

13328

No. _____

Supreme Court of Illinois

Larned

vs.

Chicago, St. Charles and
Mississippi Air Line Co. *R. R.*

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, 1861.

EDWIN C. LARNED

vs.

CHICAGO, ST. CHARLES
AND MISSISSIPPI AIR
LINE RAILROAD COM-
PANY.

Appeal from the Superior Court of Chicago.

Summons in the usual form. Declaration in assumpsit in the usual form.

2 First count charging defendant for services rendered in the Supreme Court.

3 & 4 Second count for same cause of action.

5 & 6 Defendant and plaintiff's stipulation, waiving further plea or affidavit of merits.

7 Defendant's plea of general issue in the usual form.

8 Affidavit of merits sworn to by Ira Minard. Also commencement of trial before the jury.

8 & 9 Jury trial; verdict of jury in favor of plaintiff for \$1000.

10 Defendant's motion for new trial.

10 & 11 Arguments of motion for new trial. Motion overruled. Defendant prays an appeal to the Supreme Court. Appeal granted.

Defendant to have an appeal to the Supreme Court. Bond to be filed by the 15th day of August 1860. Bill of exceptions to be filed in thirty days.

12 Bond filed. Bill of exceptions filed.

12 Commences bill of exceptions.

JAMES H. REESE, first witness called by plaintiff—

Resides in Cook county. Was one of the parties plaintiff in a suit in the Court of Common Pleas, in Cook county, against Bennett and others.

Suit commenced in 1855 or 1856.

The Chicago, St. Charles & Mississippi Air Line Railroad Company and he, said witness, Henry Waller and McCauley, were plaintiffs.

Bill filed to establish lost deed from one Bennett to Kinzie. The land involved was the W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of S. No. 20, in T. 39, R. 14, situated in Cook county, about $1\frac{1}{2}$ or 2 miles south-west of the Court House.

13 The parties named were the owners of the land. Defendants had a railroad track across the land.

Witness was then asked, by plaintiff's counsel, as follows: What amount of land did defendants claim?

Defendants objected to the question. Court overruled objection. Defendants excepted.

Witness answered, I suppose they claimed it. I had a conversation with Litchfield. I suppose he was an officer of the road. I understood he claimed eight acres. I had a conversation with Minard. He was acting, as I supposed, for the road. They claimed eight acres. Waller filed the bill, Waller and Canfield. I think plaintiff was consulted. Most of the conversation with him.

Plaintiff's counsel then asked the witness as follows: Who argued the case in the Cook County Court of Common Pleas? Question objected to by defendant and overruled by Court. Exception taken. Witness then answered, Mr. Larned and Mr. Waller. Plaintiff's counsel then asked witness how long after the bill was filed before the case was argued? Question objected and overruled by Court. Exception. Witness then answered, "About three or four years." Plaintiff's counsel then asked witness, During that time what services did the plaintiff perform for the complainants in that case, in taking testimony or otherwise? Question objected to by defendant. Overruled. Exception taken. Witness answered, "I don't know; think he took the testimony of Saulis, or was present; he acted throughout the case; prepared the brief before Wilson; Waller prepared the evidence. Plaintiff then asked witness to state what he knew of defendant or any of its officers, having any knowledge of the filing the bill? Question objected to. Objection overruled. Exception taken. Witness answered, "I don't

know as they were advised of the filing of the bill; as the case progressed defendant paid its share of expense; Litchfield knew of it; I had a conversation with Litchfield in New York, about three years ago, I think; can't say directly what connection he had with the road; he was understood to be the principal party in interest.

To all of which testimony the defendant, by its counsel, then and there objected, and asked the court to exclude the same from the jury. Motion overruled and exceptions taken.

- 16 Witness further testified, Had a conversation with Minard about these bills two or three years back; Litchfield referred me to Minard in regard to the settlement of these expenses; bills were paid Galena Road by Minard; Minard was the managing man of the Road in Illinois. A decree taken for complainants in Cook County Court of Common Pleas. The other party appealed; after the appeal, I retained Larned to defend me in the Supreme Court on the writ of error; Walker and McCauley compromised for all, excepting my land and defendants'; I wrote to Mr. Minard. Letter produced.

(Copy of letter from Reese to Minard.)

*Hon. J. A. Minard
or Charles Lee*

D. Sir:

Waller

Chicago Sep. 14. 1857

- 17 Suit of ~~Walker~~ ^{has been} and others vs. Bennett and others, compromised by him so far as his interest and that of his friends are concerned, I have decided to continue the suit for my interest, and it is for you to decide whether you will settle or fight. They compromised by paying \$400 per acre. Supreme Court sits, I believe, on Monday next, and it is important that you decide at once. I have retained Mr. Larned to attend to my interest before the Supreme Court. You can compromise at the same price per acre as Waller and others. I pay Larned \$1000 for attending to my interest. Had you not better come and see to it.

JAMES H. REESE.

- 18 Witness further testified, "I don't know as Larned told me to write; I did not hear from Minard a few days after Barry called on me; inquired about it; understood he was acting in the same position Minard had formerly; don't know what that position was; plaintiff had gone to Supreme Court; Barry said he would see plaintiff; don't think he stated whether defendant had concluded to compromise or not. All of the evidence, so far as the same relates to a conversation between witness and Barry, was objected to before the same was given. Objection overruled by the Court. Exception taken. Witness further testified, I did not see any letter at the time; said he was going to Ottawa; would see Larned. All declarations of Barry were again objected to. Objection overruled by the Court. Exception taken.

On *Cross-Examination*, witness testified :

It was the first time I ever saw Barry; the cause was talked about; my impression is, Judge Barry held the same position towards Litchfield that Minard had held; this is my impression; the first trouble about title was in 1847 or 1848; I owned 12 acres.

Direct Examination:

Orders were paid by the Galena Railroad Company, by order of Minard; Minard said he had seen Litchfield, and perhaps it was right they should pay a share of the expenses. Plaintiff then asked witness, How much did they pay? Defendant objected. Objection overruled. Exception taken. Witness answered, I think they paid \$600 or \$700.

Cross-Examination:

Can't say that Minard or Litchfield knew anything about Larned having anything to do with the case; can't say that any of the acting men (of the railroad company) knew anything of Larned having any connection with the suit.

Waller and myself had charge of it; first knowledge defendants had of it was when I called on Minard for money, two or three years after the bill was filed.

Re-Examined by plaintiff:

The \$600 or \$700 was for court fees, traveling expenses, &c., Waller's expenses to Missouri; first conversation with Litchfield two or three years after; bill was filed; Litchfield knew the purpose of the bill; he did not know who were the attorneys; Minard knew the same; can't say they knew what court the case was in.

Re-Cross-Examined:

Minard said he knew nothing about it; I told him Litchfield said it was all right; Bennett and Stowe appealed.

The plaintiff then called EBENEZER E. PECK, who testified :

I was the attorney of the Galena & Chicago Union Railroad Company at the time of the suit of *Waller et al. vs. Bennett et al.*, some three or four years ago; think I had a conversation with officers of defendant in relation to the pending of the suit; have no distinct recollection; our road purchased defendant's road; took a bond to defend all suits; difficult to state any conversation; I reported each case to Captain Turner; don't know whether the road was a party to the suit; Minard was in the office several times; Barry acted as the attorney for St. Charles Air Line road and for Minard.

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Barry was an attorney at law; Minard was not; Barry acted for Minard or for the road in the management of cases arising under the bond given by Minard and Litchfield to the Galena road.

I understood Barry acted as attorney for Minard, or for the St. Charles Air Line Road; could not say which; interest of St. Charles Road and Minard were perhaps the same; I think I had a conversation with Judge Barry, who was Minard's counsel, about this or other suits.

Cross-Examined:

Recollect about Barry speaking of Larned making claim for services; I have no doubt I notified them of the pendency of the suit; have no recollection of it; should have talked with Turner, president of the Galena Road, if any one; my impression is, I have not talked with Minard since the Kelly suit, three or four years ago.

Re-Examined by plaintiff:

I think Litchfield was president of the road.

HENRY WALLER was then called by the plaintiff:

I was one of the plaintiffs in the case of *Reese et al. vs. Bennett et al.*; had an interest in the land in question; bill filed to supply lost deed; I wrote to Iglehart to employ counsel in the case; bill was drawn and filed by Arnold, Larned and Lay, in March 1854 or 1855; supplemental bill filed; I was counsel in the cause, and a party; decree was taken before Judge Wilson; defendants did not compromise to the knowledge of witness; I did not compromise for them; was not authorized to; I know Larned prepared a brief for the Supreme Court; I am a counsellor in the Supreme Court; thinks one thousand dollars would come within the range of a fair fee; Reese's proportion of the land was twelve acres, defendant's eight acres; our ideas of the value of the land ranged from \$3,000 to \$5,000 per acre. *The labor of counsel was the same for each interest* (Rec p 23. § 2d)

23

Cross-Examined:

He testified as follows: I think the eight acres of land is now worth \$200 per acre; I employed Arnold, Larned and Lay to file a bill; no step had been taken at that time to dispossess any one; noticed it by publication; Stowe was brought in as a party to the bill in 1855, several months after filing the original bill; five attorneys were employed; Larned and myself attended the case; had all the authorities looked up before the appeal to the Supreme Court; I would not estimate services in court below as high, because others were engaged with him.

24

He charged \$6000 in the court below; I did more hard service in the court below than the plaintiff or any one else; have made no bill myself.

Rec. p. 22. { Great
a } The parties who compromised
all companies through me

JOHN VAN ARMAN, a witness for the plaintiff:

25 Is an attorney of the Supreme Court; assisted Walker in the court below; had charge of the compromise; is familiar with the facts in the case of *Reese et al. vs. Bennett*; nearly 100 witnesses were sworn; testimony has to be analyzed; plaintiff was the sole counsel in that suit, in the Supreme Court; in my opinion a fair compensation for plaintiff's services would be \$2000; I judge from my own labor; I would put his services at \$2,500; am not clear what proportion Reese and defendants ought to pay; he ought to have from some one \$1,500 more than the \$1000 he has received; would not say from whom; railroad did not compromise. *It was a case requiring the best minds of the profession (Rec'd. 24. 9 40)*
Cross-Examined.

Witness testified: The case was appealed in the winter; it went to the Supreme Court in April.

ARTHUR WINDETT, sworn for the plaintiff.

Testified as follows: I was counsel in case of *Reese et al. vs. Bennett et al.*, before Judge Wilson, for one of the parties; *I filed a printed argument*; \$1000 is the lowest amount I would name for his services to each party. *It was a case requiring the very best legal talents in the State. I was on one side, the plaintiffs on the other.*

J. M. WALKER, a witness for the plaintiff:

Is a member of the firm of Walker, Van Arman and Dexter; is familiar with the case of *Reese et al. vs. Bennett et al.* Thinks \$1000 not an unreasonable charge for the services of the plaintiff from each party. *The case required a great deal of investigation*

*Rec'd. 26
9 40.*

JAMES H. REESE, recalled by plaintiff.

Testified: I recollect the account as given by Mr. Waller; cannot recollect the particulars.

27 The plaintiff then offered in evidence two letters from Ira Minard to W. M. Larrabee, and also a bill of items attached to said letters. Defendant's counsel admitted the letters being in the handwriting of Ira Minard, but objected to the letter and bill of items being read in evidence to the jury. Objection overruled. Exception taken. The plaintiff then read the two letters and bill of items, as evidence, to the jury.

(Copy of letters and bill of items.)

CHICAGO, Oct. 22nd, 1857.

W. M. LARRABEE, Sec'y

G. & C. U. R. R. Co.,

DEAR SIR:

Should you pay the enclosed order to J. H. Reese, Esq., please fill the annexed description of

the section and $\frac{1}{4}$ sect. on which it is located, also his indorsement of receipt on back of am't paid.

Yours truly,

IRA MINARD.

(Bill of items attached to said letter.)

28	Am't p'd for Kinzie's interest in contract with Bennett,	-	\$500.00
	Am't p'd on Kinzie's land; - - - - -	-	600.00
	" for horse and wagon, - - - - -	-	302.00
	Am't paid other expense for Pinkerton, - - - - -	-	601.75
	Bal. due Pinkerton for operating as per his ac't, - - - - -	-	1571.37
	Am't p'd Arnold, - - - - -	-	50.
	Am't p'd Larned, - - - - -	-	250.
	Am't p'd Com'r to Wisconsin, - - - - -	-	60.
	Am't p'd expenses there, - - - - -	-	50.
	Am't p'd other expenses since last settlement, - - - - -	-	150.
			4,135.14
		1-10th.	413.51

(Copy of letters to Galena & Chicago Union R. R. Co.)

CHICAGO, October 22nd, 1857.

GALENA & CHICAGO UNION R. R. Co.

I have examined the annexed schedule of expenses incurred by James H. Reese, Esq., and Henry Waller, Esq., in defending the title to the interest, owned by Chicago, St. Charles and Mississippi Air Line Railroad, in lands situate, lying, and in the west half of north-east quarter of section numbered twenty, in town 39, R. 14, in Cook county and State of Illinois, and believe the same to be correct, and should be paid by Elisha C. Litchfield.

29 Please pay the amount, his proportion, as per schedule attached, say four hundred thirteen and $\frac{50}{100}$ dollars, 413 $\frac{50}{100}$ and charge the same to said Litchfield, against any Bond or Coupon you may hold of his, as security for any such advance made by your company.

(Signed)

IRA MINARD,

Prest.

(Copy of receipt on back of said letter.)

Received of E. C. Litchfield by the Galena and Chicago Union Rail Road Company, Four hundred and thirteen and $\frac{50}{100}$ dollars, it being his proportion of the within mentioned expense incurred as per statement hereto annexed.

Chicago, Nov., 5th, 1857.

(Signed)

JAMES H. REESE,

HENRY WALLER,

by JAMES H. REESE.

Here the plaintiff rested his case.

The foregoing and above is all the evidence given in the cause.

The plaintiff then asked and the Court gave the following instructions:

30 To the giving of which the defendant by its counsel excepted.

31 Copy of plaintiffs instructions given.

"If the jury believe from the evidence that the plaintiff rendered services for defendant in the Supreme Court with the knowledge and assent of the defendant, then the law implies an agreement on the part of the said defendant to pay for such services; such amount as they were reasonably worth.

32 If the jury believe from the evidence that there was a cause in Chancery pending in the Cook County Court of Common Pleas in which said defendant was a party plaintiff, and which affected the property and rights of the said defendant, and that the plaintiff had been with the knowledge and assent of the defendant, ^{evidence} ~~attorney~~ to the management of said cause in said court, and that said cause was appealed after a decree in favor of said defendant to the Supreme Court, and that the said defendant knew of said appeal, and knew that the said Larned was defending the said appeal for the benefit of said defendant, and the said defendant under the circumstances suffered the said Larned to go on with the management of said cause in said Supreme Court without objection, and took the benefit of said Larned's services therein, the law would under such a state of facts raise an implied promise on the part of said defendant to pay the said plaintiff for such services what they were reasonably worth.

If the jury believe from the evidence that the defendant had knowledge of the appeal being taken, in the cause in which they were party plaintiff, to the Supreme Court, and that Mr. Larned was defending the said appeal, and with such knowledge suffered him to go on without notifying him that they had elected to abandon the said cause, and took the benefit of his services in said Supreme Court, the law would raise an implied promise on their part to pay him what such services were reasonably worth. This is certainly so, if defendants understood that plaintiff was acting for them as their counsel in the appeal case.

Copy of Instructions given for defendant:

33 Unless the jury believe from the evidence that the defendant authorized or employed the plaintiff to attend to the case in question in the Supreme Court, they must find for the defendant. If the jury believe from the evidence that some person other than the defendant originally

employed the plaintiff to commence the action in the Court of Common Pleas without the knowledge of the defendant, they must find for the defendant, unless there is evidence of a recognition, by the defendant, of the plaintiff as their attorney in the progress of the case before the Supreme Court. And if the jury believe from the evidence that the plaintiff has failed to prove this fact, they must find for the defendant.

34 If the jury believe from the evidence that the witness, Wm. Reese, employed plaintiff to argue the case in question in the Supreme Court, and notified the defendant by letter to Mr. Minard of such employment, and that he could compromise or litigate said cause, recommending the defendant to come in and see to it, this is not of itself standing alone such an employment of the plaintiff as will entitle him to recover, although the plaintiff performed the services for Mr. Reese, and the jury must find for the defendant, unless they believe from the evidence that the defendant authorized the plaintiff to act for the defendant after the receipt of said letter, or employed or recognized the plaintiff as their attorney in the Supreme Court, or knowingly suffered said Larned to proceed with said appeal without objection, under the belief that he was acting for said defendants.

Although the jury may believe from the evidence that the result of the argument by the plaintiff of the cause in question in the Supreme Court was beneficial to the defendant, still if they believe from the evidence that the services of the plaintiff were performed by the plaintiff under an employment from Mr. Rees, without any employment of the plaintiff by the defendant, and without any expectation of being paid by said defendant, they must find for the defendant.

Although the jury may believe from the evidence that Mr. Minard knew that Mr. Rees had employed the plaintiff to attend to his own case in the Supreme Court, yet that does not of itself prove that Minard employed the plaintiff to attend to the case for the defendant.

35 Before the plaintiff can recover, he must prove to the satisfaction of the jury that he was employed by some person authorized to act for the defendant to attend to the case in the Supreme Court, or was recognized by the defendant in some way as the attorney of the defendant, and if the plaintiff has failed to prove ^{that} to the satisfaction of the jury, they should find for the defendant.

ERRORS ASSIGNED BY DEFENDANT.

1. The court erred in receiving improper evidence on the part and behalf of the plaintiff, and allowing the same to go to the jury.
2. The court erred in giving improper instructions on the part and behalf of the Plaintiff.
3. The verdict of the jury was contrary to the evidence.
4. The verdict of the jury was against the law and evidence of the case.
5. The court erred in overruling the motion for a new trial.
6. The court erred in rendering judgment on the verdict of the jury.

W. D. BARRY,
Attorney for Defendant.

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Lanned
vs

Chicago St Cham, & Mif, Air.
Line R.R. Company.

13328

Filed Apr. 24th 1861

L. Leland
Clerk

1861

United States of America
State of Illinois Cook County J.

Plas before the Honorable the
Judges of the Superior Court of Chicago.
petition and for the County of Cook and State
of Illinois at a regular term of said
Superior Court of Chicago. begun and holden
at the Court House in the City of Chicago
in said County and State on the first Monday
being the fourth day of June in the year
of our Lord eighteen hundred and sixty
and of the Independence of the United States
of America the eighty fourth.

Present the Honorable John M. Wilson Chief Justice
of the Superior Court of Chicago.
Vern H. Higgins Esq Grant Goodrich Judges
Carlos Warren Prosecuting Attorney
John Gray Sheriff of Cook County
Attest
Walter Kimball
Clerk.

It is remembered that hereoford to wit. on the 26th day of
January in the year of our Lord One thousand
eight hundred and eighty, there issued out of
and under the Seal of the Superior Court
of Chicago. The People's writ of Summons
which said writ, with the Sheriff's return thereon
endorsed is in the words of figures following to wit:

State of Illinois,
County of Cook ²⁰

The People of the State of Illinois
To the Sheriff of Cook County. Greeting:

We do command you that you summon
The Chicago & Charles and Mississippi
Air Line Rail Road Company if it shall
be found in your County, personally to be
and appear before the Superior Court of
Chicago of said Cook County, at the first
day of the next term thereof, to be holden at
the Court House in the City of Chicago in
said Cook County, on the First Monday
of February next to answer unto Edwin
C. Larned in a plea of trespass on the case
on promises, to the damage of said plaintiff
as he says in the sum of One thousand and
No cents.

And have you then and there this writ with
an endorsement thereon, in what manner
you shall have decreed the same.

Seal

Hiram Walter Kimball Clerk
of said said Court and the
Said Sheriff at the City of
Chicago in said County, this
26th day of January A.D. 1860.
Hiram Kimball Clerk

Executed this writ February 4th 1860. by
reading the same to Dr. Minard President
of the Chicago, St. Charles and Mississippi
Air Line Rail Road Company and at
the same time I delivered to said Minard
a true copy of this writ.

E. J. Allen Sheriff of
Kane County
By H. M. Clark Deputy

It is remembered that heretofore, to wit:
on the 6th day of April in the year of our
Lord one thousand eight hundred and sixty
Edwin C. Larned Plaintiff by his attorneys
filed in the office of the Clerk of the Superior
Court of Chicago, his certain ^{amended} Declaration in the
words and figures following, to wit:

State of Illinois The Superior Court of Chicago
Cook County P. April Term A. D. 1860.

Edwin C. Larned Plaintiff in this
suit by Greenie Larned & Greenie his at-
torneys complains of the Chicago, St. Charles
& Mississippi Air Line Rail Road Company
a corporation created by the Legislature
of the State of Illinois duly summoned
to defend out. of a plea of trespass on
the case upon promises.

For that whereas heretofore, to wit:
on the second day of January A. D. 1860.
at Chicago in said County the said de-
fendant was indebted to said plaintiff
in the sum of one thousand dollars for
the labor & services of said plaintiff, and
that for said defendant and in its agent
an attorney & counsellor of the Supreme

Court of the State of Illinois in defending
a certain appeal suit in Chancery brought
into said Supreme Court from the Cook
County Court of Common Pleas at the April
Term of said Supreme Court A.D. 1857. in
which William Bennett & William H.
Stone were plaintiffs in error & the said
defendant impleaded with Henry Waller
James H. Rus & Henry McAnley were defend-
ants in error & for his Counsel fees in said
suit being so indebted the said defendant
afterwards on the day & year last aforesaid
promised to pay said plaintiff the said
sum of one thousand dollars as he reason-
ably ought for the services aforesaid & then
requested.

Yet the said defendant hath not al-
though often requested paid the said sum
of money or any part thereof to the said plain-
tiff but neglected & refused & still doth neglect
& refuse to pay the same.

And whereas also the said defendant
afterwards to wit on the day & year last
aforesaid at Chicago in Cook County
aforesaid in consideration of the work
& labor care & diligence of the said plain-
tiff by the said plaintiff before that time
done performed & bestowed as the Attorney

(4)
for the said defendant & upon its request in &
& Solicitor of & about the defendant a
certain writ of error or appeal in Chan-
cery brought into the Supreme Court of
Illinois from the Cook County Court of
Common Pleas at the April Term of said
Supreme Court A. D. 1839. in which William
Bennet & William H. Stand were plaintiffs
in error & the said defendant impleaded
with Henry Waller, James H. Rice &
Henry McCulley were defendants in error
& for his Counsel fees in said suit in said
Supreme Court, the said defendant under-
took & then & there faithfully promised the
said plaintiff to pay him so much money
as he therefor was lawfully deserved to have
of the said defendant. when the said
defendant should be thereunto afterwards
requested. And the said plaintiff avers
that he therefor was lawfully deserved to have
of the said defendant the further sum of
Two thousand and dollars to wit at Chicago
in Cook County aforesaid whereof the
said defendant afterwards to wit on the
day & year aforesaid then had notice.
Nevertheless the said defendant not regard-
ing its said several promises & undertakings
valther afterwards requested &c. to wit on the day
& year & at the place last aforesaid has

not get paid the said several sums of money above mentioned or any or either of them or any part thereof to the said plaintiff but to pay the same or any part thereof to the said plaintiff the said defendant hath hitherto altogether refused & still doth refuse to the damage of the said plaintiff of two thousand dollars & therefore he brings suit &c.

Goodwin Larned & Goodwin
Attys

Copy of Account sued on
The Chicago, St Charles & Mississippi Air Line
Rail Road Company
To Edwin C. Larned Dr
For work & labor in & about the suit of
you & others, vs William Bennett & others
in the Supreme Court April Term 1859. \$1000

I hereby consent & agree that the within amended
now shall be filed in the above cause, & the plaintiff
hereby waives another plea & affidavit of merits.
Signed Chicago April 14, 1861. W. D. Barry Atty for Defts
Goodwin Larned & Goodwin

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And afterwards, to wit on the day and year
aforesaid, to wit: the 6th day of April A.D. 1860.
the said Defendant by its Attorney filed in
the office of the Clerk of said Court, its certain
plea sufficient of merits in the words and figures
following to wit:

The Superior Court of Chicago
April Term A. D. 1860.

The Chicago, St. Charles and
Mississippi Air Line Rail
Road Company
vs
Corwin C. Larned

And the said Defendant
by H. D. Barry its Attorney comes and
defends the wrong and injury when &c.
and saith that it did not undertake
or promise in manner and form as the
said plaintiff hath above thereof (in his
Amended Declaration) complained against
it, and of this it puts itself upon the Country
&c.

H. D. Barry
Atty. for Deft.

The Chicago, St. Charles & F.
Mississippi Air Line Rail Road Company
at Chicago
Edwin C. Larned }
Appl. Term A. S. 1861.

Ia Minard being first duly
sworn on oath before me and says that he
believes that the Chicago, St. Charles and
Mississippi Air Line Rail Road Company
has a good defense to said suit (the above
intituled suit) upon the merits.

Subscribed & sworn to before

On this 5th day of April A. S. 1861.

Ia Minard

A. H. Barry

Notary Public.

Seal

And after matured con- sideration, on the 14th day of
June in the year aforesaid, said day being
one of the days of the June Term of said
Court, the following among other proceedings
now had rendered of record in said Court
to wit:

Edwin C. Larned

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The Chicago & Charles & Mississippi
Air Line Rail Road Company

This day comes said Plaintiff by Gordon
Larned & Hoar in his attorney and said
Defendants by H. D. Barry their attorney
also comes and issue being joined herein.
it is ordered that a jury come whereupon
comes the jury of good and lawful men,
to wit, William Sawyer, H. R. Green, D. O.
Jones, E. Owens, P. L. Flagg, G. W. Colby, E.
K. Brown, S. M. Popple, C. P. Lane, Benson
Allen, George W. Hinton and R. S. Williams,
who being duly elected, tried and sworn to
try the issues joined as aforesaid after hearing
evidence, arguments of Counsel and instruc-
tions of the Court, retire to consider of their
verdict, and the hour of adjournment having
arrived, it is ordered upon agreement of the parties
that the jury when they shall have agreed
upon a verdict they shall reduce the same
to writing sign and seal the same and after
being separate and meet the Court to-morrow
morning.

3
And afterwards to wit, on the 15th day of
the month & year last aforesaid, said day
being one of the days of the June Term of
said Court. the following among other
proceedings now had and entered of record
in said Court. to wit:

Orwin C. Larned

The Chicago & North Western
Air Line Rail Road Company

And now again come the parties to
this cause by their respective Attorneys as
aforesaid, and the jury empanelled herein
on yesterday for the trial of this cause
now come, and submit their verdict and
say by the jury find issues for the plaintiff
and award his damages herein to the sum
of One thousand dollars.

And thereupon Defendant submit motion
herein for a new trial in this cause.

And afterwards, to wit, on the 29th day of the
month and year aforesaid, said day being one
of the days of the June Term of said Court

The following among other proceedings now
had and entered of record in said Court.
to wit:

Orson C. Larned

^{vs}
The Chicago, St. Charles & Mississippi
Air Line Rail Road Company.

And now again comes said plaintiff
by Green in Larned and Green his attorney
and said defendant by H. D. Barry its attorney
also comes and counsel being heard on defend-
ants motion heretofore submitted herein for
a new trial in this cause. And due delibera-
tion being thereupon had and the premises
being fully understood it is considered by
the Court that defendants motion for a new
trial herein be and is hereby overruled.

Wherefore plaintiff ought now to have judg-
ment entered on the verdict of the jury her-
etofore rendered herein.

Therefore it is considered that said plaintiff
do have and recover of said defendant
his damages of One thousand dollars
in form aforesaid by the jury here found
and apportioned together with his costs and
charges in this behalf expended thereon.

therefor.

And therefore defendant prays an appeal herein to the Supreme Court of this State which is allowed on filing bond in the penalty of fifteen hundred dollars to be approved by a Judge of this Court. to be filed by Fifteenth day of August next. with bill of exceptions to be filed within thirty days from this day.

And afterwards to wit, on the 2nd day of July in the year aforesaid. The said Defendant by its Attorney filed in the office of the Clerk of said Court its certain Bill of Exceptions, in the words of figures following to wit:

Edwin K Larned

vs

The Chicago St Charles
and Mississippi Air Line
Rail Road Company

Superior Court of Chicago
of the June Term A.D. 1860

Be it remembered that now on
this 14th day of June A.D. 1860 it being one of the
days of the ^{1st June} ~~Spring~~ Term of the Superior Court of
Chicago the above entitled cause comes on for trial
before the Hon^{ble} John Higgins one of the Judges
of the Superior Court and a jury duly impaneled
and sworn to try the issue in said cause

The Plaintiff to maintain the
issue on his part called

James K Reese

A witness who was duly sworn and testified
as follows

I reside at Lake View in Cook County
- I was one of the parties plaintiff in a suit in
the Cook County Court of Common Pleas
against Bennett, Howe and others - The action
was commenced in 1855 or 1856 - I think
Henry Waller, Mc Cauley, The Chicago
St Charles and Mississippi Air Line Rail
Road Company and myself were plaintiffs
- The Bill was filed to establish a lost deed from
one Bennett to Kinzie - The land involved was
the West half of the North East Quarter of
section No twenty (20) in Town No Thirty Nine (39)

Range Fourteen (14) situated in Cook County about one and a half or two miles South^{west} of the Court House within the city limits - The parties I have named were the owners of the land

Defendants had a Rail Road track across the tract - No other claim - Witness was then asked by plaintiff's counsel as follows

What amount of ^{land} did the defendants claim? To which question defendant by its counsel then and there objected - The Court overruled said objection - To which decision of the court the defendants by its counsel then and there and at the same time excepted and prays this exception may be made a part of this record which is done - The witness then answered as follows - I supposed they claimed it - I had a conversation with E. C. Litchfield - I supposed he was an officer of the road - I understood he claimed eight acres - I had a conversation with Winard he was acting as I supposed for the Road - They claimed eight acres - Waller filed the Bill Waller and Canfield - I think the plaintiff was consulted - Waller was the party with whom I had most of the conversation in relation to it.

Plaintiff's Counsel then asked the witness as follows.

Who argued the case in the Cook County Court of Common Pleas?

To which question the defendant by its counsel then and there and at the same time excepted and pray this exception to be made a part of the record in this case which is done - The witness answered Mr Larned and Mr Waller - The plaintiffs counsel then asked the witness as follows - How long after the Bill was filed before the case was argued? To which question the defendant by its counsel then and there objected - objection overruled by the Court - To which ruling of the Court the defendant by its counsel then and there and at the same time excepted and pray that this exception may be made a part of the record in this case which is done - Witness then answered about three or four years - The Plaintiffs counsel then asked the witness the following question; During that time what services did the plaintiff perform for the complainants? in that case in taking testimony or otherwise

To which question the defendant by its counsel then and there objected, The objection was overruled by the court, to which ruling of the Court the defendant by its counsel then and there and at the same time excepted and pray this exception may be made a part of the record in this case which is done. The witness then answered I don't know that he took any testimony, think perhaps he took the testimony of Gaulis or was present at the taking of it - He acted through out the

(15)

Case - Learned prepared the brief before Wilson
Nallen prepared the evidence - Plaintiff by his counsel
asked the witness as follows - State what you
know of the defendant or any of its officers
having any knowledge of the filing of the Bill

To which question the defendant by its counsel
then and there objected - The Court over-
ruled the objection - to which ruling the defendant
by its counsel then and there and at the same
time excepted, and prays that this exception may
be made a part of the record in this case which
is done - The witness then answered I don't recollect
whether they were advised of the filing of
The Bill, I know as the case progressed
defendant paid its share of the expenses
from time to time Litchfield knew of it,
I had a conversation with Litchfield in New
York about it three years ago I think, Can't
state directly what connection he had with
the road, he was understood to be the principal
party in interest

To all of which testimony the
defendant by its counsel then and there objected
and asked the court to exclude the same from
the jury - The Court overruled the objection and
denied the motion to exclude the evidence from
the jury, To which ruling of the Court the defendant
then and there and at the same time by its
counsel excepted and prays this exception may

4
be made a part of the record in this case, which is done,

The witness then further testified, I had a conversation with Mr Minard about these Bills two to three years back. Litchfield referred me to him, Minard, in regard to the settlement of these expenses - The Bills were paid through the Galena and Chicago Union Rail Road Company by Minard. Mr Minard was the managing man of the road in Illinois - A decree was taken for the complainants in the Cook County Court of Common Pleas. The other party appealed - After the appeal I retained Lamed to defend me in the ^{Supreme} ~~State~~ Court on the writ of Error - Waller and McCauley compromised for all except my land and defendants.

I wrote to Mr Minard on the subject after I employed Lamed - Letter produced and the same was read to the jury. This is the letter which I wrote Copy of Letter

Office of Rev Druman & Co

James H. Rev

Samuel Druman

David P. Hocum

Real Estate Brokers No 48

La Salle Street

Chicago April 14-1859

Hon Ira Minard

St Charles Ill

Dr Sir

The suit of

Mc Waller & others vs W Bennett has been compromised

(17)
by him so far as his interest and that of
his friends are concerned - I have decided to
continue the suit for my interest and it is
for you to decide whether you will settle or
fight - They compromise by paying \$400 per acre
The Supreme Court sits I believe on Monday
next & it is important that you decide at once
I have retained Mr Larned to attend to my
interests before the Supreme Court - You can
compromise at the same price per acre as
Waller & others - I pay Mr Larned \$1000 for at-
tending to my interest. Had you not better
come and see to it?

Very Truly Yours
James H. Pees

I don't know as Larned told me to write I thought
it was my duty to write - I did not hear from
Mr Minard on the subject - A few days after
Judge Barry called on me and enquired about
it. I understood he was occupying the same
position Minard had formerly - Don't know
what that position was in particular - This
conversation was after the commencement of
the term of the Supreme Court - Plaintiff
had gone down - Judge Barry said he would
see Plaintiff - Don't think he stated whether
the defendant had concluded to compromise

+ or not

All of the above evidence so far as relates to the conversation between witness and Judge Barry was objected to by defendants attorney before the same was given which objection was overruled by the Court - To which ruling of the Court the Defendant by its counsel then and there and at the same time excepted and prays that this exception may be made a part of the record in this case which is done.

Witness then testified as follows - I did not see any letter at the time - He referred to it as a letter I had written - Said he was going to Ottawa to attend the Supreme Court - Would see Larned - Don't recollect that he asked if Larned had prepared the case for the Supreme Court - All declarations of Judge Barry were again objected to by defendants counsel - Objection overruled Defendant then and there and at the same time excepting and prays the exception may be made a part of the record in this case which is done.

On Cross Examination said witness testified as follows,

That interview was the first time I ever saw Judge Barry - I informed him Larned had gone to the Supreme Court

(19)

The cause was talked about - Judge Barry said he was going to the Supreme Court. My impression is Judge Barry held the same position toward Litchfield that Mr Minard had held. Can't repeat the words used by Judge Barry on that occasion - This is my impression -

The first ~~trouble~~ about the title was in 1847 or 1848 - Waller abstracted the title - I own twelve acres of land defendants eight acres of land -

Direct Examination resumed by plaintiffs Counsel - Said witness testified as follows - Orders were paid by the Galena Railroad Company by order of Mr Minard - Minard said he had seen Litchfield and perhaps it was right they should pay a share of the expenses - Plaintiffs Counsel then asked the witness how much did they pay? To which question defendants by its counsel objected which objection was over ruled by the Court to which ruling of the Court defendants by its attorney then and there and at the same ^{time} excepted and pray that this exception may be made a part of the record which is done.

Witness then testified I think they paid six or seven hundred dollars

The Witness was then Cross Examined by defendants counsel and testified as follows

I don't recollect of his paying four hundred and twenty five dollars at one time - Cannot say that Minard or Litchfield knew anything about Larned having anything to do with the case - Cannot say that any of the acting men knew anything of Larned's having any connection with the suit - Waller and myself had the principal charge of it - The first knowledge defendants had of it was when I called on Minard for money two or three years after the Bill was filed.

Witness being re-examined by plaintiffs counsel testified as follows - The six or seven hundred dollars was for Court fees travelling expenses &c Mrs Waller's expenses to Missouri - The first conversation with Litchfield was two or three years after the bill was filed - Litchfield knew the purpose of the Bill -

He did not know who were the Attorneys - Minard knew the same - Can't say they knew what Court the case was in.

Being again Cross Examined by defendants counsel said witness testified as follows.

At the first conversation Minard said he did not know anything about it afterward I told him that Litchfield said it was all right - Bennett and Stone appeared the case

Ebenezer Peck

A witness produced by the plaintiff who being duly sworn testified as follows.

* Mr Barry was the attorney of the St Charles & Line Road and acted as attorney for Minard for the

* I am the Attorney of the Chicago & Galena River Road & Bond Company, at the time the entry of Waller et al vs Bennett was pending some eight or nine years ago. I shall state a conversation with the officers of defendants in relation to the judgment of the suit. I have for my own book recollections. Ben Bond purchased defendants Road stock a few years before they were brought against the road. It is difficult for me to state what if any conversation was had, I refer to each case to Capt Sumner and know what the road was a party at the time. Minard was in the Galena office several times.

(21)

Road - Barry was an attorney at Law Minard was not - Barry acted for Minard or for the Road in the management of Cases arising under the bond given by Minard and Litchfield to the Galena Road and acted for the Galena Rail Road - I understood that Barry acted as attorney for Minard or for the St Charles Air Line Road I could not say which as Minard executed this bond and after that the interest of the St Charles Road and of Minard were perhaps identical - I think I had a conversation with Judge Barry who was Minards Counsel - I frequently talked with him about this or other suits.

Being Cross Examined he testified as follows: I recollect Barry speaking of Lamed making a claim for services - Have no doubt I notified them of the pendency of the suit - Have no recollection of any conversation between myself and them - Should have talked with Turner The President of the Road if any one - My impression is that I have not talked with Minard since the Kelly case some three or four years since

Being re examined by the plaintiffs counsel he testified as follows - I think Litchfield was president of the road - They gave bonds after our company purchased it - The Directors of defendants road resigned

Henry Waller

A witness for the plaintiff being duly sworn

Testified as follows - I was one of the plaintiffs
in the case Reese et al vs Bennett et al (Shown
Copy of Printed Records) this is a printed copy
of the records in that case - I purchased an inter-
est in the land in question and found that there
was no deed on record from Bennett to King -
Bill was filed to rectify the deed - I was not
living here at the time - I wrote to Ingraham to em-
ploy counsel - The Bill was drawn up and filed
by Arnold Larned and Lay in 1854 in March
1855 a supplemental Bill was filed upon the
recording of a deed from Bennett to Stowe - I
was counsel in the cause and a party - A decree
was taken before Judge Wilson - After that a
compromise was made - The witness was then
asked by plaintiffs Counsel did defendants
compromise - To which question the defendants
by its counsel objected which objection was over-
ruled by the Court - To which ruling of the
Court defendants then and there and at the
same time by its counsel excepted - The witness
then answered I am not aware that they did
I did not compromise for them - Was not autho-
rized to (Shown the letter from Reese to Minard)
a compromise offered to in that letter was the
one I made - The parties who compromised
all compromised through me - I know Larned
prepared a brief for the Supreme Court - Don't
know as anyone else did - Walker Van Arman

(25)

and Dexter, Blackwell and Windlett were the solicitors for the defendants - I only know of two arguments (shown printed arguments) there are the arguments - I am a counselor in the Supreme Court - Have had experience in the profession - One Thousand Dollars would come within the range of a fair fee for the services in the Supreme Court for each party. Keese's proportion of the land was twelve acres - defendants eight acres - The labor of counsel was the same for each interest - Our ideas of the value of the land ranged from three thousand to five thousand dollars per acre.

Being cross Examined

he testified as follows - I don't know what the land would sell for - I think the eight acres is worth now two hundred dollars per acre - I employed the firm of Arnold Larned and Gay to draw and file a Bill - No steps had been taken at that time to dispossess any one - Gave notice of the filing of the Bill by publication - Howe was brought in as a party to the Bill in March 1855 - Several months after filing the original Bill - Five attorneys were employed - Larned and myself attended the case - Larned had all the authorities looked up before the appeal to the Supreme Court - If he had never been in the case

in the Court below I would fix the fees as I have done - I would not estimate services in the Court below as high because others were engaged with him - He was alone in the Case in the Supreme Court - He could only make an oral argument of one hour in the Supreme Court - He charged six thousand dollars in the Court below for the whole eighty acres - I did more hard labor service in the Court below than the plaintiff or any one else - Have made no bill myself yet

John Van Arman

A witness produced by the plaintiff being duly sworn testified as follows - I am an Attorney of the Supreme Court Assisted Walker in the Court below - Went into the case with him - Had charge of the Compromise - Am familiar with the facts in relation to the case of Reese et al vs Bennett et al (shown printed argument) These are the arguments in the case - The testimony was very voluminous the number of witnesses nearly one hundred were sworn - A great number of impeaching witnesses - The whole testimony was to be analyzed - Some of it was analyzed before the time in the Court below by our firm and the remainder after - It was a case requiring the best minds in the profession - Plaintiff was the sole counsel in that suit in the Supreme Court

in my opinion a fair compensation for the plain-
 tiffs services would be two thousand ^{dollars} - I judge
 from my own labor - I would put his services at
 twenty five hundred dollars that would not
 exceed a reasonable fee - Am not quite clear
 what proportion each Mr Perse and defendants
 ought to pay - He ought to have from some
 one fifteen hundred more than the one thousand
 dollars he has received - Would not pay from
 what source - The Rail Road did not comprom-
 -ise

Being Cross Examined he testified
 The case was appealed in the winter - It
 went to the Supreme Court in April - It went
 the next term.

Arthur Windett

A witness produced by the plaintiff and
 being duly sworn testified as follows - I was
 counsel in the case of Perse et al vs Bennett
 et al before Judge Wilson for one of the par-
 -ties I filed a printed argument - Blackwell
 filed a printed argument of 130 pages - Our side
 was totally beaten - One thousand is the lowest
 amount I would name for his services each party
 It was a case requiring the very best legal talent
 in the state - I was on one side the plaintiffs on
 the other

J. M. Watson

A witness produced by the plaintiff

being duly sworn testified as follows - I am a member of the firm of Walter Van Arman and Dexter - I am familiar with ^{the} case of Reese et al vs Bennett et al - Bennett brought me the Bill to answer - I am familiar with the case

Think one thousand dollars by no means an unreasonable charge for the services of the plaintiff each party - I did not attend the Supreme Court in person - The case required a great deal of investigation,

Henry Waller being recalled by the plaintiff was asked - Give the amount paid by Mr Minard on account of this case - question objected to by defendant and objection sustained,

Plaintiffs counsel then asked the witness What items did you call upon the Rail Road company through Mr Reese to pay? The witness then answered I gave the items to Mr Reese in writing - Defendants counsel then objected - Objection sustained

James H Reese

Being recalled testified I collected the account as given me by Mr Waller - I made it out myself - Cannot recollect the particular items.

The Plaintiff then offered in evidence two letters from Ira Minard to Wm M Larabee dated October 22nd 1857 and also a Bill of items

(27)
attached to said letter.

Defendants counsel admitted the letter to be in the hand writing of Mr Minard but objected to the two letters and Bill of Items being read in evidence to the jury which objection was overruled by the Court.

So when ruling of the Court the defendant then and there and at the same time by its counsel excepted and prays that this exception may be made a part of the record which is done.

The plaintiff then read ~~the two letters~~ and the Bill of Items as evidence to the jury which said letter and Bill of Items are in the words and figures following to wit:

Copy of letter and Bill of Items

Chicago Oct 22nd 1857

N. M. Larrabee Secy

G & C U R R Co

Dr Sir

Should you pay the enclosed order to J. H. Reese Esq please fill the annexed description of the Section & 1/4 sect on which it is located also his endorsement of receipt on back of amt paid

Yours truly

Ira Minard

Bill of Items annexed to said letter

Amt pd for Kings interest in Contract with Bennett \$500.00

Am't pd on King's land	\$600.00
" for house & wagon	302.00
Am't paid other expenses for Pickerton	601.75
Bal due Pickerton for operating as per his acct	1571.37
Am't pd Arnold	50.
Am't pd Lamed	250.
Am't pd Come to Wisconsin	60.
Am't pd expenses there	50
Am't pd other expenses since last settlement	150
	<u>4135.14</u>
1/10th	413.51

Copy of Letters to Galena & Chicago
Union R.R. Co

Chicago October 22nd 1857

Galena & Chicago Union R.R. Co

I have
examined the annexed schedule of expenses
incurred by James H. Reese Esq and Henry
Nallen Esq in defending title to the interest
owned by Chicago St Charles and Mississippi
Air Line Rail Road in lands situate lying
and in the West half of North East quarter
of section numbered twenty in town No 39
R 14 in Cook County and State of Illinois
and believe the same to be correct and should
be paid by Elisha C Litchfield.
Please pay the amount his proportion as per
schedule attached say four hundred thirteen

(29)
+ $\frac{5}{100}$ Dollars $4\frac{1}{3}\frac{5}{4}$ and charge the same to
said Litchfield against any Bond or coupon
you may hold of him as security for any such
advance made by your company

(Signed) Ira Minard
Pres

(Copy of Recd on Back)

Recd of E. O. Litchfield by the Galena &
Chicago Union Rail Road Company, Four
hundred thirteen + $\frac{5}{100}$ Dollars it being his
proportion of the within mentioned expense in-
curred as per statement hereto annexed

Chicago Nov 5th 1857
(Signed) James H. Rees
Henry Waller
By James H. Rees

Here the plaintiff rested rested his
case

The foregoing and above was all
the evidence offered or given upon the trial
of this cause both on the part of the plain-
tiff and defendant.

The plaintiff then asked and Court
gave the following instructions (Here
insert copy of instructions)

To the giving of which instructions
The Defendant by its counsel then and

"For Offs instructions turn
over 1/2 leaf"

There and at the same time excepted,
The Defendant by its counsel then asked and
The Court gave the following instruction (Here
insert copy of instructions)

"For Defts Instructions
turn this leaf"

The jury then retired in charge of an officer
to consider their verdict and afterward came into
Court with the following verdict (Here insert
copy of verdict)

"For Copy of Verdict
turn 3 leaves"

Thereupon the Defendant by its
counsel moved the Court for a new trial and
filed in Court the following motion in writing
(Here insert copy of motion) which said
motion was overruled by the Court. To which
ruling of the Court in overruling the Defend-
ant's motion for a new trial the Defendant by
its attorney then and there and at the same
time excepted and prays that this Bill
of Exceptions may be signed and sealed
and made a part of the record in this
case which which is done

"For Copy of Motion
turn over third leave"

Van H. Higgins
Judge

(31)
Copy of Plaintiff's Instructions Given

Given
If the Jury believe from the evidence that the plaintiff rendered services for the defendant in the Supreme Court with the knowledge and assent of the defendant, then the law implies an agreement on the part of the said defendant to pay for said services such amount as they were reasonably worth.

Given
If the Jury believe from the evidence that there was a cause in Chancery pending in the Cook County Court of Common Pleas in which said Defendant was a party plaintiff; and which affected the property rights of the said Defendant; and that the plaintiff had been with the knowledge & assent of the Defendant attending to the management of said cause in said Court; and that said cause was appealed after a decree in favor of said Defendant to the Supreme Court and that the said Defendant knew of said appeal - and knew that the said Learned was defending the said appeal for the benefit of said Defendant, and the said Defendant under these circumstances suffered the said Learned to go on with the management of said cause in said Supreme Court, without objection, and took the benefit of said Learned's services therein the law

would under such a state of facts raise an implied promise on the part of said defendant to pay the said plaintiff for such services, what they were reasonably worth.

If the jury believe from the evidence that the defendant had knowledge of the appeal being taken in the case, in which they were parties Plaintiff to the Supreme Court, and that Mrs. Larson was defending the said appeal, and with such knowledge suffered him to go on without notifying him that they had elected to abandon the said cause and took the benefit of his services in said Supreme Court, the law would raise an implied promise on their part to pay him what such services were reasonably worth. This is certainly so, if Defendants understood that plaintiff was acting for them - as their counsel in the appeal case.

Copy of Instructions given for Defendant.

Unless the jury believe from the evidence, that the defendant authorized or employed the plaintiff to attend to the case, in question, in the Supreme Court, they must find for the defendant.

If the jury believe, from the evidence, that some person other than the defendant originally employed the plaintiff, to commence the action in the Court of Common Pleas, without the knowledge of the defendant, they must find for the defendant, unless there is evidence of a recognition, by the defendant, of the plaintiff, as their attorney in the progress of the case before the Supreme Court. And if the jury believe from the evidence that the plaintiff has failed to prove this fact, they must find for the defendant.

If the jury believe from the evidence, that the witness Mr. Rus employed the plaintiff, to argue the case, in question, in the Supreme Court, and notified the defendant, by letter, to Mr. Minard of such employment, and that he could compromise, or litigate, said cause, recommending the defendant to come in and put to it, this is not of itself, standing alone, such an employment of the plaintiff, as will entitle him to recover, although the plaintiff performed the services for Mr. Rus - and the jury must find for the defendant, unless they believe, from the evidence that the defendant authorized plaintiff to act for the defendant, after the receipt of said letter or employed or recognized the plaintiff, as their attorney in the Supreme Court, or knowingly

suffered said Larned to proceed with said appeal without objection & under the belief that he was acting for said defendants.

Although the jury may believe from the evidence that the result of the argument, by the plaintiff of the cause in question, in the Supreme Court, was beneficial to the defendant, still if they believe from the evidence, that the services of the plaintiff were performed, by the plaintiff, under an employment from Mr Rees, without any employment of the plaintiff by the defendant & without any expectation of being paid by said defendant they must find for the defendant.

Although the jury may believe from the evidence that Mr Minard knew that Mr Rees had employed the plaintiff to attend to his own case, in the Supreme Court, yet that does not of itself prove that Minard employed the plaintiff to attend to the case for the defendant.

Before the plaintiff can recover in this case, he must prove to the satisfaction of the jury that he was employed by some person, authorized to act for the defendant, to attend to the case in the Supreme Court or was recognized by the defendant in some way as the attorney of the defendant, and if the plaintiff has failed

to prove this, to the satisfaction of the jury, they should find for the defendant.

Copy of Motion by Deft. for a new trial
Superior Court of Chicago
Edwin C. Larned

vs
The Chicago, St. Charles & Mississippi^E Rail Road Company } Pending in the Superior Court of Chicago.

And now comes the said defendant by H. D. Barry its attorney and moves the Court for a new trial in this case for the following reasons

1st Because said Court allowed improper evidence to be given to the jury on the part of the plaintiff.

2nd Because said Court gave improper instructions to the jury for and on behalf of said plaintiff.

3rd Because said Court refused to give proper instructions for and on the part of the defendant and qualified the instructions asked for by the defendant.

4th Because the verdict of the jury was contrary to the evidence.

5th Because the verdict was contrary to both the law and the evidence in the case.

H. D. Barry
Atty for Deft.

Copy of Verdict.

Chicago. June 14/60.

We the Jury find in favor of the Plaintiff
and award the damages at One thousand
Dollars \$1000

C. P. Brown Foreman

R. Allen

S. M. Rosier

W. R. Green

R. P. Williams

Wm Sanger

E. O. Lane

G. H. Colby

D. D. Jones

C. Orent

P. L. Flagg

Geo Hinton

And afterwards, on the 15th day of August
in the year aforesaid, the said Defendant
filed in the office of the Clerk of said
Court, its certain Appeal Bond, in the more
figures following, to wit:

Know All Men by these presents, that we
the Chicago, St. Charles and Mississippi
Air Line Rail Road Company, Oliver
C. Litchfield and Ira Munnick are held
and firmly bound unto Edwin C. Larned
in the penal sum of fifteen hundred dollars
lawful money of the United States for
the payment of which, well and truly
to be made, we bind ourselves our heirs
and administrators jointly, severally and
firmly by these presents.

Witness our hands and seals this 3^d
day of August 1860.

The Condition of the above obligation
is such, that whereas the said Edwin C.
Larned did on the fifteenth day of June
A.D. 1860. before the Superior Court of
Chicago, recover a judgment against the
above bounden Chicago, St. Charles and
Mississippi Air Line Rail Road Company

for the sum of one thousand dollars and costs of suit, from which judgment the said Chicago St Charles and Mississippi Air Line Rail Road Company have taken an appeal to the Supreme Court of the State of Illinois.

Now if the said Chicago, St Charles and Mississippi Air Line Rail Road Company shall prosecute its appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void. Otherwise to remain in full force and effect.

Approved
Wm H. Higgins
Pres

W. H. Brown Pres
C. St C + M. Air Line Co.

J. S. Brewer
Secy

Eliza C. Litchfield Secy
La Minard Secy

Seal

State of Illinois
Cook County Jp.

I, Walter Kimball
Clerk of the Superior Court of Chicago,
within and for the County of Cook and State
of Illinois, do hereby certify the foregoing
to be a full, true & complete transcript of
the ^{Supplement} ~~Amended~~ Declaration, plea & affida-
vit of merits & proceedings & judgment
entered of record in said Court, together
with the bill of Exceptions & appeal bond
in a certain case wherein Edwin O.
Larned was plaintiff and The Chicago,
St. Charles & Mississippi Air Line Rail
Road Defendant



Witness my hand and the
Seal of said Court at the
City of Chicago, in said
County this 10th day of
April A. D. 1861.
Walter Kimball Clerk

Michael L. Linder
vs

Edwin L. Larned
vs

La. Railroad

The Chicago & Mississippi and New R.R. Co.
Errors assigned by defendant

1 The Court Erred in receiving improper Evidence on the part and behalf of the plaintiff

2 The Court Erred in giving improper instructions on the part and behalf of the plaintiff

The Court Erred in rejecting legal and competent evidence given on behalf of the defendant

3 The verdict of the jury was against the Evidence

4 The verdict of the jury was against the Law and Evidence

5 The Court Erred in overruling the motion for a new trial

6 The Court Erred in rendering judgment upon the verdict of the jury

W.D. Barry Attorney for Defendant

229.
Larned

ms

Rail Road Co.

Title of 4—

Filed Apr. 17. 1861
Leland
Ch.

5¢ Paid by Barry

Supreme Court of Illinois
Third Grand Division

Edwin C. Larned

Appellee

vs

appeal from the
Superior Court of
Chicago -

The Chicago, St. Charles & Mississippi
Air Line Railroad Company
Appellant.

And now comes the said Appellee Edwin C. Larned, by Goodwin. Larned & Goodwin, his attorneys & says there is no error in the said above record filed in this cause

Goodwin, Larned, and Goodwin
Attys. for Appellee

229
Supreme Court of Ill
Third Grand Division

Ervin Larned
vs appellee

The Chicago, St Charles
& Mississippi Air
Line Rail Road Company
appellant

Jones in error

Filed April 18, 1861
L. Leland
Clerk

Goodwin Larned & Goodwin
Left Attys