

No. 13497

Supreme Court of Illinois

Town of Hull

vs.

Bushnell.

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 75.

Jones of Hull
vs.
Do. Hull

1861

3497

State of Illinois, Supreme Court
Third Grand division
April Term 1860

The Town of Hull

vs Appell from Bureau
Wm H Bushnell &
Orval Lencaster

Robt Harwell being duly sworn on oath says that the above cause was brought by the appellee agt. the appellant, in the Bureau County, Illinois Circuit. That such suit was brought for work & labor done & performed by the appellees for appellants in building a bridge & that affiant says that such work was done under a special contract in writing. That said written contract was in the possession of the said Town and was delivered by the supervisor of said Town to this affiant for the purpose of being used in evidence on the trial below for appellants.

That such contract was used in evidence on such trial & was introduced by the appellees & that such contract was, on the trial

below, delivered to the appellee's atty.
in obedience to notice to produce
the same served upon this affiant
And this affiant says ~~he is~~
the record in the above cause shows
that such contract is not on file
in the clerk's office of Bureau Co. & this
affiant is also so informed by the
clerk of said court.

And this affiant says that
such contract is not in the
possession of the appellants attys.
and that they have not had
^{or seen} the same since the Trial below
and that he believes the same
is in the possession of the appellee
or his atty. & that he believes
the same was taken by
~~mistake~~ Appellee's atty atty
from the files of the court
& that the same is now in his possession
below by mistake. Robert Harwell

L. Delmond Clerk

By J. Delmond Depy

Supreme Court - State of Illinois
Third Grand Revision
April Term 1860.

The Mayor of Hall

vs Appeal from Bureau
Bushnell &
Sancaster

Robt Hannell

being by the first Jury sworn
an oath says that he is one of
the attys. for the appellants.

That said cause was tried
at the last March Term of the
Bureau County Circuit Court -
1860. That the Record in said
cause has not yet been sent
up - That thirty days were
allowed the appellants within
which to file bond and a Bill
of exceptions - That the
Minutes of the Testimony
of the cause were mislaid
so that the Bill of exceptions
could not be prepared until
file signed & sealed & filed
until the last day for filing
the same which was

Monday of the present week
That said Bill of excep-
tions was prepared by
the appellants attys, as
soon as the same could
be. And this affiant
says he is satisfied that
the clerk of the Circuit
Court of ~~Illinois~~ ^{Bureau} County
since the filing of such
Bill of exceptions has not
had time to make up the
Record in said cause.

Subscribed & subscribed Robt. Hannell
before me this 19th
day of April 1860

L. Deland
Clerk

Filed April 19, 1860
L. Deland Clerk

308 75-
Town of Hull
Buchnell

Page 1 State of Illinois }
Barren County } ss

Be it remembered that on
the 8th day of January A.D 1859 came into
the Office of the Clerk of the Circuit Court
of said County & State aforesaid, William
H. Bushnell & Israel Lancaster by Blanchard
their attorney and filed their process for summons
in the words and figures following to wit

State of Illinois } And Circuit Court thereof
Barren County } To April term A.D 1859

William H. Bushnell

vs Israel Lancaster

vs

The Town of Heald

In assumpsit

Damages \$ 2000.

To the Clerk of said Court

Please issue summons in
above entitled cause to the Sheriff of Barren
County, returnable as above and Oblige

Per Jan 3^d

A.D 1859

Blanchard

Att'y

Copy of summons

State of Illinois }
Barren County } ss

The People of the State of Illinois
To the Sheriff of said County greeting

2

We command you that you summon the Town of Hall if they shall be found in your County personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court House in the Town of Princeton in said County on the first monday in the month of April next to answer unto William H. Bustnell & Israel Lancaster of a plea of trespass on the case upon promises to the damage of the said plaintiffs as they say in the sum of two thousand dollars and have you then and there this writ with an Indorsement thereon in what manner you shall have executed the same

(Seal)

Witness Edward M. Fisher Clerk of our said Circuit Court and the seal thereof at Princeton in said County this 8th day of January in the Year of our Lord one thousand Eight hundred and fifty nine

Edward M. Fisher Clerk
Copy of Indorsement

"Served this writ by reading to H. H. Perry Supervisor Feb 18th 1859, also served by reading to Caleb Munson March 4th 1859

D. E. Norton Sheriff Public
per J. F. Whetzel deputy

3

Also on the 2nd day of March A.D. 1859 the said plaintiffs by their solicitor aforesaid duly filed their Declaration by them and there declared upon in the words and figures following to wit

State of Illinois } And Circuit Court thereof
Bureau County } To March term A.D. 1859

William F. Bustnell and Israel Lancaster plaintiffs in this suit, by Charles Blanchard their attorney complain of the Term of Hall defendant demanded &c. of a plea of assumpsit. For that whereas the said defendant on to wit: the first day of December in the year of our Lord one thousand Eight hundred and fifty Eight, to wit; at the County of Bureau aforesaid was indebted to the plaintiffs in the sum of Two thousand dollars for work and labor before that time by said Plaintiffs done for said defendant in building a certain Bridge over and across Spring Creek in the Town of Hall in said County at the special Instance and request of said defendant, and materials for the same provided at the like special request of said defendant and being so indebted it the said defendant undertook and then and there faithfully promised said plaintiffs to pay them said sum of money on request - And whereas also said defendant

A

on to wit; the day and year last aforesaid at the County aforesaid was indebted to the plaintiffs in the sum of two thousand dollars for other work labor and diligence of said Plaintiffs by said Plaintiffs before that time done and performed in and about the business of ~~the~~ said defendant, and for said defendant and at its Special instance and request and also for divers other materials and other necessary things by said plaintiffs before that time found provided and applied in and about that work and labor for said defendant and at its like Special instance and request, and being so indebted it said defendant, undertook and then and there faithfully promised said Plaintiffs to pay them said last mentioned sum of money on request — And whereas also to wit on the day and year last aforesaid at the County aforesaid, in consideration that the said plaintiffs at the like Special instance and request of said defendant, had before that time built and constructed a certain other bridge over and across Spring Creek in the Town of Deal in said County and had found used and applied divers other materials in and about the building and construction of said bridge last aforesaid, it, the said defendant undertook and then and there faithfully promised said Plaintiffs to pay them so much money as they therefore

5 reasonably deserved to have of said defendant
even said defendant should be thereunto after
wards requested, and said Plaintiffs aver that
they said Plaintiffs therefore reasonably deserved
to have of said defendant, the further sum of
two thousand dollars, whereof then and there
said defendant then and there had notice

And whereas also said defendant to wit,
On the day and year last aforesaid to wit, at the
County aforesaid was indebted to the Plaintiffs
in the sum of two thousand dollars for the
price and value of goods chattels and merchan-
dise before that time bargained sold and deliv-
ered by the plaintiff to the defendant at its
request, and in the sum of two thousand dollars
for money then and there loaned by the plaintiffs
to the defendant at its request, and in the sum
of two thousand dollars for work and labor
done and materials for the same provided by the
plaintiffs for the defendant at its request, and
in the sum of two thousand dollars for money
then and there laid out and expended by the
plaintiff for the defendant at its request, and
in the sum of two thousand dollars for money
found to be due and owing from the defendant
to Plaintiffs on an account then and there
stated between them and the defendant, to be
paid on the day and year last aforesaid at the
County aforesaid in consideration of the promises

6 respectively promised to pay the Plaintiffs to pay them the said several monies herein above mentioned on request. Yet the defendant has disregarded its said promises and hath not paid any of said moneys or any part thereof though after requested so to do. To the plaintiffs damage Two thousand dollars and thereupon they sue &c.

Charles Blanchard
Plffs atty

Copy of Account

The Town of Hall

To Bushnell & Lancaster Dr.

To work & materials in

Building Bridge

\$ 2000.

To work & materials

\$ 2000.

To goods Chattels &c

\$ 2000.

To money loaned

\$ 2000.

To money laid out

\$ 2000.

To balance of acc

\$ 2000.

Also on the same day to wit March 2nd 1831, the said plaintiffs filed bills by their Solicitor aforesaid filed their bill of particulars in the words and figures following to wit

7 State of Illinois } Circuit Court thereof
Bureau County } April term A.D. 1859

William F. Bushnell

& Isaac Lancaster

vs

The Town of Hall

(Special bill of particulars)

The Town of Hall

To Bushnell & Lancaster Dr.

Sept. 1858

To 1700 yds of dirt-grading for Bridge at 25 cts per yd

\$425.00

" "

To 98 yds of stone work at \$3.25 per yard

\$318.50

" "

To 6000 ft of lumber at \$20 per thousand

\$120.00

" "

To 408 lbs of Iron work at 9 cts per lb

\$36.72

" "

To 260 lbs of Spikes & nails at 4 1/2 cts per lb

\$9.00

" "

To Carpenter work & raising bridge

\$100.00

" "

To team work furnished in building bridge

\$25.00

" "

To 22 yds of Stone relaid at \$1.50 per yard

\$33.00

" "

To 11 yds Stone furnished & relaid at \$3.25 per yard

\$35.75

" "

To work on sinking foundations of above bridge

\$25.00

Total

\$1127.97

8

Pleas before the Hon. W. E. Hollister
 Judge of the ninth Judicial Circuit of the State
 of Illinois at the March term of the said
 Circuit Court in and for the County of Bureau
 begun and held at the Court House in Princeton
 in said County on the second monday in the
 month of March in the year of our Lord one
 thousand eight hundred and fifty nine

Present W. E. Hollister Judge

E. M. Fisher Clerk

D. E. Norton Sheriff

W. Bushnell State attorney

William L. Bushnell

& Israel Lancaster

vs

The Town of Hall

assumpsit

do wit on the 14th day of

March ¹⁸⁵⁹ 1st day of said term

Now come the defendants by
 Peter & Parnell their attorneys, and file their
 pleas to said plaintiffs declaration in the
 words and figures following to wit

William L. Bushnell

& Israel Lancaster

vs

after

The Town of Hall

Circuit Court

Bureau County Ills

To the March term

A. D 1859

9 And the said defendant comes and defends the wrong & Injury when &c. and says that the said Town did not undertake and promise in manner and form as the said Complainants have above complained against it and of this the said town puts itself upon the Country

2 And for a further plea in this behalf the said defendant says actio non, because said Town says that before the commencement of this suit in said County, said Town paid to said Plaintiffs, two thousand dollars in full satisfaction and discharge of the said several promises and undertaking in said declaration mentioned which said money, was so received by the plaintiffs as full satisfaction and discharge of all the causes of action in said declaration alleged, and that the said town is ready to verify, wherefore said town prays judgment

Peters & Hamill Defrs attys

The said Plaintiff will take notice that the defendant will set up and prove upon trial that the work and labor done by Plaintiff are defective and materials furnished by Plaintiff were defective that the work was unskillfully and imperfectly done & the materials insufficient & of an inferior quality whereby defendant sustained two thousand dollars damages, which defendant will set up on trial

10

against the damages found by the plaintiffs
on trial

Peters & Parnell atty for deft.

The deft will further insist and prove upon
trial that the work and labor done & materials
provided if any were done & provided upon a
special contract, which said contract was not
performed on the part of plffs.

P. & P. for deft.

I had before the Hon. M. E. Hollister
Judge of the ninth Judicial Circuit of the State
of Illinois at the September Term of the said
Circuit Court begun and held at the Court
House in Princeton in and for the County of
Bureau on the third Monday in the month
of September in the Year of our Lord one
thousand Eight hundred and fifty nine

Present M. E. Hollister Judge

E. M. Fisher Clerk

J. E. Norton Sheriff

W. Bushnell States atty

William Bushnell
& Isaac Lancaster

as

The Town of Hall

assumpset

I was on the 2nd day
of said term

11

Now come the said Plaintiffs by Blanchard their attorney and file their replication to the defendants pleas herein in the words and figures following to wit

State of Illinois } Circuit Court thereof
Bureau County } 20 September Term A.D. 1889

William S. Bushnell
& Israel Lancaster

vs

The Town of Hall

And the said plaintiffs as to the said first plea of said defendant by it above pleaded and whereof the said town hath put itself upon the Country do the like

Chas. Blanchard

Plff. atty

And the said plaintiffs as to the plea of said defendant by it, secondly above pleaded to the said promises so far as they relate in the said sum of two thousand dollars say that they ought not to be barred of their said action & because that they say that the defendant did not pay to said plaintiffs, nor did plaintiffs accept or receive from the said defendant the said sum of money in the said second plea mentioned in satisfaction or discharge of the said several promises and undertakings
- eye

1/2 and causes of action in said declaration mentioned in manner and form as said defendant hath in its said second plea alleged, and thus the plaintiffs pray may be Enquired of by the Country &c.

Chas. Blanchard

Plffs atty

William H. Bushnell

& Israel Lancaster

vs

assumpsit

The Town of Hall

To wit on the 10th day of said term

Now come the said Plaintiffs by Blanchard their attorney and the defendant comes by Peters & Perwell and by agreement this cause is set for hearing on the fourth Wednesday of the present term in the afternoon of said day

William H. Bushnell

& Israel Lancaster

vs

assumpsit

The Town of Hall

To wit on the 21st day of said term

Now come the said parties as aforesaid by their attorneys aforesaid and by agreement this cause is set for trial on Monday noon of fifth next provided Court shall then be in session

13

Shad before the Hon^{ble} M. E. Hollister Judge
of the ninth Judicial Circuit of the State of
Illinois at a term of said Circuit Court begun
and held within and for the County of Bureau
in the said State, at the Court House in Prince-
ton in said County on the Second Monday in the
month of March in the Year of our Lord one
thousand Eight hundred & Sixty

	Present	M. E. Hollister	Judge
		E. M. Fisher	Clerk
William H. Bushnell		S. E. Norton	Sheriff
& Ezra Lancaster		W. Bushnell	State Attorney

vs

assumpsit

In Town of Keokuk To wit on the 16th day of said term

Now come the said Plaintiffs
by Blanchard & Steph their attorneys and the
said defendants come by Peters, Winslow, Hook
their attorneys and the Court orders that a jury
be impanelled to try the issues herein, and
there comes a jury of twelve good and lawful
men to wit, Gardner Rogers, William Knox
J. E. Oads, A. J. Karnes, John Shepherd, H. E.
Stall, Stephen Dow, Wm. Catagraw, Ephraim Butler,
John J. Sweet, Donnie A. Ludis, & E. B. East. It
who being duly elected tried and sworn well and
truly to try said cause and a true verdict render
according to the Evidence

13

Shad before the Hon^{ble} M. E. Hollister Judge
of the ninth Judicial Circuit of the State of
Illinois at a term of said Circuit Court begun
and held within and for the County of Bureau
in the said State, at the Court House in Prince-
ton in said County on the Second Monday in the
month of March in the Year of our Lord one
thousand Eight hundred & Sixty

	Present	M. E. Hollister	Judge
		E. M. Fisher	Clerk
William H. Bushnell		S. E. Norton	Sheriff
& Ezra Lancaster		W. Bushnell	State Attorney

vs

assumpsit

In Town of Keokuk To wit on the 16th day of said term

Now come the said Plaintiffs
by Blanchard & Steph their attorneys and the
said defendants come by Peters, Winslow, Hook
their attorneys and the Court orders that a jury
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J. E. Oads, A. J. Karnes, John Shepherd, H. E.
Stall, Stephen Dow, Wm. Catagraw, Ephraim Butler,
John J. Sweet, Donnie A. Ludis, & E. B. East. It
who being duly elected tried and sworn well and
truly to try said cause and a true verdict render
according to the Evidence

114 State of Illinois Bureau County, Jo.
vs }
H. Bushnell & } Circuit Court
Israel Lancaster }
vs } March Term 1860
The Town of Hall } Assumpsit

Be it remembered that on the trial of the above entitled cause the plaintiffs to maintain the issue on their part then and there produced as a witness on their behalf Smith Miller, who having been first duly sworn, then and there testified to the jury Impannelled in said cause as follows, to wit:
" My name is Smith Miller - I was one of the
" Commissioners of Highways of the Town of Hall
" in 1858, I executed the contract with the
" Plaintiffs (here shown to me) as such com-
missioner

And the Plaintiffs further to maintain the issue on their part produced as a witness on their behalf James H. Scaton, who having been first duly sworn, then and there testified to the jury aforesaid as follows, to wit:
" My name is James H. Scaton, I was one of
" the Commissioners of Highways of the Town of
" Hall in 1858 and executed the contract with
" the Plaintiffs (here shown to me) as such
" Commissioner. I am not now one of the commis-
sioners of Highways of said Town, John Snyder

15" James Windsor & Hezekiah W. Terry are now
" Commissioners of Highways of the Town of Hall
" Henry Snyder, who was a Commissioner of Highways
" of said Town in 1838 also executed said contract.
And the Plaintiffs further to maintain the
issue on their part then and there produced
and read to the jury aforesaid, the said contract
between the commissioners of Highways of the
Town of Hall and the plaintiffs which contract
is as follows to wit (The Contract here called for
was not filed among the papers in the Case and consequently
it is impossible to copy it, which will account for the omission)

And the plaintiffs further to maintain the issue
on their part then and there produced to the
Jury aforesaid John Snyder as a witness on
their behalf who having been duly sworn then
and there testified to the jury aforesaid as follows
" to wit: My name is John Snyder, a bridge was
" built by the Plaintiffs across Spring Creek -
" The bridge was completed before October 1st 1838
" The bridge is not built according to the contract
" Stringers not the size - I saw E. C. Hall mea-
" sure them. the size of Stringers was not great
" ^{one} on by 2 inches - on the other by 1 1/2 inches -
" I mean by Stringers the long chords I think
" Contract size of Chords is 15 x 14 inches &
" don't recollect what they were measured)

And the said witness further testified on

16 Cross Examination then and there to the jury
aforesaid as follows

"I Examined the Stone work some - Am not
"a judge of Stone work - Hall is a farmer -
"went with me and measured chords - measured
"Stone work - Stone in West abutment is va-
"rious sizes some less than six inches - they were
"in face of abutment - Small Stone were between
"tiers of large Stone - Mr. Hall poked his square
"into joints between Stone the whole length -
"this was in front of abutment - It was between
"1st and 2nd layer of Stone from the bottom
"of abutment - this was some time last fall
"I tried some of the Cement taken out - It
"crumbled very much - It was very near like
"sand - This west abutment was commenced in
"Spring of 1888 and claimed to be completed in
"fall of 1888 - It fell before they completed the
"bridge - the bridge had not been laid at the
"time the abutment fell - Some Stones in the
"rip-rap wall are laid flat - Some on edge
"They dug down about three feet from the
"surface for foundation of abutments they did
"not find solid surface - they built upon
"coarse gravel - The water rises and falls some
"times ^{no water of any account sometimes,} twice a year freshets Sometimes - In
"freshets water rushes both abutments but most
"the West abutment - The rings of the piers
"are not built so as to cover the embankments

16 Cross Examination then and there to the jury
aforesaid as follows

"I Examined the Stone work some - Am not
"a judge of Stone work - Hall is a farmer -
"went with me and measured chords - measured
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"rious sizes some less than six inches - they were
"in face of abutment - Small Stone were between
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"into joints between Stone the whole length -
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"1st and 2nd layer of Stone from the bottom
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"coarse gravel - The water rises and falls some
"times, ^{no water of any account sometimes,} twice a year freshets Sometimes - In
"freshets water rushes both abutments but most
"the West abutment - The rings of the piers
"are not built so as to cover the embankments

17 "The Earth filling of the Embankment is washed
"away in one place - Some of the Rip-rap wall
"fell down - Cant say how much - that is the
"wall on the East - one point on West side
"was down the Rip-rap wall where it fell was
"not built upon same angle as rest - where
"the wall fell the larger stones were set up
"Edgways - the Stone were 2 to 3 inches that
"were set on edge - Heall measured width of
"Embankment - I dont know what it is - Chord
"were of Sire contract called for on one end of
"Chord and that is all - timber, pine

And the said witness on Examination in Chief
resumed further testified to the jury aforesaid
then and there as follows to wit

"Dont know how many stones are down -
"There was an old bridge standing on N.E.
"side of New Bridge - the Stones that were set
"up Edgways in rip-rap wall were near the
"bottom - Some of these stones were in the wall
"that fell and some in the standing wall - I
"saw these Stones last fall -

And the plaintiff further to maintain the
issue on their part then and there produced
Louis Monette as a witness on their behalf
who being then and there Examined on his
Vow dire testified to the Court as follows
"to wit, I took a Sub contract with the
"plaintiffs to build the abutments in the

18 " inanner specified in the contract between Plain-
" tiffs and defendant - Plaintiffs have accepted
" my work and paid me in full therefor -
And the plaintiffs in connection with said
testimony of the witness Louis Monette offered
in Evidence to the Court a release from the
Plaintiffs to the said Louis Monette which
release is as follows to wit, (The release
called for cannot be inserted as it was never
filed)

Which said release was then and there objected
to by the defendant as being insufficient by
reason of its being executed by only one of the
Plaintiffs, and the defendant further then
and there objected to the Court to the said
Louis Monette testifying to the jury aforesaid
on behalf of Plaintiffs on account of his inter-
est to the extent of the contract regarding the
mason work being the same as that of the
Plaintiffs, which objection of the defendant
was then and there by the Court overruled
and the said Louis Monette permitted to testi-
fy to the Jury aforesaid on behalf of the
plaintiffs, to which decision of the Court
in overruling the objection of the said defendant
and permitting the said Louis Monette to tes-
tify to the jury aforesaid on behalf of plain-
tiffs the defendant then and there accepted
And the said Louis Monette having been

19 first duly sworn then and there testified to the Jury aforesaid as follows to wit

" My name is Louis Monette I am a Stone
" mason and Stone Cutter I built the abut-
" ments of this bridge in 1838 in the Spring
" I made the contract with the plaintiffs the
" abutment on West Side is 12 ft ^{6 in} high East one is
" 12 ft 3 or 4 in high they were ^{between} six & eight in-
" above floor of Old Bridge. They were 15 ft wide
" at top - wider at ^{the} bottom, between 4 ft 9 in
" & 5 ft at bottom - 3 ft at top - wing on
" Each Side Extending $4\frac{1}{2}$ or 5 ft from abut-
" ment on top, at bottom a little over six ft -
" large Stone were used the bottom courses were
" not less than 20 in - in the rest from that
" to 10 in - top course probably 8 in - all large
" Stone Except in levelling courses we have to
" put small Stone to level up with there was
" not a course less than 6 in - laid up in
" Utica cement mortar - We got the sand at
" the foot of the hill at Spring Creek - toler-
" able good sand not the best - nor the poorest
" sufficient for the purpose there came a
" heavy freshet & formed an Eddy around the
" head of abutment & washed under it -
" Abutment settled down and broke some of the
" heaviest stone from 3 $\frac{1}{2}$ to 4 ft down on
" front part and 3 ft on back part - on a
" foundation on good hard gravel - I struck

20th a drill into it as far as I could and could
not strike it in more than three or four in-
ches - Mr. Scaton and Mr. Snyder were there
when foundation was laid. Mr. Snyder said
we could not expect any better foundation
and to go on as we was - the front stones
of foundation ~~were~~ on an average would not
weigh less than 8 to 10 cwt apiece, the
one large stone except where the small stones
were used to level up the courses. Same
kind of stone put into the rings - saw that
some of the Rip-rap wall had fallen down.
Know what was the cause of falling except
that the ground settled - the Embankment
settled down and the wall bulged out - the
old bridge was there when bridge was built
- Afterwards all taken away, but the mud
still - some of the stones were laid edgewise
in Rip rap wall - some of them were stand-
ing some fallen - I rebuilt the pier - I found
the end of pier broke - I had to take the
work down and put in more stone - Terry
and Windsor and Scaton had a conversation
with Lancaster. Lancaster wanted to move
abutment further back - they would not do it -
Assigned no reason that I heard - Water is
very bad in Spring Creek in heavy rain -
Water 6 or 8 inches higher last time than
first time - where the Squire was run onto

21 " the wall water washed out the mortar at the
" time a buir - we had to keep water out
" with nails - mortar would do no good in lay
" ing up such stones -

And on cross Examination said witness
then and ^{there} testified to the jury aforesaid as
follows to wit

" In some places the water would take the
" mortar away as fast as we put it on - the
" water percolated through the sand and it also
" came up through the bottom, dug down from
" 3' to 4 ft. on front of abutments - 4 ft on
" back - the top dirt was loose gravel - the
" bottom hard - Rip rap wall level from 4 to
" 6 inches in a foot - Some of it not so much
" probably 3 inches to the foot - The wall on the
" canal basin had not given away since this
" contract - Some of the stones were set on edge
" as this was cont told how many there were
" nor the thickness of that wall, wings were
" built on an angle of 4 in to the foot - abut-
" ment 3 feet wide better 1 1/2 in to the foot -
" no course of stone or portion of course less
" than 6 in - Stone laid so as to break joints
" joints broken on lower courses - have not ex-
" amined them since two years ago last June
" the foundation of the abutment which was
" built was lowered a foot or a foot and a
" half - did not build on the lower course of

22nd ^{1st} Stone they were taken out the Embankments
" are wider at the bottom than the abutments
" and wings - could not see that the bridge was
" built askew - the Eddy was formed on upper
" side of Bridge where the wing join the face of
" abutment. Do not think the Eddy formed,
" would have been greater if the angle of the
" wings from the face of abutment were that
" of 27° instead of 45° -

And the defendants counsel then and there
interrogated the said witness as follows to wit
" Would not the Eddy have been greater if the
" wings had been greater, if the wings had been
" at right angles with the face of the abutment
" than at an angle of 27° or one of 45° ?

So which question the plaintiffs then and there
objected as irrelevant, which said objection
was then and there by the Court sustained
and the witness prevented answering the said
question to which decision of the Court in
sustaining the plaintiffs said objection and
preventing the witness from answering said
Question the defendant then and there accepted
And on cross examination being resumed the
said witness further testified as follows to wit
" No layers of stone in West abutment less than
" six inches except where they were put in to
" chisel up the courses - Got the sand from the
" bottom of the hole on East side of the Creek

23 " Mr. Terry asked me if that would answer
" the purpose - I told him it might, would do
" but we could get better than was before the
" Contract was made with Bushnell & Lancaster
" - Terry was intending to make a bid for the
" Contract He said if he got the job he would
" haul the sand from elsewhere -

And on direct Examination resumed said
witness then and there testified to the jury
aforesaid as follows:

" Don't think the rings would be any better
" at an angle of 45° than at a level angle
" unless the rings were longer

And the plaintiffs further to maintain
the issue on their part then and there pro-
duced as a witness on their behalf E. E.
Giddings who then and there having been
first duly sworn testified to the jury aforesaid
as follows to wit:

" My name is E. E. Giddings I was employed
" by Mr. Lancaster reside in Peru since 4
" yrs last November, or 5. I dug the foundation
" for the west abutment I dug the foundation
" I should think 4 ft. - It was coarse, com-
" pact gravel - I then went to Peru Mr.
" Bushnell came out Louis Moratto was
" there and some Irishmen - I was not out
" again until abutment was two thirds done
" - I built ^{on west side I worked on embankment} embankment something like 6 feet

24th - West Embankment was 135 ft. East Embankment
" 183 or 185 ft. the Road Commissioner of Hail
" Township (Seaton) pointed out to me the
" length of the East Embankment - was to
" be built where the commissioners ^{had} set a stake
" I built to a stake he pointed out - the Em-
" bankments were built to the top of the bridge
" Built 18 ft on top - I measured them in 40
" different places with tape line - I helped
" build the rip rap wall - Stone were mostly
" quarry Stone - and were mostly laid flatways
" Some at the Extreme End of rip rap wall were
" set up Edgerays - they are all standing yet
" - large Stone at bottom and smaller towards
" top - I have Examined wall on canal basin
" wall $\frac{3}{4}$ mile long - $\frac{2}{3}$ of the distance up the
" wall is fallen - near the basin the wall is
" more perfect - the Soil where the foundation
" of the Rip rap wall is laid is black Soil -
" there was a Slough there - I filled up the
" Slough with dirt as far as the road went -
" West abutment was washed down 2 or 3 weeks
" after it was built - the abutment was under-
" mined and broke down - when the old bridge
" was taken away Embankment was filled up
" to $1\frac{1}{2}$ feet - then the bridge was taken away
" by Windsor Ferry and another - there was
" a day set to see whether the commissioners
" would accept the bridge - they said they had

25" no time to attend to it, west side of rip-rap
" wall had fallen down right by the abutment -
" protection wall extended to wing - water got
" behind it and under the wall - cut out the
" bank under the wall on East side - Rip rap
" wall was built up nearly perpendicular -
" Water undermined it - a dry wall of that kind
" Could not have been ~~built~~ ^{built} there so as to stand
" the action of the water without digging down
" 2 or 3 ft - I told Mr. Ferry it would be impos-
" sible to build a wall according to the contract
" to stand without a foundation - I asked Mr.
" Ferry if the Commissioners would allow con-
" tractors to remove the abutment - the stone in
" the foundation would weigh from 1000 to 1200
" - 22 in thick - 2 ft. broad)

And the said witness on cross examination
further testified to the jury aforesaid as follows
to wit

" Measured the length of the Embankment - have
" a distinct recollection it extended East 15 ft -
" Nor to see & I Stone set on edge near the
" abutments - don't know about foundation of
" the wall at the canal basin - no excavation
" made for the foundation of Rip rap wall
" at bridge - If there had been water would not
" have washed under it - at the meeting of the
" Commissioners it was Mr. Windsor I think
" who spoke and said they had not time to
" attend to it

26 And the said plaintiffs further to maintain the issue on their part recalled the witness James H. Scaton who then and there testified to the Jury aforesaid as follows to wit;

"When we let the bridge we put out some
"Stakes to mark the length of the Embank-
"ments - I should addings the Stake on the
"East side of the Embankment -

and on cross Examination said witness further testified as follows

"It was not our intention to change the terms
"of the contract but to fix the stakes at the
"number of feet named in the contract

And the plaintiffs further to maintain the issue on their part produced as a witness on their behalf Abel Martin who having been first duly sworn testified to the Jury aforesaid as follows to wit

"My name is Abel Martin am a Carpenter
"and joiner live in Princeton - went at Plaintiffs
"request in September last to examine bridge
"Concealer and plaintiffs attorney Blanchard,
"were with me and Mr. Whitmarsh I did the
"measuring and Whitmarsh took it down in
"figures - the courses of stone in abutments
"averaged from 6 to 12 in. - more or less than
"6 in - unless small stones to level out courses
"The usual size of the stone were from 6 to
"13 inches in thickness - I think I can tell

27 " a good piece of work from a poor one - the
" joints were broke - the wall was laid in Cement
" Consider the work of upper part of bridge good.
" did not notice any serious defect - one of the braces
" was not set into the Chord but a piece of plank
" put on with bolts and screws for End of brace
" to rest against - I gave the correct measurements
" to Mr. Whitmarsh -

" And on cross Examination said witness further
testified as follows to wit

" I thought the bridge crowned about 6 inches.
" Lengths of Chords 64 ft 11 1/2 to 15 x 10 in one
" the other 10 x 14 in think the North one was
" 10 x 15 at one end and 10 x 11 ft at the other
" the other 10 x 14 at one end and 10 x 12 at the
" other - 3 Iron bolts fastening King posts to
" Chord - 2 in queen posts - crowning prevents a
" bridge from setting and braces it - I consider
" the chords strong enough to support the bridge
And on direct Examination resumed, said witness
further testified as follows.

" I millers all sound none shattered or checked
On the plaintiffs further to maintain the
the issue on their part then and there pro-
duced Alvah Whitmarsh as a witness on
their behalf. who having been first duly
sworn then and there testified to the jury
aforesaid as follows to wit.

" My name is Alvah Whitmarsh I have been

28 "45 years a carpenter - Examined bridge at
"Plaintiff's request 24th day of last September
"We Examined wood work and abutments - mea-
"sured all the timbers - that is we measured
"Courses of abutments - and set them down - I
"think they broke joints the top course was
"9 in - the next to bottom 18 in - then we
"thought they would average 10 in - judged there
"was none less than 6 in except a double course
"down near the bottom double course some 3 ft.
"long - both less than 6 in. - length of Stone
"3 ft 2 in on an average - width of abutment
"15 ft 3 in at top - wings 6 ft 3 in at bottom
"and 5 ft at top - wings were as nicely built
"as main wall - long chords 64 ft 10 in long
"North one West End $10\frac{1}{2} \times 12\frac{1}{2}$ in - other end
"12 x 11 - The other one West End $13 \times 10\frac{3}{4}$ in
"East End 12×15 - at Small Stick in center
"was 12×12 in South Stick in center 11×12
"in - width of bridge from out to out 14 ft -
"7 Cross Stringers about a foot beyond the
"long Stringers or chords - two lateral braces
"between each of the Stringers - 5 ranges of
"floor Joist 3×10 - 18 in from center - 2 King
"Posts 13 ft high $10 \times 13\frac{1}{2}$ in Reduced to 8 in
"one may in center - Queen posts 10×12 long
"braces 10×10 - 2 Straps of Iron on heads of
"King posts and 3 bolts - bottom of Queen
"Posts stirrup of iron & 2 bolts - bottom of

* Pearson measured and I took
down the figures as given by
Martin

29 " King Posts Straps of iron 1 bolt and 2 Keys
" The Western pier don't stand at right angles
" with the bridge - bridge is askew - consider
" the workmanship of bridge good

And on cross examination the witness further testified as follows

" Angle of wings was about 34° - Some of
" the stones in the fallen rip rap wall were
" Edgerays we calculated the crown of the
" bridge only by the eye - Timber in bridge
" good - I think it was all sound, only one
" bolt in King post at lower end - not much
" difference in the Expense between one bolt and
" 2 Keys or 3 Bolts - I relied in general by the
" figures given me by Mr. Martin, I depend
" upon the paper I made rather than my memory
" for the great bulk of the entries made & upon
" the paper - I depend upon that paper - I read
" every figure and dimension I gave in my di-
" rect Examination from the paper I hold in
" my hand

And the counsel for the defendant then &
there interrogated the said witness as follows
" State from your recollection independent of
" the paper if you can the dimensions of East
" End of South Chord

And on the cross examination resumed said
witness further testified as follows
" The place where the two courses were was

30 " about 1 foot above water - one course was
" about 14 in - the other a little thicker - So
" much mortar I could not tell the thickness
" of the stone mortar 1 in thick - big stone at
" end of these two courses - 16 in thick - 2 ft
" long two courses might be 3 ft long then a
" big stone about 16 in thick. I did not take
" much notice about the mortar - I did not notice
" any crumbling out - don't think that crown
" of Bridge would settle more than 1 in in six
" months - If the bridge settles where the long
" braces come into the chords near the end of
" Bridge it is evidence of bad workmanship
" and the defendant to maintain the issue on
" their part then and there produced Franklin
" W. Winship as a witness on their behalf, who
" having first been duly sworn testified to the
" Jury aforesaid as follows to wit
" My name is F. W. Winship - have been a Sur-
" veyor 14 years - drew the plan of this bridge
" hold in my hand a copy - I examined this
" bridge July 26th & August 6th last - spent
" 3 hours there the first time and over three
" hours the last time had the contract and
" specifications there at the time. - Courses of
" Stone at Base of west abutment, were the
" first course, I could see 15 in the next course
" 16 in - there was a place under water, there
" was stone not more than 2 inches thick

31" and loose. could my hand in doubled easily -
" course 4 feet in length not over 4 in - two places
" in face of the wall where stone ~~were~~^{were} less than
" 2 in - I did not consider it cement they were
" laid in - this mortar had not made a cement
" you could crumble it in your fingers - it was
" not hard - I could stick my Knife in it any
" where I measured the angles of wings on West
" abutment - on North side angle was ^{on South side angle was 26° -} 28° - It
" is part of my business to draw plans for
" Bridges - current does not pass the bridge
at right angles - less Eddy would be caused
thereby an angle of 45° - than of 25° -
abutments are further apart on North side
than on South side - one chord is longer than
the other. the bridge is askew and its strength
lessened thereby - there is about 5° ~~the~~ ^{in them} ~~press~~
difference, one side of bridge is 18 in the longest
I went and examined rip rap wall and canal
basin at Lasalle the stone there are laid
flat they vary from 3 ft to 4 in ^{to 4 ft square} square -
the North side is thatched - at bridge 15 ft.
of rip rap wall on East side of creek is com-
posed of trim stone laid flat & in other places
different from wall at Canal Basin - the
Canal wall at Lower Basin is laid 16 in
thick - Pilfs wall from 4 in to 10 in thick
I measured Canal Wall in 20 places - part
of Pilfs rip rap wall fallen down all sizes

32. " & Kind of stones in this wall measured Imbank
" ment in some ten places, it varied from 13 to
" 17 ft wide West Imbankment 115 ft long -
" Widths 13. 16. 16. 16. 16 & 17 ft - East Imbank
" ment 130 feet long Widths 13. 15. 16. 15 & 16 ft
" 15 ft measured length twice it did not come
" up to a true grade 10 ft from East End
" of Bridge it lacked 9 in. of being up to true
" grade - Imbankments did not come up even
" with the bridge - Canal wall falls back
" at an angle of 32° - Piffs wall 32° . 35° .
" & 42° - The strength of that wall would depend
" upon the angle upon which it was built -
" Water striking the wall had forced out stones
" and then it had slid down - Dimensions of
" South Chord East End 12×14 in West End
" 10×12 in - North Chord East End $10 \frac{1}{2} \times 12$ in
" West End 12×12 in long braces South Chord
" East End was let into Chord - at the other End
" a piece of plank spiked on for it to rest
" against - 3 bolts in Queen posts 1 bolt in
" King posts - Bridge Crowned $4 \frac{1}{10}$ of a foot
" North Chord is not a sound piece of timber
" there is a very material difference in the
" strength of a Chord 10×14 in Set on Edge and
" one 10×12 or 12×12 in - the 10×14 Set on
" Edge is much the strongest - If the bridge
" had settled near the place where the long
" brace fits into the Chord, it is evidence that the

32. " & Kind of stones in this wall measured Imbank
" ment in some ten places, it varied from 13 to
" 17 ft wide West Embankment 115 ft long -
" Widths 13. 16. 16. 16. 16 & 17 ft - East Embank
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" upon the angle upon which it was built -
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" there is a very material difference in the
" strength of a Chord 10×14 in Set on Edge and
" one 10×12 or 12×12 in - the 10×14 Set on
" Edge is much the strongest - If the bridge
" had settled near the place where the long
" brace fits into the Chord, it is evidence that the

34th At the time we gave notice nothing ^{was done} but the
" East abutment - The commissioners all met
" on the ground. Scaton & Terry differed -
" I told Lancaster that I would take a day
" to decide and examine the contract - I did
" so and notified him that we ^{would} not receive the
" work

And the defendant further to maintain the
issue on their part then and there produced
as a witness on their behalf Heretiah^W Terry
who having been first duly sworn then and
there testified to the jury aforesaid as
follows to wit

" I gave notice that work would not be accep
" ted unless or July 1858 abutment had been
" built Stone not well bevelled - came to a
" point near the edges - not dressed to make
" a joint in one or more instances points do
" not come to the face of abutment - two
" spaces filled in with Stone less than 6 in
" ches - one 3 ft or more long - one about 2 ft
" no cement in lower 3 ft - no cement except
" pointing above that - mortars dry and crumb
" ling and after poking out the pointing it
" will run out - I notified plaintiffs that the
" angle of wings was not 45° as contract
" required In rip rap wall some cobble stones
" and ^{most of the flat stone} were laid flat on
" face of bank - cement mortar made right -

35th Extended too far up stream - Bridge Sags
" in three places - most in place where chord
" is 10 in deep none in ~~that~~ place where chord
" is 14 in deep

And the defendant further to maintain the
issue on their part produced as a witness
on their behalf William Audnot who then
and there having been first duly sworn test-
ified to the Jury aforesaid as follows to wit
" I have been engaged in Superintending public
" works have seen rip-rap walls built and
" feel competent to give an opinion as to the
" strength of the rip-rap wall - think I can
" form a more accurate opinion than ordinary
" men - Have seen the Rip rap wall built
" by Plaintiffs and also the wall at the Canal
" Basin at Lasalle

and the said witness was then interrogated
by the Counsel for defendant as follows
" State ~~whether~~ which would be the strongest
" a wall laid as this is, or one laid on same
" angle as the wall on South East side Canal
" Basin at Lasalle?

To which question the plaintiffs then and
there objected, and the said objection of the
plaintiffs was then and there by the Court
sustained, to which ruling of the Court in
sustaining said objection of plaintiffs and
not permitting the witness to answer said

36 question the defendant - then and there accepted
And the defendant further to maintain the
issue on their part then and there produced
as a witness on their behalf John Bushong
who having been first duly sworn then and
there testified to the jury aforesaid as follows
to wit:

" The West abutment from 3 ft of Bottom
" is very badly done laid up without any
" mortar - Some places layers are 15 or 16 in
" thick - Some places only 4 or 5 in thick,
" Joints not broken and not dressed from 3 ft
" of bottom down - I saw Hali run an iron
" Square the whole length of into the wall
" Easily - there was a hole as big as my double
" fist in face of the wall - this 3 ft was under
" ground when built and covered over with dirt
" & dirt washed away by freshet

And the plaintiffs further to maintain the
issue on their part recalled the witness

Louis Monette who then and there testified
as follows to wit

" The Cement used was good cement - wall
" all laid in Cement alike - pointing same
" as that inside wall - It is not usual to break
" joints or make a face below ground)

And the plaintiffs then and there asked of
the Court to give to the jury the following
instructions on their behalf to wit

3rd If the Jury believe from the Evidence that
Plaintiffs prior to the commencement of this
suit constructed a bridge for defendant and
furnished materials for the same at defendant's
request according to the contract given in
Evidence then the Jury will find for the Plain-
tiffs and the measure of damages will be the
contract price deducting from the total
amount such sums as plaintiffs have received
from defendant upon said bridge

2nd If the Jury believe from the Evidence that
Plaintiffs contracted with defendant to fur-
nish materials and build a bridge for defen-
dant across Spring Creek in the Town of
Hale, in Bureau County and State of Illinois
and that defendant contracted to pay said
plaintiffs therefor the sum of nine hundred
dollars and that Plaintiffs built said bridge
and furnished said materials as required by
said contract then the Jury should find for
the plaintiffs and assess their damages at
the contract price deducting therefrom the
amount paid plaintiffs upon said contract
if any

3rd If the Jury believe from the Evidence that
Plaintiffs and defendant on or about the
fourth day of February A D 1858 entered

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into a contract whereby Plaintiffs agreed to build a bridge and furnish materials for the same for the defendant across Spring Creek in the Town of Hale and that defendant agreed to pay plaintiff for the same the sum of nine hundred dollars and that plaintiffs furnished such materials and built said bridge in manner and form so required by said contract with only some slight and immaterial deviations from the contract as to some of the particulars provided for then the Jury will find for the plaintiffs and assess their damages at the contract price after deducting such payments as the deft has made

Given

4th The Jury believe from the Evidence that Plaintiffs contracted with defendant to furnish materials and construct a bridge for defendant across Spring Creek in the Town of Hale of certain specified dimensions and materials within a given time for a certain specified price and that Plaintiffs under said Contract acting in good faith with determination to do what they had contracted to do performed said contract as required with the exception of some trifling slight and immaterial deviations from the said contract as to some of the particulars provided for then the plaintiffs are entitled to recover after

Given

39 deducting any payments made through they may have not complied with the terms of the contract literally in every particular

Given 4. If the Jury believe from the Evidence that Plaintiffs constructed said bridge substantially as required by the terms of said contract, and after the same was completed the same was injured by floods or high water that it was not the fault of the Plaintiffs

Given 5. If the Plaintiffs have not built the work according to the terms of the contract, yet if the defendant has accepted the work or permitted it to be used for the public travel or for a public highway and the work is valuable for such purpose, the Plaintiffs are entitled to recover the contract price after deducting any price payment made and allowing the difference (if any) between the contract price and the value of the work as it was constructed

6. To the giving of which instructions the defendant then and there objected, and the Court then and there overruled the said objection of the defendant and then and there gave to the Jury aforesaid the said instructions on behalf of the Plaintiffs, to which decision of the Court in overruling the said objection of the

40 defendant and in giving to the Jury the said instructions on behalf of the plaintiffs the defendant then and there excepted and the defendant then and there asked of the Court to give to the Jury the following Qualification to the 7th Instruction on behalf of the plaintiffs given by the Court to the Jury as aforesaid

1st Qualification to Plaintiff's 7th Instruction

Refused) But if the said bridge is within the bounds of a public Highway in said Town, that then the town could not lawfully prohibit or exclude the public from travelling over said bridge so located so long as said bridge is on such highway

Refused) The defendant had no right to prohibit the public from passing over that bridge so long as it was in the public highway and consequently their failure to prohibit them from so doing is not evidence of itself showing that the bridge was accepted by the commissioners

Which said Qualifications the Court then and there refused to give to the Jury, to which decision of the Court in refusing to give to the Jury the qualifications aforesaid the defen-

41

account and there excepted

And the Jury aforesaid having retired brought into Court their verdict in favor of plaintiffs as follows

William H. Bushnell
vs Israel Lancaster

The Term of Hall to wit on the 17 day of March
" " 6th day of said term

Now comes the parties aforesaid by their attorneys aforesaid and the Jury aforesaid and said Jury upon their oaths say "me of the Jury do find the issues herein joined in favor of the said plaintiffs, and assess their damages at the Sum of Two hundred and Sixty dollars" and the said defendants enter their motion for a new trial herein and the Court being fully advised in the premises considers that said motion be overruled. It is therefore Considered by the Court that the said plaintiffs have and recover of the said defendants the said Sum of Two hundred and Sixty dollars their damages assessed as aforesaid, together with all their costs and charges by them in and about their said suit in this behalf Expended and that they have Execution therefor

42 and the said defendant by their said attorneys prays an appeal to the Supreme Court of the State of Illinois, which said appeal is allowed by the Court upon condition that the defendant enter into bond in the sum of six hundred dollars within thirty days from this date with Peter Perry & Hezekiah Perry or Hezekiah Perry & Smith Miller as security said bond and bill of Exceptions to be filed here in within thirty days from this date

Whereupon the counsel for the defendant then and there moved the Court that the verdict of the Jury aforesaid be set aside and a new trial granted to the defendant and the Court then and there overruled the said motion of the defendant and refused to set aside the said verdict of the Jury and to grant the defendant a new trial to which decision of the Court in overruling the said motion of the defendant and refusing to set aside the said verdict and to grant ^{to the} defendant a new trial the defendant then and there excepted, and prays the Court to sign and seal this said bill of Exceptions and that the same be made a part of the record in this cause which is done accordingly

by

W. E. Hollister (Seal)

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by

W. E. Hollister (Seal)

43 I know all men by these presents that we Haze-
 Riah Terry and Peter Terry are held and
 firmly bound unto William H. Bushnell
 and Israel Lancaster in the penal sum
 of six hundred dollars lawful money of the
 United States for the payment of which
 well and truly to be made we bind ourselves
 our heirs Executors and administrators jointly
 and severally and firmly by these presents
 Witness our hands and seals this 13th day
 of April A.D. 1860

The condition of the above obligation
 is such that whereas at the March term
 A.D. 1860 of the Circuit Court within and
 for the County of Bureau and State of
 Illinois in a certain cause then and there
 pending wherein the said William H. Bushnell
 and Israel Lancaster were plaintiffs and
 the "Town of Hale" were defendant a judgment
 was rendered in favor of the said plaintiffs
 and against the said defendant for the sum
 of two hundred ^{and sixty} dollars and costs of suit
 from which judgment the said defendant has
 taken an appeal to the Supreme Court of
 the said State of Illinois. Now therefore if
 the said defendant shall well and truly
 pay and satisfy said judgment and all
 costs, interest, and damages accrued or which
 may accrue, in case the said judgment shall

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 was rendered in favor of the said plaintiffs
 and against the said defendant for the sum
 of two hundred ^{and sixty} dollars and costs of suit
 from which judgment the said defendant has
 taken an appeal to the Supreme Court of
 the said State of Illinois. Now therefore if
 the said defendant shall well and truly
 pay and satisfy said judgment and all
 costs, interest, and damages accrued or which
 may accrue, in case the said judgment shall

44 be affirmed and shall duly prosecute said appeal then this obligation to be void otherwise in full force and virtue

H. W. Terry (Seal)

Peter Terry (Seal)

State of Illinois } ss

Bureau County } St Edward M. Fisher Clerk of
the Circuit Court in and for the said County in the State
aforesaid do hereby certify that the above and foregoing is a
true and perfect transcript of all the proceedings in the
above entitled Cause as the same appears on file and of
record in my office. In testimony whereof I hereunto
set my hand and Official Seal at
my office in Princeton in said
County this 19th day of April
A.D. 1860

E. M. Fisher Clerk
per Wm Hall Jenkins
Deputy Clerk

Clerks fee for transcript \$10.65

Certificate here .35

\$11.00

~~303~~
Burlington & Lancaster

~~303~~ 75

in

11 Jan. v. Hall

Copy of Record

Sumner County, Ill.

Filed April 24, 1860

L. Leland

Clerk

1861
cert. trans. all amt

15 all amt