No. 14438

Supreme Court of Illinois

City of Pekin

---

vs.

Reynolds

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

No. 185

14138

1863

City of Pekin

vs

1863

Clerks fees for making this record $12.00

$12 Recd the above fee from

S. D. Puterbaugh, atty for defts,

Mark D. Sloan, clerk

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Pleas before the circuit court, within, and for the county of Peoria, and state of Illinois, on the thirteenth day of February, in the year of Lord one thousand eight hundred and sixty-three.

Be it remembered that heretofore to-wit:- on the 20th day of September AD1862, there was filed in the office of the clerk of the circuit court of said county, a Transcript of the Record, together with certain papers to wit, a declaration, summons, demurrer, plea, and a petition for a change of venue, all of which are in words and figures following to wit:-

Proceedings at a term of the circuit court begun and held at the court house in the city of Pekin, within and for the county of Tazewell and state of Illinois, on the first Monday of the Month of September AD 1862, and on the 16th day of said month, it being the 8th day of said term. Present, Hon. James Harriott, Judge of the 21st Judicial Circuit of the state of Illinois, C A Roberts, states attorney, Chapman Williamson, Sheriff and George H. Harlow, Clerk, to wit:-

Tuesday, September 16. 1862

John H. Reynolds
vs } In Debt
City of Pekin

Now on this day comes the plaintiff

by his attorneys Johnson & Hopkins and enters his motion upon affidavit filed, for a change of venue in this cause, for the reason that the presiding Judge of this court is prejudiced against him, which motion the court allowed, and the venue in this cause is ordered to be changed to the county of Peoria. It is further ordered by the court, that the clerk of this court transmit to the clerk of the circuit court of Peoria county, a certified transcript of the record of proceedings, and the papers on file in said cause.

State of Illinois }
Tazewell county } ss

I, George H. Harlow, Clerk of the circuit court in and for said county do hereby certify that the foregoing is a true and complete transcript of the record proceedings had in said cause, and that the accompanying papers mark "A" "B" "C" "D" "E" & "F" are all the papers filed in said cause.

(Seal) Witness my hand and the seal of said court hereto affixed at Pekin in said county this 16th day of September A.D. 1862.

Geo H Harlow, Clerk
per. A. P. Griswold, Deputy.

State of Illinois } ss In the circuit court of
Tazewell County } Tazewell county,
To September Term AD 1862.

John H Reynolds Debt $1280.
City of Pekin Dam 1280.

John H. Reynolds plaintiff in this suit complains of the city of Pekin in the county of Tazewell and state of Illinois in a plea that the said defendant render unto the said plaintiff the sum of twelve hundred and eighty dollars which the said defendant owes to and unjustly detains from the said Plaintiff - For that whereas heretofore to wit: on or about the twentieth day of September AD 1856 there was a railroad corporation in the state of Illinois organized under the laws thereof called and known by the name of the Illinois River Rail Road company, which company or corporation was engaged in conducting a rail road in the state of Illinois in pursuance of its charter and act of incorporation and that on or about the said twentieth day of September AD 1856 the city council of the said city of Pekin passed a resolution authorizing a vote to be taken by the qualified voters of the said city of Pekin for or against the said city subscribing the sum of one hundred thousand dollars to the capital stock of the said Illinois River Rail Road company in pursuance

and by authority of an act of the general assembly of the state of Illinois entitled an act supplemental to an act to provide for a general system of rail road incorporation approved November the 6th AD 1849 and an act of the general assembly of said state entitled an act to facilitate the construction of said roads approved March 1st 1854, and which said resolve of said city was passed or enacted by the city council aforesaid duly and legally and in conformity with said law of the state of Illinois which resolution is in substance as follows viz:

Resolved, That there be an election held by the qualified voters of the city of Pekin on the 23d day of October next, for the purpose of deciding for or against said city subscribing the sum of one hundred thousand dollars to the capital stock of the "Illinois River Rail Road Company," and that the clerk of the city be required to give thirty days notice of the time and of the usual place of holding elections as required by law.

And be it further resolved that the bonds of the city to the amount of one hundred thousand dollars, to pay said subscription to said capital stock, redeemable in twenty years from date, bearing interest at the rate of eight per cent

per annum payable semiannually at the American Exchange Bank, in the city of New York, in amounts not exceeding one thousand dollars each be issued therefor, Provided, That the majority of the voters shall decide in favor of the subscription, and that the same shall be substantially set forth in such notice of election by said clerk.

And in pursuance of such resolve an election by the qualified voters of the said city of Pekin was held on the 23rd day of October AD 1856 at the usual place of holding elections in said city of Pekin, which election was duly called by and under the authority of the said resolve of the said city of Pekin, and that thirty days notice of the time and place of holding such election was duly given by the clerk of said city which notice was in conformity with and in pursuance of said resolve at which election the number of legal voters of said city of Pekin who were present and voted upon the question of subscribing for the stock in said Rail road company as provided in said resolve, exceeded the number of votes polled at the last preceding general election in said city of Pekin, and that a large majority of the voters present and voting at the said election so held in pursuance of said resolve were given for the proposed subscription to the stock of the said Rail Road Company.

And the Plaintiff further avers that at a meeting of the said city council duly held at said Pekin on the 23d day of October AD 1856, the clerk of said city was authorised to subscribe the sum of one hundred thousand dollars to the capital stock of said Rail road company in behalf and in the name of the said city, which resolution is in substance as follows, viz:

Whereas at an election held this day in the city of Pekin by the qualified voters of said city to vote for or against the city of Pekin subscribing one hundred thousand dollars to the capital stock of the Illinois River Railroad Company."

It having appeared by the returns made to the city Council of said city that the number of legal voters polled at the said election exceeds the number polled at the last general election in said city and a very large majority of all the votes polled were given for the subscription to the said capital stock of said Rail road Company.

Now therefore be it resolved that the clerk of said city be, and is hereby authorized on behalf of said city to subscribe in the name and in behalf of the city of Pekin the sum of $100.000 to the capital stock of the Illinois River Rail road company" October 23d 1856

And the plaintiff further avers that in pursuance of said resolution the said sub=

scription of one hundred thousand dollars was duly made by the city clerk of the said city of Pekin to the stock of the said Rail road Company on or about the said twenty-third day of October AD 1856. And the plaintiff further avers that on or about the first day of January AD 1857 the said city of Pekin under and by authority of the said resolves or votes and proceedings and subscription and pursuant to the laws of the state of Illinois made its bonds bearing date on the day aforesaid and numbered forty-two (42) forty three (43) forty four (44) forty-five (45) eighty-two (82) eighty-three (83) eighty-four (84) and eighty-five (85) said eight bonds so issued being for the sum of one thousand dollars each, by each of which said eight bonds the said city of Pekin acknowledged itself indebted to the "Illinois River Rail road company or bearer thereof in the sum of one thousand dollars lawful money of the United States of America with interest thereon at the rate of eight per cent per annum from date payable semi annually on the first days of January and July in each year at the American Exchange Bank in the city of New York on the presentation and surrender of the proper Coupons thereto attached and signed by the Mayor of the said city of Pekin with the seal of the said city attached thereto the principal of said bonds payable at the said Amer

ican Exchange Bank twenty years from the date of said bonds, which bonds were each (not including the coupons attached to each) in substance as follows, to wit:

Know all men by these presents that the city of Pekin in the state of Illinois acknowledges itself indebted to the "Illinois River rail road company or bearer in the sum of one thousand dollars lawful money of the United States with interest thereon at the rate of eight per cent, per annum payable semiannually on the first days of January and July in each year at the American Exchange Bank in the city of New York on the presentation and surrender of the proper coupons hereunto attached and signed by the mayor of the said city of Pekin. The principal is payable at the above named place twenty years from the date hereof. The bond is issued in pursuance of an act of the general assembly of the state of Illinois approved November 6th 1849 entitled "an act supplemental to an act, entitled "An act to provide for a general System of Rail Road Incorporations, and an act of said general assembly entitled "An act to facilitate the construction of Rail Road" approved March 1st 1854 and on account of the subscription of the said city of Pekin, to the capital stock of the Illinois River Railroad Company, made by order of the city Council of said city of Pekin on the 23rd day of October 1856 said subscription

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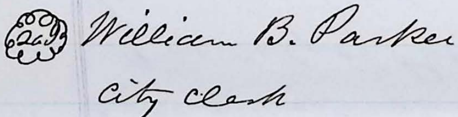
being duly authorised by a vote of the majority of all the qualified voters of said city, as required by said act of said general assembly approved November 6th 1849 for the performance of all which the faith of said city of Pekin is irrevocably pledged as is also the property resources and revenues of said city.

In testimony whereof I the Mayor of said city of Pekin have hereunto set my hand and affixed the corporate seal of said city, this the first day of January AD 1857.

Attested by M. Tackaberry, Mayor



William B. Parker
City Clerk

Which eight bonds and the coupons thereto severally attached and numbered as aforesaid were duly executed and delivered to the said Rail Road Company aforesaid to which they were respectively made payable as aforesaid. And the plaintiff avers that after the making and delivery of said bonds as aforesaid the same were for a valuable consideration negotiated by said Rail Road Company, and the said Plain is now and was on the first day of January AD 1861 the legal owner and holder thereof and the plaintiff further avers that on the first day of January AD 1861 the sum of forty dollars for an installment of semiannual interest upon each of said bonds became by the terms thereof due

and payable to this Plaintiff upon the presentation and surrender of the coupon or interest warrant representing the same attached to each of said bonds at the American Exchange Bank in the city of New York aforesaid, and the plaintiff further avers that on the said first day of January AD 1861 he did cause the said several coupons for the payment of the said forty dollars each to be presented at the said American Exchange Bank in the city of New York for payment, and payment thereof was duly demanded, which was refused, and that the said defendant did not then nor has it since paid the said coupons or either of them, and the plaintiff further avers that the said coupons were in substance as follows, viz:

The city of Pekin will pay the bearer at the American Exchange Bank in the city of New York on the first day of January 1861 Forty dollars interest due on their bond No 85

M. Tackaberry, Mayor

THE CITY OF PEKIN

Will pay the Bearer, at the American Exchange Bank, *in the* City of New York, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond No.* 43

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the American Exchange Bank, *in the* City of New York, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond No.* 45

M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond* No. 44.

M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond* No. 82.

M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond* No. 83.

M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond* No. 84.

M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond* No. 42.

M. TACKABERRY, Mayor.

And the plaintiff further avers that on the first day of July AD 1861 the sum of forty dollars for an instalment of semi-annual interest upon each of said bonds became by the terms thereof due and payable to this plaintiff upon the presentation and surrender of the coupons or interest warrant representing the same attached to each of said bonds at the American Exchange Bank aforesaid and that this plaintiff did on the said first day of July AD 1861 cause the said coupons or interest warrants for the payment of the sum of forty dollars upon each of said bonds to be presented at the said American Exchange Bank for payment and payment thereof was duly demanded which was refused, and the said defendant did not then and has not since paid the same or

any part thereof, and the plaintiff avers that each of said coupons is in substance as follows, viz:-

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~*January*~~ July, 1861, *FORTY DOLLARS, interest due on their Bond No.* 45...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~*January*~~ July, 1861, *FORTY DOLLARS, interest due on their Bond No.* 83...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~*January*~~ July, 1861, *FORTY DOLLARS, interest due on their Bond No.* 84...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~*January*~~ July, 1861, *FORTY DOLLARS, interest due on their Bond No.* 43..

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~*January*~~ July, 1861, *FORTY DOLLARS, interest due on their Bond No.* 82..

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~*January*~~ July, 1861, *FORTY DOLLARS, interest due on their Bond No.* 42...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~*January*~~ July, 1861, *FORTY DOLLARS, interest due on their Bond No.* 44.

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~*January*~~ July, 1861, *FORTY DOLLARS, interest due on their Bond No.* 85....

M. TACKABERRY, Mayor.

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And the plaintiff further avers that on the first day of January AD 1862, the sum of forty dollars for an instalment of semi-annual interest upon each of said bonds became by the terms thereof due and payable to this plaintiff upon the presentation and surrender of the coupons on interest warrant representing the same attached to each of said bonds at the American Exchange Bank aforesaid, and that the plaintiff on the said first day of January AD 1862 caused the said coupons or interest warrants for the payment of the said sum of forty dollars upon each of said bonds to be presented at the American Exchange Bank aforesaid for payment and payment thereof duly demanded which was refused, and the said defendant did not then and has not since paid the said sum or any part thereof, and the plaintiff avers that each of said coupons is in substance as follows viz:-

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of January, 1862, FORTY DOLLARS, interest due on their Bond No. 42...

M. TACKABERRY, Mayor.

10

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of January, 1862, FORTY DOLLARS, interest due on their Bond No. 82....

M. TACKABERRY, Mayor.

10

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of January, 1862, FORTY DOLLARS, interest due on their Bond No. 45....

M. TACKABERRY, Mayor.

10

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1862 *FORTY DOLLARS, interest due on their Bond* No. 85...

M. TACKABERRY, Mayor.

10

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1862 *FORTY DOLLARS, interest due on their Bond* No. 83...

M. TACKABERRY, Mayor.

10

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1862 *FORTY DOLLARS, interest due on their Bond* No. 44...

M. TACKABERRY, Mayor.

10

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1862 *FORTY DOLLARS, interest due on their Bond* No. 43...

M. TACKABERRY, Mayor.

10

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1862 *FORTY DOLLARS, interest due on their Bond* No. 84...

M. TACKABERRY, Mayor.

10

And the said plaintiff further avers that on the first day of July AD 1862, the further sum of forty dollars for an instalment of semi annual interest upon each of said bonds by the terms thereof became and was due and payable to this plaintiff upon the presentation and surrender of the coupons or interest warrants representing the same attached to each of said bonds at the office of the American Exchange Bank aforesaid and that this plaintiff did on the said first day of July AD 1862,

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cause the said coupons or interest warrants for the payment of the said sum of forty dollars upon each of said bonds to be presented at the American Exchange Bank for payment and payment thereof duly demanded which was refused and the said defendant did not then nor has it since paid the same or any part thereof and the plaintiff avers that each of said coupons is in substance as follows, to wit:—

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of ~~January~~ July, 1862 FORTY DOLLARS, interest due on their Bond No. 42....

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of ~~January~~ July, 1862 FORTY DOLLARS, interest due on their Bond No. 43...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of ~~January~~ July, 1862 FORTY DOLLARS, interest due on their Bond No. 85.....

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of ~~January~~ July, 1862 FORTY DOLLARS, interest due on their Bond No. 82...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of ~~January~~ July, 1862 FORTY DOLLARS, interest due on their Bond No. 84.....

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of ~~January~~ July, 1862 FORTY DOLLARS, interest due on their Bond No. 83....

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of ~~January~~ Jany, 1862 FORTY DOLLARS, interest due on their Bond No. 45...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of ~~January~~ July, 1862 FORTY DOLLARS, interest due on their Bond No. 44..

M. TACKABERRY, Mayor.

And the plaintiff further avers that the said several instruments upon each of said bonds amounting in the aggregate to the sum of twelve hundred and eighty dollars now justly due to the plaintiff from the said defendant, whereby an action hath accrued to said plaintiff to demand and have of and from said defendant the said sum of twelve hundred and eighty dollars the amount of the said coupons herein described, also for that whereas the said defendant heretofore to wit on the first day of January AD 1857 at the County of Tazewell aforesaid made its eight writings obligatory numbered forty-two (42) forty three (43) forty-four (44) and forty-five (45) eighty-two (82) eighty three (83) eighty-four (84) eighty-five (85) each of which writings obligatory were sealed with the corporate seal of said defendant, and each of said writings obligatory bearing date the day and year aforesaid, and thereby then and there the said defendant in each of said writings obliga=

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tory acknowledged to be due from the defendant to the Illinois River Rail Road company or bearer one thousand dollars lawful money of the United States with interest thereon at the rate of eight per cent per annum payable semi-annually on the first days of January and July in each year at the American Exchange Bank in the city of New York on the presentation and surrender of the proper coupons attached to each of said bonds or writings obligatory, the principal of each of said writings obligatory was to be paid at the said American Exchange Bank in the city of New York twenty years from the date of said writings obligatory and attached to each of said writings obligatory were coupons for the payment of said instalments of interest payable semi-annually as provided in said writings obligatory, which said writings obligatory were signed by the Mayor of the said city of Pekin, at the date of the said writings obligatory, to wit:- by M. Jackaberry mayor as aforesaid, and each also signed by the city clerk of the said city of Pekin at the time aforesaid viz: "William B. Parker, city clerk", and each and every of said coupons upon the said eight bonds were signed by the said M. Jackaberry, Mayor of said city, which said writings obligatory so being duly made and executed were on the day and year of their execution aforesaid at the

county of Tazewell aforesaid, delivered to the said Illinois River Rail Road company, and thereafterwards to wit on the same day at the county aforesaid were for a valuable consideration delivered to the plaintiff, who then and there became and was and ever since hath been and still is the legal holder and owner of the said eight writings obligatory, and the coupons thereto attached as aforesaid By means whereof and by force of the statute in such case made and provided the said defendant became liable to pay to the said plaintiff the several sums of money in said several writings obligatory and in the said coupons thereto attached according to the tenor and effect thereof and the plaintiff further avers that on the first day of January AD 1861 there became and was due upon the coupons attached to each of said bonds the sum of forty dollars for semiannual interest upon each of said bonds which coupons were in substance as follows to wit:-

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond* No. 42..

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond* No. 85...

M. TACKABERRY, Mayor.

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THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond* No. 43...
M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond* No. 45...
M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond* No. 44...
M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond* No. 82...
M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond* No. 84...
M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of January,* 1861, *FORTY DOLLARS, interest due on their Bond* No. 83...
M. TACKABERRY, Mayor.

And the plaintiff presented the said several coupons attached to each of said writings obligatory due on the day and year last above mentioned for payment at the American Exchange Bank at the city of New York when and where the same were

made payable, and demanded the payment thereof which was refused and neither did the defendant on said day and year last aforesaid or at any other time pay the said coupons or either of them nor has the said defendant or any person for him at any time since paid to the said plaintiff the sums of money specified in said coupons or any portion thereof whereby an action hath accrued to said plaintiff to demand and have of and from said defendant the sum of three hundred and twenty dollars the amount of the said coupons for semiannual interest due upon said writings obligatory upon the day and year last aforesaid parcel of the same aforesaid.

Also for that whereas the said defendant heretofore to wit on the first day of January A D 1857 at the county of Tazewell aforesaid made its eight writings obligatory, numbered forty-two (42) forty three (43) forty four (44) and forty-five (45) eighty-two (82) eighty-three (83) eighty-four (84) eighty five (85), each of which writings obligatory were sealed with the corporate seal of said defendant, and each of said writings obligatory bearing date the day and year aforesaid, and thereby then and there the said defendant in each of said writings obligatory acknowledged to be due from the defend-

21 ant to the Illinois River Rail Road Company or bearer one thousand dollars lawful money of the United States of America with interest thereon at the rate of eight per cent per annum payable semi annually on the first days of January and July in each year at the American Exchange Bank in the city of New York on the presentation and surrender of the proper coupons attached to each of said bonds or writings obligatory the principal of each of said writings obligatory was to be paid at the American Exchange Bank in the city of New York twenty years from the date of said writings obligatory, and attached to each of said writings obligatory were coupons for the payment of said instalments of interest payable semi-annually as provided in said writings obligatory, which said writings obligatory were signed by the mayor of the said city of Pekin at the date of the said writings obligatory to wit: by M. Jackaberry, Mayor, as aforesaid, and each also signed by the city clerk of the said city of Pekin at the time aforesaid, viz "William B. Parker, city clerk" and each and every of said coupons upon the said eight bonds were signed by the said M. Jackaberry Mayor of said city, which said writings obligatory so being duly made and executed were on the day and year of their execution aforesaid at the county of Taze=

well aforesaid, delivered to the said Illinois River Rail Road Company and thereafterward to wit on the same day at the county aforesaid were for a valuable consideration delivered to the plaintiff who then and there became, and was and ever since hath been and still is the legal holder and owner of the said eight writings obligatory and the coupons thereto attached as aforesaid, By means whereof and by force of the statute in such case made and provided the said defendant became liable to pay to the said plaintiff the several sums of money in said several writings obligatory and in the said coupons, thereto attached according to the tenor and effect thereof and the plaintiff further avers that on the first day of July A D 1861, there became and was due upon the coupons attached to each of said bonds the sum of forty dollars, for semiannual interest upon each of said bonds which coupons were in substance as follows to wit:-

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~January~~ July 1861, *FORTY DOLLARS, interest due on their Bond No.* 45....

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~January~~ July 1861, *FORTY DOLLARS, interest due on their Bond No.* 84....

M. TACKABERRY, Mayor.

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THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~January~~ July 9, 1861, *FORTY DOLLARS, interest due on their Bond* No. 42...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~January~~ July 9, 1861, *FORTY DOLLARS, interest due on their Bond* No. 44...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~January~~ July 9, 1861, *FORTY DOLLARS, interest due on their Bond* No. 83...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~January~~ July 9, 1861, *FORTY DOLLARS, interest due on their Bond* No. 85...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~January~~ July 9, 1861, *FORTY DOLLARS, interest due on their Bond* No. 82...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~January~~ July 9, 1861, *FORTY DOLLARS, interest due on their Bond* No. 43...

M. TACKABERRY, Mayor.

And the plaintiff presented the said several Coupons attached to each of said writings obligatory, due on the days and year last above mentioned for payment at the American Exchange Bank at the city of New York when and where the

THE CITY OF PEKIN

Will pay the Bearer, at the American Exchange Bank, *in the* City of New York, *on the first day of* ~~*January*~~ July, 1861, *FORTY DOLLARS, interest due on their Bond* No. 42...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the American Exchange Bank, *in the* City of New York, *on the first day of* ~~*January*~~ July, 1861, *FORTY DOLLARS, interest due on their Bond* No. 44...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the American Exchange Bank, *in the* City of New York, *on the first day of* ~~*January*~~ July, 1861, *FORTY DOLLARS, interest due on their Bond* No. 83...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

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M. TACKABERRY, Mayor.

THE CITY OF PEKIN

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M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the American Exchange Bank, *in the* City of New York, *on the first day of* ~~*January*~~ July, 1861, *FORTY DOLLARS, interest due on their Bond* No. 43...

M. TACKABERRY, Mayor.

And the plaintiff presented the said several Coupons attached to each of said writings obligatory, due on the days and year last above mentioned for payment at the American Exchange Bank at the city of New York when and where the

same were made payable and demanded the payment thereof, which was refused, and neither did the defendant on said day and year last aforesaid or at any other time pay the said coupons or either of them, nor has the said defendant or any person for him at any time since paid to the said Plaintiff the sums of money specified in said coupons or any portion thereof whereby an action hath accrued to said plaintiff to demand and have of and from said defendant the sum of three hundred and twenty dollars the amount of the said coupons for semi-annual interest due upon said writings obligatory upon the day and year last aforesaid parcel of the same aforesaid.

Also for that whereas the said defendant heretofore to wit on the first day of January AD 1857 at the County of Tazewell aforesaid made its eight writings obligatory numbered forty two (42) forty three (43), forty four (44) and forty five (45) eighty two (82) eighty three (83) eighty four (84) eighty-five (85) each of which writings obligatory were sealed with the corporate seal of said defendant and each of said writings obligatory bearing date the day and year aforesaid, and thereby then and

25 there the said defendant in each of said writings obligatory acknowledged to be due from the defendant to the Illinois River Rail Road company or bearer one thousand dollars lawful money of the United States, with interest thereon at the rate of eight per cent per annum payable semi annually on the first days of January and July in each year at the American Exchange Bank in the city of New York on the presentation and surrender of the proper coupons attached to each of said bonds or writings obligatory, the principal of each of said writings obligatory was to be paid at the said American Exchange Bank in the city of New York twenty years from the date of said writings obligatory, and attached to each of said writings obligatory, were coupons for the payment of said instalments of interest payable semi annually, as provided in said writings obligatory which said writings obligatory were signed by the Mayor of the said city of Pekin at the date of the said writings obligatory to wit:- by M. Sackerberry Mayor as aforesaid and each also signed by the city clerk of the said city of Pekin at the time aforesaid, viz: William B. Parker city clerk, and each and every of said coupons upon the said eight bonds were signed

by the said M. Zackabery mayor of said city which said writings obligatory so being duly made and executed were on the day and year of their execution aforesaid at the county of Tazewell aforesaid delivered to the said Illinois River Rail Road Company and thereafterward to wit - on the same day at the county aforesaid were for a valuable consideration delivered to the plaintiff who then and there became and was and ever since hath been and still is the legal holder and owner of the said eight writings obligatory and the coupons thereto attached as aforesaid, By means whereof and by force of the statute in such case made and provided the said defendant became liable to pay to the said plaintiff the several sums of money in said several writings obligatory and in the said coupons thereto attached according to the tenor and effect thereof, and the plaintiff further avers that on the first day of January 1862 there became and was due upon the coupon attached to each of said bonds the sum of forty dollars for semi annual interest upon each of said bonds, which coupons were in substance as follows to wit:-

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THE CITY OF PEKIN

Will pay the Bearer, at the American Exchange Bank, *in the* City of New York, *on the first day of January,* 1862 *FORTY DOLLARS, interest due on their Bond No.* 82... 10

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the American Exchange Bank, *in the* City of New York, *on the first day of January,* 1862 *FORTY DOLLARS, interest due on their Bond No.* 84.... 10

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the American Exchange Bank, *in the* City of New York, *on the first day of January,* 1862 *FORTY DOLLARS, interest due on their Bond No.* 42.. 10

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the American Exchange Bank, *in the* City of New York, *on the first day of January,* 1862 *FORTY DOLLARS, interest due on their Bond No.* 43... 10

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

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M. TACKABERRY, Mayor.

THE CITY OF PEKIN

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M. TACKABERRY, Mayor.

THE CITY OF PEKIN

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M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the American Exchange Bank, *in the* City of New York, *on the first day of January,* 1862 *FORTY DOLLARS, interest due on their Bond No.* 45.... 10

M. TACKABERRY, Mayor.

And the plaintiff presented the said several coupons attached to each of said writings obligatory due on the day and year last above mentioned for the payment at the American Exchange Bank in the city of New York, when and where the same were made payable, and demanded the payment thereof which was refused and neither did the defendant on said day and year last aforesaid or at any time pay the said coupons or either of them nor has the said defendant or any person for him at any time since paid to the said plaintiff the sums of money specified in said coupons or any portion thereof whereby an action hath accrued to said plaintiff to demand and have of and from said defendant the sum of three hundred and twenty dollars the amount of the said coupons for semiannual interest due upon said writings obligatory upon the day and year last aforesaid parcel of the sum aforesaid.

Also for that whereas the said defendant heretofore to wit on the first day of January AD1857 at the county of Tazewell aforesaid made its eight writings obligatory num=

29

bered forty-two (42) forty three (43) forty four (44) and forty-five, eighty-two (82) eighty-three (83) eighty four (84) eighty-five (85) each of which writings obligatory were sealed with the corporate seal of said defendant, and each of said writings obligatory bearing date the day and year aforesaid, and thereby then and there the said defendant in each of said writings obligatory acknowledged to be due from the defendant to the Illinois River Rail Road company or bearer, one thousand dollars lawful money of the United States, with interest thereon at the rate of eight per cent per annum payable semiannually on the first days of January and July in each year at the American Exchange Bank in the city of New York on the presentation and surrender of the proper coupons attached to each of said bonds or writings obligatory - the principal of each of said writings obligatory was to be paid at the said American Exchange Bank in the city of New York twenty years from the date of said writings obligatory and attached to each of said writings obligatory were Coupons for the payment of said instalments of interest payable semiannually as provided in said writings obligatory, which said writings obligatory were signed by the Mayor of said city of Pekin, at the date of the said writings obligatory,

to wit:- by M. Tackaberry, Mayor as afore=
said, and each also signed by the city
clerk of the said city of Pekin at the time
aforesaid viz:- William B. Parker city clerk"
and each and every of said coupons upon
the said eight bonds were signed by the said
M. Tackaberry, Mayor of said city, which
said writings obligatory so being duly
made and executed were on the day and
year of their execution aforesaid, at the
County of Tazewell aforesaid, delivered
to the said Illinois River Rail Road com=
pany and thereafterward to wit: on the
same day at the county aforesaid were
for a valuable consideration delivered
to the plaintiff who then and there be=
came and was and ever since hath
been and still is the legal holder and
owner of the said eight writings oblig=
atory, and the coupons thereto attached
as aforesaid, By means whereof and
by force of the statute in such case made
and provided the said defendant became
liable to pay to the said plaintiff the several
sums of money in said several writings oblig=
atory and in the said coupons thereto
attached according to the tenor and effect
thereof, and the plaintiff further avers
that on the first day of July AD 1862
there became and was due upon the

31 coupon attached to each of said bonds the sum of forty dollars for semi-annual interest upon each of said bonds, which coupons were in substance as follows to wit

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~*January*~~ July, 186~~1~~2, *FORTY DOLLARS, interest due on their Bond No.* 44...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

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M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~*January*~~ July, 186~~1~~2, *FORTY DOLLARS, interest due on their Bond No.* 85...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~*January*~~ July, 186~~1~~2, *FORTY DOLLARS, interest due on their Bond No.* 43..

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~*January*~~ July, 186~~1~~2, *FORTY DOLLARS, interest due on their Bond No.* 84..

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~*January*~~ July, 186~~1~~2, *FORTY DOLLARS, interest due on their Bond No.* 82..

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~January~~ July, 1862, *FORTY DOLLARS, interest due on their Bond* No. 45...

M. TACKABERRY, Mayor.

THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, *in the* CITY OF NEW YORK, *on the first day of* ~~January~~ July, 1862, *FORTY DOLLARS, interest due on their Bond* No. 83...

M. TACKABERRY, Mayor.

And the plaintiff presented the said several coupons attached to each of said writings obligatory due on the day and year last above mentioned for payment at the American Exchange Bank in the city of New York when and where the same were made payable and demanded the payment thereof which was refused and neither did the defendant on said day and year last aforesaid or at any other time pay the said coupons or either of them nor has the said defendant or any person for him at any time since paid to the said plaintiff the sums of money specified in said coupons or any portion thereof whereby an action hath accrued to said plaintiff to demand and have of and from said defendant the sum of three hundred and twenty dollars the amount of the said coupons for semi annual interest due

upon said writings obligatory upon the days and year last aforesaid parcel of the sum aforesaid.

Also for that whereas the said defendant heretofore to wit on the first day of July AD 1862 at the county of Tazewell aforesaid was indebted to the plaintiff in the sum of twelve hundred and eighty dollars for money before that time lent and advanced to and paid laid out and expended for said defendant by said plaintiff at said defendants special instance and request and for money before that time had and received by said defendant to and for the use of the said plaintiff, also for so much money before found to be due and owing from defendant to plaintiff upon accounting before then had between plaintiff and defendant also for interest upon the same and for forbearance of divers large sums of money by plaintiff to defendant at the request of defendant for divers long spaces of time before then elapsed to be paid when the defendant should be thereto afterwards requested and by reason of the said money being and remaining wholly unpaid an action hath accrued to plaintiff to demand and have of and from defendant the said money so demanded yet the said defendant although often requested so to do hath not as yet paid the said sum of twelve

hundred and eighty dollars or any part thereof to the plaintiff but to do so has hitherto wholly neglected and refused to the damage of the plaintiff the sum of twelve hundred and eighty dollars and therefor he brings suit by his attorneys

Johnson & Hopkins, Attys

John A Reynolds } Tazewell county Circuit
v } Court = September Term
City of Pekin } AD 1862 = Action of Debt.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or any of the officers of this court, in pursuance of the laws of this state.

Dated this 20 day of August AD 1862

Elbridge G. Johnson.

State of Illinois } In the circuit court of Taze-
Tazewell County } ss well county = To September Term AD 1862.

John A Reynolds } Debt $1280
v }
City of Pekin } Damages $1280

Issue a summons in the above cause to the sheriff of Tazewell county returnable according to law

To Clerk of said court

35

Johnson & Hopkins, Attorney for Plaintiff

A copy of the Coupons sued on are correctly set out in the several counts of the foregoing declaration.

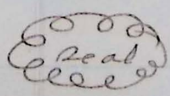
Copy of Account sued upon.

To Money paid, laid out and expended	$1280
To Money lent and advanced	$1280
To Money had and received	$1280
To Money due on account stated	$1280
To Mony due for interest on divers large sums of Mony	$1280

Summons = State of Illinois } The People of the state of Illinois,
Tazewell county } ss To the Sheriff of said county = Greeting:

We command You that you summon City of Pekin if they shall be found in your County, personally to be and appear before the circuit court of said Tazewell county, on the first day of the next term thereof, to be holden at the court house in Pekin in said Tazewell County, on the first Monday of September 1862, to answer unto John H. Reynolds in a plea of debt $1280 - to the damage of said plaintiff as he says in the sum of Twelve Hundred & eighty dollars

And you have then and there this writ with an indorsement thereon, in what manner you shall have executed the same. Witness George H. Harlow,



Clerk of our said court,

and the seal thereof, at Pekin aforesaid, this 22 day of August AD 1862

Geo. H. Harlow, clerk

per A P Griswold, deputy

Return - "B"

Served by reading this writ to Benjamin S. Prettyman, Mayor of the city of Pekin and A. P. Griswold, Clerk of the city of Pekin this the 22d day of August 1862 C. Williamson, S.T.C.

"C"

State of Illinois } ss Sept. Term AD 1862
Tazewell County } Tazewell circuit court

City of Pekin
ats. } In Debt
John H Reynolds

And the said defendant by Cohrs his atty comes and defends the wrong and injury when &c and says he does not owe the said several sums of money in said pltff declaration mentioned above demanded or any part thereof in manner and form as the said plaintiff hath above thereof complained against him, and of this the said defendant puts himself upon the country &c

John B. Cohrs, Defts atty

"D"

State of Illinois } ss Circuit Court
Tazewell County } Sept. Term A.D. 1862

37 John H. Reynolds
vs
City of Pekin

And the said defendant by John B. Cohrs its atty comes and defends the wrong and injury when &c and demurs to the said plaintiffs declaration and each and every count thereof generally and specially, and says that the matters and things therein contained are not sufficient for said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and the said defendant is not by law bound to answer the same, this he is ready to verify whereupon he prays judgment &c
John B. Cohrs, Defts atty

"7" John H. Reynolds vs City of Pekin } Tazewell county circuit court September Term 1862

John H. Reynolds plaintiff in said suit prays for a change of venue in the above entitled cause from the circuit court of Tazewell county to some adjoining circuit for the following reasons = First Your petitioner has reason to believe and does believe that the presiding judge of the circuit court of Tazewell Co. is interested, being a resident property owner & tax payer of the city of Pekin, and interested for the defence of said suit.

38 Secondly - Because the adverse party in said suit has an undue influence over the minds of the inhabitants of said county of Tazewell wherein said action is pending - so that he cannot expect a fair trial of said cause - either in said county or the circuit in which said county is contained.

John H Reynolds
per Johnson & Hopkins, attys

E. G. Johnson being of counsel for plaintiff in the above entitled cause first duly sworn doth depose and say that he has read the foregoing petition - and the statements therein contained are true in substance and in fact. E. G. Johnson

The above affidavit
of E. G. Johnson, sworn
to and subscribed before
me this 12th day of Sept 1862
Bernard Baily J P [Seal]

STATE OF ILLINOIS, }
PEORIA COUNTY. }

Office of the clerk of the County Court
Clerk's Office.

I, CHARLES KETTELLE, Clerk of the county court, in and for said county, do hereby certify that Bernard Baily whose name appears to the foregoing affidavit was on the day of the date thereof, an acting Justice of the Peace, in and for said county, duly commissioned and quali ed, as appears of record in my office; that as such full faith and credit are due to all his official acts; and his signature thereto is genuine.

Given under my hand and official seal at the City of Peoria, this twelfth day of September A. D. 1862.

Charles Kettelle Clerk.

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And afterwards to wit: on the 12th day of ~~February~~ December AD 1862, upon the trial of this cause, Coupons were read in evidence in words and figures following to wit:

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of January, 1861, FORTY DOLLARS, interest due on their Bond No. 83 8
M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of January, 1861, FORTY DOLLARS, interest due on their Bond No. 82 8
M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of January, 1861, FORTY DOLLARS, interest due on their Bond No. 44 8
M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of January, 1861, FORTY DOLLARS, interest due on their Bond No. 45 8
M. TACKABERRY, Mayor.

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M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of January, 1861, FORTY DOLLARS, interest due on their Bond No. 85 8
M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of January, 1861, FORTY DOLLARS, interest due on their Bond No. 42 8
M. TACKABERRY, Mayor.

THE CITY OF PEKIN
Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of January, 1861, FORTY DOLLARS, interest due on their Bond No. 84 8
M. TACKABERRY, Mayor.

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M. TACKABERRY, Mayor.

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9

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M. TACKABERRY, Mayor.

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THE CITY OF PEKIN

Will pay the Bearer, at the AMERICAN EXCHANGE BANK, in the CITY OF NEW YORK, on the first day of ~~January~~ July, 1862 FORTY DOLLARS, interest due on their Bond No. 85....

M. TACKABERRY, Mayor.

Proceedings at a term of the circuit court begun and held at the court house in the city and County of Peoria Illinois, on the first monday, in the month of December in the Year of our Lord one thousand eight hundred and sixty two, it being the first day of said month. Present, the Honorable A. L. Merriman, Judge of the 16th Judicial circuit in said state, J. A. J. Murray, sheriff and Enoch P. Sloan, clerk to wit:

Friday, December 12th A D 1862

John H. Reynolds

vs — Debt = Venue from Pekin

The City of Pekin

This day come the plaintiff to this suit

by his attorney, and it is ordered by the court that a jury be impannelled to try this cause, whereupon come a jury of twelve good and lawful men to wit: John Gray, George Bristol, M. C. Miller, Adam Barefoot, Pat. Hanlon, Geo. B. Parker, A. T. Toward, Peter Frye, Thos. E. Patton, John Fasnacht, C. B. Stebbins, V. M. Taggart, who being duly chosen tried and sworn to well and truly try the issues joined in this cause, and a true verdict give according to the evidence, do say, We the jury do find for the plaintiff and find that defendant does owe to said plaintiff the sum of twelve hundred and eighty dollars, and that by reason thereof the plaintiff has sustained damages in the sum of Ninety dollars and sixty-eight cents. The defendant by Ingersoll moved the court for a new trial.

Proceedings at a term of the circuit court begun and held at the court house, in the city and county of Peoria, Illinois, on the first Monday in the month of February, in the Year of our Lord one thousand eight hundred and sixty three, the same being the second day of said month. Present the Honorable Amos L. Merriman, Judge of the 16th Judicial circuit, in said state, John A. J. Murray, Sheriff, and Enoch P. Sloan Clerk, to wit:–

Friday, February 13th AD 1863.

John H. Reynolds
vs — Debt
City of Pekin

This day this cause came on to be heard on the motion of defendant for a new trial, and the court being fully advised in the premises overruled said motion. Therefore it is considered by the court that said John H Reynolds have and recover of said city of Pekin the said sum of twelve hundred and eighty dollars his debt aforesaid and the sum of ninety dollars and sixty eight cents his damages aforesaid and also his costs and charges by him about his suit in this behalf expended, and that he have execution therefor.

And afterwards to wit = On the 14th day of February AD 1863, there was filed in the office of the clerk of said circuit court a Bill of Exceptions, in words and figures following to wit :-

State of Illinois } Circuit court
Peoria County } February Term 1863

John H Reynolds
vs — Bill of Exceptions
City of Peoria

Be it remembered that on the

13th day of December AD 1862, the defendant filed the following motion in said cause, viz:-

Dec. term, Peoria circuit court 1862

Reynolds
vs } Debt.
City of Pekin

And now on this day the said deft by Ingersoll & Williamson its attys, comes & moves the court here to set aside the assessment made on yesterday in the above cause by the jury and award a new trial, for the reason following to wit: When the said cause was called on yesterday on the docket of the court, the defendant had no counsel or atty in court, and no atty appeared on behalf of said deft, J.B. Cohrs, Esqr. of Pekin Ills. being the only atty of the said deft at trial upon yesterday, and he being at the time in Pekin. There was no issue joined in the said cause. The pleadings were not made up at the time of the said trial. The evidence was not sufficient to sustain the verdict. There was no proof that the coupons had ever been presented at the treasury of the defendant or elsewhere for payment either of the principal or interest. The deft. has a good

defence to said action. There was no proof offered tending to prove that there had ever been any demand made for the payment either of principal or interest on said coupons at any place whatever. There was never any demand made upon the city treasurer for the payment of said coupons

Ingersoll & Puterbaugh
Attys for Deft.

And that at the February Term 1863 to which this ~~motion~~ cause was continued on the 5th day of February A.D. 1863, the defendant filed in support of said motion the affidavit of E. C. Ingersoll, Esq., to wit:

State of Illinois }
Peoria County } Circuit Court Feby Term 1863

Reynolds
vs
City of Pekin

E. C. Ingersoll being duly sworn according to law deposeth and says that he was present at the trial of the above entitled cause at the last term of this court and heard all the testimony offered at said trial, and states that no counsel appeared at said trial = That the plaintiff offered no evidence that the coupons sued on had ever been presented to the city treasurer of said city of Pekin, for

payment, or that any demand had ever been made for the payment of said Coupons, or the amount due on the same. E. C. Ingersoll

Subscribed & sworn to before me this 5th day of February AD 1863

E A Sloan, clerk

These were all the papers filed, and evidence offered in said cause = and the court overruled said motion, to which defendant, by attys then and there excepted - and present this their bill of exceptions and pray that the same may be signed and sealed by the court and made part of the record in said cause, which is accordingly done A. L. Merriman (Seal)

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State of Illinois } S.S.
Peoria County }

I, Enoch P. Sloan, Clerk of the circuit court in and for said county & State do hereby certify that the foregoing is a full, true and complete transcript of the papers filed in the cause wherein John D. Reynolds is plaintiff and the City of Pekin is defendant, and of the proceedings of said court appertaining thereto, as the same appears of record and on file in my office.

Given under my hand and seal of said court at Peoria, this 19th day of March A.D. 1863.

Enoch P. Sloan, Clerk

justice has been done the plaintiff in error by the overruling motion for new trial.

S. D. Puterbaugh and
John B. Cohrs for
Plaintiff in Error.

And the said Defendant for joinder in the errors ~~afor~~ assigned as aforesaid or such of them as properly arise upon the foregoing record says there is no error in the said record & proceedings in ~~any~~ manner & form as above assigned & alleged & this he will maintain as the Court shall direct

Johnson & Hopkins
for Defendant

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City of Pekin

185 vs

John H. Reynolds

Record

Filed April 22. 1863

L. Leland
Clerk

SUPREME COURT OF ILLINOIS.

Third Grand Division.—April Term, 1863,

JOHN H. REYNOLDS,

ATS.

CITY OF PEKIN.

DEFENDANT'S BRIEF.

This suit by the Defendant in error, against the Plaintiff in error, was brought in the Circuit Court, at Tazewell County, and venue changed to Peoria County, and tried there by a jury at December term, 1862, and motion for new trial overruled and final judgment at February term, 1863. The action was debt upon thirty-two coupons of the City of Pekin, all alike, except the numbers designating them and date when payable, and number of bond from which they were detached, to-wit: "The City of Pekin will pay to the bearer at the American Exchange Bank in the City of New York, on the first day of January, 1862, Forty Dollars, interest due on their bond No. 42." The cause was tried upon the general issue only.

I. But two of the errors assigned can arise upon this record, viz: that relative to overruling Plaintiffs' motion for a new trial, and that relating to the cause being tried without a similiter. The other errors assigned relate to the sufficiency of the evidence to support the verdict, and the Plaintiff only took a bill of exceptions of the matters relative to the motion for a new trial made at a term subsequent to the trial upon the merits, and the evidence to the jury is not brought up nor preserved by bill of exceptions And this Court will entertain any exception as to correctness of the verdict in the matter of debt or damage.

Swain et al. vs. Cawood, 2 Scam. 506.
Granger vs. Warrington, 3 Gil. 310.
McLaughlin vs. Walsh, 3 Scam. 185.
Moss vs. Flint et al., 13 Ill. 572.
Wheeler vs. Shields, 3. Scam. 320.
Roan vs. Dosh, 4 Scam. 460.

II. The Court did not err in trying the cause in its regular order, even though the attorney employed by Defendant below was absent. It was rather the duty of the attorney to be in attendance on the Court.

2dly. It appears that the Defendant below was represented by attorney at the trial. Ingersoll, one of the attorneys who filed the motion for new trial, (see page 44 of Record,) was present at the trial and entered then a motion for new trial. (See page 42 of Record.) 3rdly. There is no evidence before this Court that any attorney desiring to appear for Defendant below was absent from the trial—the Court certifies no such fact in the bill of exceptions, but only that a bystander in the court room filed an affidavit so stating.

III. There is no error of a nature to reverse the judgment in going to trial upon declaration, general issue and proofs, without a similiter. It is at most but an irregularity which can injure no one, and is cured by verdict.

Hays vs. McKee, 2 Blackf. 11
Waters vs. Simpson, 2 Gil 577.
Wilson vs. Burton, 3 Gil. 625.
Furnace vs. Williams. 11 Ill. 237.

Secondly. No objection was made below where it might at once have been remedied.

IV. The second and third grounds assigned as error cannot be entertained because the proofs, on the trial below, are none of them before this Court.

The clerk recites in his record that certain coupons were given in evidence, but does not state that that was all the evidence, and this recital is evidence of nothing, as it is not in a bill of exceptions, but a mere voluntary attempt of the clerk to state one fact which took place at the trial about which he may be right or wrong.

Ingersoll's affidavit filed for the purpose of procuring a new trial and a part of the bill of exceptions, states that no demand of payment, of the City Treasurer, was proved at the trial—but this is evidence of nothing. The Judge certifies to no such fact, and this Court will not take the affidavit of a mere bystander as to the facts which were before the jury.

McLaughlin vs. Walsh, 3 Scam. 185.
Petty vs. Scott, 5 Gil. 209.
Mayher vs. Howe, 12 Ill. 379.
Moss vs. Flint et al., 13 Ill. 572.
Browder vs. Johnson, Breese 61.

Cory vs. Russel, 3 Gil. 366
Edwards vs. Patterson, 5 Gil. 126.
Saunders vs. McCallins, 4 Scam 419.
Mane vs. Russell, 12 Ill. 380.

For ought that appears to this Court there was abundance of proof below of demand upon the said Treasurer for payment of said coupons.

Again, no objection was made below to said coupons for want of demand. There the demand if not proven might readily have been.

And again, we hold that Plaintiff was entitled to recover without demand. That part of the coupon which makes them payable in New York being void, (People ex. rel. P. & O. R. R. Co. vs. Tazewell Co. et al. 22 Ill. 147,) they became payable at the City Treasurer's office. Johnson vs. Stark Co., 24 Ill. 75. Demand is not a prerequisite to the right to sue for money made payable at a particular place, but proof that payor had the money ready at such place is a defence as to interest, if set up, but no such defence was set up in this case.

Parsons on Con. 226.
U. S. Bank vs. Smith, 11 Wheat. 171.
Foden vs. Sharp, 4 Johns. 183.
Wolcott vs. VanSautvoord 17 Johns. 248.
Caldwell vs. Cassady, 8 Cow. 271.
Wallace vs. McConnel, 13 Peters, 136.
Carley vs. Vance, 17 Mass. 389.
Watkins vs. Crouch, 5 Leigh. 522.
Weed vs. VanHouten, 4 Halst. 189.
McNuir vs. Bell, 1 Yerg. 502.
Bacon vs. Dyer, 3 Fairfield 19.
Eldred vs Haus, 4 Conn. 465.
Payson vs Whitcomb, 15 Pick. 212.
Irvin vs Withers, 1 Stew. (Ala) 234.
Green vs Goings, 17 Bar. 652

It is conceded by the Plaintiff that interest may be recovered on coupons if their be a contract for its payment, and in the absence of any proof to the contrary, the Court will presume that the jury had such evidence and such instructions as justify their verdict.
See authorities first above cited.

But we contend that coupons draw interest after maturity, as matter of law, without any further agreement.

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This Court cannot inquire whether the Court below erred in not granting a new trial upon the merits, because the evidence is not before them. See authorities first above cited.

But the only inquiry upon this head is: Should a new trial have been allowed upon the ground that the similiter was not added to the plea of general issue?

Upon this question we refer to the authorities already cited.

Wherefore the said Record shows no error and no injustice to the Plaintiff

JOHNSON & HOPKINS,
Defendant's Attorneys.

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City of Pekin
vs
J H Reynolds

Defts. Brief

Filed May 12. 1863
L Leland
Clk

Supreme Court } Third Grand Division
State of Illinois } April Term 1863.

City of Pekin
vs
John H. Reynolds. }

In addition to the printed brief and argument already filed herein, I desire to reply briefly to points of defendant in error.

1st The proceedings of the court below, page 41 of record, and the affidavit of E. C. Ingersoll Esq. in bill of exceptions, clearly show that no no attorney appeared at the trial of this cause, for the city before the jury- The cause was tried entirely exparte by defendant in error, which he had no right to do until he had joined in the issue, by adding similiter

2nd The cases cited by defendant upon the question of "similiter" have no bearing in this case, because in all the cases cited both parties appear to have been present and gone to trial without objections.

3rd. There is no pretense on the part of the attorneys for Reynolds that the suit is brought on any thing else but the 32 Coupons - which amount in the aggregate to $1280 - In addition to this amount the jury have allowed $90.68/100 damages as interest, which is clearly wrong, upon this point I desire particularly to call the attention of the Court to the case of Madison Co vs Bartlett 1 Scammon 67 - also City of Bridgeport vs Rose 17 Conn. 243 - These cases it seems to me are clear upon this point.

4th. The affidavit of E. C. Ingersoll Esq (see page 45 record) shows that no proof was offered on the trial below of any demand having been made at the city treasury for amount due on coupons - From the decisions referred to in my brief it seems that no right to sue exists until such demands has been proven - Under the plea of nil debet the parties must prove every material allegation, Certainly he must here prove the demand, or he has shown no right of action.

5th The defendant asserts that no objection was made in the court below to the want of the similiter, by reference to page 44 of the record the court will see that the attorney for defendant is mistaken - (see motion for new trial at page 44 record)

6 There was some disagreement between the origonal counsel in this cause about the suit below - J. B. Cohrs Esq. who lives at Pekin, says that he and the attorney for Reynolds were in correspondence about compromising the suit, and that Johnson & Hopkins had his proposition under advisement, And he had no reason to suppose that they would call the case up without giving him notice - This accounts for the attorney for the city not being in Court -

S. D. Puterbaugh
Atty for Pltff in Error -

~~John~~ 185

City of Pekin
vs
John H. Reynolds

Points for Plff.
in Error.

Filed May 14. 1863
L. Leland
Clk

State of Illinois, SUPREME COURT. | Third Grand Division, APRIL TERM, A. D. 1863.

CITY OF PEKIN, PLAINTIFF IN ERROR,

vs.

JOHN H. REYNOLDS, DEFENDANT IN ERROR.

ERROR TO PEORIA.

ABSTRACT OF THE RECORD.

This was an action of debt brought by defendant in error against plaintiff in error, on coupons issued by plaintiff. Suit commenced in circuit court, Tazewell county, and removed to Peoria on change of venue.

Page of Record.	
1	Transcript of record, circuit court of Tazewell county.
3 to 33	Copy of declaration.
34	Bond for costs and precipe.
35	Summons.
36	Plea *nil debet*.
37	Application of defendant in error for change of venue.
39	Copy of coupons offered in evidence.
41	Proceedings in circuit court, Peoria county.
	Verdict of jury for defendant in error, $1,280 debt, and $90.68 damages.
42	Motion for new trial; motion overruled.
	Bill of exceptions.
45	Affidavit of E. C. Ingersoll, esq.: That no counsel appeared for plaintiff in error at the trial; that there was no evidence of any demand having been made on treasurer of said city for payment of coupons sued on.
47	Certificate of clerk.

Errors Assigned.

1st. The court erred in hearing said cause in the absence of the counsel for plaintiff in error, without the defendant in error having taken issue on the plea of plaintiff in error.

2d. The court erred in permitting the coupons to be offered in evidence, without proof of demand being made on the treasurer of the city of Pekin for the payment of the same, prior to bringing suit.

3d. The court erred in allowing damages to be assessed as interest on the coupons.

4th. The court erred in not granting new trial.

5th. The record shows that manifest injustice has been done the plaintiff in error by overruling the motion for new trial.

JOHN B. COHRS,
S. D. PUTERBAUGH,
For Plaintiff in Error.

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City of Pekin

vs.

Jno H. Reynolds

Abstract of Record

Filed Apl. 29. 1869.
L. Leland
Clk.

State of Illinois, SUPREME COURT. | Third Grand Division, APRIL TERM, A. D. 1863.

CITY OF PEKIN, PLAINTIFF IN ERROR,

vs.

JOHN H. REYNOLDS, DEFENDANT IN ERROR.

BRIEF, POINTS AND ARGUMENT FOR PLAINTIFF IN ERROR.

This action was commenced in the circuit court of Tazewell county, and taken by change of venue to Peoria county. As appears by the record in this cause, and the affidavit of E. C. Ingersoll, the counsel for the plaintiff in error (Jno. B. Cohrs) was not present at the trial of the cause below when the jury was empanelled, and the damages were assessed to the defendant in error.

The errors assigned are—

1st The court erred in permitting the jury to assess damages before the similiter was added and issue joined.

2d. The court erred in rendering judgment for defendant in error in the absence of any proof of a demand having been made upon the city treasurer for payment of the coupons before the commencement of the suit.

3d. The court erred in permitting interest to be assessed upon the coupons, after they became due, in the absence of any express agreement of the city to pay interest, and of proof of demand before instituting suit.

4th. The court erred in overruling the motion for a new trial.

Upon the first point, we admit that, had the counsel for plaintiff in error been present at the trial below, and gone into the trial without objecting to the want of a similiter, the defect would have been cured by the verdict of the jury. Or, were the defect occasioned by any neglect or omission of the party assigning the non-joinder of issue for error, it would be overruled on the ground that a party can take no advantage of his own wrong. But, as the plaintiff in error (defendant below) was not present at the trial, the city cannot be considered to have consented or agreed to dispense with the formal issue, and the verdict of the jury could not cure the defect by implying consent from the absence of objection when the parties were present by their counsel. And the application of the principle that a party can take no advantage of his own wrong or neglect, is against the defendant in error here. The plaintiff in error, by tendering an issue, had done all that was necessary, and could not be guilty of neglect, or be forced to trial until the plea filed was either demurred to, or issue joined. What was necessary to complete the issue it devolved upon the plaintiff below to do, and not having done so, he cannot take advantage of his neglect to deprive the defendant of its rights.

A brief review of the decisions of this and other courts upon this point, will fortify the position here assumed. See 1st Chitty's Pleading. 600. Shaw vs. Redmond, 11 Serg. & Rawle, 32; Earl vs. Hall, 22 Pickering, 102. The first case in our own supreme court upon this point, is that of Geo. Brazzle et. al. vs. Usher, Breese, (2d ed.,) 35. From the statement of the case in the report, it appears to have been a writ of error brought by *defendants* below, to reverse judgment below, assigning for error that no *plea* was filed in the cause, and trial was had without plea. In addition to this clear omission on the part of the party endeavoring to take advantage of the omission, it appears from the record that the parties were present at the trial by their attorneys, and made no objection to the proceedings. The court affirmed the judgment below. Again, in Ross vs. Redrick, 1 Sc., 74: The court says: "If several pleas be pleaded, *one* of which is not answered, and particularly when the matter may be given in evidence under the general issue, and the *parties go to trial* without any objection on the part of the defendant that such plea remains unanswered, it will be considered as a waiver, or the irregularity will be cured by the verdict of the jury."

In Waters et. al. vs. Simpson, 2 Gil. 570, the cause assigned for error by appellants (defendants below) was, that appellants had not filed any replication to the issue tendered by the appellees (plaintiffs below) on the second plea. The court says: "There was technically no issue on that plea. The plaintiffs, in their replication, tendered an issue, and it was then the *dvty ot the defendants to have made it complete by adding the similiter*. To sustain this error, and reverse this judgment, would be to allow the defendants to take advantage of their own wrong, a thing the law abhors." The court will not fail to see the dissimilarity of the cases, and how applicable the rule enforced by the court in the case referred to is to the defendants in error. the court only deciding in this case (in which, as in the previous cases, the defendants below were present at the trial) that the omission being the act of the defendant, he could not successfully assign for error his own neglect. So also, in Graham vs. Dixon, 3 Sc. 115, the plaintiff in error omitted to file a plea to the second count of the declaration, and the court decided that, being an omission on their part, the defendant could not sustain error therefor.

So also, in 17 Ill., 166, the court says: "The parties went to trial without a formal joinder of issue on the fourth plea. Proceeding to trial without a formal issue is, after verdict, treated as a waiver either of the issue or plea"—referring to the decisions above referred to in this argument.

So also, in 21 Ills., 192, Spencer vs. Langdon, the court says: "A special plea was filed, concluding with a verification, to which a *similiter* was added; upon which the parties went to trial. To this replication defendant below (appellant) now objects. It is too late to raise that objection now. The similiter was a nullity, and was no answer to the plea. The parties *by agreement* went to trial with a plea unanswered. This was decided to be no ground for reversing the judgment in the case of Ross vs. Reddick, 1 Sc., 74. And *upon the same principle* was the case of Brazzle vs. Usher, Breese, 14, (1st ed.,) decided, where it was held that if parties *go to trial* without any plea, the objection was waived."

So also, in the case of Parmelee et als. vs. Fischer, 22 Ills., 212. "If one of several pleas be not answered, and the *parties go to trial without objection* on the part of the defendant, the irregularity is considered as waived."

In Loomis vs. Riley, 24th Ills., 307, this court says: "It is first urged that the court below erred in trying the cause without any plea having been filed to the second count of the plaintiff's (appellant's) declaration. While this is not strictly formal, this court has repeatedly held that it is not such an error as will justify a reversal of the judgment. When the plaintiff waives the right to take a default, or to rule the other party to file a plea, *and proceeds to trial,* he is estopped to urge the want of a plea, and must be held to have consented to try the case as though the general issue had been filed."

So in all other cases in our reports, where the want of a similiter or of a plea has been held to be cured by verdict, it will invariably be found that it was either where the party assigning the omission for error was himself the party who ought to have completed the issue, or where the parties being present and going into trial without any objection, must be held to have consented that the cause should be treated as though the issue were technically complete.

In the case of Kelsy vs. Lamb, 21 Ills., 559, the court says: "As a general rule of pleading and of practice, it is true, that it is error to proceed to the trial of a cause until there are issues of fact formed on each of the pleas filed. But this rule has no application to cases where, *by consent of the parties,* formal written issues are dispensed with. There can be no doubt that parties may agree to try a cause without plea or replication being filed; and by such an agreement the parties would be estopped from insisting upon the want of a plea or replication as error. When the parties submitted the case to trial by the court without a jury, by consent, it had the effect of submitting the case to trial on the pleadings, as if there were proper issues formed, and the court will hear evidence under all the pleas presenting a legal defense, precisely as if the allegations of such pleas had been formally traversed. This is the fair and reasonable construction to be given to such agreements. But it is otherwise where the party is compelled to proceed to trial without the issues being formed in the case. There the act is not voluntary, and no such intendment can be made." It appears to us that this case is decisive upon this point, as there can be no intendment against the plaintiff in error, drawn from any consent on our part; or agreement, as there was no consent. Nor is there any omission on the part of the city.

There is nothing to bring the plaintiff in error within the principles upon which this court decided in the cases first referred to, that a formal similiter was unnecessary. Neither consent to enter upon the trial without objection, nor omission of anything necessary on our part to complete and make up the issue.

But the facts, as set forth in the record, and the affidavit of Mr. Ingersoll, bring as clearly and emphatically within the decision in 21st Ills., last quoted from, and which is itself clear, emphatic and brief upon the point presented.

In Mix vs. the people, 26th Ills., 480, which was error to reverse a judgment on *scire facias* on a recognizance. There were six pleas filed, and to one only was replication filed. It nowhere appears from the record, or the opinion in the report of the case, that the parties were not all present at the trial. The court says, Caton giving the opinion: "Six pleas were filed to this *scire facias*, but one of which seems to have been noticed—this was the first—to which a replication was filed. Whatever may be said of the

other pleas unanswered, the fourth plea, filed by the surety, was undoubtedly a good plea. It averred that the prisoner was dead at the time the cognizor was required to produce him. It was undoubtedly error to proceed to trial and judgment, while this plea remained unanswered. The judgment must be reversed, and the cause remanded." We quote the whole opinion in this very recent case, which to us appears conclusive upon this point, and to which we beg the particular attention of this court.

Upon the second assignment of error—that before the plaintiff below could recover upon the coupons sued upon, he must make a demand for payment at the city treasury, and prove such demand upon the trial—we apprehend the decisions of this court are equally clear.

As averred in the declaration, the coupons sued upon were interest coupons upon bonds issued by the city of Pekin, in aid of the Illinois River railroad, under the law of 1849; and upon their face, these coupons are payable at the American Exchange Bank, in the city of New York.

By reference to the provisions of the charter of the Illinois River Railroad Company, (see laws of 1853,) the court will perceive that nowhere in the charter is there any clause or provision authorizing counties and cities to make the interest upon their bonds issued in aid of such road, payable at any other place than the city treasury. By an amendatory act, (see laws of 1857,) the vote of the city of Pekin is declared to have been legally made and taken, but that vote was only upon the question of subscribing to the railroad. The act of the city council in making the interest upon those bonds payable at the American Exchange Bank, in the city of New York, is nowhere legalized. The subscription to the road, therefore, stands upon no other footing as to the powers of the city, than by the general law of the state in 1849, in reference to subscription to its stock by municipal corporations. In each count of the declaration the plaintiff below avers a presentment, demand, and refusal to pay at the American Exchange Bank, in New York. But we submit, upon the authorities below, that this was entirely inoperative as a demand.

In the case of Prettyman vs. supervisors of Tazewell county et. als., reported in the 19th vol. of Ills. Reports, at page 406, this court held that it was only by virtue of the act of February, 1857, that the county courts of the counties subscribing to the Tonica and Petersburg Railroad Company could legally make the interest upon the bonds in aid of that road payable elsewhere than at the county treasury. That act applied to subscriptions to that particular road, and to none other.

In the case of the "People ex rel. Peoria and Oquawka Railroad Co. vs. county of Tazewell et. als., this court says: "States, counties and corporations, created for public convenience only, are not required to seek their creditors to discharge their indebtedness, but when payment is desired, the demand should be made at their treasury. That is the only place at which payment can be legally insisted upon, and it is the only place where the treasurer can legally have the public funds with which he is entrusted."

"To authorize the auditor to draw his warrants on the treasurer, payable in a sister state or in a foreign country, necessarily imposes an obligation to provide funds in that place to meet them; and his duties requiring him at the treasury would require the employment of agents, the transmission of the funds at the risk of loss, and at a considerable expense in charges, insurance and discounts, which are not incident to its payment at the treasury. And the same reasons apply with equal force to cities, counties, and public corporations of a similar character."

The treasury being, then, in the language of the court above quoted, the "*only place* at which payment can be legally insisted upon," and the only place at which the "treasurer could legally have the public funds with which he is entrusted," no action for the non-payment of these coupons can be sustained against the city, until the holder of the coupons has presented them, and demanded their payment at the city treasury, "the only place where payment can be legally insisted upon." The city could not be in default until payment had been asked and refused at the treasury, the only place where payment in the first instance could be legally demanded, or where the city could legally have the funds to meet the coupons. In saying that the city treasury was the only place where payment could be legally insisted upon, this court either conveyed absolutely no meaning by their language, or else they conveyed the meaning that a demand and presentment must be made there, and refused, before an action at law can be sustained against the city for non-payment.

The court says: "States, counties, and corporations created for public convenience only, are not required to seek their creditors to discharge their indebtedness, but when payment is desired, the demand should be made at their treasury." If, when the creditor desires payment, he must seek his debtor and make that demand at the debtor's treasury, it must be evident that, before he can maintain an action at law upon that indebtedness, he must have made the precedent necessary demand at the place where he was required to make it. To decide otherwise, would be to make utterly meaningless every word of the decision above quoted from. If the action may be maintained without a demand at the city treasury, by simply serving summons upon the city clerk, then payment may be "legally insisted upon" at some place other than the city treasury; and "when payment is desired," the debtor need not "make his demand at the treasury," but by serving legal process in the first instance upon the proper city official.

The plea of *nil debet* in actions of debt, as this was, puts in issue every material fact necessary to sustain the plaintiff's cause of action. In every action at law, it is incumbent upon the plaintiff to prove every material fact, (not admitted,) the existence of which is necessary to his recovery. The affirmative is upon him, who alleges that he has sustained a legal wrong, to prove his allegation. To prove a negative is never, as a rule, the duty of the defendant in the first instance, or until necessary to rebut the evidence of the plaintiff. If, then, it was necessary for the plaintiff, "when he desired payment," to "make a demand at the city treasury," "the only place where payment could be legally insisted upon," it is incumbent upon him when seeking to recover a judgment at law, with costs against the city, for a failure to pay him his debt, to prove this fact, viz: a presentment and demand of payment at the city treasury, and a refusal to pay, prior to the institution of his suit at law. Until he does that, the city cannot be in default. In this case, there is no pretense of any demand having been made or proven. The bill of exceptions does not show it; the affidavit of Mr. Clark Ingersoll, filed in support of the motion for a new trial, is positive to the contrary.

In the case of Johnson vs. county of Stark, 24 Ills., 75, this court says: "It was held by this court in case of The people ex rel vs. Tazewell county, 22 Ills., 147, that counties and municipal corporations, unless specially authorized by legislative enactment, have no power to make their indebtedness payable at any other place than at their treasury." Further on, in the same opinion, the court says: "The law authorized the county to issue it, (a coupon,) and requires no place of payment to be named, and where none is specified, it by operation of law is payable at the treasury."

"There is no room to doubt that the specified amount, by the terms of the agreement, is payable to, and may be *demanded* by, the holder after maturity. Its legal effect is, that the money is to be paid on the coupon, and to the holder *presenting* it for that purpose." From these decisions, it appears to us clear that this error is well assigned.

The third error assigned is, that the court permitted interest to be assessed upon the coupons from the time of their maturity, in the absence of any express agreement of the city to pay interest. The coupons were themselves for the payment of interest upon the principal of the bonds. The assessment of the jury, for which judgment was rendered in the court below, was twelve hundred and eighty ($1280) dollars debt, and ninety and 68-100 ($90 68) dollars damages, the first of these amounts being the amount due on the face of the coupons; and the damages were allowed as interest on the coupons after they became due, and until date of the recovery.

The general principle is, that interest cannot be recovered upon interest, in the absence of any express agreement.

"At common law, interest is the consideration or price that is agreed between parties to be paid for the use of money for a stipulated time. At common law, if no agreement for interest be made, it cannot be recovered, although the payment of the debt should be unreasonably delayed." Madison Co. vs. Bartlett, 1 Sc., 67.

"Interest is not given, by the common law, for a failure to pay money when it is due, unless the parties have so agreed; and it is only allowed by statute, when the party neglects to pay at the time stipulated, and is then given in the nature of a penalty for the violation of a contract. The law does not impute laches, or even improper conduct, to a state or county, and hence will not presume that the county has not done everything within its power to enable itself to comply with its contracts, or duties." Idem. See also, to the same effect, County of Pike vs. Woodford, 11 Ills., 170. If this rule is applicable to cities, and we see no reason why it should be held otherwise, interest on these coupons certainly cannot be recovered as a penalty against the city for a violation of its contract, until that contract has been violated. That contract was in accordance with the decisions referred to on the question of the demand to pay the coupon at maturity upon presentment and demand by the holder at the treasury. And if interest could be recovered at all upon these coupons, which we deny, it certainly could not be until the demand had been made, and payment refused, at the city treasury, "the only place where payment could be legally insisted upon."

Interest cannot be recovered upon coupons given for interest, after they become due. City of Bridgeport vs. Rose, 17 Conn. Rep., 243.

Where money is payable on demand, and there is no contract or usage requiring it, and the defendant is not a wrong-doer in acquiring or detaining it, interest is to be computed from the service of the writ only. 15 Pick., 500; 12 Pick., 547; 9 Pick., 112.

This is the rule as applicable to ordinary cases of debtor and creditor, where the service of the writ is the demand; and the principle requires that where the demand must be made at a specified place by the creditor, interest can only be recovered from the time of such demand. Service of

the writ is not a sufficient demand in this case; and the court will notice that interest has been computed on these coupons, not from service of the writ, but from maturity of the coupons, without any evidence of demand at the city treasury.

A note payable on demand does not bear interest until demand is made. 6 Dana, 7; Madison Co. vs. Bartlett, 1 Sc., 67.

A county warrant will bear interest after presentment at the treasury and refusal of payment by the treasurer, but not before. 3d Miss., 57.

It must be true that, when payment could not be "legally insisted upon," except at the city treasury; when the city treasurer could "legally have the funds with which he is intrusted at no other place;" when the holder of a coupon "desiring payment," must "make his demand at the city treasury;" when the city was "not compelled to seek its creditors;" interest on the coupons cannot be recovered until demand and refusal have been made, and proven, at the treasury, previous to the commencement of the suit; otherwise, the creditor gains pecuniarily by his own neglect, and payment *can* be "legally insisted upon" elsewhere than at the city treasury; the treasurer *can* "legally have the funds" elsewhere than at the city treasury; the creditor "desiring payment" *need not* there make his demand; and the city, to avoid payment of costs and interest, *must seek its creditor*. Admitting, contrary to the decisions of this court, that the institution of a suit in the county of the defendant was a sufficient demand at the city treasury, and that interest may be recovered upon these coupons after such demand, even then, interest should only be computed on these interest coupons from the time of that demand, to-wit, the service of the writ. In this case, interest was computed from the maturity of the coupons. If this is allowed to become a precedent, holders of coupons may, by their own negligence, wait for any length of time without asking payment, and suddenly institute suit, without any previous demand at the treasury, and recover interest for the whole time, without any default of the city.

It appears to us that these errors are well assigned; and that the court below should have granted the motion for a new trial.

Where an error is shown to have been committed by the primary court, the presumption is that it worked an injury to the party complaining, and the judgment must consequently be reversed, unless it satisfactorily appears that no injury could have ensued. 16 Ala., 106; 17 do., 540. Can the court say that "it satisfactorily appears" that no injury could have ensued by these errors to plaintiff in error? Was it no injury that the plaintiff in error should be compelled to trial in the absence of their attorney, when the pleadings in the case were not made up, and that defect occasioned by neglect of the plaintiff below—defendant here?

Was it no injury that a judgment should be recovered against the city, with the accompanying costs, without any evidence that the city was in default by refusing payment upon demand at their treasury?

The court can indulge in no presumption, as against the city, that presentment and demand would have been useless, especially as there was no proof that it would have been.

Was it no injury that this large amount of interest should be assessed against the city contrary to law, and without the city being proved to be in default by refusal to pay at her treasury?

On these grounds we confidently ask this court to reverse the judgment below, and remand this cause to another jury, where the defense of the city can be fairly presented, and the errors of this judgment corrected.

JOHN B. COHRS,
S. D. PUTERBAUGH,
For Plaintiff in Error.

185-140

City of Pekin
vs.
Jno H. Reynolds

Brief and Argument
for Pelff in error.

Filed April 29th 1885
L. Leland
Clerk

Mr. Justice Walker delivered the opinion of the Court:

~~Walker J.~~ There was no averment of a demand # upon the City treasurer for payment of these coupons, ~~made~~ in this declaration. If such instruments could, in any event, draw interest, without an express agreement, it could only be # after a proper demand of payment. Until a demand is made, such a body is not in default. They are not like individuals, bound to seek their creditors, to make payment of their indebtedness. It was held in the case of the ~~County of S~~ People ex rel. vs Tazewell County, 22 Ills. 147, that municipal corporations # could not, even bind themselves # to pay their indebtedness # at any other place than at the treasury, unless specially authorised by legislative enactment. That their debts were payable at the treasury of the body. The same rule was adhered to in the case of Johnson vs Starke County, 24 Ill. 75. And we see no reason for ~~disregarding~~ annulling or modifying the rule. This declaration was insufficient, therefore, to authorise the recovery of interest on these coupons, if they could

even, in any event, bear interest.

~~The rate of interest, that indebtedness shall bear in this State, in the absence of any agreement for its payment~~
But we may go further, as

It was held in the case of Madison County vs Bartlett, 1 Scam. 67, that the State and counties were not liable to pay interest upon their warrants, or orders. The court placed it upon the grounds, that counties were corporations, with limited powers, and it must be presumed that they had employed all their means to cancel their indebtedness. That only being authorised to levy taxes to a limited extent, the presumption would be, that they had exhausted their power of taxation without ~~the~~ producing the necessary means to pay the debt. That, as States and counties are not named in the statute regulating interest, the inference is, that they were not designed to be ~~embraced~~, required to pay interest on their indebtedness.

At the common law interest was allowed in no case. 6 Jacob Law Dic 373. It is the creature of the statute alone, and to it we must look for ~~its~~ authority for its allowance. If not authorised by the statute it cannot be recovered.

It seems to us that all the reasons why a State or county should not be liable for interest, apply with equal force, to a city or town. They are municipal bodies created for public purposes, and with limited powers of taxation. And must be presumed to have exhausted all of their powers of taxation for the payment of their debts, and are not in default, when they fail to pay. ~~But even if this were not~~ Nor are they named in the act regulating interest on indebtedness. Whatever power they may possess to contract for the payment of interest, in the absence of express legislation on the subject, we are of the opinion that this indebtedness in the absence of such agreement does not bear interest.

The judgment of the court below must be reversed and the cause remanded.

Judgment Reversed