a fit state at all
 " times for travellers with their said horses
 " & teams safely to pass & repass, over &
 " across the same, and that said defendant
 " at divers times after the building of said
 " Bridge & before the happening of the
 " grievances herein complained of, entered
 " upon said Bridge by its servants &
 " agents, and made repairs thereon, by

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reason of all which. it then and there
became and was the duty of said defendant
to have maintain & keep the said Bridge
properly constructed and in good repair
and at all times safe for persons with
horses and other property safely to
travel and pass over and across the
same; and said plaintiff further avers
that the said defendant so being such
owner and proprietor of said Bridge
as aforesaid and so bound to have maintain
and keep the same properly constructed
and in good repair afterwards, to wit: on
the 28th day of February A.D. 1860 at
Tazewell County aforesaid received
said plaintiff with a certain other horse
the property of the said plaintiff of great
value, to wit: of the value of Two hundred
and fifty Dollars, upon said Ferry to
be ferried across said river for certain
fare and reward then and there paid
by said plaintiff and received by said
defendant as toll for the carriage of said
plaintiff and his said Horse across
said ferry. And plff avers that said
Bridge was not safely constructed
& kept in good & safe repair by said deft
& that by reason of the negligent, careless
and unskillfull manner in which said

bridge was built constructed and
 kept in repair by defendant, the horse
 of said plaintiff after having so crossed
 as aforesaid with said plff at said ferry
 without any fault on the part of the
 said plff, and while travelling along
 moderately & carefully across said
 bridge, as it was the right of the said
 plaintiff, and his said horse to do, then
 and there broke and fell through said
 Bridge, and was then and there so greatly
 damaged and injured by said fall
 as to be rendered wholly valueless
 and unserviceable and plaintiff was
 forced to allow said horse to be killed
 to put him out of pain and said plaintiff
 was forced and obliged, and did then
 and there pay, lay out and expend divers
 other large sums of money, to wit: the
 further sum of Fifty dollars in and
 about taking care of, and endeavouring
 to cure the injuries sustained by said
 Horse, to wit: at Tazewell County
 aforesaid -

And whereas also the said defendant
 before and at the time of the commission
 of the grievances hereinafter complained

of, to wit: on the day and year last
 aforesaid, to wit, at said Tazewell
 County, was the owner and proprietor
 of a certain other wooden structure
 & bridge extending from the west
 bank of the Illinois River, opposite
 the City of Pekin in said Tazewell
 County, to the Bluff on the west side
 of said River, built, constructed & kept
 up by said defendant, and by said
 defendant used as appurtenant to
 & in connection with a certain other
 ferry franchise, owned and used
 by said defendant, for the purpose of
 transporting passengers, horses and
 other stock and teams across said Illinois
 River, to and from said City of Pekin, and
 at which said Ferry, defendant was in
 the habit of charging and did by law
 charge and receive toll; and plaintiff
 avers that said Bridge was so used
 by said defendant for the purpose of
 inducing and facilitating travel to
 & from said Ferry, and for the private
 benefit & advantage of defendant, and
 being so kept and used, it was the
 duty of defendant to have & keep the
 same in good condition & repair & safe
 for persons & horses to cross and pass

on and over the same = Yet plaintiff
says that the said Bridge was not kept
by said defendant in good condition
and repair, but on the contrary thereof
was wholly unsafe, and so kept as
to endanger the lives and property of
persons travelling on, and across the
same, and plaintiff avers that
afterwards, to wit: on the said 28th
day of February A.D. 1860, at Prosser
County, to wit: at said Tazewell County,
plaintiff entered upon said Bridge
from said Ferry as he had a right to
do, & attempted to cross the same, upon
a certain other Horse the property of said
plaintiff, of great value, to wit: of the
value of Two hundred and fifty dollars
which said plaintiff was then and there
riding at the time, and that by reason
of the carelessness, unskillfulness and
default of said defendant in constructing
and keeping in repair the said Bridge,
the said Horse of plaintiff, while plaintiff
was carefully and moderately riding
the same on and over said Bridge, while
at said Tazewell County, broke and fell
through said Bridge, and was thereby
then and there greatly damaged and
injured, and so as to be rendered wholly

helpless and valueless in consequence
 of said fall. and plaintiff was then
 and there obliged to lay out and expend
 other large sums of money, to wit: the
 further sum of Fifty dollars, in and
 about the care and attention of said
 Horse; all which as also the said Horse
 was wholly lost to said plaintiff. Whereby
 and by reason of the negligence, and skillfulness
 and default of said plaintiff, in const-
 ructing and keeping in repair said
 Bridge, plaintiff avers that he has been
 and is greatly injured, to wit: at Tazewell
 County of our said.

To the damage of the said plaintiff of
 Five hundred dollars and therefore he
 brings his suit &c

Jona. K. Cooper atty for Plff

And now afterwards, to wit: at a
 Term of the Circuit Court begun and held
 at the Court House in Pekin within and for
 the County of Tazewell and State of Illinois
 on the first Monday in the month of September
 A.D. 1860. Present Hon James Harriott, Judge of
 the 21st Judicial Circuit of the State of Illinois
 composed of the Counties of Mason, Tazewell &c
 Hugh Fullerton States Attorney. Thomas C.

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Recees Sheriff and Merrill C. Young Clerk
the following proceedings were had; to wit:-

Wednesday September 5th 1860

George B. Newell

"
The City of Pekin

} Trespass on the case

being the 3^d day of said Term
Now on this day comes

the defendants by their attorney Roberts and
file their demurrer to the Plaintiffs declaration
which said demurrer is in the words and
figures following; to wit:-

State of Illinois } In Circuit Court
Tazewell County } September Term 1860

City of Pekin

vs

George B. Newell

And the said defendant
by Roberts attorney comes and defends, and
says that the matters and things in the
2^d, 3^d & 4th counts of said plaintiffs
declaration and each of them is insuff-
-icient in law to be answered unto and
for the said plaintiff to maintain his
aforesaid action thereof against said
defendant, and this the defendant is

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" verify & wherefore he prays Judgment &c
 " And for special cause of demurrer said
 " defendant shows that said 2^d, 3^d & 4th
 " counts are each of them insufficient in
 " this that they do not show that the defendant
 " had funds, or was empowered to raise
 " with which to repair said Bridge

James Roberts

atty for Deft

And now afterwards, to wit: on the
 same day, the following proceedings were
 had, to wit:

George B. Newell

vs

The City of Pekin

} In response on the case

Now comes the parties
 by their attorneys, and this cause having
 come on to be heard upon the demurrer to the
 plaintiffs declaration, and the Court having
 heard argument of counsel thereon and
 being fully advised in the premises, is of
 opinion that the same be sustained to all
 counts but the 1st. Whereupon the Plaintiff
 abides by the demurrer to the 2^d & 4th counts, with
 leave of Court to amend as to 3^d Count

And now afterwards, to wit: on the same day comes the defendant and enters their demurrer to the 1st & 3^d amended counts of Plaintiff's declaration, which said demurrer was in the words and figures following, to wit:

" State of Illinois } In Circuit Court
 " Tazewell County } September Term 1860.

" City of Pekin }
 " at }
 " George B. Newell }

And the said defendant comes and defends the wrong and injury wherein and says that the first count and the 3^d amended count of said plaintiff's declaration, and the matters and things therein contained are insufficient in law to be answered unto by the said defendant and this the said defendant is ready to verify, wherefore he prays Judgment

pat

And for special cause of demurrer Deft shows that said 1st count and amended count does not show that the defendant had funds or power to raise funds with which to repair -

2^d. The said 1st count and amended count

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does not show that it was through and
by the negligent manner in which the
repairing was done that the injury occurred
Roberts for Deft

And now afterwards, to wit: on the same
day the following proceedings were had, to wit:

George B. Sewell	} Trespass on the case
The City of Pekin	

Now again on this
day, come the parties by their attorneys, and
this cause coming on to be heard upon the
demurrer to the 1st count and 3^d amended
count of the plaintiffs declaration, and the
Court having heard argument of counsel
thereon and being fully advised in the
premises, is of opinion that the same be
overruled.

And now afterwards, to wit: on the
12th day of said month of September it being
the 9th day of said Term, the following
proceedings were had, to wit: =

George B. Sewell	} Trespass on the case
The City of Pekin	

Now on this day comes the defendant and files his plea in said cause, which said plea is in the words and figures following; to wit: =

State of Illinois } In Circuit Court
Jazewell County } September Term 1860

City of Pekin }
" ^{vs} }
George B. Jewell }

And the said defendant comes and defends the wrong and injury when &c and says that he is not guilty in manner and form as the plaintiff has above thereof complained against him, and this he prays may be inquired of by the Country &c

Roberts for Deft

And now afterwards, to wit: = on the same day the following proceedings were had, to wit: =

George B. Jewell }
" ^{vs} } Tresspass on the case
The City of Pekin }

Now again on this day

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come the parties by their attorneys, and on motion this cause is ordered to be continued at defendants costs, and it is agreed by the parties herein that the depositions of D. Stephenson, A. Cole, & Mrs Patter may be taken at defendants costs.

And now afterwards, to wit: at a Term of the Circuit Court begun and held at the Court House in Pekin, within and for the County of Tazewell and State of Illinois on the first Monday of the month of February A.D. 1861. Present Hon James Harriott Judge of the 21st Judicial Circuit of the State of Illinois, composed of the Counties of Mason, Tazewell &c Hugh Fullerton States Attorney, Chapman Williamson Sheriff and George A. Harlow Clerk, the following proceedings were had, to wit:—

Wednesday February 6, A.D. 1861,
3^d day of the Term

George B. Newell }
vs } Trespass on the case
The City of Pekin }
Now on this day comes

as well the Plaintiff by his Attorney Cooper as the said defendant by his Attorney Roberts whereupon came a Jury of twelve good and lawful men, to wit: D. J. Bennett, John Nichols, C. S. Worthington, Wm M. Galliard, Bennett Arnold, Daniel Prescott, W. B. Hurry, Elbert Parke, John Williams, J. S. Haynes, M. S. Davis & Joseph Slaughter, duly elected, tried and sworn, who having heard the allegations and proofs of parties, and argument of counsel thereon, for verdict say, We the Jury find for the Plaintiff and assess his damages in the sum of one hundred seventy five dollars (\$175-) whereupon the defendant moved the Court for a new trial, which motion the Court overruled, It is therefore ordered and adjudged by the Court, that the Plaintiff have and recover of the said defendant, the damages aforesaid in manner and form found as aforesaid likewise the costs and charges by him about his suit expended and that execution issue therefor.

Whereupon the defendant prayed an appeal, which is granted by the Court, with Bond to be filed in Thirty days in the sum of Three hundred & fifty Dollars (\$350-)

and by agreement of parties the Clerk to approve the bond

And now afterwards, to wit: on the 25th day of March A.D. 1861, the defendant in said cause, filed his bill of exceptions in the office of the Clerk of the Circuit Court of said County, which said Bill of Exceptions is in the words and figures following; to wit:—

State of Illinois } In Circuit Court of
 " Tazewell County } said County February Term 1861.

George B. Sewell }
 " " } Bill of Exceptions
 " The City of Pekin }

Be it remembered that upon the trial of this cause the following evidence was given on the part of the plaintiff— Mrs Mary Patter sworn, I reside in Proia County opposite Pekin, I know the plaintiff, first saw him in February 1860 on the Bridge opposite Pekin, I crossed the Ferry with him from Pekin; he was riding a dark colored sprightly horse, I was on foot; I saw the horse go down through the Bridge; he was going in slow walk—

" I was at that time about three rods behind
 " the Plaintiff = I saw the Plaintiff jump
 " off the horse = several of the boards went
 " down with the horse = the horse hung
 " several minutes by his fore legs before
 " he fell = I had crossed the bridge in the
 " morning and saw no hole in the bridge
 " at the time = saw the horse after he had
 " fallen = he could not get up = his back
 " was broken by the fall = the Bridge is
 " only a single track with places for
 " the wagons to turn out = Mr Bale was
 " on the bridge ahead of us = he had
 " been behind plff & had passed him
 " on the bridge = when Jewell got off
 " the horse, the horse's hind parts were
 " falling through = Plaintiff held on
 " to the bridle as long as he could = at
 " the time the horse went down Plff was
 " riding him along the traveled track
 " just where the wheels of the wagons run =
 " where the horse fell through, the boards
 " seemed to have no hold at their ends on
 " the side stringer, and that when the horse
 " stepped on them they tilted up and let
 " him through =

Plaintiff then offered in
 evidence the following act of the

Legislature -

An act to amend an act to amend
the Charter of the City of Pekin.

Section 1. Be it enacted by the People
of the State of Illinois, represented in the
General Assembly. That the City of
Pekin is hereby authorized to build and
construct an embankment and plank
road across the Illinois river bottom,
opposite said City, and that the right of
way over all lands belonging to the
State of Illinois be and is hereby granted
to said City of Pekin for the use of said
Road, one hundred feet in width, on
such route as shall be adapted for said
road.

§ 2. That the City of Pekin is hereby
authorized to apply any money or
moneys which she may have at her
control for the purpose of building
said road; that she may contract with
any person or persons to construct said
road, and have the entire control of the
same when completed, to make such
rules and regulations for the management
and preservation of the same, not contrary
to the laws of Illinois, as said City shall
deem best.

§ 3. That the City of Pekin is hereby authorized to subscribe and take stock in any rail or plank roads leading to and from the said City, not exceeding in all the sum of one hundred thousand dollars, and that the said City be authorized to borrow such sum or sums of money as may be so subscribed, and issue her bonds for the payment of the same.

§ 4. That said City of Pekin is hereby authorized to levy such tax on the taxable property of said City as shall be sufficient to pay all interest as it accrues on any bonds she may issue for the above purpose.

§ 5. This act to be in force from and after its passage.
 Approved February 12, 1853.

To the reading of which in evidence the defendant objected.

- 1st Because the act was unconstitutional
- 2^d Because it did not authorize the City to build the Bridge in question,

which objections were overruled and the same admitted, to which defendant

at the time excepted.

The Plaintiff then called A. P. Grinnald
who testified that he was Clerk of the
City of Pekin, that the record produced
was the record of the proceedings of the
Common Council of said City: The
plaintiff then read in evidence the
following proceedings of said Council.

December 11th 1852.

The following Resolution was adopted
to wit:—

Whereas a written contract has been
prepared by the Mayor and by him
presented to the Council for the contri-
-bution of a road to be made by Wm. S.
Mans as per proposal made by said
Mans, and contract awarded to him
by the City Council, therefore, Resolved
that James Harriatt Mayor of the City
of Pekin be authorized to enter into
the said contract for and on behalf of
the City of Pekin with Wm. S. Mans for the
construction of a plank road and Bridge
across the Illinois bottom opposite Pekin,
said contract so made by the said James
Harriatt, shall be binding on the City
of Pekin

November 25th 1852

The following resolution was offered and adopted, to wit:-

Resolved, that the City Council adopt as the location of the Road to be built from the west bank of the river opposite Pekin to the Bluff- The route surveyed by J. A. Mason in October last, a profile of which is on file in the mayors office, and known as the Road now cut out & travelled the ground to be cleared entirely of stumps and everything on the lower side of the Road for 100 feet at least through from the Bank to the Bluff

January 5th 1853,

The following resolution was offered and adopted, to wit:-

Resolved, that Thomas K. Gill be appointed a committee to get the Charter of the City of Pekin amended at the present session of the Legislature so that the City can control the improvements in the Bottom opposite the City when completed and secure the right of way

January 18th 1853

The committee appointed to examine

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the Jury report, that Mr Craiger proposes
renting the ferry until the road through
the bottom is completed and agrees to
give \$40. per month payable monthly
to charge such rates of Ferriage as the City
directs. to ferry all Dr Maus' men that may
work on the road free, also J. A. McGrew free,
we are of opinion that the City had better
rent the ferry to Mr Craiger until the
road is done as above stated

Peter Heybrich
 Thos. Lill
 James A McGrew

} Committee

on motion the report was concurred in by
the Board, and the following Resolution adopted
Resolved, That the Mayor be authorized
to contract with Mr Craiger in accordance
with the above report

April 4th 1853,

The following resolution was
offered and adopted, to wit:—
Resolved, that James Harriatt be appointed
Superintendent of the Road & Bridges to
be constructed by W. B. Maus across the
bottom, for the City of Pekin, the duties of
said Superintendent are to inspect all
timber, to see if it in quality is according
to contract, also all stone and embankment

work to decide if it is done according to contract, and to act general & special agent to look after the interest of said City in said work

May 21, 1853

Mr Heybrich introduced the following Resolution which was concurred in by the Council

Whereas the City Council having leased the ferry to William Craiger for a specified time and said Craiger offers and wishes to be released from his contract and that William Divinney is willing to take the place of said Craiger and be bound by all the conditions of his said lease, provided said lease be extended till the road now constructing by the City across the Bottom is completed, Resolved, That the lease now held by Craiger be transferred to William Divinney with all its terms and conditions excepting that the time be extended to the completion of said road when it shall cease, said Divinney shall make such bond as the council shall approve and that Craiger shall be held bound by his lease until the Bond of the said Divinney shall be approved, then a new lease shall

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be made to Divinney and Craiger
shall surrender his lease

May 24, 1853

Resolved that the City Council of the City
of Pekin do accept the lease made in
accordance with a resolution of the
Council by W^m Divinney and that the
Clerk be authorized to sign the lease
on the part of the City, and that the
same be put on Record, - which resolution
was concurred in by the Board -

This Indenture made and entered into
this the twenty third day of May in the
year of our Lord one thousand eight
hundred and fifty three, between the
City of Pekin of the first part and William
Divinney and C^W Westernman and W^m S. Wans
Surties, of the City of Pekin County of
Tazewell and State of Illinois of the
second part - Witness that the said
party of the first part hath let, and
by these presents doth grant, demise and
let unto the said party of the second part
The Ferry Ferry House, Boats, Tackle, appurtenances
^{and} appurtenances belonging to said Ferry, until
the completion of the road building by
the City of Pekin across the Illinois River
at a monthly rent or the sum of thirty

dollars payable monthly in advance
and it is agreed between the parties that
the said Devanny shall keep said Ferry
boat and every thing appertaining thereto
in good repair and will cross all persons
who shall desire so to do for such fees and
compensation as now is or shall be allowed
by law and protect and save harmless the
City of Pekin from all damage that may
accrue in any manner to any person or
persons of their property in crossing at said
ferry or in any manner that the City would
be liable for damages for owner of said ferry
it is also agreed that if any rent shall be
due and unpaid, or if default shall be made
in any of the covenants herein contained
then it shall be lawful for the said party
of the first part to re-enter and take possession
of said Ferry, Ferry House, Boats &c and
remove all persons therefrom and the
said party of the second part doth covenant
to pay the said party of the first part the said
monthly rent as herein specified namely
monthly on the first of each & every month
in advance and at the expiration of said
term the said party of the second part will
quit and surrender the said Ferry, Ferry
House, Boats &c hereby demised in as good

" state and condition as reasonable use
 " and wear thereof will permit, and the
 " said party of the first part doth covenant
 " that the said party of the second part that
 " on the paying the said monthly rent and
 " performing the covenants aforesaid, shall
 " and may peaceably and quietly have
 " hold and enjoy the said desired Ferry
 " Ferry House, Boats &c for the time aforesaid,
 " In witness whereof we have hereunto set our
 " hands and affixed our seals this the
 " twenty third day of May in the year
 " of our Lord one thousand eight hundred
 " and fifty three

W^m Devinney (seal)
 C Waterman (seal)
 W^m S. Maud (seal)
 W^m D. Parker (seal)
 Clerk of the City of Pekin

" I William Devinney the within
 " lessee do hereby acknowledge that I
 " am now holding and will continue
 " to hold and conduct the within
 " mentioned Ferry according to the
 " terms of lease to William Crago wife
 " the City authorities shall make the
 " terms more favorable to the said
 " Devinney in his opinion, Witness

my hand and seal this 24th May AD 1853
W^m Devinney Secd

July 19, 1853

Mr Gill from the Special Committee to whom was referred the matter in relation of the embankment across the Illinois River made the following report which was read and received and the Committee discharged and is as follows, to wit:-

The Committee to whom was referred a work of making a Bridge and embankment across the bottom believe that it is better to alter the original plan to a pile Bridge, the entire length above high water mark. Dr Mans proposes to change the plan and complete the pile bridge for the sum of Twenty seven thousand dollars. Your Committee have made every calculation that we are capable of making and believe that the work will cost that amount therefore we recommend that the Council change the original contract with Dr Mans from an embankment to a pile Bridge, the piling to be ten feet apart, three rows of them caps twelve inches square and twenty four feet long, railing over

each side sufficiently strong and
braced to protect teams & providing
he will enter into contract with the
City for the above amount and release
the City from all that has been done
on the old contract allowing the City
of course for the money he has received
on this plan instead of the old plan

Atkin July 18, 1853

Thomas N. Gill

D. P. Kenyon

Benjamin Buck

} Committee

Mr. Heyrick introduced the following
Resolution which was concurred in by
the Board.

Resolved, that the Mayor appoint
a committee of two with the following
instructions, that they inquire into
all matters connected with the cost of
making a pile bridge across the bottom
opposite the City to be above high water
mark also as to the best mode of constructing
said Bridge and that they report to the
Council in ten days from this date

The Mayor appointed Kenyon, Heyrick
and Clauser as a committee to carry
out the purpose of the above resolution

July 30th 1853

Mr Heyhrich of the Special committee to examine and make report in relation to the Bridge across the bottom of the Illinois River opposite the City of Pekin made the following report which was received read and concurred in by the Council and is as follows, to wit:-

To the Hon Mayor and Council of the City of Pekin.

Your special committee to examine and make report in relation to a Bridge across the Bottom of the Illinois River opposite the City of Pekin respectfully submit as follows as their Report that the said committee have made all the enquiry in the matter that the time and the circumstances justified and they find that piles can be furnished and drove not to exceed twenty feet in length when the Lumber for the same can be obtained within four miles from the place of use for the sum of twelve and a half cents per foot. Your committee further report that the piles should be driven ten feet apart all of which is submitted to the consideration of the Council

P. Heyhrich

Mr Gill introduced the following resolution which was concurred in by the Board

Resolved that the Mayor appoint D.P. Kinyon & Peter Weyhrich as a special committee to alter the contract with Wm. B. Maus in relation to the work in the bottom opposite Pekin from an embankment to a Pile work above high water mark provided the whole work will not cost over twenty seven thousand dollars that they report at the next meeting with a written contract with said Maus

September 1st 1853

The Special Committee to whom was referred the matter of altering the Contract with Wm. B. Maus for Pile Bridge across the Bottom opposite the City of Pekin presented to the Council the contract of the said Wm. B. Maus which was received read and approved and ordered made a matter of Record which is as follows, to wit:

This contract made and entered into this the Sixth day of August in the year of our Lord One thousand eight hundred and fifty three, between William B. Maus and the City of Pekin, Witness that in consideration of covenants and the

promises hereinafter made by the City of
Pekin. The said William B. Maus party of the
first part hereby covenants promises and
agrees with the City of Pekin to build and
construct a pile Bridge from the river bank
opposite the City of Pekin to be above high
water mark at the Bluff the length being
Eight thousand one hundred feet, and
ground to designated by the City Council of
the City of Pekin with piles of white oak
Burr Oak or Black Walnut not less than
twelve inches in diameter at the Butt and
to be twelve feet span from centre of pile to
centre and to be placed three in a bent
twenty feet from outside to outside, each
bent of piles to be capped by timber 12 by 12
twenty four feet long, projecting two feet
each end beyond the butt sides of the piles
The floor of said Bridge to be above high
water mark of (1849) The railing of said
Bridge shall be made of sawed timber
three by six three and a half feet high running
the whole length on each side and braced
from end of each cap the upright post of
said railing to be six feet apart, there shall
be seven joists to each bent, the two outside
four by twelve for the whole length
the balance to be three by twelve, the
plank for floor of said bridge to be of four

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" or white oak, two and a half inches
" thick and to be fastened in accordance
" with a model furnished by the said
" William S. Maus the rids and meade
" ties for fastening down said plank to
" be three inches thick, There shall be
" a suitable apron for landing, stepping
" from low water mark up to the level of the
" bridge, said apron shall be so fastened as to
" resist the force of the water in the River in
" any stage, The whole work is to be finished
" in the best style, and with the best quality of
" materials on or before the first day of May A.D. 1854
" The quality of the work and material to be
" judged of and decided upon by James
" Harriott an agent appointed by the City
" Council, and if he thinks that the said
" Maus is at any time violating any of
" the conditions of the contract he may
" call in two good practical framers and
" if a majority of the three thus appointed
" shall so decide the said Maus shall
" stop the work until the defects are
" remedied

" For which the City of Pekin covenants
" and agrees to pay the said William S.
" Maus the sum of twenty seven
" thousand dollars for the whole work
" complete, including labor and materials

as the work progresses the City Council shall pay to said Maus, on the first day each and every month Eighty per cent of the work done and materials furnished. The twenty per cent of the amount of labor done and materials furnished shall be retained by the City Council until the whole work is complete, and not paid until the work is accepted by the Council.

All money furnished, advanced or paid to the said William S. Maus by the City of Pekin intended to apply on his former contract with said City entered into on the first day of December AD 1852, shall apply in payment on this contract, and the said Maus shall not be entitled to any pay or compensation for anything he may have done on the previous contract, And for all the undertakings promises and covenants herein set forth to be done by the said W^m S. Maus, he the said William S. Maus binds himself his heirs executors and administrators firmly by these presents, and the City of Pekin hereby covenants and promises to do and perform on her part all the undertakings and

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promises herein set forth to be by the
said City of Pekin done and performed
In witness whereof the said William
S. Mans and William B. Parker Clerk
of the City of Pekin hath herunto set
their hands and seals the day and year
above written

W. S. Mans Seal

W. B. Parker Seal

Clerk of the City of Pekin

September 14, 1853

The following resolution was introduced
and concurred in by the Board-

Resolved that the City Engineers
estimate for \$1200. on work done on the
Bridge opposite Pekin be allowed, and
the Clerk ordered to draw an order on the
Treasurer for One thousand dollars being
for above estimate less the 20 per cent
reserved as per contract

October 14, 1853

The following resolution was introduced
and concurred in by the Board

Resolved, that the certificate of the
City Engineer upon the contract of Wm
S. Mans with the City, authorizing a

42 " further estimate of \$2200. less 20 per
" cent be received and allowed and the
" Clerk be directed to draw his order on
" the Treasurer in favor of Wm B. Maus for
" \$1760. the amount of estimate No 3

November 4, 1853.

" The following resolution was introduced
" and concurred in by the Board

" Resolved, that the Clerk of the Council
" of the City of Pekin be authorized to
" draw on the Treasurer in favor of
" William B. Maus, for the sum of
" Two thousand Dollars it being the
" amount of estimate No 4 less twenty
" per cent.

December 3, 1853

" The following resolution was introduced
" and concurred in by the Board.

" Resolved, that the estimate of the City
" Engineer in favor of Wm B. Maus being
" Estimate Number 5, on account of the
" Plank Road in the bottom, amounting
" to \$2500, less twenty per cent be and is
" hereby allowed, and the Clerk is hereby
" authorized to issue an order for that
" amount

January 28, 1854.

On motion it was resolved, that the Mayor appoint a committee of two, whose duty shall be to see that the right of way is obtained over the bottom opposite the City of Pekin for the plank road.

The Mayor appointed Messrs. Meyrick & Buck as that committee.

March 4, 1854.

Mr Gill presented the ^{City Engineers} estimate No 8 on Wm B. Mans plank road contract amounting to \$1250- which was received and on motion it was ordered that the Clerk draw an order on the Treasurer for the sum of One thousand dollars in favor of Wm B. Mans it being the amount of said estimate less twenty per cent.

April 17, 1854.

The following resolution was introduced, the Yeas & Nays were called by Mr Kenyon. and was adopted Messrs Kenyon, Gill, & Meyrick voting in the affirmative, Mr Buck in the negative, and is as follows, to wit: Whereas the City of Pekin advanced

44 " to William S. Maus, five thousand dollars
" on the Eighth of February 1853, to assist him
" in commencing his contract with the
" City, to build a bridge across the bottom
" opposite the City, and the City having no
" security for the said money, it is deemed
" necessary to charge the five thousand dollars
" over to Maus in part payment for his
" work and that it make part of the 80 per
" cent which he was to receive on said
" contract previous to the completion of the same
" Resolved, that the clerk be directed to charge
" W^m S. Maus with five thousand dollars,
" as directed in the above preamble with
" the accruing interest at 8 per cent

" June 2, 1854
" The following resolution was introduced
" and concurred in by the Board -
" Resolved that the sum of One thousand
" dollars be allowed to Dr W^m S. Maus in
" addition to what he has had heretofore
" on his contract for building the Bridge
" across the bottom opposite Pekin

" August 11, 1854,
" The following resolution was introduced
" and concurred in by the Board
" Resolved that the clerk be authorized

45 to issue an order in favor of W^m B. Mans
for the sum of One thousand dollars
to apply upon the timber by him purch-
ased for the plank road, and wages for
workmen

April 21, 1855,

The following resolution was introduced
and concurred in by the Board, the yeas
& nays being called, Glasgow & Gibson
voted in the affirmative, Brower in the
negative, and is as follows, to wit:-
Resolved that an order be drawn on the
Treasurer for the sum of twelve hundred
dollars in compliance with the report of
the bridge committee in the following
manner, to wit:- three hundred dollars
per week commencing with the week
on which said Mans shall resume
work on said contract, and providing
he prosecute the same to the amount
of the appropriation

March 7, 1856

The Bridge Committee to whom was
referred the petition of W^m B. Mans,
made the following report which
was received read and adapted.
To the Honorable Mayor and aldermen

of the City of Pekin

Your committee to whom was referred the petition of Doct Wm B. Mans asking to be placed at his disposal the amount due on his contract on his completion of the bridge would respectfully report that they have examined the matter and have concluded not to accept the prayer of the petitioner for the following reasons, to wit: in the first place it may affect the legality of the contract and place the City in a worse condition than it is at present, also if the security is ample the City has no money to lend, and if the security that is proposed by the petitioner is ample, the money could be procured from other sources without application to the City, Your committee are further of opinion that only about 1/8 of the work on said contract is done, and none of 1/8 is wholly completed, when according to the contract time the whole work was to be finished on the first of May 1854, taking all the matters into consideration, Your committee would respectfully say that according to the best of their judgment that the prayer

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" of the petitioner should not be granted,
" all of which is respectfully submitted
" J. W. Glasgow }
" Robert Gibson } Committee

" April 8, 1856,

" ~~On~~ ~~referred~~ Mr Glasgow presented
" the petition of Wm B. Maus, asking for
" the extra pay allowed him by the Council
" for placing four inch Joists instead of
" three as is specified in the Bridge contract
" on motion the petition was received read
" and adopted

" On motion it is ordered that the
" Clerk draw an order in favor of Wm B. Maus
" on the Treasurer for \$162. for extra allowance
" on bridge contract

" July 22, 1856.

" The Bridge committee to whom was
" referred the petition of Wm B. Maus, made
" the following Report which was received
" read and adopted:

" The Bridge Committee to whom
" was referred the petition of Wm B. Maus
" would respectfully report-

" That they informed
" Wm B. Maus that the Board required
" other security than that offered, at a

" former meeting before they would
 " furnish him the \$1000- asked for, and
 " they also informed him that they would
 " require security to the amount of \$5000=
 " when the said Maus refused to furnish
 " any other security than the 200 acres
 " in Plover County, which your committee
 " are of opinion is not worth near the
 " sum of \$5000. they therefore report back
 " the subject matter referred to them and
 " recommend that the money be not paid
 " or allowed to him, and asked to be
 " discharged from the further consideration
 " of the subject

B. B. Puttymann
 J. Wagnerseller
 J. E. McIntire

Committee

" The following resolution was introduced
 " and concurred in by the Board
 " Resolved, that the City Attorney be author-
 " ized and required to examine the matter
 " in relation to the Bridge, and report to
 " the Bridge Committee, whether or not a
 " suit for damages cannot be sustained
 " against the Contractor

August 22, 1856,

" The resolution authorizing City

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" Attorney to sue William S. Mans on the
 " Bridge contract, after the yeas and nays
 " being duly called stood as follows, to wit:-
 " Yeas, Wagneller, McIntire, Wertenman &
 " Puttyman, Chas Devere, Gibson & Thomas
 " which said resolution is in the words and
 " figures as follows, to wit:-
 " Resolved, that the City Attorney be, and
 " he is hereby authorized to bring suit
 " on the bridge contract of William S. Mans
 " against him for damages to the City, on
 " account of the breach of and non compliance
 " of said contract

February 16, 1857.

" On motion it is ordered that the Clerk
 " advertise the sale of the Ferry Ferry franchise
 " and all the appurtenances thereunto. belonging
 " on the 4 day of May next

March 24, 1857

" The following resolution was introduced
 " and concurred in by the Board
 " Resolved that the City agree with W. S. Mans
 " to arbitrate the matter in dispute between
 " him and the City in relation to the Bridge
 " contract for building the Bridge across
 " the river bottom which is now in suit
 " in Woodford County = It was agreed

" between the City and Wm. G. Maus, that
 " M. Jackabeary, David Mark and W. Rankin
 " should be appointed arbitrators

July 13. 1857.

" The following resolution was introduced
 " and concurred in by the Board
 " Resolved. That the Bridge Committee be
 " requested to investigate the matter of the
 " Bridge and see what is necessary to make
 " it permanent and they are empowered to employ
 " a competent man, to make the investigation
 " and report what plans the Council should
 " adopt

March 26. 1858.

" On motion it is ordered that Prettyman
 " and Wagenseller be appointed a special
 " committee to examine the work done on
 " the Bridge by Charles Carey, and when the
 " said Carey shall furnish the clerk a
 " certificate of the Committee, of the amount
 " of work done, the clerk is authorized to
 " issue an order for the amount

May 29. 1858.

" On motion it is ordered that the clerk
 " draw an order in favor of John Gridley for
 " \$1390.37 for the April interest on Bridge Bonds

November 9, 1858

The lease of H. G. Carey was presented
and on motion it was ordered that the
clerk take security on said lease to be
approved by the Mayor

February 21, 1859.

On motion Messrs Devinney & Devoud
was appointed a committee to confer with
Wm Winchester in relation to bridge plank

September 23, 1859

Mr Higginson introduced the following
resolution which was received, read, and
concurred in by the Board.
Resolved, that the ferry lease with H. G.
Carey be extended one year from October
1859 at the rate of \$40 per month in
consideration of what said Carey shall
put Bridge on ^{the} opposite side of the river
in good repair for the sum of Three hundred
and fifty dollars, the repairs to be done under
the superintendence of the Bridge committee
and to the entire satisfaction and acceptance
of the City Council if to be in repair

December 5, 1859.

The matter of H. G. Carey in relation to
his claim for work on Bridge, on motion

52 the same was laid on the table and the
Bridge committee was instructed to report
thereon by next meeting

April 10. 1860.

Treasurer reports \$210 received from H.G.
Cary for ferry rent

On motion it is ordered that the Clerk
draw an order on the Treasurer in favor of
H.G. Cary for \$350.00 for work on Bridge -

to the reading of all said proceedings
in evidence the defendant objected for the
reason that the City Council had no
authority to do the acts therein mentioned,
which objection was overruled, to which
the defendant at the time excepted.

Claph Florey was then called for
the plaintiff, and testified that he was
a horse farrier by profession - I was
called by Kemell the plaintiff to examine
his horse about February 1860 - the horse
was then under the Bridge spoken of by
the other witnesses - on examination I
found that the horse's back was broken
and that his injuries were fatal and that
he would die - I walked, and led my
horse across the bridge - I felt afraid of
it and do not consider it safe - The

horse was a good horse about $16\frac{1}{2}$ hands high, a dark bay - I suppose he was 5 or 6 years old - I advised the plaintiff to kill the horse - The bridge was sprung so as to let the plank slip off at the ends, when the horse went down - To cross the bridge was the ordinary way of travel from the ferry to the Bluff on the west side - the planks on the bridge were loose, not fastened down in any way -

Viles Cole, I know Stewell - I saw him on the 28th day of February 1860, at the ferry at Pekin - I always pay ferridge when I cross - I crossed the ferry at the same time with Stewell - was behind and passed him on the bridge, and was 10 or 20 rods ahead of him on the bridge when the horse fell through, and heard plaintiff call, looked back and saw him holding on to his horse, whose hind parts were off the Bridge - the plank by the springing of the outside stringers were not long enough to reach, and having no support would tilt with the horse's weight - several planks tilted and went through at the time the horse fell - the horse could not get up, was crippled in the back in some way - he was a valuable horse of a light brown color - I do not consider it a safe bridge -

it is built of piles with square Bents,
and stringers from bent to bent. I think
the stringers were sprung so that the planks
were not long enough to reach. I saw the
carcass of the horse in question, and the
two of Carey's horses which have fallen
through since. The piles of the bridge
are driven about four feet in the earth.
the earth is very soft and at wet times
wholly impassable over that part where
the bridge is. the bridge leads directly from
the ferry to the bluff. there are three
piles under each bent of the bridge, one
at each end and one in the middle. the
bridge has never been completed. there is
nothing to brace the stringers, to prevent
them from springing and leaving the
ends of the planks without support. I
have not considered the bridge safe since
the 10th of July 1856. according to my
Judgment the bridge has never been safe.
it is about 12 feet high from the ground.
the piles are not very stiff, and the tremor
of the bridge can be felt for a half mile
when teams are crossing. I do not consider
it a safe bridge for the purpose for which
it was designed. the bridge is a mile
& $\frac{1}{2}$ long. I had a horse fall partly through
the bridge some time prior to the time

plaintiffs fell through.

S. C. Wheeler sworn. = I passed the bridge the next day after the horse fell through the bridge = It was still living, and I thought ought to be killed = I thought the horse was a fine horse and worth \$175⁰⁰ = I have been acquainted with the bridge ever since it was built = I do not think the bridge ~~ever~~ was safe = I would not let my teams cross it = it was not properly made = Piles were driven into the ground and capped, stringers were laid on the caps and boards on the stringers without being fastened down, in walking behind a heavy loaded team, one could hardly keep his feet for the vibration of the bridge = this is the result of the slowness of the piles, I have seen stringers that had fallen off = I concur in the opinion that the bridge is unsafe =

David Goodwin sworn. = I know plaintiff he inquired the way to Elmwood, on the day his horse fell through the bridge = he appeared to be a stranger in these parts The horse was worth 175 dollars = I crossed the ferry with the plaintiff he paid toll - it was ten cents for the horse

and saw - I knew the bridge at the time the horse was killed - the bridge was out of repair, it was because the bridge was out of repair that the accident occurred - there were no stays or braces between the joists, and from the character of the structure it was liable to be out of repair - the plank was mostly oak some white elm - there was no other way to get from the ferry to the bluff in a wet time except across the bridge

Wiles Brandall sworn - I live about $\frac{1}{4}$ or $\frac{1}{2}$ mile from the bridge, and I have known it ever since it was built - the horse was dead when I saw him - he was a fine horse worth from \$160. to \$180. - such horses were selling at from that to \$200 - at the time - I should not consider the bridge a safe structure - the plank are not fastened down - it is built of piles driven in the ground from four to six feet and capped, is about eleven feet high, piles six feet apart crosswise and 12 feet lengthwise of the bridge, four stringers to hold the planks, two in the center, one on each side sit down on the caps - the two on the inside lapped on the caps - the planks had about two inches hold at the end on

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" on the outside stringers = In my judgment
 " I do not consider the bridge safe and
 " never was = some of the stringers were
 " sprung, so that when a horse walked on
 " the side the plank would tip up, if there
 " had been an earth embankment thrown
 " up and planked it would have been
 " safe = the plaintiff was a stranger in
 " this part of the country = McGrews wagon
 " broke through the bridge, which was
 " occasioned by the breaking of the joists

" Xavier Carrillion sworn = I reside in
 " Pekin, I am a Carpenter = have observed
 " the structure of the bridge = the
 " stringers and piles are too light and
 " ought to be braced = the stringers have
 " no braces, the plank have about 2
 " inches to lay on at the ends = the stringers
 " are liable to spring from the action of
 " the weather, and there were no braces to
 " prevent ^{it} the bridge has not been completed
 " I do not know whether the stringers came
 " off or not = I have worked on bridges and
 " know how they ought to be built = the bridge
 " is about 12 feet high = I saw the horse =
 " plaintiff asked me to help him up, I
 " told him his back was broke, and
 " next morning I examined the horse

" again and found his back broken in
 " two places = I do not consider the bridge safe =

" J. A. Mason sworn = I am surveyor = I laid
 " out the route for the bridge = I was in the
 " employ of the defendant = I had the
 " superintending so far as to see that
 " the bridge was on the line and above high
 " water mark = there is no convenient way
 " of getting to the ferry when the water is high,
 " than by the bridge = the soil under the bridge
 " is soft = there is a road leading from the
 " ferry to Peoria that need not cross the
 " bridge except in high water =

" The plaintiff also by agreement read in
 " evidence the following affidavit =

" George B. Newell } Circuit Court, Jazewell
 " } County Del. September
 " The City of Pekin } Term 1860, action on the case =
 " David W. Stevenson being duly sworn
 " says on oath that he is acquainted with
 " the Rev. George B. Newell, the plaintiff
 " above named, and has known him
 " for a number of years = Deponent states
 " that in the winter of 1859 & 1860, said Newell
 " was the owner of a young horse coming
 " five years old in the spring of 1860 = said

" Horse was of medium size, of a dark
 " Bay, or light Brown color, with a small
 " white strip running down his nose, the
 " only white spot or mark. deponent remem-
 " -bers upon him = Deponent knew said
 " horse well and considered him a
 " remarkably fine horse. worth at ^{the} least
 " when deponent last saw him, from one
 " hundred & seventy five, to two hundred
 " dollars, deponent would readily have
 " given \$175⁰⁰ for him, and had deponent
 " owned said horse, he deponent would
 " not have taken \$200. for him = Deponent
 " further states that said Jewell could
 " readily have sold said horse for \$175.
 " but said Jewell was unwilling to part
 " with him at that price, said horse was
 " of the Morgan stock and remarkably
 " well broken to all kinds of service =
 " Deponent last saw said horse on or about
 " the morning of the 28th day of February
 " 1860, when said Jewell had him at
 " Delavan in said Tazewell County
 " where deponent resides - said Jewell
 " was then on his way to Peoria County
 " by way of Pekin, and deponent soon after-
 " -wards learned that said horse was
 " killed by falling through a Bridge
 " on the Peoria side of the ferry across

the Illinois River at said City of Pekin
 and further deponent saith not
 Subscribed and } David M Stevenson
 sworn to before me
 this 13th day of Sept 1866
 Muriel Young

W. B. Parker = I was City Clerk when
 the bridge was built, the City bought the
 ferry of Pettyman, and again sold
 it to him, and bought it back again
 and now the City own it = the ferry rented
 for more after the bridge was built than
 before

Wm Divinney sworn = I took the lease
 of Berger off his hands and paid
 \$30 per month = the City took away
 from me and leased it at Seventy
 dollars per month =

H. G. Carey sworn = I rent the ferry from
 the City = pay Seventy dollars per
 month = I have also repaired the bridge
 to the amount of about \$300. under the
 direction of the City Council, and they
 paid me for it =

J. A. Riblet sworn = I have lived across the

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river near this Bridge, some six years,=
 " have seen carcasses of horses under the
 " bridge = I have examined the structure
 " of the bridge = it is set on piles which
 " are driven about five feet into the earth
 " which here overflows and is soft, = have
 " never thought this bridge safe since
 " July 1856. = my wagon in going over
 " it pulled up three planks = from the
 " nature of the structure it cannot
 " be safe

" The foregoing was all the evidence
 " given in the case. the defendant
 " offered no evidence, but upon the
 " closing of the plaintiff's evidence moved
 " the Court to exclude the same from
 " the Jury. for the reason that the evidence
 " did not sustain the declaration, and
 " there was no legal liability on the part
 " of the City to repair the Bridge, which
 " motion was overruled, to which the
 " defendant at the time excepted.

" The Court thereupon give for the
 " plaintiff the following instructions

" George B. Sewell }
 " " "
 " The City of Pekin }

1st If the Jury believe from the evidence
" that the defendant is & was on the 28th
" day of February 1860, the owner of
" a ferry franchise across the Illinois
" River and running from the South
" east bank of said river at the City
" of Peikin to the North west bank of
" said River opposite in Peoria County
" and that for carrying passengers
" and their property across said
" River by said ferry the defendant
" is allowed by law to receive and
" does receive tolls - and if the Jury
" shall further believe from the
" evidence that the defendant is
" also the owner of a wooden bridge
" leading from said ferry on said
" North west bank of said river
" across the bottom lands to the
" Bluff, on said North west side of
" said River. - That said Bridge was
" built and designed to be kept in
" suitable repair by said defendant
" and used as appurtenant to said
" ferry, and for the purpose of
" attracting travel to and across
" said ferry, and that repairs have
" actually been made from time to

time by defendant upon said bridge,
And if the jury shall further believe
from the evidence, that on or about
the day above named the defendant
received the plaintiff upon said
ferry and bridge, to cross the same
with a horse, the property of said
plaintiff, and received toll therefor
and if the jury shall further believe
from the evidence that said Bridge
was not in good repair and safe
for the passage of horses across the
same, and that the plaintiff had
no notice that said Bridge was
out of repair and unsafe, and
that in attempting to cross same
with his horse the said horse fell
through said Bridge and was killed
or so badly injured as to be rendered
valueless or of little value to the
plaintiff because of the defective
and unsafe condition of the said
Bridge and without any fault
on the part of the plaintiff, the jury
should find for the plaintiff and
allow him such damages as they
shall believe from the evidence
he has sustained thereby

That whether the City had or had not sufficient legal authority to build and keep in repair said Bridge yet if it undertook so to do, and to invite travel across said Bridge it was bound to do its work well and make said Bridge safe and sufficient for the purpose designed, and if the Jury shall believe from the evidence that the City did build and undertake to keep in repair the said Bridge and did the work so defectively that the plaintiff sustained the damage complained of thereby, without any fault on his part, the Jury should find for the plaintiff =

" to the giving of which the defendant
" at the time excepted.

The Defendant
then asked the Court to give the jury
the following instructions =

City of Pekin
at
George B. Newell

1st The Court instructs the Jury that the
City Council of the City of Pekin

" had no right to build the Bridge
 " in question, or to expend money to
 " keep the same in repair, and that no
 " acts in relation to the management
 " and control of the same of said City
 " Council are binding upon the Corporation,
 " and that there being no authority on
 " the part of the City to build said Bridge
 " or to repair or keep the same in repair
 " the Jury will find the defendant not guilty.

" The Court instructs the Jury that there
 " is no obligation upon the part of the
 " City to repair the bridge in question, and
 " they will find for the defendant.

" which the Court refused to give, to which
 " the defendant at the time excepted. ~~on~~
 " whereupon the Jury returned a verdict
 " for plaintiff, and thereupon the
 " defendant moved for a new trial, because
 " the Court give improper instructions,
 " and refused proper instructions, and
 " admitted improper evidence, and there
 " was no legal liability on the part of the
 " City to repair. which motion the Court
 " overruled, to the overruling of which
 " the defendant at the time excepted
 " and now prays that this bill of

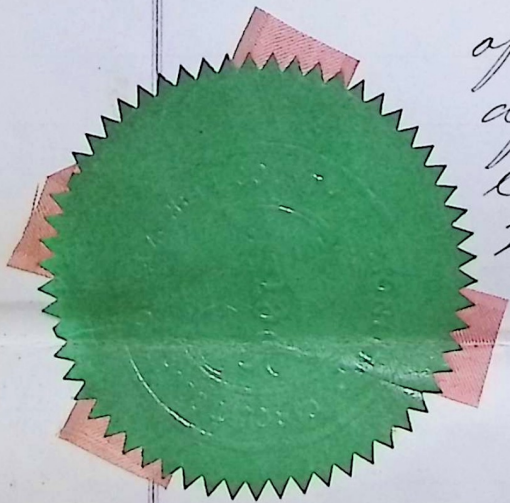
66 exceptions may be signed and sealed
which is done
James Harriatt Seal

State of Illinois }
Tazewell County } ss.

I, George H. Harlow Clerk
of the Circuit Court within and for said
County do hereby certify that the foregoing
65 pages contains a full, true, perfect
and complete copy of the Record of
proceedings had in the cause therein
named, as fully as the same appears of
Record in my office

Witness my hand, and the Seal
of said Circuit Court hereto
affixed at Pekin in said
County, this 28th day of
March A.D. 1861

Geo H. Harlow Clerk
per A. P. Griswold by deputy, Clerk



State of Illinois } 3^d Grand Division
Supreme Court } 3^d April Term A.D. 1861

City of Peoria }

^{vs}
George B. Newell }

Assignment of Errors

And now comes the appellant in the above entitled cause and says that in the record and proceedings aforesaid manifold errors have intervened in this to wit:

1st The Court erred in admitting in evidence the act of the Legislature entitled "An act to amend an act to amend the Charter of the City of Peoria" Approved February 12th 1853,

2^d The Court erred in admitting ^{in evidence} each and all of the proceedings of the City Council of said City and read by plaintiff below,

3. The Court erred in not excluding the evidence of plaintiff below from the jury,

4th The Court erred in giving the instructions asked by the plaintiff below.

5th The Court erred in refusing to give the instructions asked on the part of the Defendant below for which said error appellant prays that said judgment and proceedings may be reversed and annulled.

James Roberts
for Appellant.

And now comes the said George B. Semple, the appellee herein; and says that in the said record proceedings there is no such error as the appellant has above alleged; wherefore he prays that the said judgment do stand & be affirmed.

J. K. Cooper
for appellee

275-67

The City of Peking

as

George B. Newell

Records & Enos

Filed April 18. 1861

L. Leland

Clerk

Fee \$19.50