No. 12437

Supreme Court of Illinois

Wilson, et al,

---

vs.

Hydraulic Co.

71641

State of Illinois }
Whiteside County }

April Term of the
Robert L. Wilson. Nelson Mason } Whiteside County Circuit Court
Daniel R. Beck Leonard Nichols } A. D. 1855
Charles Nichols, Lewis L. Crandall
and Elizabeth Nichols } In Chancery Bill for
vs. an
John Gall and the Sterling Hydraulic } Injunction
Company.

To the Hon. S. Wilson Drury Judge of the sixth judicial district of the State of Illinois.

Humbly complaining sheweth unto your honor your orators, Robert L. Wilson, Nelson Mason, Daniel R. Beck, Leonard Nichols a minor under the age of twenty-one years to wit, of the age of four years by Edward Jamieson his next friend and Charles Nichols a minor under the age of twenty one years to wit of the age of six years by Henry Bush his next friend, Lewis L. Crandall and Elizabeth Nichols all of the county of Whiteside and State of Illinois.

That your orators Robert L. Wilson, Nelson Mason, Daniel R. Beck, Lewis L. Crandall, and one Charles Dement and one Norton S. Nichols since deceased, being desirous to secure the prompt completion on or before

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the first day of October 1855 by the "Sterling Hydraulic Company" which is a body corporate organized under the provision of an act of the general assembly of the State of Illinois approved Feby 5th 1849, entitled an "act for the improvement of the navigation of Rock River and for the production of Hydraulic Power" of a good and sufficient dam across Rock River at the town of Sterling in said County and a canal or head race connected therewith on the west side of said river for the production of Hydraulic power, in consideration thereof and in order to secure the prompt and punctual completion of the said dam and head race or canal on or before the first day of October 1855, by the said "Sterling Hydraulic Company" did on or about the twenty-fifth day of December 1852 severally execute and deliver to John Galt the said defendant Deeds of conveyance to the following described lots of Land, as follows Robert L Wilson by his said Deed bearing date the 15th day of December 1852 in consideration of the premises aforesaid and of the sum of one dollar expressed in said Deed to be paid, but which in fact never was paid, and formed no part of the real consideration for said conveyance, conveyed to the said

John. Galt, and to his heirs, executors, and administrators the Lots or parcels of Land known and described as Town Lots five (5) and twelve (12) in Block two, Lot six (6) in block four-teen (14), Lot three (3) in block six (6) West of Broadway in said town of Sterling, County and State aforesaid, Together with all and singular the right and privileges thereunto belonging. A Copy of which said Deed is hereunto attached and marked exhibit "A," and which your orators pray may be made a part of this bill. And the said Nelson Mason by his said Deed bearing Date the 21st day of December 1852 in consideration of the premises aforesaid and of the sum of one dollar expressed in said Deed to be paid but which in fact never was paid, and formed no part of the real consideration for said convey-ance. Conveyed to the said John Galt and to his executors and administrators the Lots or parcels of Land known and described as Town Lots four (4) and nine (9) in block two (2) Lot three (3) in Block (3) Lot three (3) in block four (4) and lot eight (8) in block five (5) Lots eight (8) and twelve (12) in block six (6) Lot six (6) in block seven (7) Lots five (5) and three (3) in block ten (10) Lots four (4) and five (5) in block (11) Lot three (3) in block twelve (12), Lots three (3) and eight (8) in block thirteen (13) Lot eight (8) in

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block fourteen (14), Lot eleven (11) in block fifteen (15), Lots three (3) and eight (8) in block twenty (20) Lot nine (9) in block twenty-two (22) Lot three (3) in block twenty-three (23) Lot five (5) in block twenty-six (26) Lot five (5) in block twenty-seven (27) Lot five (5) in block twenty-eight (28) Lot eight (8) block thirty five (35) Lots seven (7) and eleven (11) in block thirty-seven (37). Lot four in block thirty-eight (38) Lots three (3) and twelve (12) in block forty-four (44) Lot ten (10) in block forty-five (45) Lot ten (10) in block forty-seven (47) Lot three (3) in block forty-eight (48) Lots one (1) and three (3) in block fifty (50) Lot eleven (11) in block fifty-one (51) Lot six in block fifty-three (53) Lot ten (10) in block fifty-four (54) West of Broadway in said town of Sterling County and State aforesaid. Together with all and singular the rights and privileges thereunto belonging, a copy of which Deed is hereto attached and marked exhibit "B" and which your orators pray may be made a part of this bill.

And the said Daniel R. Beck by his said Deed bearing date the 18th day of December 1852 in consideration of the premises aforesaid, and of the sum of one Dollar expressed in said Deed to be paid but which in fact was never paid and formed no part of the real consideration

for said conveyance, Conveyed to the said John. Galt and to his executors or adminis=
=trators the Lots or parcels of land known and described as Town Lots eight (8) and nine (9) in Block fourty=eight (48) West of Broadway in said Town of Sterling, County and State aforesaid Together with all and singular the rights and privileges thereunto belonging.

A Copy of which said Deed is hereto attached and marked exhibit "E" and which your orators pray may be made a part of this bill. And the said Norton. S. Nichols by his said Deed bearing date the 14th day of December 1852 in consideration of the prem=
=ises aforesaid and of the sum of one Dollar expessed in said Deed to be paid, but which in fact was never paid, and formed no part of the real consideration for said conveyance, Conveyed to the said John, Galt his executors and administrators Lots or parcels of Land known and described as Town Lots one (1) and two (2) in block thirteen (13) Lots four (4) eight (8) and ten (10) in block three (3), Lot seven (7) in block twenty=two (22) Lots eight (8) nine (9) in block twenty=seven (27) Lot five (5) in block thirty=
=five (35), Lots four (4) and nine (9) in block forty=nine (49) Lot two (2) in block fifty (50) Lots five and ten in block fifty=one (51)

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and Lot six (6) in block fifty-two (52), West of Broadway in said town of Sterling, County and State aforesaid. Together with all and singu-lar the rights and privileges thereunto belon-ging. A Copy of which said Deed is hereto attached and marked exhibit "E" and which your orators pray may be made a part of this Bill. And the said Charles Dement by his said Deed bearing date the 13th day of December 1852 in consideration of the premises aforesaid and of the sum of one dollar expressed in said deed to be paid but which in fact never was paid and formed no part of the real consider-ation of said conveyance, Conveyed to the said John Galt his executors and administra-tors the Lots or parcels of Land known and described as Town Lots six (6) seven (7) eight (8) and nine (9) in block four (4) Lots seven (7) nine (9) and ten (10) in block five (5) Lots seven (7) and nine (9) block fourteen (14) Lots one (1) and two (2) in block twenty-one (21) Lots three ~~(3)~~ and four ~~(4)~~ in block twenty-seven (27) Lots nine (9) and ten (10) in block twenty-eight (28) and Lot five (5) in block fourty-four (44) West of Broadway in said town of Sterling County and State aforesaid. Together with all and singular the rights and

privileges thereto belonging. A Copy of which said Deed is hereto attached and marked exhibit "D" and which your orators pray may be made a part of this bill.

And the said Lewis D. Crandall by his Deed bearing date the 13th day of December 1852 in consideration of the premises aforesaid and of the sum of one Dollar expr=essed in said deed to be paid but which in fact never was paid and formed no part of the real consideration of said conveyance, Conveyed unto the said John Galt his executors and administrators. The Lots or parcels of land known and described as Town Lots No eleven (11) and twelve (12) in block thirty=eight (38) and Lots nine (9) and ten (10) in block thirty=seven (37) in the said town of Sterling County and State aforesaid. Together with all and singular the rights and privileges thereto belonging. A Copy of which said Deed is hereto attached marked exhi=bit "E" and which your orators pray may be made a part of this bill.

And your orators do further show unto your Honor that the said several conveyances were each and every of them made to the said John Galt, his heirs executors and administrators, in trust nevertheless for the uses and purposes following, that is to say in

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trust, in case the said Sterling Hydraulic Company should on or before the first day of October 1853 build or construct and complete a good and sufficient dam composed of Rocks or Rock, hewn timber and gravel across Rock River at the said town of Sterling, and a Canal or head race connected therewith on the west side of said River for the improvement of the navigation thereof and for the production of Hydraulic power. Then on application in writing by said Company to the said John Galt, trustee as aforesaid, or to his executors or administrators for a deed in fee simple of the said premises above described. And upon the said Company having first given thirty-days public notice to all whom it may concern by publication in a public newspaper published in or most adjacent to said County that they will on some certain day therein mentioned make application to said trustee for a deed to the said company in fee simple, to the said premises.

Then it should and might be lawful for said trustee his executors or administrators to make, execute and deliver a good and sufficient deed of conveyance in Law in fee simple of the said premises to the said Hydraulic Company, the said company paying all necessary and proper costs and expenses of said conveyance, and all taxes assessed upon

said premises subsequent to the day of the date of the said deeds of conveyance respectively in which the said lands were described. And it was further provided in each and every of the said deeds of trust in case said Sterling Hy=
=draulic Company should fail or neglect to build and complete said dam and Canal or head race on or before the said first day of October 1855 in manner and form and for the purpo=
=ses therein before specified, the said conveyances, respectively to be null and void, and the said premises therein mentioned should rest absolute=
=ly in the said grantors respectively discharged from all liens whatever created by the said trust.

And your orators further show unto your honor, that heretofore and subsequent to the execution and delivery of the said deed of trust by the said Norton. F. Nichols to wit, on the seventh day of January A.D. 1854 the said Norton F. Nichols departed this life intestate leaving him surviving Elizabeth Nichols his widow and as his only heirs at Law his minor sons Leonard F. Nichols and Charles Nichols two of your orators and his minor daughter Amarette. F. Nichols who upon the death of their said father became seized as tenants in common by descent, each of an undivided one third part of the said premises mentioned and described in the said deed of trust

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executed by the said Norton. S. Nichols as aforesaid subject however to the condition of the trust thereby created. And your orators further shew that afterwards, to wit - on or about the first day of April A.D. 1854 the said Amerette F Nichols departed this Life intestate leaving as her only heirs at Law her Mother the said Eliza= =beth Nichols and her Brothers, the said Leonard S. Nichols and Charles Nichols who thereupon be= =came seized of the said premises, mentioned and des= =cribed in the said trust deed executed by the said Norton. S. Nichols as aforesaid, as tenants in com= =mon by descent. The said Elizabeth Nichols of an undivided two-twelfths and the said Leonard S. and Charles Nichols each of an undivided one=twelfth thereof which together with their former interest therein entitled each of the said minor Children to an undivided five-twelfths in the said premises, subject however to the conditions of the said trust created by the said Norton. S. Nichols as aforesaid. And your orators further shew unto your honor that, that since the execution and delivery of the said trust deed by the said Charles. Dement as aforesaid to-wit on the first day of May 1854 the said Charles Dement by deed of conveyance bearing date the first day of May 1854 in consideration of the sum of three thousand dollars to him paid by the said Robert. L. Wilson granted, bargained and sold

and conveyed to the said R. L. Wilson his heirs and assignees forever the Lots or parcels of land mentioned and described in the said trust deed executed by the said Charles. Dement as aforesaid a Copy of which said deed from the said Charles. Dement to the said R. L. Wilson is hereto attached and marked exhibit "C" and which your orators pray may be made a part of this bill. And your orators further show and expressly charge the fact to be, that the said Sterling Hydraulic Company, did not on or before the first day of October 1855, construct or complete a good and sufficient dam across Rock River at the said town of Sterling, nor a canal or head race connected therewith on the West side of said River for the production of Hydraulic power in manner and form, as specified and required by the terms of the said trust deeds respectively, but on the contrary as your orators alledge and expressly charge the facts to be the said company utterly failed and and neglected, to construct and complete a good and sufficient dam, across said Rock River at said above named point, and a canal or head race connected therewith on the west side of said River for the production of Hydraulic power as aforesaid, although a dam has been constructed by said company, the same was not constructed at the town of Sterling aforesaid, but

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was located and constructed at a point about two hundred and fifty feet south west of the south westerly boundrary line of said town according to the recorded and unvacated plot thereof at the time of the construction of said dam.

And the said dam was not completed and finish=ed on the said first day of October 1855 that the dam so built by the said company, was not a good and sufficient one for the production of Hydraulic power, but that the same was so unskillfully planned and constructed as to be defective and insufficient for said purpose, that on or before the first day of October 1855 very little if any work had been done towards constructing the said canal or head race and no portion of the same had at that time been completed nor has any portion yet been completed, and your ora=tors aver and charge that by the failure and neg=lect of the said Sterling Hydraulic Company, to build and complete said dam, and the said canal or head race on or before the first day of October 1855 in the manner and for the purposes in the said several trust deeds ment=ioned, the aforesaid conveyances, to the said John Galt in trust as aforesaid became void and the said premises became discharged from all lien whatever created by said trusts.

And your orators had well hoped that the said

Sterling Hydraulic Company would not have made any application to the said John Galt trustee as aforesaid, for a deed in fee simple from him, to the said company, of the lands in the said several trust deeds mentioned nor have made any claim thereto, but now so it is may it please your honor that the said Comp= =any by its officers and agents, combining and con= =federating with the said trustee how they may injure and oppress your orators, have published a no= =tice in the Sterling Times a public newspaper published in Sterling in said county notifying all whom it may concern that on the twenti= =eth day of November 1855 they will make applica= =tion to the said John Galt to execute and deliver to the said Company a deed of said lots in fee simple, in manner and form as specified in said deeds of trust, And the said John Galt disregarding his duty and trust in that behalf threatens to execute and deliver to the said company deeds in fee simple of the said lands in the said several deeds of trust above mentioned, on the twentieth day of November 1855, in compliance with the application of said Company should such application be made to him the said John Galt. And the said Sterling Hydraulic Company, falsely pretending that the said com= =pany had on the said first day of October

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1853 fully constructed and completed a good and sufficient dam across Rock River at Sterling in said County and a Canal or head race connected therewith on the East side of said River for the production of Hydraulic Power in manner and form as specified and required by the terms of the said trust deeds respectively all of which pretences and representa=tions are wholly false and unfounded in fact and your orators aver and state that in case the said John Galt, should make and execute to the said Sterling Hydraulic Company a deed for said mentioned Lots as he offers and threatens to do the respective titles of your orators therein will be injuriously affected and embarassed if not entirely lost to them respectively.

All which actings and doings and pretences are contrary to equity and good conscience, and tend to manifest wrong and injury of your ora=tors in the premises in consideration whereof and for as much as your orators are remediless in the premises by the strict rules of common Law and can only have relief in a court of equity where matters of this kind are properly cognizable and relievable to the end therefore that the said Ster=ling Hydraulic Company and the said John Galt may full true perfect and direct answ=er make to all and singular the matters here=in

before stated and charged your orators pray that they respectively be made defendants to this bill of complaint and be required to answer all and singular the statements matters and charges aforesaid according to the best of their respective information, knowledge and belief as fully and particularly as if the same were herein repeated and they thereunto directly interrogated but not upon their respective corporal oaths (your orators hereby waving the necessity of the answers of the said defendants being made under oath) and that upon the hearing of this cause your honor will be pleased to order and decree that the several trust deeds be delivered up by the said John Galt trustee as aforesaid to be cancelled and that the said John Galt may be perpetually restrained and enjoined by an order and injunction of this honorable Court from executing any deeds of conveyance to the said Sterling Hydraulic Company of any of the said lots and parcels of Land mentioned and described in the said several Deeds of trust, and from transferring, incumbering or in any manner interfering with the title to the same or any part thereof, and that your orators may have such other, and such further relief in the premises as their case shall require and as shall be agreeable to equity.

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May it please your Honor to grant unto your orators in the meanwhile the writ of injunction issueing out of and under the seal of this honorable Court directed to the said John Galt, to restrain him from executing any Deed of conveyance to the said Sterling Hydraulic Company of any of the said Lots or Parcel of Land mentioned and described in the said several deeds of trust, and from transferring, incumbering or in any manner interfering with the title to the same or any part thereof; and also that your orators may have the most gracious writ of subpeona of the said State of Illinois issueing out of and under the seal of this honorable Court directed to the said Sterling Hydraulic Company and to the said John Galt commanding them and each of them at ~~at~~ a certain day and under a certain penalty to be therein specified personally to be and appear before your Honor in this honorable Court then and there to answer all and singular the premises and to stand to perform and abide such order and decree therein as to your Honor shall seem meet and your orators shall ever pray &c

Robert. L. Wilson.
Nelson Mason.
Daniel. R. Beck

F. Sackett & J. O. Wilkinson
Complts. Solrs.

Lewis. D. Crandall
Elizabeth. Nichols
Charles Nichols by his
next friend Henry Bush
Leonard Nichols by his
next friend Edward. Jamison.

State of Illinois }
Whiteside County } ss

Robert. L. Wilson, Daniel. R.
Beck and Lewis D. Crandall three of the above
named complainants having been first duly
sworn do severally depose and say that all the
several matters and things which are stated in
the foregoing bill of complaint, as upon the
information of others they believe them to be
true and all the several other matters and
things therein set forth they are in true in
substance in fact.

Robert. L Wilson
Daniel. R. Beck
Lewis. D. Crandall

Sworn and subscribed
before me this fifth day of
Nov. A.D. 1855

Nath[l]. G. Reynolds.
Judge of Ce Court.

I do hereby acknowledge myself bound to pay
all costs which may accrue in this suit and
legally devolve upon the said Charles Nichols
one of the above named complainants.

Henry. Bush L.S.

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I do hereby acknowledge myself bound to pay all costs which may accrue in this suit and legally devolve upon the said Leonard S. Nichols one of the above named complainants

Edward Samuson L.S.

R. L. Wilson & Wife
To
Sterling Hydraulic Company

Exhibit "A"
Conditional Deed
Recorded May 2nd 1855.

This Indenture made this 15th day of December in the year one thousand eight hundred and fifty two between Robert L. Wilson and Eliza Jane his wife of the county of Whiteside and State of Illinois of the first part and John Galt of the said county and state of the second part, Witnesseth that whereas the Legislature of the State of Illinois passed an act in force April 13th 1849 entitled an act for the improvement of the navigation of Rock River and for the production of Hydraulic power by virtue of which act a number of persons have associated as a company to build a dam across said river at Sterling in said county in manner and for the purposes in said act specified, and whereas the persons so associated did on the 7th day of July 1852 file a certificate in the office of the Clerk of the County Court in and for said county in manner and form as required by said act therein and thereby adopting the name of the Sterling Hydraulic Company as the name by which the said company shall be designated, and whereas the said party of the first part is desirous to secure the completion of said dam on or before the first day of October A.D. 1855, and the construction of a canal or head race by said company on the West side of said river connected with said dam for Hydraulic purposes. Now therefore these

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presents Witnesseth that the said party of the first part in consideration of the premises and in order to secure the prompt and punctual completion of said Dam and canal or head race, in manner and for the purposes aforesaid and in said act enumerated and in consideration of the sum of one dollar to the said party of the first part paid the receipt whereof is hereby acknowledged do hereby grant bargain and sell unto the said party of the second part and to his heirs or executors administrator or administrators (in trust for the uses and purposes hereinafter specified) all the following parcels of land or town lots situated, lying and being in the town of Sterling, county of Whiteside and state of Illinois and known and described as follows, to-wit, Town Lots five (5) and twelve (12) in block two (2) Lot six (6) in block fourteen (14) Lot (3) in block six (6) in said town of Sterling, county and state aforesaid together with all and singular the rights and privileges thereunto belonging to have and to hold the above described premises unto the said party of the second part and his executor or exectors, administrator or administrators.— In trust nevertheless for the following uses and purposes to wit— In trust— in case the said Sterling Hydraulic company shall on or before the first day of October 1855 build and complete a good and sufficient dam composed of Rocks and Rock, hewn-timber and gravel across said river at said town of Sterling

and a canal or head race connected therewith on the west side of said river in manner and for the purposes herein before and in said act specified and enummer=
=ated then and on application in writing by said comp=
=any to the said John Galt trustee as aforesaid his execu=
=tor or executors or administrator or administrators for a deed in fee simple to said premises, and then upon said company having first given thirty=days public notice to all whom it may concern, by publication in a public newspaper published in or most adjacent to said county, that they will on the day therein mentioned make application to said trustee for a deed to said company in fee simple to and for said purposes then it shall and may be lawful for the said John Galt, trustee as aforesaid his executor or executors ad=
=ministrator or administrators, to make execute and deliver a good and sufficient deed of conveyance in Law, in fee simple for said premises to said Sterling Hydraulic Compa=
=ny said company paying all necessary and proper costs and expenses of said conveyance and said trusts and all taxes assessed subsequent to the date hereof. But in case said Sterling Hydraulic company fail or neglect to build and complete said dam or canal or head race on or before the said first day of October A.D. 1855 in manner and for the purposes herein before and also in said act specified and enummerated then this conveyance shall be null and void and the said prem=
=ises shall rest absolute in said party of the first part freely discharged from all liens whatsoever created by

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said trust and the said party of the first part for themselves their heirs and administrators do hereby covenant to and with the said party of the second part his executors or administrators or to and with the said Sterling Hydraulic company in case a deed in fee simple shall be made to them by said trustee in manner aforesaid, that at the time of making and delivering of these presents are well seized of the premises above conveyed as of a good and indefeasible inheritance in Law in fee simple and that the same are free from all incumbrances of what nature soever and against all and every person or persons lawfully claiming or to claim the whole or any part thereof will forever Warrant and Defend and that he will during the continuance of these presents pay all taxes assessed upon the same. In witness whereof the said party of the first part have hereunto set their hands and seals the day and year above named

R. L. Wilson .L.S.

Eliza. A. Wilson .L.S.

State of Illinois
Whiteside County } J. N. T. Nichols clerk of the county court in and for said county in the state aforesaid do hereby certify that Robert L. Wilson is personally known to me as the person whose name is subscribed to the foregoing Warranty Deed appeared before me this day in person and acknowledged that he signed sealed and

delivered the said instrument in writing as his free and voluntary act for the uses and purposes therein set forth.

And the said Eliza Jane, Wilson wife of the said R. L. Wilson, having been ~~by me~~ examined seperate and apart and out of the hearing of her husband and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband and that she does not wish to retract the same.

Given under my hand and seal this day of December 1853

N. F. Nichols
Clerk, Co. Court

Nelson Mason & Wife
To
Sterling Hydraulic Company

Exhibit "B"
Conditional Deed
Recorded May 2nd 1855

This Indenture made this 21st day of December in the year eighteen hundred and fifty-two between Nelson Mason and Desire E. his wife of the county of Cook and State of Illinois of the first part and John Galt of the county of Whiteside and State aforesaid of the second part Witnesseth, whereas the Legislature of the State of Illinois passed an act, in force April 14th 1849 entitled "an act for the improvement of the

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navigation of Rock River and for the production of Hydraulic power by virtue of which act a number of persons associated as a company to build a dam across said River at Sterling in said county in manner and for the purposes in said act specified, and whereas the persons so associated did on the 7th day of July A.D. 1852 file a certificate in the office of the clerk of the County Court in and for said county, in manner and form as required by said act therein and thereby adopting the name of the "Sterling Hydraulic Company" as the name by which the said company shall be designated, and whereas the said party of the first part is desirous to secure the completion of said dam on or before the first day of October 1855 and the construction of a canal or head race by said company on the west side of said River connected with said dam for Hydraulic purposes. Now therefore these presents Witnesseth that the said party of the first part in consideration of the premises and in order to secure the prompt and punctual completion of said dam and canal or head race in manner and for the purposes aforesaid and in said act enumerated and in consideration of the sum of one Dollar to the said party of the first part paid the receipt whereof is hereby acknowledged do hereby grant bargain and sell unto the said party of the second part and to his executor or executors administrator or administrators (in trust for the uses and purposes hereinafter specified) all the following parcels

of land or town lots, situated lying and being in the town of Sterling county of Whiteside and State of Illinois and known and described as follows, To wit. Four lots four (4) and nine (9) in block two (2). Lot three (3) in block three (3) Lot three (3) in block four (4). Lot eight (8) in block five (5) lots eight (8) and twelve (12) in block six (6) lot six (6) in block seven (7) lots five (5) and three (3) in block ten (10) lots four (4) and five (5) in block eleven (11) lot three (3) in block twelve (12) lots three (3) and eight (8) in block thirteen (13) lot eight (8) in block fourteen (14) lot eleven (11) in block ~~fifteen (15) Lots~~ three (3) and eight (8) in block twenty (20) lot nine (9) in block twenty-two (22) lot three (3) in block twenty-three (23) lot five (5) in block twenty-six (26) lot five (5) in block twenty-seven (27) lot five (5) in block twenty-eight (28) lot eight (8) in block thirty-five (35) lots seven (7) and eleven (11) in block thirty-seven (37) lot four (4) in block thirty-eight (38) lots three (3) and twelve (12) in block fourty-four (44) lot ten (10) in block fourty-five (45) lot ten (10) in block forty-seven (47) lot three (3) in block fourty-eight (48) lots one (1) and three (3) in block fifty (50) lot eleven (11) in block fifty-one (51) lot six (6) in block fifty-three (53) and lot ten (10) in block fifty-four (54) in said town of Sterling county and State aforesaid, together with all and singular the rights and privileges thereunto belonging, to have and to hold the above described premises unto the said party of the second part and to his executors or executors administrator or administrators.

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In trust nevertheless for the following express ures and purposes to wit. In trust in case the said Sterling Hydraulic Company shall on or before the first day of October A.D. 1853 build and complete a good and suffi=
=cient dam composed of Rocks or Rock hewn timber and gravel across said river at the said town of Ster=
=ling and a canal or head race connected therewith on the west side of said river in manner and for the purposes herein before and in said act specified and enumerated then on application in writing by said company to said John Galt trustee as aforesaid his executor or executors administrator or administrators for a deed in fee simple to said premises and then upon said company having first given thirty-days public notice in a newspaper published in or most adjacent to said county that they will on the day therein mentioned make app=
=lication to said trustee for a deed to said company in fee simple to and for said premises, then it will and may be lawful for the said John Galt trustee as afor=
=esaid his executor or executors, administrator or admin=
=istrators, to make execute and deliver a good and sufficient deed of conveyance in law in fee simple for said premises to said Sterling Hydraulic Company said company paying all necessary and proper costs and expenses of said conveyance and said trust and all taxes assessed subsequent to the date hereof.
But in case said Sterling Hydraulic Company fail or neglect to build and complete said dam or canal or head race on or before the first day of Oct=

October A.D. 1855 in manner and for the purposes here-
=in before and also in said act specified and enumer-
=ated then this conveyance shall be null and void
and the said premises shall rest absolutely in the
said party of the first part fully discharged from
all liens whatsoever created by said trust and the
said party of the first part for themselves their heirs
executors and administrators do hereby covenant to
and with the said Sterling Hydraulic Company in case
a deed in fee simple shall be made to them by said
trustee in manner aforesaid that at the time of mak-
=ing and delivering of these presents they are well seized
of the premises above conveyed as of an indefeasible
estate of inheritance in the law in fee simple,
and that the same are free from all incumbran-
=ces of what nature power and against all and
every person or persons lawfully claiming or to claim
the whole or any part thereof will forever warrant and defend
and that he will during the continuance of these
presents pay all taxes assessed upon the same.

In testimony whereof the said party of
the first have hereunto set their hands and seals
the day and year above given.

Nelson. Mason. LS

Desire. E. Mason. LS

State of Illinois
Cook County

I William. H. Adams a Notary Public
in said county in the state aforesaid do hereby certify

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that Nelson Mason and Desire E. Mason who are personally known to me as the same persons whose names are subscribed to the annexed trust deed appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instru=ment of writing as their free act and deed for the uses and purposes therein set-forth. And the said Desire. E. Mason, wife of the said Nelson Mason hav=ing been by me examined seperate and apart and out of the hearing of her husband and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned and that she does not wish to retract the same.

Given under my hand and Notarial seal this third day of April A.D. 1854.

William. H. Adams
Notary Public.

Daniel. K. Beck
To
Sterling Hydraulic Company

Exhibit "C"
Conditional Deed
Recorded May 2nd 1855

This Indenture made this 18th day of December in the year one thousand eight hundred and fifty-two between Daniel. K. Beck of the county of Whiteside and State of Illinois of the first part and

John Galt of the said county and State of the second
part Witnesseth that whereas the Legislature of the State
of Illinois passed an act in force April 13th 1849 entitled
an act for the improvement of the navigation of Rock
River and for the production of Hydraulic power, by vir-
=tue of which a number of persons have associated as a com=
=pany to build a dam across said river at Sterling in said
county in manner and for the purposes in said act speci=
=fied and whereas the persons so associated did on the 7th
day of July A.D. 1852 file a certificate in the office of the Clerk
of the County Court in and for said county in manner and
form as required by said act therein and thereby adopting
the name of the Sterling Hydraulic Company as the name by which the said corporation
shall be designa=
=ted. And whereas the said party of the first part is des=
=irous of securing the completion of said dam on or before the
first day of October 1855 and for the construction of a canal
or head race by said company on the west side of said River
connected with said dam for Hydraulic purposes. Now
therefore these presents Witnesseth that the said party of the
first part in consideration of the premises and in order to
secure the prompt and punctual completion of said dam and
canal or head race in the manner and for the purposes aforesaid
and in said act enumerated, and in the consideration of
the sum of one dollar to the said party of the first part paid
the receipt whereof is hereby acknowledged do hereby grant bar=
=gain and sell unto the said party of the second part and to
his executor or executors administrator or administrators (in
trust for the uses and purposes hereinafter specified) all the
following parcels of land or town lots situated lying and

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being in the town of Sterling County of Whiteside and State of Illinois, known and described as follows to-wit, town Lots eight (8) and nine (9) in Block forty-eight (48). Together with all and singular the rights and privileges thereunto belonging, to have and to hold the above described premises unto the said party of the second part his executor or executors, administrators, in trust nevertheless for the following express uses and purposes to wit. In trust in case the said Sterling Hydraulic Company shall on or before the first day of October A.D. 1855 build and complete a good and sufficient Dam composed of Rocks or Rock, hewn timber and gravel across said river in manner and for the purposes therein before and in said act specified then and on application in writing by said company to the said John Galt trustee as aforesaid his executor or executors, administrator or administrators for a deed in fee simple to said premises, then upon said company having first given thirty days notice to all whom it may concern by publication in a public newspaper published in or most adjacent to said county that they will on the day therein mentioned make application to said trustee for a deed to said company in fee simple to and for said premises. Then it shall and may be lawful for the said John Galt, trustee as aforesaid his executor or executors, administrator or administrators to make execute and deliver a good and sufficient deed of conveyance in law in fee simple for said premises to said Sterling Hydraulic Company said company paying all necessary and proper costs and expenses of said conveyances and said trusts and all taxes assessed

subsequent to the date hereof. But in case said Sterling Hydraulic Company fail or neglect to build and complete said dam or canal or head race on or before the said first day of October 1855 in manner and for the purposes herein before and also in said act specified and enumerated then this conveyance shall be null and void and the said premises rest absolutely in said party of the first part fully discharged from all liens whatsoever created by said trust, and the said party of the first part for himself and his heirs executors and administrators do hereby covenant to and with said party of the second part, his heirs executors or administrators or to and with said Sterling Hydraulic Company in case a deed in fee simple shall be made to them by said trustee in manner aforesaid, that at the time of making and delivering of these presents are well seized of the premises above conveyed as of an indefeasible estate of inheritance in the law in fee simple and that the same are free from all incumbrances of what nature soever and against all and every person or persons lawfully claiming or to claim the whole or any part thereof will forever warrant and defend and that I will during the continuance of these presents pay all taxes assessed upon the same.

In witness whereof the said Daniel R. Beck party of the first part have hereunto set my hand and seal the day and year first above named.

Daniel R. Beck L.S.

State of Illinois
Whiteside County

I J. N. I. Nichols Clerk of the County Court in and

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for said county do hereby certify that Daniel R. Beck is per-
-sonally known to me as the person whose name is subscribed
to the foregoing Warranty Deed appeared before me this day
in person and acknowledged that he signed, sealed and
delivered the said instrument of writing as his free and
voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this 18th day
of December 1852

A. J. Nichols
Clerk. Co. Court

Chas Dement & Wife
To
Sterling Hydraulic Company

Exhibit "D"
Trust Deed.
Recorded, May 2d 1855.

This Indenture made this thirtieth day of De-
-cember in the year one thousand eight hundred and fifty-two
between Charles Dement and Mary A. Dement his wife, of Lee
County Illinois of the first part and John Galt of the county of
Whiteside and State of Illinois of the second part Witnesseth where-
-as the Legislature of the State of Illinois passed an act in force
April 13th 1849 entitled an act for the improvement of the navi-
-gation of Rock River and for the production of Hydraulic Pow-
-er, by virtue of which a number of persons associated as a company
to build a dam across said river at Sterling in said county in
manner and for the purposes in said act specified. And whereas
the persons so associated did on the 7th day of July A.D. 1852 file
a certificate in the office of the clerk of county court in and
for said county in manner and form as required by said

act therein and thereby adopting the name of the "Sterling Hydraulic Company" as the name by which said company shall be designated, And whereas the said party of the first part is desirous to secure the completion of said dam, on or before the first day of October, A.D. 1855 and the construction of a canal or head race by said company on the west side of said river connected with said Dam for Hydraulic purposes. Now therefore these presents Witnesseth that the said party of the first part in consideration of the premises and in order to secure the prompt and punctual completion of said dam and canal or head race in manner and for the purposes aforesaid, and in said act enumerated and in consideration of the sum of one dollar to the party of the first part, paid the receipt whereof is hereby acknowledged, do hereby grant bargain and sell unto the said party of the second part and to his executor or executors administrator or administrators, (in trust for the uses and purposes hereinafter specified) all the following parcels of land or town Lots situated, lying and being in the town of Sterling County of Whiteside and State of Illinois, known and described as follows to-wit. Town lots six (6) seven (7) eight (8) and nine (9) in block four (4) lots seven (7) nine (9) and ten (10) in block five (5) Lots seven (7) and nine (9) in block fourteen (14) Lots one (1) and two (2) in block twenty-one (21) Lots three (3) and four (4) in block twenty-seven (27) lots nine (9) and ten (10) in block twenty-eight (28) and Lot five (5) in block fourty-four (44) in said town of Sterling, County and State aforesaid, together with all and singular the rights and privileges thereunto belonging, to have and to hold the above described premises unto the said party of the second part, and to his executor & executors administrator & administrators, in trust nevertheless for the

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following uses and purposes to wit, in trust, in case the said Ster-
=ling Hydraulic Company shall on or before the first day of October
A.D. 1855, build and complete a good and sufficient dam composed
of Rocks or Rock hewn timber or gravel across said river at the
said town of Sterling and a canal or head race connected there-
=with on the west side of said River in manner and for the purposes
herein before and in said act specified and enumerated. Then
on application in writing by said company to the said John Galt
trustee as aforesaid his executor or executors, administrator or ad-
=ministrators for a deed in fee simple to said premises, and then
upon the said company having first given thirty-days public
notice to all whom it may concern by publication in a pub-
=lic newspaper published in or most adjacent to said county, that
they will on the day therein mentioned make application to said
trustee for a deed to said company in fee simple to and for said
premises, then it shall and may be lawful for the said John
Galt trustee as aforesaid his executor or executors, administrator or
administrators, to make execute and deliver a good and suffi-
=cient conveyance in law in fee simple for said premises to said
Sterling Hydraulic Company, said company paying all necessary
and proper costs and expenses of said conveyances and said trust,
and all taxes assessed upon the same subsequent to the date here-
=of. But in case the said Sterling Hydraulic Company fail or
neglect to build and complete said dam and canal or head
race on or before the said first day of October A.D. 1855 in man-
=ner and for the purposes herein before and in said act speci-
=fied and enumerated, then this conveyance shall be null and
void, and said premises shall vest absolute in said party of

the first fully discharged from all liens whatsoever created by said trust, and the said party of the first part for themselves and their heirs, executors and administrators do hereby covenant to and with the said party of the second part, his executors, or administrators or to and with the said Sterling Hydraulic Company in case a deed in fee simple shall be made to them by said trustee in manner aforesaid, that at the time of making and delivering of these presents, are well seized of the premises above conveyed as of an indefeasible estate of inheritance in the law in fee simple, and that the same are free from all incumbrances of what kind or nature soever and against all or every person or persons lawfully claiming or to claim the whole or any part thereof will forever Warrant and defend and that he will during the continuance of these presents pay all taxes assessed upon the same. In testimony whereof the party of the first part have hereunto set their hands and seals the day and year above given.

Charles. Dement [L.S.]
Mary. A. Dement [L.S.]

State of Illinois
Lee County

I Henry. Webb Notary Public in and for said county in the state aforesaid do hereby certify that Charles Dement and Mary. A. Dement are personally known to me as persons whose names are subscribed to the foregoing Warranty Deed, appeared before me this day in person and acknowledged that they signed sealed and delivered the said instrument of writing as a free and voluntary act for the uses

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and purposes therein set forth. And the said Mary A. Dement wife of the said Charles Dement having been by me examined seperate and apart and out of hearing of her husband and the contents and meaning of said instrument of writing having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements mentioned therein without compulsion of her said husband and that she did not wish to retract the same.

Given under my hand and seal this 13th day of December 1852.

Henry. Webb.
Notary. Public.

N. S. Nichols
To
Sterling. Hydraulic Co

Exhibit "E"
Conditional Deed.
Recorded May 2nd 1855.

This indenture made this fourteenth day of December in the year one thousand eight hundred and fifty two between Norton. S. Nichols of the county of Whiteside and State of Illinois of the first part and John Galt of the said county and State of second part Wit=
=nesseth that whereas the Legislature of the State of Illinois pas=
=sed an act in force April 14th 1849, entitled "an act for the im=
=provement of the navigation of Rock River and for the pro=
=duction of Hydraulic power" by virtue of which a number of per=
=sons have associated as a company to build a dam across said river at Sterling in said county in manner and for the purposes in said act specified and whereas the said persons so associated

did on the 7th day of July A.D. 1852 file a certificate in the office of Clerk of the County Court in and for said County in manner and form as required by said act, therein and thereby adopting the name of the Sterling Hydraulic Company. as the name by which said company shall be designated and whereas the said party of the first part is desirous to secure the completion of said dam on or before the first day of October A.D. 1855, and the construction of a canal or head race by said company on the west side of said River connected with said dam for Hydraulic purposes.

Now therefore these presents witnesseth that the said party of the first part in consideration of the premises and in order to secure the prompt and punctual completion of said dam or canal or head race in manner and for the purposes aforesaid and in said act enummerated and in consideration of the sum of one dollar, to the said party of the first part paid the receipt of which is hereby acknowledged do hereby grant, bargain and sell unto the said party of the second part and to his executor or executors, administrator or administrators, (in trust for the uses and purposes herein after specified) all the following parcels of land or town lots situated, lying and being in the town of Sterling County of Whiteside and State of Illinois, and known and described as follows. To wit. Town Lots one (1) and two (2) in block thirteen (13) Lots four (4) eight (8) and ten (10) in block three (3) Lot seven (7) in block twenty-two (22) Lots eight (8) and nine (9) in block twenty-seven (27) Lot five (5) in block thirty-five (35) Lots four (4) and nine (9) in block forty-nine (49) Lot two (2) in block fifty (50) Lots five (5) and ten (10) in block fifty-one (51) and lot six (6) in block fifty-two (52) in said town of Sterling, County and State aforesaid together with all and singular the rights and privileges thereunto belonging, to have and to hold the above described premises unto the said party of the second part

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and to his executor or executors administrator or administrators, in trust nevertheless for the following uses and purposes to wit, for trust in case the said Sterling Hydraulic Company shall on or before the first day of October A.D. 1855 build and complete a good and sufficient dam composed of Rock or Rocks, hewn timber and gravel across said river at said town of Sterling and a canal or head race connected therewith on the West side of said river in manner and for the purposes herein before and in said act specified and enummerated, then on application in writing by said company to the said John Galt trustee as aforesaid his executor or executors administrators or administrators for a deed in fee simple to said premises and upon the said Company having first given thirty days public notice to all whom it may concern by publication in a public newspaper published in or most adjacent to said County that they will on the day therein mentioned make application to said trustee for a deed to said company in fee simple to and for said premises then it shall and may be lawful for the said John Galt trustee as aforesaid his executor or executors administrators or administrators to make execute and deliver a good and sufficient deed of conveyance in law in fee simple for said premises to said Sterling Hydraulic Company said company paying all necessary costs and expenses of said conveyance and said trust and all taxes assessed subsequent to the date hereof.

But in case said Sterling Hydraulic Company fail or neglect to build and complete said dam or canal or head race on or before the first day of October 1855 in manner and for the purposes herein before and also in said act specified and enumonerated then this conveyance shall be null and

void and the said premises shall rest absolute in said party of the first part fully discharged from all liens whatsoever created by said trust and the said party of the first part for himself and his heirs, executors and administrators do hereby covenant to and with the said party of the second part his executors and administrators or to and with said Sterling Hydraulic Company in case a deed in fee simple shall be made to them by said trustee in manner aforesaid that at the time of making and delivering of these presents are well seized of the premises above conveyed as of an indefeasible estate in the law in fee simple and that the same are free from all incumbrances of what nature soever and against all and every person or persons lawfully claiming or to claim the whole or any part thereof will forever Warrant and Defend and that he will during the continuance of these presents pay all taxes assessed upon the same.

In witness whereof the said party of the first part has hereunto set his hand and seal this 14th day of December 1852

N. S. Nichols L.S.

State of Illinois
Whiteside County

I, Robert L. Wilson Clerk of the Circuit Court in and for said county and State do hereby certify that Norton S. Nichols is personally known to me as the person whose name is subscribed to the foregoing Warrantee Deed appeared before me this day in person and acknowledged that he signed sealed and delivered the said instrument in writing as his free and voluntary act for the uses and purposes therein set forth.

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In witness whereof I have hereunto set my hand

and seal this 14th day of December 1852

R. L. Wilson. Clerk.

Lewis. D. Crandall & Wife
To
Sterling. Hydraulic. Co.

Exhibit "Y"

Conditional Deed

Recorded May 2nd 1855

This Indenture made this 13th day of December in the year of our Lord one thou=sand eight hundred and fifty=two, between Lewis. D. Crandall and Lucy. Ann his wife of the county of Whiteside and State of Illinois of first part and John Galt of the said county & State of the second part Witnesseth that whereas the Legisla=ture of the state of Illinois passed an act in force April 13th 1849 entitled an act for the improvement of Rock River and for the production of Hydraulic power by virtue of which a number of persons have associated as a company to build a dam across said river at Sterling in said county in man=ner and for the purposes in said act specified, and whereas the said persons so associated did on the 7th day of July A.D. 1852 file a certificate in the office of the Clerk of the County Court in and for said county in manner and form as required by said act therein and thereby adopting the name of the "Sterling Hydraulic Company" as the name by which the Company shall be designated, and whereas the said party of the first part is desirous to secure the completion of said dam on or before the first day of October A.D. 1855 and the con=struction of a canal or head race by said company on the West side of said River connected with said Dam for Hy=draulic purposes, Now therefore these Presents Witnesseth, that the

said party of the first part in consideration of the premises, and in order to secure the prompt and punctual completion of said Dam and canal or head race in manner and for the purposes aforesa=
=id and in said act enummerated, and in consideration of the sum of one dollar to the party of the first part paid, the receipt whereof is hereby acknowledged, do hereby grant bargain and sell unto the said party of the second part and to his executor or executors, administrator or administrators (in trust for the us=
=es and purposes hereinafter specified) all the following parcels of land or town lots, situated lying and being in the of Sterling county of Whiteside and State of Illinois, known and described as follows, to wit. Lots Seven (11) and twelve (12) in block thir=
=ty-eight (38) also lots nine (9) and ten (10) in block thirty-seven (37), together with all and singular the rights and privileges thereunto belonging to have and to hold the above described premises unto the said party of the second part and to his execu=
=tor or executors administrator or administrators in trust never=
=theless for the following express uses and trust to wit, in trust in case the said Sterling Hydraulic company shall on or before the first day of October A.D. 1853 build and complete a good and sufficient dam composed of Rock or Rocks, hewn timber and gravel across said river at the town of Sterling and a ca=
=nal or head race connected therewith on the west side of said river in manner and for the purposes herein before and in said act specified and enummerated, then on application in writing by said company to the said John Galt trustee as aforesaid, his executor or executors administrator or administrators to make execute and deliver a good and sufficient conveyance in law in fee simple for said premises, to said Sterling

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Hydraulic Company said company paying all necessary costs and expenses of said conveyance and said Trust, and all taxes assessed subsequent to the date hereof, But in case said company fail or neglect to build and complete said dam and canal or head race on or before said first day of October 1855 in manner and for the purposes herein before and also in said act specified and enumerated then this conveyance shall be null and void and said premises rest absolutely in said party of the first part fully discharged from all liens whatsoever created by said trust, And the said party of the first for themselves and their heirs executors and administrators do hereby covenant to and with the said party of the second part his heirs executors and administrators or to and with the said Sterling Hydraulic Company in case a deed in fee simple shall be made to them by said trustee in manner aforesaid that at the time of making and delivering of these presents are well seized of the premises above conveyed as of an indefeasible estate of inheritance in the law in fee simple and that the same are free from all incumbrances of what nature soever and against all and every person or persons lawfully claiming or to claim the whole or any part thereof will forever warrant and defend and that he will during the continuance of these presents pay all taxes assessed upon the same. In witness whereof the party of the first part have hereunto set their hands and seals the day and year above mentioned

L. D. Crandall L.S.

Lucy Ann Crandall L.S.

State of Illinois
Whiteside County } ss

I N. S. Nichols clerk of the county court in and for said county in the State aforesaid do hereby certify that Lewis D. Crandall personally known to me as the person whose name is subscribed to the foregoing Warrantee Deed appeared before me this day in person and acknowledged that he signed sealed and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.
And the said Lucy Ann Crandall wife of the said Lewis D. Crandall having been by me examined seperate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion from her said husband and that she does not wish to retract the same.

Given under my hand and official seal this 15th day of December A.D. 1852

N. S. Nichols
Clerk Co. Court

L.S.

Chas Dement & Wife
To
H. L. Wilson

Exhibit "A"

Warrantee Deed

Recorded May 9th 1854 at 12. M

This Indenture made this first day of May in the year one thousand eight hundred and fifty-four between Charles Dement and Mary A. Dement of Lee County Illinois

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of the first part and Robert L. Wilson of Whiteside County Illinois of the second part Witnesseth, that the said party of first part in consideration of the sum of three thousand dollars to them duly paid before the delivery hereof have granted bargained and sold and by these presents do grant, bargain and sell and convey to the said party of the second part his heirs and assigns forever all the following described premises situated lying and being in the county of Whiteside and State of Illinois and known and described as follows. To Wit Lots one (1) two (2) ~~six~~ (6) seven (7) eight (8) and nine (9) in block four (4). Lots one (1) two (2) five (5) six (6) seven (7) and nine (9) in block five (5) lot twelve (12) in block thirteen (13) Lots one (1) ~~two~~ (2) seven (7) and nine (9) in block fourteen (14) Lots one (1) two (2) five (5) and six (6) in block twenty-one (21) Lots three (3) four (4) and six (6) in block twenty-seven (27) Lots one (1) two (2) and three (3) in block twenty-eight (28) and lots four (4) and five (5) in block forty-four (44) in the town of Sterling county and State aforesaid subject to the conditions of a certain trust deed given to promote the building of a Mill dam and race as therein more fully set forth to John Galt trustee for the benefit of the Sterling Hydraulic Company with the appurtenances and all the estate right title and interest of the said party of the first part therein, and the said Charles Dement and Mary A. Dement party of the first part do hereby covenant and agree with the said party of the second part, that at the time of the delivery hereof the said party of the first part were the lawful owners of the premises above granted and seized thereof in fee simple absolute that they will warrant and

defend the above granted premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns forever. Subject to said trust deed above named and that they are free from all incumbrances whatsoever except said trust deed.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

Signed sealed & delivered
in presence of
Henry Webb.

Charles Dement L.S.
Mary A. Dement L.S.

State of Illinois
Lee County

I, Henry Webb Notary Public in and for the said County in the State aforesaid do hereby certify that Charles Dement and Mary A. Dement personally known to me as the persons whose names are subscribed to the foregoing Warran=-tee Deed appeared before me this day in person and acknowl=-edged that they signed sealed and delivered the said instru=-ment of writing as their free and voluntary act for the uses and purposes therein set forth and the said Mary A. Dement wife of the said Charles Dement having been by me examined sep=-arate and apart out of hearing of her husband and the con=-tents and meaning of the said instrument of writing having been by made known and fully explained to her acknowledged that she had freely and voluntarily executed the same and re=-linquished her dower to the lands and tenements therein mentioned without compulsion of her said husband and

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that she does not wish to retract the same.
Given under my hand and seal this first day of May A.D. 1854.

Henry Pelt.
Notary Public.

State of Illinois }
Whiteside County } ss I R L Wilson Clerk of the Circuit Court in and for said County & State do hereby certify that the within is a true full correct and perfect Copy of the original bill or petition for an injunction in the within entitled cause, and also true, full, correct & perfect Copies of the following deeds
R L Wilson & Wife to John Lacy Mortgage &c & marked Exhibit A
Nelson Mason & Wife " Same " " B
Daniel R Rich " Same " " C
Charles Dimmitt & Wife Same " D
Norton J Nichols Same " E
Lewis D Crandall & Wife Same " F
Charles Dimmitt & Wife To R L Wilson " G
and referred as designated herein in the bill
Witness R L Wilson Clerk of our Circuit Court and the Seal of said Court this 10th day of April 1854
R L Wilson
Clerk

Whiteside County Circuit Court.

In Chancery.

Seperate answer of the Sterling Hydraulic Company to the Bill of complaint of Robert L. Wilson, Nelson Mason, Daniel R. Beck, Leonard Nichols, Charles Nichols, Lewis D. Crandall and Elizabeth Nichols, filed against them and John Galt, defendants

These defendants now and at all times hereafter, saving and reserving to themselves all and all manner of benefit of exceptions to the many errors and insufficiencies in said bill of complaint contained, for answer thereto or to so much or such part thereof as they are advised it is material for them to make answer unto, answer and say-

They admit that at the time mentioned in complainants bill, they were a body corporate as in said bill stated, formed under the law mentioned and for the purposes therein stated.

These defendants further answering admit that the said several persons in said bill mentioned to-wit the said complainants, Wilson, Mason, Beck and Crandall and said Charles

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Dement and the said Norton. S. Nichols did make, execute and deliver to the said John Galt deeds of trust conveying to him the several lots of land in said deed mentioned and that said deeds of conveyance respectively were in trust for the benefit of these defendants and for the purpose of causing said several tracts of land to be conveyed to these defendants upon the completion by these defendants of improvents of Rock River at the town of Sterling but as these defendants have not and are not entitled to the control and possession of said trust deeds and are not sufficiently advised of their peculiar provisions, they are not aware whether the same are correctly set out in complainants bill or not and ask that the complainants may be required to produce and prove the same as they may be able, and they hereby insist upon all benefits and interests they are entitled to or may lawfully claim under the same.

And these defendants further say that before the time mentioned in complainants bill, there was at and near the town of Sterling a valuable water privilege which could be improved at or near that point by the erection of a dam across Rock River at said point; that the capacity of said river of improvements was and had for a long time been well

understood by all the inhabitants and citiz=
=ens of said place, and that said citizens had
for a long period been anxious that such
improvements should be made, well knowing
that such improvements would greatly promote
the prosperity of their place, and enhance the
value of their lands and town lots, besides
greatly increasing the business therein — that
in consequence of the size and magnitude
of said river such improvements required
the outlay of a large amount of capital
and was not sufficiently certain to be
profitable as an investment of money, so as
to reimburse to such persons as might expo=
=end their money in such improvements a
sufficient return for their outlay of capital
while it was evident that the collateral bene=
=fits, such as the increase in the value of town
property and in business as aforesaid, to be
derived from such improvements would far
exceed the direct benefit to accrue to those
who should invest their capital therein and
that in view of those circumstances the sever=
=al persons mentioned in said bill ~~Grantors~~
in said trust deeds being proprietors of
lands and town Lots in said town of
Sterling which were then of little value, to
induce the construction of said dam and
the completion of such improvements as

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aforesaid, were willing and so proposed that (in case any company could be formed under the act of the Legislature of the state of Illinois as aforesaid in said bill mentioned) for the purpose of causing such incorporated company to be formed, to convey to such company upon the completion of such improvements, a large part and proportion of the town Lots by them owned in said town of Sterling, in order that said company might be pharges in the collateral benefits above mentioned.

And these defendants further say that in view of all the aforesaid premises and to induce the formation of such company for the purposes aforesaid and to induce the improvement of said river as aforesaid and to induce persons having capital to subscribe for and take stock in said company to be organized as aforesaid, the said complainants Wilson, Beck, Crandall, Mason, Charles Dement and several other persons made and executed a written agreement, by which after reciting, that a number of persons were about to associate as a company to build a dam across Rock River at Sterling under the act aforesaid each of them agreed to and with said company, that when the said company

should subscribe and take Fifteen thousand dollars of Stock for said improvements and file their certificate thereof in the office of the Clerk of the County Court in pursuance of said act, that they would severally convey to said company, one half of all their unimproved town lots, which they at that time owned and possessed in the said town of Sterling, subject to certain exceptions therein more particularly specified a copy of which agreement is hereto annexed and marked "A" and which these defendants pray may be taken as a part of this their answer, and which said agreement was made and executed on the 7th day of July A.D. 1852, for the purpose of being delivered to the company therein mentioned whenever the same should be fully formed and organised and these defendants further say that shortly after, and on or about the 23d day of October A.D. 1852 they these defendants were fully organised as a body corporate in pursuance of said agreement, and in pursuance of the aforesaid act of the Legislature of the State of Illinois, and that upon such organization the said last mentioned agreement was in due form of Law delivered to them.

That the several persons who were stockholders in said body corporate were induced to become such stockholders by the making of said

[12487-87]

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agreement and the terms thereof, and to take and subscribe for stock and that the said sum of fifteen thousand dollars therein mentioned as stock of said company was severally subscribed for, and the proper certificate thereof made and duly filed in accordance with said agreement, and these defendants in consideration thereof commenced the said improvements therein mentioned and within the time mentioned completed the same and on their part and behalf fully complied in all respects with the terms of said agreement to be observed fulfilled and complied with by these defendants.

And these defendants further say, that said trust deeds were made by and between the same makers and grantors thereof, with the said Galt ostensibly in fulfillment of said agreement above mentioned and after these defendants were by the terms thereof entitled to a conveyance of said lots under said agreement.

That these defendants were not parties to the same and did not and never have consented to the release of the makers thereof from any of the provisions of said agreement favorable to them and have never waived the same and now and hereby insist upon all and every provision thereof favorable to these defendants, and they humbly submit to your Honorable

court that the makers and grantors of said deeds did not and could not by their own act alone, nor by the concurrence of the afore=said John. Galt release any rights which these defendants acquire under said agreement or in any manner limit or curtail the same and that having performed all and singular the provisions of said agreement on their part and behalf to be performed they hereby claime and insist upon the benefit thereof in every particular and upon the full and complete execution of said trust, in accordance with said agreement, and that any declarations of trust, provisos or provisions if therein writt=en or contained not in accordance with said agreement would be null and void and of no force or effect against these defe=ndants and should not be regarded by your Honorable Court.—

And these defendants further answering admit that the said Norton. D. Nichols in said bill mentioned is deceased and that the rights of said complainants in said bill by the name of Nichols are as in said Bill stated in respect to the real estate of said deceased, and that they are not aware whether the said Dement has conveyed to the said Wilson as therein stated or not and leave the said Wilson to make proof

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thereof as he may be able.

And these defendants further answer=
=ing say and admit that they did within
the time mentioned in said trust deed to
wit, on or before the first day of October. A.D.
1855 construct and complete a good and suff=
=icient dam across Rock River at the said
town of Sterling and they deny that they
have failed or neglected so to do and in
explanation these defendants say that by or
before the first day of October aforesaid these
defendants ~~had built~~ constructed and com=
=pleted of stone, hewn timber and gravel a
good and sufficient dam across Rock River
that said dam so constructed was and is
located at and near the west end of the
town of Sterling aforesaid about three hund=
=red feet East of the West end of the town
of Sterling as the same was originally laid
out, surveyed and recorded, and immediately
contiguous to and against two Blocks in the
original recorded plat of said town of said
town of Sterling called and known as Blocks
numbers Forty=one and Forty=two that said
Blocks numbers Forty=one and Forty=two at
the time of the execution of the above mention=
=ed agreement and at the time of the execu=
=tion of said trust deeds formed and were

part of said town of Sterling according to the aforesaid recorded Plat – that the said Blocks Forty-one and Forty-two were afterwards vacated, which vacation these defendants insist did not and could not affect the said agree-ment and trust deeds before made – that a street of said town known as Locust Street which is now and always was a part of said town terminates within about Sixty-six feet of the East end of said head race and improve-ments – That the said town as laid out and then owned by said grantors in said agreem-ent and trust deeds mentioned does not at any place touch Rock River, there being a strip of land varying in width from about Fifty-feet to One hundred and Fifty-feet lying between said town and said river and which does not constitute any part of said town Plat, and that neccessarily by the term <u>at</u> in said deeds and agreement contained could only be meant adjacent or near to said town – that said town of Sterling has never been incorporated as a town, and these defendants believe and so insist that by the term used in said trust deeds and agreement is meant a place or locality and not either a recorded town Plat or incorporated town and that said dam and improvements are within the locality so

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intended and they also insist that they have built said dam and improvements at the town of Sterling within the true meaning and intent of said trust deeds and agreement whether by said term is meant an incorporated town, recorded town plat or locality or whatever its meaning may be—

And these defendants further answering say that said dam as constructed by these defendants was planned and constructed in a skillful and workmanlike manner of rock, hewn timber and gravel as in said trust deeds was provided, and that the same is a good and sufficient dam for the production of Hydraulic power, and they fully and especially deny any and all the allegations, statements and charges of said complainants in said bill contained, stating alledging or maintaining that the same was planned, constructed or built in an unskilful, unworkmanlike or insufficient manner and say that the same are wholly unfounded in fact.

And these defendants further say that before the first day of October A.D. 1855 aforesaid these defendants had within the true meaning and intent and spirit of said trust deeds made and constructed a head race or canal in connection with said dam on the West side of Rock River for the

production of Hydraulic power as therein pro-
=vided that the said canal or head race comp-
=leted at said time was not as long and exten-
=sive as these defendants design constructing,
yet as the said canal or head race in said
trust deeds mentioned is not therein required
to be of any particular length, size form or
dimensions, these defendants insist that the
portions of the canal or head race they had
then completed fully and in all respects ans-
=wers and fulfills the requirements of said
trust deeds in respect to the same particularly
and especially as these defendants have at all
times and in all respects been diligent in
extending and have extended and design
still further to build and extend as soon as
practicable and called for, the head race
or canal in such manner as shall be fully adeq-
=uate and sufficient to furnish at all times
all the water and water power that may
be needed for the propulsion of machinery
at said town of Sterling.

And these defendants further answering say
that the portion of said canal or head race
constructed before October 1st A.D. 1853 was
one hundred feet in width about forty-five
feet in length and furnished with ten
gates, each about ten feet in width, and was
sufficient to furnish power for the propulsion

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of a large amount of machinery and that the same could have been conviently and for that purpose - And these defendants further say that those persons executing said deeds of trust at the time of the execution thereof did not intend therein that such canal or head race should be completed within said time as no such limitation in time was contained in said original agreemet which the said trust deeds were made to fullfill, but were only desirous to secure the location of said canal or head race on the West side in distinction from the East side of Rock River, and that all the provisions and provisos in said trust deeds in respect to said canal or head race were inserted for that purpose and object only and that if by any of the provisions thereof the completion of said canal or head race was thereby required within said time, such requirement was the mere result of inadvertence on the part of the person drawing the same and was not intended by the makers and grantors therein and the said defendants submit that by the true and proper construction of said trust deeds, the completion by these defend-ants of the aforesaid head race or canal or any portion thereof is not required on the 1st day of October A.D. 1875 and they

hereby insist as they have herein before insisted that said condition and provision in said trust deed contained in respect to the said canal or head race, not being required by the aforesaid agreement, were inserted in said trust deeds in derogation of the rights of these defendants under said agreement, in violation of said agreement and for these reasons and other reasons were null and void against these defendants, and cannot be set up and made use of to hurt injure and defeat the just rights of these defendants, in said lots of land in said trust deeds mentioned and so meritoriously and equitably acquired as aforesaid.

And these defendants further answering admit that they did cause the notice mentioned in complainants bill, to be inserted and published in the "Sterling Sims," as therein mentioned and say that in consequence of the objections, made by said complainants, no conveyance of the lots of land in said bill mentioned has been made to these defendants by said John Galt, and these defendants are not aware that the said John Galt, has so threatened to convey said lots to these defendants as is in said bill set forth, and these defendants submit to your Honorable Court and

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and insist that by reason of the facts and circumstances herein above set forth and by reason of the agreement aforesaid, the formation of these defendants into said body corporate and the construction of said improvements of said river as above mentioned and of the other facts herein above stated, these defendants are purchasers of the said several town Lots in said bill mentioned for a valuable consideration which they have fully paid to the said complainants, and the other grantors in said deeds of trusts— that these defendants have as @ consideration of said purchase invested laid out and expended in the construction and erection of said improvements a large sum of money amounting to Twenty-five thousand Dollars and more and in amount far exceeding the amount of Stock in said trust deeds mentioned, and that the said complainants and the other grantors in said trust deeds have received great advantages and benefits from the erection and construction of said improvements, by a great increase of value to their remaining Lots of land in said town of Sterling and in the great increase and growth of business in said town, and that

such benefit has proved to said complain=
=ants and other parties as aforesaid a most
valuable and remunerative consideration for
said lots so conveyed and that to a
much greater extent even than was con=
=templated by them at the time of mak=
=ing said agreement - and these defend=
=ants hereby submit that your Honorable
Court will not and cannot interfere to
set aside and annul or in any manner
impair a sale so made upon such val=
=uable and meritorious considerations so
paid by these defendants as aforesaid -

And these defendants further answering insist
that the said complainants by their bill in this
behalf are endeavoring to inforce against these def=
=endants an alledged forfeiture, and they submit
whether said court will exercise its jurisdiction
in that way for a purpose so inequitable, un=
=just, and against the rules of equity in that
behalf. - And these defendants further answer=
=ing deny all confederacy, combination and impro=
=er and injurious conduct as charged in said
bill and they hereby deny all and singular
all other matters, things statements, allegations
and charges in said bill contained and not
herein and hereby more specifically answered
unto traversed or denied, all of which matters
and things they will aver and maintain and

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prove as this Honorable Court shall direct and ask to be hence discharged with their costs in this behalf most wrongfully sustained

In testimony whereof these defendants have hereto affixed their corporate seal and caused their answer to be signed by their President and attested by their clerk.

John. Van. Nortwick
President Sterling Hydraulic
Company

B. C. Coblentz
Clerk

State of Illinois
Whiteside County } SS

I R. L. Wilson Clerk of the Circuit Court in and for said County and State do hereby certify that the foregoing is a true true correct and perfect copy of the original answer of John Van Nortwick as and for said Hydraulic Company Company in the certain entitled cause, and which original is on file in my office

Witness R L Wilson Clerk of our Circuit Court and the Seal of said Court this 10th day of April 1857

R L Wilson
Clerk

Exhibit "A".

Whereas a number of persons are about to associate as a company to build a dam across Rock River at the town of Sterling in pursuance of an act of the Legislature of the state of Illinois entitled "an act for the improvement of the navigation of Rock River and for the production of Hydraulic power approved February 6th A.D. 1849. and whereas the property holders of said town believing that such dam when built will greatly enhance the value of their town property, therefore in consideration thereof we the subscribers hereto owners of property in said town do hereby promise and agree to and with said company that so soon as the said company shall subscribe for and take fifteen thousand dollars of Stock for said improvements and dam and file their certificate therefore in the office of the County Clerk in manner and form as directed by said act, that we will severally deed and convey to said Company by good and sufficient deeds of conveyance the one equal half part of all the unimproved town Lots which we at this time own, hold and possess in said town excepting Lots in Blocks No 8. 9. 24. 25. 40. 41. 42. & 43. west of Broadway. Said deeds of conveyance to be drawn and executed with and upon the following

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conditions expressed therein to wit, that the said company will on or before the 1st day of October 1853 build or cause to be built in a good and workmanlike manner a good and sufficient stone dam across said river at said town of Sterling in manner and for the purposes in said act specified otherwise said deeds of conveyance to be forever null and void. And it is further hereby agreed that we the undersigned owners of improved Lots in said town will at the same time and upon the same conditions above mentioned well and sufficiently secure to be paid to the said company upon the completion of said dam the one equal half part or sum of the present valuation or value of all the improved lots which we own or hold in said town of Sterling exclusive of the improvements upon said Lots, said valuation or sum to be ascertained and taken from the County assessors book of the year 1852, by taking the assessed value of the next or most adjacent unimproved lot thereto.

In testimony whereof we have hereunto set our hands this 7th day of July A.D. 1852.

(Signed)

Chas. Dement ⅓ John Galt. ⅓ Jonas Nordon
R. L. Wilson ⅓ James L. Crawford ⅓ Jos Sander

L. D. Crandall	Ed. Jamison	E. H. Prince
D. R. Beck	H. B. Stillman	Martin Thayer
I. P. Anthony	I. H. Boynton	by H. Wallace, agent
A. McMurr	D. C. Cushman	Nelson Mason
A. N. Benton	Hugh Wallace	
M. L. Henry	Joel F. Rice	

(Copy)

State of Illinois
Whiteside County } S.S. I, Wilson Clerk of the Circuit Court in and for said County and State do hereby certify that the within is a true full correct and perfect copy of the original agreement between the donors to the Sterling Hydraulic Company and said Company which accompanies the the Sterling Hydraulic Company (one of the defendants in the within entitled cause) answer herein. And is referred to in said answer as an exhibit thereto. Which said agreement is on file in my office

Witness R. L. Wilson Clerk of the Circuit Court and the Seal of said Court this 10 day of April 1857. R. L. Wilson
Clerk

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State of Illinois
Whiteside County } ss

I R L Wilson Clerk of the Circuit Court in and for said County and State do hereby Certify that the within is a full true Correct and perfect Copy of the original Answer in the within entitled cause on file in my office

Witness R L Wilson Clerk of our Circuit Court and the Seal of said Court this 16th day of April 1857

R L Wilson
Clerk

Whereas a number of persons are about to associate as a Company to build a Dam across Rock River at the Town of Sterling in pursuance of an act of the Legislature of the State of Illinois entitled "an act for the improvement of the navigation of Rock River and for the production of Hydraulic power" approved February 6th A.D 1849, And whereas the property holders of said Town believing such Dam when built will greatly enhance the value of their town property therefore in consideration thereof we the undersigned owners of property in said Town do hereby promise & agree to and with said Company that so soon as the said Company shall subscribe for and taken fifteen thousand dollars of stock for said improvement & dam and file their certificate therefor in the Office of the County Clerk in manner and form as directed by said act that we will severally deed and convey to said Company by good and sufficient deeds of conveyance the one equal half part of all the unimproved Town Lots which we at this time own hold & possess, in said Town excepting Lots in Blocks, No 8, 9, 24, 25, 40, 41, 42, & 48. West of Broadway said deeds of conveyance to be drawn and executed with and upon the following conditions expressed therein to wit, that the said Company will on or before the 1st day of October 1855, build or cause to be built in a good and workman like manner a good and sufficient Dam across said Rock at said Town of Sterling in manner and for the purposes in said act specified otherwise said deeds of conveyance to be forever null and void. And it is further hereby agreed that we the undersigned owners of unimproved Lots in said Town will at the same time & upon the same

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" conditions & has complied with & sufficiently secure to
" be paid to the said Company upon the completion of said
" Dam the one equal half part or sum of the present valua-
" tion or value of all the improved Lots which we own or hold
" in said town of Sterling exclusive of the improvements upon
" said Lots said value or sum to be ascertained and taken
" from the County assessors book of the year 1852. by taking
" the affixed value of the next or most adjacent unimproved
" Lots thereto. In testimony whereof we have hereunto set our
" hands this 7th day of July A D 1852.

" Elias Dement	" H. B. Silliman
" R S Wilson	" S. H. Boynton
" C O. Crandall	" D C. Cushman
" D. R. Beck	" Hugh Wallace
" J P. Anthony	" Jock F. Rice
" A. Mc Moore	" Jonas Windom
" A W. Benton	" Jos. Sander
" M. S. Henry	" E. H. Pierce
" John Galt	" Martin Thayer }
" James L. Crawford	" By H. Wallace agent }
" Ed. Jamison	" Nelson Mason

"Filed July. 10th
1852."
"R S. Wilson"
"Clerk."

State of Illinois
Whiteside County } SS

I R L Nelson Clerk of the circuit Court in and for said County and State do hereby certify that the within is a true full correct and perfect copy of the original agreement on file in my office in the within entitled cause

Witness R L Nelson Clerk of our circuit Court and the seal of said Court this 10th day of April 1857

R L Nelson
Clerk

Robert L Mitchell et al
vs
John Mahon et al Chancery

Copy of Contract
between the Owners and the
Co filed as exhibit C
Depositions Answer

{12 #37-3C}

Whiteside County Circuit Court.

In Chancery.

Seperate answer of John Galt to the bill of complaint of Robert L. Wilson, Nelson Mason, David R. Beck Leonard Nichols, Charles Nichols Lewis D. Crandall, and Elizabeth Nichols filed against him and the Sterling Hydraulic Company defend-ants.

This defendant now and at all times hereafter sav-ing and reserving to himself all and all manner of benefit of exceptions to the many errors and insuffi-ciencies in said bill of complaint contained for ans-wer thereto or to so much or to such parts thereof as he is advised it is material for him to make answer unto — answers and says — admits that the said several parties in said bill of complaint mentioned did make execute and deliver to this defendant the several trust deed therein mentioned therein convey-ing the several town lots and lands in said bill men-tioned upon certain trust therein contained for the benefit of said Sterling Hydraulic Company that this defendant does not know and is not advised whether said trust deeds are correctly and truly set out and described in complainants bill, that he has the said several trust deeds in his possession and control and is ready and willing to produce the same under the directions of this Honorable Court.

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And this defendant further answering denies that he has ever threatened to convey said lands in said bill mentioned to said Sterling Hydraulic Company and says that since he has learned that the right of said company to said lots and to such conveyance thereof has been denied by the complainants he has determined and intended to do no act which might prejudice either the complainants or the said company in their just rights and has at all times endeavored to act in accordance with such determination and verily believes that he has at all times so acted and is ready and willing to abide such decree as this Honorable Court may make in the premises and to convey said lands and so act in respect to the said lands as this Honorable Court shall direct.—

And this defendants further answering says that he is a mere naked trustee in respect to the matters and things in complainants bill contained having no interest in the matters and things in litigation therein and is a stranger to the same and hereby submits himself to the direction of your Honorable Court in the premises and submits his rights herein to the protection of your Honorable Court.

And this defendant denies all the unlawful combination confederacy and unlawful and improper conduct charged against him in the said bill of

complaint— All which matters and things this defendant will aver maintain and prove as this Honorable Court shall direct and he hereby prays to be hence dismissed with his costs in this behalf most wrongfully sustained

John Gall

State of Illinois
Whiteside County } ss

I R. L Wilson Clerk of the Circuit Court in and for said County and State do hereby certify that the above is a true full correct and perfect copy of John Gall one of the defendants Original answer in the certain entitled cause which original answer is on file in my office

Witness R L Wilson Clerk of our Circuit Court and the Seal of said Court this 18 day of April 1857

R L Wilson
Clerk

See Same Certificate on the opposite Page whereof the proper one

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State of Illinois
Whiteside County } ss

I R L Wilson Clerk of the circuit
Court in and for said County and State
do hereby certify that the within is a true full and
perfect & correct copy from the original Separate
answer of John Cole one of the defendants in the
within entitled cause on file in my office

Witness R L Wilson Clerk of
our circuit Court and the
Seal of said Court this 10
day of April 1867

R L Wilson
Clerk

State of Illinois.
Whiteside County and Circuit Court thereof
In Chancery

The Replication of Robert L. Wilson
Nelson Mason Daniel R. Beck, Leonard
Nichols, Charles Nichols, Lewis D. Crandall
and Elizabeth Nichols, Complainants to
the seperate answer of the Sterling
Hydraulic Company to the bill of com=
=plaint filed herein by these Repliants

These Replicants saving and reserving to themselves now
and at all times hereafter all and all manner of bene=
=fit and advantage of exception which may be had or
taken to the manifold insufficiencies of said answer for
replication thereunto say that they will aver maintain
and prove their bill of complaint filed herein to be true
certain and sufficient. And that the said answer
of the said defendant is uncertain, untrue, and insuffi=
=cient, and that without this that any other matter
or thing whatsoever in said answer contained materi=
=al and effectual in the law to be replied unto and
not herein replied unto confessed and avoided traver=
=sed or denied is true all which matters and things
these Repliants are and will be ever ready to aver
maintain and prove as this Honorable Court shall
direct and further they do pray as in and by their
said bill of Complaint they have already prayed

over

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Sackett & Stillman
Solrs for Compts

State of Illinois
Whiteside County

I, R. L. Wilson Clerk of the Circuit Court in and for said County and State do hereby that the within is a true full correct and perfect copy of the original replication in the within entitled cause on file in my office

Witness R. L. Wilson Clerk of our Circuit Court and the seal of said Court this 10th day of April 1857 R. L. Wilson Clerk

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State of Illinois Whiteside County and Circuit Court thereof. In Chancery.

The Replication of Robert L. Wilson, Nelson Mason, Daniel Re. Beck, Leonard Nichols, Charles Nich=ols, Lewis D. Crandall and Elizabeth Nichols complainants to the seperate answer of John Galt to the Bill of complaint filed herein by these repliants

These Repliants saving and reserving to them=selves now and at all times hereafter all and all manner of benefits and advantage of exceptions which may be had or taken to the manifold insufficien=cies of said answer for replication thereunto say that they will ever maintain and prove their bill of complaint filed herein to be true certain and suffi=cient and that the said answer of the said def=endant is uncertain untrue and insufficient and that without this that any other matter or thing whatsoever in said answer contained mater=ial or effectual in the law to be replied unto and not herein replied unto confessed and avoided tra=versed or denied is true all which matters and things these Repliants are and will be ever ready to aver maintain and prove as this Honorable Court shall direct and further these Repliants

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pray as in and by their Bill of complaint they have already Prayed

Sackett & Stillman.
Sols. for Complts

State of Illinois
Whiteside County } ss

I, R L Wilson Clerk of the circuit
Court in and for said County and State do
hereby certify that the within a true full correct
and perfect Copy of the original papers & orders
in the within entitled cause as file in my
office

Witness R L Wilson Clerk of our circuit
Court and the seal of said Court this
16 th day of June 1857

R L Wilson
Clerk

{12437-42}

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Robert L Wilson
Nelson Mason
Lewis D Crandall
Daniel R Peck et al
vs
John Galt & Sterling
Hydraulic Company

Application before Hon
J W Drury for Injunction
Bill in Chancery in
Whiteside Cir Court

It is hereby agreed by & between the parties that the application for the writ of Injunction in the above cause shall be brought on for hearing before the Hon J. W. Drury. Judge &c on _____ at his chamber in the city of Rock Island Illinois and that testimony may be taken before E N Kirk a special master commissioner agreed upon for the purpose of said Witnesses as may be offered by either party to be used as evidence on said application and that said commissioner issue subpoenas for witnesses on the application of either party. It is also agreed that no Deed shall be executed by the trustees for any of the property mentioned in said Bill until the said application is disposed of—

Dated at Rock Island this seventh day of November 1855

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Ira O Wilkinson v
Frederick Sackett
Solr for compltt
Kirk & Henry
Attys for Defts

It is hereby agreed by and between the parties to the within ~~Bill~~ Suit that the Defts shall file their answer to complainants Bill on or before the 1st of January next That either party on notice of ten days to the other (in person or by attorney) may take further testimony before E S Kirk as stipulated in the within agreement until the first of Febry next that the application for the injunction may be made before Judge Emery at any time after the 10th of Febry on notice of ten days to the Defts or their attorney of the time and place of said application and in all other particulars the within agreement made on the 7th day of Nov is to be remain in full force
Dated the 6th day of Dec 1853
Frederick Sackett Ira O Wilkinson
W B Stillman Attys for compltt
& S Kirk
Attys for Defts

State of Illinois
Whiteside County } ss

This certifies that the within is a true, full correct and perfect copy of the original agreement in the within entitled cause on file in my office

Witness R L Wilson Clerk of our Circuit Court and the Seal of Said Court this 10th day of April A D 1857

R L Wilson
Clerk

R L Wilson
&
Stirling Reynolds & Co
Agreement

[12437-44]

Whiteside Circuit Court
Robert L. Wilson
and others
vs
The Sterling Hydraulic
Company & another

In Chancery

It is hereby stipulated that the above entitled cause shall be finally heard for a final decree therein on the second (2nd) Monday of June next before the Hon S. W. Drury at his chamber in the city of Rock Island or if the said S. W. Drury shall then be unable to hear said cause as soon afterwards as practicable, and that in the meantime either party may upon legal notice take further testimony in said cause before the special master who has taken testimony in said cause, April 18th 1876

M. S Henry
Atty Apts
Fredrick Sackett
H. B. Stillman
Apts. Attys.

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State of Illinois
Whiteside County } ss

I, R. L. Wilson Clerk of our Circuit Court in and for said County do Hereby certify that the within is a true, full, correct & perfect Copy of the original Agreement in the within entitled cause, on file in My office

Witness R. L. Wilson Clerk of our Circuit Court and the Seal of said Court this 10th day of April 1857

R. L. Wilson
Clk

(12437-46)

order Judgement and decree shall be affirmed by the said Supreme Court of the State of Illinois then these presents shall be null and void otherwise to be and remain in full force and virtue.

Signed Sealed and delivered in presence of
O. V. Chaffee

Robert L Wilson (Seal)
Nelson Mason (Seal)
Daniel C. Beck (Seal)
Lewis D Crandall (Seal)
Elizabeth Nichol (Seal)
Edward Jamison (Seal)
Henry Bush (Seal)
Geo H. Wells (Seal)
Jesse Penrose (Seal)

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Know all men by these presents that We Robert L. Wilson, Nelson Mason, Daniel R Beck, Lewis D Crandall, Elizabeth Nichols, Leonard Nichols (by Edward Jamieson his next friend) and Charles Nichols (by Henry Bush his next friend) as principals and George W Wells and Jesse Penrose as security are held and firmly bound unto John Galt and to the Sterling Hydraulic Company and to their heirs executors administrators assigns and legal representatives in the penal sum of Five Hundred Dollars lawful money of the United States for the payment of which sum well and truly to be made to the said John Galt and to the said Sterling Hydraulic Company their heirs, executors, administrators, assigns and legal representatives we bind ourselves and each of our heirs executors and administrators, jointly, severally and firmly by these presents.

Sealed with our seals dated this fifteenth day of November A D 1856

The condition of the above obligation is such that whereas the above bounden Robert L. Wilson Nelson Mason Daniel R. Beck, Lewis D Crandall, Elizabeth Nichols Leonard Nichols by Edward Jamieson his next friend and Charles Nichol by Henry Bush his next friend at the April term A D 1856 of the Whiteside County Circuit Court filed their Bill of complaint in said Court on the Chancery side thereof against the said John Galt and the Sterling Hydraulic Company as defendants therein, and praying among other things that

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the said John Galt be restrained and enjoined by the order and decree of said Court from executing any deed of conveyance to the said Sterling Hydraulic Company of and from transferring, encumbering or from in any manner interfering with the title to the lots and parcels of land mentioned and described in said Bill of complaint and also that certain Trust Deeds mentioned and described in said Bill of Complaint might be ordered and decreed by said Court to be delivered up to the said complainants and cancelled, and whereas, also such proceedings were taken and had in the said cause before the said Court, that at the September Term A.D 1856 it was ordered, adjudged and decreed therein by the said Court That the said Bill of the said complainants be unconditionally dismissed and that the said complainants pay the costs of the said suit and that the said defendants have and recover the same against the said Complainants and have execution therefor And whereas also the said Complainants did at the time last aforesaid take their appeal from said order Judgement & decree to the Supreme Court of the State of Illinois.

Now if the said Complainants shall prosecute their said appeal with effect and pay whatever Judgement, costs, interest and damages shall be awarded against them in case said

Robert L Wilson
Nelson Mason
Lewis D. Crandall
Daniel R. Beck, et al.
vs
John Galt & Sterling
Hydraulic Company

Application before Hon. S. W Drury for Injunction. Bill in Chancery in Whiteside Cir. Ct

It is hereby agreed by and between the parties, that the application for the writ of injunction in the above cause shall be brought on for hearing before the Hon S. W. Drury Judge &c on

at his chamber in the city of Rock Island Illinois and that testimony may be taken before E. N. Kirk a special master Commissioner agreed upon for the purpose, of such witnesses as may be offered by either party to be and as evidence in said application and that said Commissioner issue subpoenas for witnesses in the application of either party. It is also agreed that no deed shall be executed by the Trustee for any of the property mentioned in said bill until the said application is disposed of

Dated at Rock Island this 7th day of November 1855.

Jno. O. Wilkinson & Solrs for
Fredk Sackett & Complts
Knox & Henry
Attys for defts.

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It is hereby agreed by and between the parties in the within suit that the defts shall file their answer to compltts bill on or before the 1st of January next. That either party on notice of ten days to the other (in person or by Atty) may take further testimony before E. N. Kirk as stipulated in the within agreement until the 1st of Feby next. That the application for the injunction may be made before Judge Drury at any time after the 10th of Febmary on notice of ten days to the defts or their Atty of the time and place of such application. And in all other particulars the within agreement made on the 4th of Nov is to be and remain in full force.

Dated this 6th day of Oct 1855

Fredrick Sackett
J. O. Wilkinson Atty for Compltts
H. B. Stillman

M. S. Henry Atty for defts

Robert L. Wilson
Nelson Mason
Lewis D. Crandall
Danl R. Beck et al.
vs.
John Galt & Sterling
Hydraulic Company

Application before the Hon. S. W. Drury for Injunction upon a Bill in Chancery in Whiteside Co. Cir Court

Depositions of Witnesses produced sworn and examined in the above entitled cause on the part of the Complainants.

Dec. 5. A.D. 1855 — The parties by their respective counsel met at the Examiners Office at which time the following proceedings are had. — Abram W. Benton sworn by Complts —

First Interrogy on part of complts
What is your name, age, and residence?

Answer — Abram W. Benton, am fifty years old residence Fulton City.

Second Interrogy — Where did you reside in the months of Nov. & Dec 1852?

Answer Residence in Sterling Ills —

Third Were you or not present at any public meeting held in the town of Sterling with reference to taking measures for securing the completion of a dam across Rock River for the production of Hydraulic power, if so when, and what was said about vacating any part of the then town plat of Sterling and by whom?

Answer Have been present at several meetings for that purpose. Could not tell the time precisely, think it was in the summer of 1852. Mr Wallace reserved his vacant Lots in the lower tier of Blocks in the town of Sterling, stating that he

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Excepted

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intended to have that vacation to make a farm of it

Note, 3d Intgy and answer Objected to by Defts Atty. 3

Fourth Intgy- What plan was submitted to the meeting you speak of in your last answer for procuring the early completion of a Dam at said town of Sterling and by whom?

Answer The plan submitted at the two last meetings was this— that the proprietors of the town, donate to any company who will build a dam across Rock River, within three years (I think) one half of all their vacant unimproved Lots— This proposition was submitted by Hugh Wallace, the dam was to be built at the town of Sterling.—

Fifth Intgy— Is Hugh Wallace a member of the Dam Company— does he represent himself to be such?

Answer— I have never seen the Books, don't know personally if he is or not- suppose that he is.

- Signed A. W. Bruton.

Harbey Thurber sworn &c Complts

First Intgy— What is your name, age, occupation and residence?

Answer— Harbey Thurber— forty nine— occupation Carpenter & Joiner— Como five miles from Sterling—

Second Intgy — How long have you resided at Como?

Answer Eight or nine years—

Third Intgy— Are you acquainted with the dam and other Hydraulic works connected therewith, on Rock River at or near the town of Sterling, and belonging to the Sterling Hydraulic Company, If yes were you acquainted with the progress of the work thereon, from time to time while the same were building?

Answer — Am acquainted with the Dam — have been there occ=
=asionally since the Dam was built, saw them excava=
=ting a Race — Was employed on the construction
of the Dam, from the fore part of May to the latter part of
June 1853 — The dam was not done when I left — The
Bulk head was put in — but no gates —

Fourth Intgy. — What acquaintance have you had with the progress
of the work on the said Dam and other works connected
therewith since you left the work as above stated?

Answer — I have been there twice or three times — I was there once
in the month of September last — and I was there in Octo=
=ber last, they were excavating and building the race, doing
masonry and excavating when I was there — and they were
mending the break in the Bulk Head when I was there
last

Fifth Intgy — When you were there in September, what progress had
been made in building the main body of the Dam?

Answer — They were putting in the Gates in the Bulk Head when
I was there in September — the planking was on the
dam and they were boating Stone, Men still working at
the dam there —

Sixth. Intgy — When was the first time you saw the Dam after October
first 1853. And what in your opinion was the condi=
=tion of the main part of the dam at that time, with refer=
=ence to its being sufficient to stand uninjured at all
stages of the water in the River and at different seasons
of the year?

Exceptions by Defts

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Answer — It was, I think in the latter part of October — My opinion
is it was not sufficient to stand the break up of the

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river in the spring — .

Seventh. Intgy — At the time you were there referred to in your last answer — what was the condition of the Bulk Head?

Answer — One of the gates gone through — and they had in a cof= =fer Dam above the breach, and the post was still out of place when I was there and the men were putting in Bra= =ces — bracing the bulk Head —

Eighth Intgy — What in your opinion was the condition of the bulk Head at the time referred to in your last answer with reference to its being sufficient to resist the power of the Water at all stages and at all seasons of the year?

Exception by Deft's

Answer — My opinion is it was not sufficient at that time.

Ninth. Intgy. — What work if any has been done on the Bulk Head since the time referred to above?

Answer — Lots of braces have been put in below — two sets of braces have been put in since then, and the post that was out of place has been put back and braced.

Tenth. Intgy — What reasons had you for supposing the Bulk Head insufficient as stated in your Eighth answer?

Answer — My reason is the way it is constructed — my opinion is it was not constructed right. The posts were not framed as they should have been. Only three inch tenents on the bottoms of the posts set in flat ways in a sill running across the Head of the race. Posts were 12 x 14 inches a tenant was cut on these three inches on the upper face, eight inches on the lower face, leaving the tenant three inches by twelve — The sills that these posts stand on were not properly put in. The rock was excavated

to receive these sills, the place was considerably wider than these sills, and the sills were bolted through into the Rock, and the sills were packed on each side with loose small rock. They raised the Bulk Head with the fitt fall of water and never finnished the bottom of the posts at that time - they were not finnished to my knowledge. I was there after it was raised -

11th Intgy - At the time you was there, referred to in your last answer, was there any Head race or Canal on the West side of the river connected with said Dam?

Answer When I was there, there was no Head race or canal there they had commenced building a race, they was putting in the Masonry and excavation at that time. - -

(Cross examination of H. Thurber)

Cross Intgy No. 1. By Defts -

When you were employed on the works did your business require you to spend most of your time upon the Dam itself, or did you perform most of your Carpenter and Joiner work on the shore near the Dam?

Answer Done most of our work upon the shore near the Dam, did not do any joiner work on the Dam - I superintended the framing of the timbers for the Bulk Head and Dam both, on the shore. I did not assist in putting any of them in.

Cross Intgy 2nd - Were you before leaving the Dam in June, ever upon that part of the Dam extending from the South side of the river, and if so how often?

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Answer I was over on the south side of the river, I was over

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three twice— There was no dam on the south side next to the butment, built— I was on the first of the Dam commenced at the Island and running to the south shore—

3d Intgy — How much in length of the Dam was completed when you left the work in June and from which side of the river did it extend, and what length of the Dam had any work been done upon?

Answer — Don't think any of it was completed when I left— There was a piece of work done extending from both sides of the Island. There had been work done upon the whole length of the Dam— The timbers were in all the way, under the Masonry before I left, clear across the whole Dam—

4th Intgy objected to by Pltffs. — Were you on the Dam in the months of September or October and if so how many times, and what part of it?—

Answer — I was not across on the Dame— was at the Bulk Head and over on the Pier at this side of the river— Twice—

5th Intgy — Was the water running over the Dam at the times you speak of in your last answer

Excepted to by Pltffs. Answer — The last time I think the water was running over, the first time I think it was not— They were putting in the Gates in the Bulk Head

6th Intgy — How far below the upper end of the race is the sill referred to in your answer to Complainants tenth Interrogatory

Answer — They are not more than five or ten feet I should think are near the upper end.—

7th Intgy — What is the object and design of a Bulk Head and When is it located?

Answer — It is located at the head of a race. It designed to have gates in to admit the water into the race and to shut the water out of the race. —

8th Intgy — Do you know whether the Masonry was laid in water line on both sides of the bottom sill, across the Head race as reffered to in your answer to tenth interrogation of Complainants?

Answer — It was laid in Water line I think

9th Intgy — Were the loose stone referred to in your answer to the 10th Intgy of Complts, that were laid about the sills of the Bulk Head laid in Water line?

Answer — Yes. they were laid in water line —

10th Intgy — How far below the sill that the Gates are in, were the walls of the Race completed in September when you were there?

Answer — From 25 to 30 feet I should think —

11th Intgy — Was not the entire channel between the walls when the Bulk Head is placed, excavated the distance you mentioned in your last answer when the Gates were put in?

Answer — Yes —

Direct resumed — (Excepted to by Defts)

First Intgy — How far were the walls of the race completed when you were there in September as stated in your answer to Defts 10th Intgy below the peir at which the Dam commences?

Answer — From the upper sill it was completed 25 or 30 feet. Was not any completed below the peir — The peir was 25 or 30 feet long from the upper sill —

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2nd Intgy – Which way and how far is the sill in which the Gates are placed from a line paralled with the breast of the Dam?

Answer I should think the upper sill was a little above the breast of the Dam. perhaps from 5 to 10 feet –

3d Intgy Excepted to by Defts How far below the lower timber of the Bulk Head was it – when you were there in September to the point where the stones of the Pier commenced to rack down preparatory to joining the wall below?

Answer – Should think ten or fifteen feet perhaps – – –

Cross – Resumed by Defts

1st Intgy – Does not the Pier referred to by you constitute a part of the South wall of the Head race and is not the balance of said south wall an extension of the West end of said Pier?

Excepted to by Compts

Answer Yes, That makes a wall to the race as far as it goes

(Signed) Harvey Thurber

Dec 6th 1855

Parties again met by their respective Counsel at the Examiners Office, at which time the following proceedings were had – to wit – the agreement of even date herewith executed and filed.

January 25th 1856

The parties met by their respective Counsel at the Examiners Office. When the following proceedings were had –

Luther Bush –

Sworn by Complainants

1st Interrogy — What is your name, age, and Residence? and how long have you resided there?

Answer — Luther Bush — age 61 years. Residence Sterling Ills. Have resided there eighteen years —

2nd Interrogy — Were you or were you not present at any Public Meetings held in the town of Sterling for adopting measures to secure the completion of a dam across Rock river and for the production of Hydraulic power — and if so when, and what was said about vacating any part of the then town plat of Sterling and by whom?

(Excepted)

Answer — I believe I was present at all the meetings held for the purpose of locating the Dam, and taking into consideration the town lots that were offered — The particular dates I could not state I think it was sometime in the summer of 1852. Mr Wallace in making his statements, as to what he would give, made a reserve of a tier of Blocks on the west side of the town plot — Which Lots, he intended to have vacated or had vacated (I do not remember which he said) the object as I understood was to have them attached to his field.

3d Interrogy — So what part of the town were the lots that were given, to secure the completion of the Dam, confined, and for what reason?

Excepted.

Answer — I did not understand Mr Wallace to say, that the donation should be confined to any part of the town — I proposed at the meeting that the donations should be confined to the Lots West of Broadway, I observed that the lots East of Broadway would not be very materially benefited by the building or location of the Dam — I had Lots East and West of Broadway

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but was not ever called upon to donate any—

4th Interr (Excepted) — How in your opinion has the building of the Dam at the point where it is now located effected the value of town property in that part of the town of Sterling East of Locust Street?

Answer — I think that near the Dam it has affected the prices of lots, I think it has raised their value. It is my opinion that the location of the Depot and rail-road, has been the principal reason of raising the value of town property in that part of the town — I suppose the same influences have raised the price of property, any where East of Locust Street —

5th Interr — Did you see the dam and other works connected therewith, built by the Sterling Hydraulic Company on the first day of October 1855 — If not when did you see them first after that day, and what was their condition at that time?

Answer — I could not say as to dates particularly, I was down on the Dam on the first Sunday after the gates went out. Which I think was the first Tuesday in October, well there was a considerable flood of water. Sufficient to flow over the Dam, at least a part of the way. There was one gate of the Bulk head gone — there appeared to be one of the posts was thrown out of its place but it was hanging there by some means. I would observe that there was a man then throwing in stones behind the Gates, to protect them against the current of the Water as I supposed —

6th Interr — What if any thing had been done at that time towards constructing a canal or head race, and how much if anything had been completed?

Answer — There was considerable excavation made at the time, and the wall in connection with the abuttment in the river was partly built — nothing completed —

7th Intgy: (Excepted) How in your opinion has the location of the dam, where it is built affected the price of lots in the town of Sterling East of Locust Street, compared with what it would have affected them had the Dam been built higher up —

Answer — If the Dam had been built higher up it would have affected the whole town interest much more than it does now — but how much I could not tell.

(signed) Luther Bush

Cross Interrogations By Defts

1st Intgy — Where were most of the vacant lots, the half of which were donated to the Sterling Hydraulic Company situated?

Answer I should think the largest proportion were located on the Westerly side of the town — This is a mere matter of opinion, I am not acquainted with the numbers of the lots and blocks —

2d Intgy How many lots were donated to the Hydraulic Company in the East part of the Town of Sterling?

Answer — Not any that I know of East of Broadway —

3d Intgy How far East of Broadway does the town extend?

Answer — Over a half a mile — not quite three quarters —

4th Intgy — What was the average price, and value of vacant lots in the town of Sterling West of Broadway, when the above mentioned donation was made?

Answer — Say from 15 to 30 dollars

5th Intgy What is now the average price and value of vacant lots in the same part of the town of Sterling?

Answer – Lots are worth from 75.$ to 400.$ or 500.$

6th Intgy Where were the Lots and Blocks situated that were intend
=ed to be vacated as mentioned by you in your answer
to the Pltffs' second Interrogatory, East or West of Lo=
=cust Street?

Answer – West –

(Signed) Luther Bush

Direct Examination, Resumed by Complts

1st Intgy – What was the average price of lots in the town of Sterling
west of Broadway – at the time work was commenced on the
Railroad near the town of Sterling, and when was that
work commenced?

Answer – Judging from my own town property, lots advanced
150 per cent, when the rail-road was commenced –
which was in the summer of 1854 –

(signed) Luther Bush.

E. B. Worthington – called by Complts

Sworn on his "Voir Dire" by Dfts

1st Intgy – by Dfts

Have you executed any note or donated any lot or lots
to be paid to, or conveyed to the Sterling Hydraulic Company,
upon the condition that they build a Dam at Sterling, or
have you ever signed any agreement to donate lots or exec=
=ute notes upon any condition to the Sterling Hydraulic Com=
=pany?

Answer – I have given a note – but I feel confident I have not
signed any agreement of that kind –

2nd Intgy — State upon what condition the note was given and if it
Objected to is paid?

Answer — It was given upon condition that a Dam and head race
should be built across Rock River at Sterling by the
first of October 1854 — I have not been asked for it —
it is not paid —

3d Intgy — Did you ever give but one note of that kind?

Answer — No Sir — (Signed) E. B. Worthington

Cross Interrogatories by Complts on the "Voir Dire"

1st Intgy — Are you in any manner interested in the event of this
suit?

Answer — Not unless the giving of that note makes me interested
(Signed) E. B. Worthington

Objection made by Defts, on the ground of interest to
witness being sworn in chief —

E. B. Worthington sworn in Chief by Complts

1st Intgy — What is your name, age and residence, and how long
have you resided there?

Answer — E. B. Worthington, age 37 — residence Sterling Ills —
Have resided there about 19 years —

2nd Intgy — Were you or were you not present at any public meeting
for taking measures to secure the completion of a Dam across
(Excepted) Rock River, and other Hydraulic works at the town of
Sterling, and if so when, and what was said about va-
-cating any part of the town of Sterling and by whom?

Answer — I was present at one meeting the large meeting as I
call it, in the summer or fall of 1852. Mr Wallace was
present and stated that he would give the one half of
his town lots excepting his interest in the tier of Blocks

West of Locust Street – that he wished to have that tier of Blocks vacated and added on to his farm –

3d Intgy – State if you know what was the general understanding at at the time the propositions were made for donating lots to secure the building of the Dam, and other works as to the point on the river where the Dam was to be built?

Answer – Well there was some disagreement about the proper point – Most of the citizens, a great majority of them went for some point between a point about fifteen rods below where the Old Mill stood and Broadway – Mr Wallace was in favor of putting it near the large hollow East of where the dam is now located –

The general impression was that it could not by any possibility go below the large hollow and that it probably would go far above it. the large hollow as I should say about 35 rods above where the Dam is now located –

4th Intgy – State what means you have if any of knowing the rise in the value of property in the town of Sterling and other towns in Whiteside County through which the Rail road passes. And state the Comparative rise in the town of Sterling, and said other towns?

(Excepted)

Answer – My means of knowing are that I have from time to time purchased lots in Fulton City and Sterling and recorded a good many deeds for lots in both those towns in which of course the prices of lots were mentioned –

Well I do not think their has been a great deal of difference in the rise between Sterling and Fulton, if

any thing the rise in Fulton has been greater—

5th Intgy — State whether you saw the Dam and other works connected therewith belonging to the Sterling Hydraulic Company on the 1st day of October 1855 — If not when did you see them first after that date and state their condition at that time?

Answer — I saw it frequently after the 1st of October 1855, but cannot name the exact day — I saw it on the last day of September 1855, I think I saw it on the first and second and may be third of October 1855. A Gate in the Bulk Head was partly broke, one of the upright posts was loose at the bottom. There was quite a heavy stream of water going through there, Several tons of stone I should think were placed on the top of the Bulk head to keep it down, stone were also thrown in below to keep the bottom of the posts where they were

6th Intgy — At the time mentioned in your last answer what if any thing had been done towards building a canal or head race connected with the Dam — and how much if any was completed?

Answer — I should think for a distance of 8 or 10 rods, the surface had been taken off the ground to the depth of three or four feet — and on the river side there was a wall commenced, I should not say any part of it was completed except five or six feet next the pier — The Earth would have to be excavated 7 or 8 feet, I should suppose to bring the bottom of the race down to the bottom of the Bulk Head that is on the North side of the race up toward

[illegible]

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the Bulk Head and throughout the balance of the race

(Signed) E. B. Worthington.

Joel Harvey sworn
by Complt'

1st Intgy — What is your name, age, and residence and how long have you resided there?

Answer — Joel, Harvey. — 43 years — residence Empire Falls — have resided at that place about 7 years —

2nd Intgy — What is your experience if any, in building dams, and the structures connected therewith, and the action of water upon the same?

Answer — I have worked at that business off and on for some 25 years. I have worked at and owned dams for that length of time I have built a number of Dams —

3d Intgy — What is your present occupation as connected with Dams?

Answer — I own a a Dam and keep it in repairs —

4th Intgy — Has your experience in building Dams, in your opinion been sufficient to enable you to be a competent Judge of the strength and permanance of Dams?

Answer — I should think in a stream I was acquainted with, I would be a judge of the kind of a Dam that would stand —

5th Intgy — Are you acquainted with Rock River at Sterling Ills — and the different stages of water therein at different seasons of the year — and if so how long have you been acquainted with the same?

Answer — I am — And have been for 17 years

6th Intgy — Are you acquainted with the Dams, and other works of the Sterling Hydraulic Company, and if yes what opportunities

have you had of becoming acquainted with the character of the said Dam and other works connected with the same, for strength and durability—

Answer — As far as the Dam is concerned I am not well acquainted with it. I have never been over on the Dam — I have been at the Waste Gate some 6 or 8 times during the summer while it was in progress —

7th Intgy. (Excepted) — What is your opinion of the character of said works for strength and durability?

Answer — (Excepted) — My opinion is that the waste Gate was not very substantially built—

8th Intgy — Look on paper marked "A" and made an exhibit in this cause and give your opinion of a Dam constructed according to a plan there represented for strength and durability?

Answer — I should think a dam built according to that plan and well built might stand.

9th Intgy — When did you last see the Dam in question before the 1st day of October 1855?

Answer — I was there the 25th of July, think I was there once when the water was running over the dam. The Bulk Head was in —

10th Intgy — At that time was there any head race connected with the dam completed?

Answer — I did not see any — that I should call a head race

11th Intgy — When did you see the Dam in question for the first time after the 1st of October 1855?

Answer — About the 18th or 20th of October 1855 —

12th Intgy — Was any Head race connected with the same completed at that time?

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Answer — Did not see any that I should call a head race — there were Gates that I supposed at the time, were to let water through. When they got their race below completed to receive it. —

13th Intgy — State your opinion of the character of the Dam for strength and durability planked and filled in behind as represented on Exhibit "A"? (Excepted)

Answer — Don't Know as I could tell, the way that is built whether it would stand or not —

(Signed) Joel Harvey

Cross interrogating — By Defts Co.

1st Intgy — What do you call a head race?

Answer — What is built above a Dam or above a mill. It is not often we see a Head race to a Mill Dam. —

2nd Intgy — At the two times, you have spoken of when you say you saw no head race did you see any canal there at the north end of the Dam?

Answer + I saw where they had commenced digging out one below the Dam —

3d Intgy — Did you see an abuttment or Pier at the north end of the Dam?

Answer — There was an abuttment at the shore — and a pier probably 100 feet south that was connected with the dam. The waste Gate was between the abuttment and Pier

4th Intgy — What in your opinion was the length of the Pier

Answer — Probably 50 feet long

5th Intgy — How far was it from the upper side of the Bulk Head to the upper end of the pier, up stream?

Answer – Should think probably 15 or 20 feet –

6th Jntgy – How far above the up stream side of the Bulk Head was the upper end of the abuttment

Answer – Should not think that was any further than the Pier –

7th Jntgy – At the time you spoke of above did you see any body at work in the stream below the Bulk Head?

Answer – No Sir – I do not think I did –

8th Jntgy – Was there any excavation being done at those times on either of them?

Answer – There had been some done. Taken out from the shore below the abuttment on the abuttment side –

9th Jntgy – Was any Masonry in progress?

Answer – I think there were dressed stone lying on the bank. No one at work – the hands had just quit, it was about sundown –

10th Jntgy – Did you notice whether there was any wall built below the lower end of the pier?

Answer – I did not –

(signed) Rod. Harvey.

Samuel Rice sworn by
Complts

1st Jntgy – What is your name, age, and Residence, and how long have you resided there?

Answer – Samuel Rice – 41 years, Residence Sterling – Have resided there 3 years

2nd Jntgy – State whether you have had any experience in the use and management of Dams and other structures for Hydraulic

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purposes. If so state what that experience has has been?—

Answer — I have had some experience, I have served a regular apprenticeship to Mill-Wrighting. The Mills were propelled by water power

3d Intgy — Are you acquainted with the dam and other works of the Sterling Hydraulic Company, and if yes what opportunities have you had of becoming acquainted with the character of said Dam and other works for strength and durability?—

Answer — I am acquainted with the Dam I have seen it from time to time, while it was in progress of erection—

4th Intgy — State your opinion of the character of the said dam for stoength and durability?

Answer — In the construction of the dam, for strength I should have had the planking on the upper side to have run down to the bed of the river and secured on what is termed a Mud sill — It is my opinion that the planking will not stand the pressure of the water and Ice—

5th Intgy — Did you see the Dam and the other works mentioned above on the first day of October 1855 — If not when did you see them first after that date and what was their condition at that time?

Answer — Am not certain I saw them on the first day of October 1855 — saw them frequently in that month at the time I saw them first in October the works were incomplete the Canal or Head race as they term it was not completed at that time —

6th Intgy — What was the condition of the Bulk head at that time?

Cr-cplied

Answer— I cant be positive about the month, I went down and looked at, and I saw the rise of the river had carried away a portion of the Bulk Head, The balance of it was kept in its place by chaining it fast and loading it down with stones—

4th Jntgy— State how much work if any thing had been done towards building a canal or Head race—and how much of the head race was completed if any at that time?

Answer— There had been some work done on the head race and some wall put up on the river side, There was some digging down — and some wall built — none of it was completed—

8th Jntgy — What do you understand by a Head race when speaking of Hydraulic Structures?

Answer A Canal or ditch to carry the water from the dam to the Mills for the purpose of propelling machinery

(Signed) S. M. Reed

Cross Interrogations by Defts

1st Jntgy— When and where did you ever build or construct any dam or dams, and how many, and across what streams?

Answer— I have never built or constructed any dams — I have worked as a hand on two dams — One on Pequea in Strasburg T.P. Lancaster Co. Pa. — One on Beaver Creek in the same County — one in the year 1832, the other in 1834 — I think was the time—

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2nd Judge — State and explain what the length and hight and size of those dams were you have last mentioned?

Answer — The one on Pigeon was some where near 200 feet long and about ten feet high — that is the wood work — the balance of it was Stone and clay embankements for some 500 or 600 feet more. The other was a stone dam, altogether about 150 feet long — about 16 feet high — the wall was — these are all the dams I ever had anything to do with the construction of —

3d Judge — How wide is Pigeon creek at the place where that Dam is built?

Answer — The average width of the creek 100 yds below the Dam would be 100 feet —

4th Judge — State and explain if you know the plan upon which the dam at Sterling is built, and how long and at what angle the plank in said dam are placed?

Answer — The plan of the dam is on a curve across the river — stone wall on the lower side of the Dam, the upper side it is planked, plank 8 or 10 feet long — I am not certain about the length, probably varied 2 or 3 feet in the length of the plank, the dam below the plank is backed up with rubbel, below the plank —

5th Judge — Do you think that angle sufficient to sustain the pressure of the water and the action of the ice upon the top of the dam or should it have had more pitch?

Answer — I think the angle sufficient providing the planks had reached down to the bed of the river at the same angle thus laid —

6th Judge — Previous to October 1st 1853 was there an abutment or pier built

and completed at the north end of the Dam and if so how long was it up and down stream?

Answer— There was an abuttment and pier at the north end of the dam the pier in the river I think must have been 45 or 50 feet long on top. The abuttment along the shore must be considerably longer, it makes a curve along the shore—

7th Intgy— Was there at that time a Bulk Head put in from the abuttment to the pier and if so, how far above the upper part of said Bulk Head did said pier and abuttment extend up stream?—

Answer— Previous to October I think the framing of the Bulk Head was put up, and it was some time after before the Gates were put in— I do not think the Gates were put in till after the 1st of October I am not certain about dates— The walls of the pier extend 15 or 20 feet above the upper end of the Bulk Head I should think and the abuttment some 30 or 40 feet—

8th Intgy— How far did the wall at that time of the abuttment and pier extend down stream below the upper end of the Bulk head?

Answer— Some 30 feet in my opinion—

(Signed) S. S. Rice

O. L. Payne sworn by Complainants

1st Intgy— What is your name, age, and residence, and how long have you resided there?

Answer— Oliver L. Payne, age 47 years— Residence Whiteside, Co. Ills— Have resided there two years—

2nd Intgy— What is your occupation and what experience have you had in building dams and other structures for Hydraulic purpos-

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and in the use and management of the same?

Answer — My occupation is Milling — up to 1847 — my business was Mill-wrighting — and other mechanical works connected therewith —

3d Intgy — Are you acquainted with the dams and other works for Hydraulic purposes of the Sterling Hydraulic Company and if so what opportunities have you had of becoming acquainted with the character of said works for strength and durability?

Answer — I have seen said works — I saw it while they were progressing in it I saw them placing sections of it at two different times I was there after they had built the abuttments on the north side. At the time that I was there afterwards, the Bulk Head had been raised by the freshet — I saw how it was constructed. I have not been at the work since the freshet.

4th Intgy — Did you see the works in question on the first day of October 1855 — If not when did you see them first after that date and what was the condition of the works at that time?

Answer — I am not positive the freshet was on the last day of September or the first day of October 1855 — I saw the said works the next day — the freshet had raised the Bulk Head gates the water was pressing through them

5th Intgy (Excepted) — State whether in your opinion the Bulk Head at that time had sufficient strength for the purposes for which it was intended?

Answer — My impression was that it was wrongly traced — it is my opinion it had not

Excepted to

6th Intgy — What do you understand by the term "Head race" as used in speaking of Hydraulic Structures?

Answer — It would embrace either pipe or race, or canal, or any way to convey water to the machinery —

7th Intgy — State whether in your opinion the dam in question, in the manner in which it is planked has sufficient strength to resist the action of the ice and water at all seasons of the year?

Answer — I did not see the planking —

8th Intgy — Look on Exhibit "A", and state whether a Dam planked and filled in behind as there represented, would have sufficient strength to withstand the action of the ice and water at all seasons of the year?

Answer — It would depend very much on how the plate was secured to those main pillars on the upper side of the dam — as I conceive it has the strength of the whole breast work of stone if the plate is well secured — There is more liability of the ice striking it back by the plank not going any further down is all that I can conceive about it —

(Signed) O. L. Payne

1856 — January 28th.

Parties met by their respective Counsel at the Examiner's office when the following proceedings were had —

Richard Arey, Witness called and sworn on the part of Complts —

1st Intgy — What is your name, age, and residence, and how long have you resided there?

Answer — Richd. Arey, — age 45 years — Residence Coloma, White-side County Ills, Have resided there 11 years —

2nd Intgy — State what opportunities you have had, for observing the action of water upon Structures for Hydraulic purposes

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or other structures of wood and stone?

Answer — I have had some little experience in the ebb and flow of tides and in the construction of wharves.

3d Intgy — State whether you are acquainted with the Dam and other works of the Sterling Hydraulic Company, and what opportunities you have had for observing the character of the work during the process of construction up to the present time?

Answer — I am — I live within about 15 or 20 Rods of the east end of the dam, In coming and recrossing the river to and from the Sterling side I have observed said works in almost all its stages as it progressed along.

4th Intgy — Look on Exhibit "A" now shown you and state whether the figure representing a cross section of the dam, shows correctly the manner in which the Mason work was done throughout the whole length of the dam between the Piers?

Answer — The wood work is very correct with this exception the cross sills are here represented to be all square — some of them are not square — The plates are all square timber, that I saw — A good many of the posts were round — dove-tailed at the ends, The stones are represented larger here than I think they are in the Dam.

5th Intgy — State in what manner the Mason work was laid from the bottom up level with the top of the sill?

Answer — What I saw was laid up to the top of the sill without mortar. There was a part on the Island I did not observe, I observed that the water ran through under and among the stone —

6th Intgy State whether you have noticed, whether any portion of the dam has settled. If yes state where and how much? —

Answer — I did observe that it had settled near the middle for I should think 12 or 15 feet in length. In the center of the rag, I should think it had settled about 3½ inches — I did not measure it —

7th Intgy State whether the dam now at that point is level with the other portions of the dam?

Answer — That would be a hard question for me to answer — as the dam is under water, there is a heavier body that runs over the dam in the center than at each end —

8th Intgy — Did you see the Dam and other works on the first day of October 1855 — If not when did you see them first after that date, and what was their condition at that time?

Answer — I can't answer as to the day of the month, I have seen the dam nearly every day — On Saturday night — I do not know what day of the month it was, there was a great noise, rumbling of Wagons and hollowing, over on the Sterling side that waked me up — on Sunday morning I looked over and I perceived that the Bulk Head had risen upon the shore side and one of the Gate posts gone — and a large rush of water going out below the Dam —

(Excepted) —

9th Intgy — When were you first at the end of the Dam on the Sterling side after the Sunday mentioned in your answer above and what was the condition of the Bulk Head at that time?

(Excepted) —

Answer — It may have been a week or more — the Bulk Head had risen as I said before — one of the Gates was gone — one of the posts in the Bulk Head either had risen out of the

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(Excepted) Mortice or the tenant was broke and the lower end of the post slanted down stream. Some of the braces on the lower side of the frame of the Bulk Head were gone. I think one of the Braces had a chain at the upper end – the lower end of the brace was loose –

10th Intgy. What if any thing had been done to strengthen the Bulk
(Excepted) Head or to keep it in its place at that time? –

Answer – A lot of plank had been laid upon the beams of the Bulk Head and stones laid on them – and there were a
(Excepted) lot of stone thrown down near the foot of the planking post in the Bulk Head –

11th Intgy – What in your opinion was the character of the Bulk Head
(Excepted) at that time for strength and durability? –

Answer – I think it was bad –

12th Intgy – State whether at the time of the break in the Bulk Head mentioned by you above, there had been a rise of the water in the river, and if so how much?

Answer – There had been – probably a foot or 14 inches – I mean the general rise in the river at that time.

(Signed) Richard Arey

Rufus De Garmo. sworn by Complt

1st Intgy – What is your name, age, occupation, and residence and how long have you resided there? –

Answer – Rufus, De Garmo, age 34, occupation County Clerk – residence Sterling Ills – Have resided there 3 years last July –

2nd Intgy – Are you acquainted with the dam and other works of the

(Excepted) Sterling Hydraulic Company, did you see them on the 1st day of October 1855, and if so what was the condition of the Bulk Head at that time?

Answer— I am some what acquainted with them— I did not see them on the first day of October 1855

3d Intgy (Excepted) When did you see them last previous to that date? and what was the condition of the Bulk-Head at that time?

Answer— I saw the dam and Bulk Head on the 30th day of September last— a portion of the Bulk Head had given way at the foot and the water was passing through, a part of the Bulk-Head—

4th Intgy Do you know when the Bulk Head gave way, as mentioned in your last answer, if so state?

Answer I do not ~~know~~ positively—

5th Intgy— State if you know who wrote out the trust deeds mentioned in Complainants bill in this cause?

(Excepted) Answer— I wrote most of the Trust Deeds therein mentioned from a copy furnished by Hugh. Wallace, Esq.

6th Intgy. State if you know what position Hugh Wallace occupied at that (Excepted) time in the Sterling Hydraulic Company?

Answer I think he was President of the Board of Directors of said Company

(Excepted)

7th Intgy— State if you know, who acted as President of the Board of (Excepted) Directors during the Fall and Winter of 1852?

Answer— I think Hugh Wallace acted as President in the Fall of 1852 as to the winter I cannot say

8th Intgy State if know who acted as President of the Board of Directors of the Sterling Hydraulic Company— at the time you

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(Excepted) were furnished with the ~~forms~~ from which you wrote the Trust Deeds above mentioned?

Answer — I think Hugh Wallace acted as President at that time

(Signed) Rufus. De Garmo "

John Dement sworn for Complt

1st Jntgy — What is your name, age, and residence, and how long have you resided there?

Answer John Dement, between 51 and 52 years of age, Residence Dixon, Ills — Have resided about 13 years

2nd Jntgy — Have you had any experience in the use and management of Water Power, and ~~in~~ the building of Dams. If so state how much and what?

Answer — I have been an owner in the Dixon dame and water power created by it since its commencement. Have been and am interested in the improvements and use of the water power there during the period of 6 or 7 years

3rd Jntgy — Are you acquainted with the dam and other works of the Sterling Hydraulic Company, and what opportunities have you had for knowing the character and condition of the works thereon from time to time since the commencement of the work there on?

Answer — I am very little acquainted with it, I have seen the dam probably twice while the work was progressing, and probably twice since the Dam was finished — but not in a position to judge of its strength or sufficiency — Have only looked at the dam from the shore of the river — as to the other works inside the dam there was nothing attracted

my attention except the Bulk Head, that I examined somewhat carefully —

4th Intgy — Did you see the dam and other works on the 1st day of October 1855, if not when did you see them last before that date?

Answer — I did not see them on the 1st of October, The last time I saw them before said date was July 25th 1855

5th Intgy — What portion of the work had been done on the dam and other works connected therewith at that time?

Answer — I do not recollect the state of the dam at that time, think it was nearly up to its present heights — the frame of the Bulk Head seemed to be completed according to the design, All of the Gates at any rate were not in if any of them were — I recollect of noticing at that time that below the frame of the Bulk Head there was very little done —

6th Intgy (Excepted) — State your opinion of the sufficiency at that time of the Bulk Head frame for the purpose for which it was intended?

Answer — My opinion was then that it was insufficient

Excepted

7th Intgy (Excepted) — State whether the Bulk Head spoken of above forms a portion of the Dam?

Answer — I considered then and do now that the Dam forms one part of the works and the Bulk Head another —

8th Intgy — Could the dam spoken of above have extended across the river without the Bulk Head?

Answer — No —

9th Intgy — What length of wall had been built on the river side of the Bulk Head including the abutment of the dam when

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you saw the works at the time you saw the works spoken of above?

Answer— On the 25th of July as before mentioned, I think the abutt=ment was finished or nearly so, I think there was no wall below the abuttment on the river side of the race — above the water — my recollection as to the length of the wall in the abuttment is imperfect — I should say from 50 to 80 feet —

10th Interrogatory — In speaking of Hydraulic structures, what do you understand by the term Head-race?

Answer— I understand it to be a reservoir below the dam and below the Bulk Head and above the wheels to be propelled by the power created by the dam —

11th Interrogatory (Excepted) At the time you saw the works on the 25th of July what if any thing had been done towards building a head race and was any portion of the same completed?

Answer— I think there was some excavation done from the West bank of the river below the frame of the Bulk Head and the abutt=ment on the West side — There was no part of the Head-race Completed, as I considered at that time —

12th Interrogatory — State if you know what was the understanding of the Ster=ling Hydraulic Company at the time the donations were made, as contained in the several Trust Deeds mentioned in the complainant Bill of complaint, as to the necessity of having a Head race or canal connected with the dam completed on or before the 1st day of October 1835?

Answer— So far as I understood it as a director and stock holder the Company accepted the donation upon the terms expressed

in the Deeds and that it required as as much to complete the Head race by the 1st day of October 1855 as it did to finish the dam. I allude to the time when the President and directors accepted the ~~form~~ power of the deeds —

13th Intgy — To make the water ~~from~~ power created by the dam available for the propulsion of Machinery, would there have been any thing improper or injudicious in having a Head race or canal completed for the reception of water as soon as the dame was built?

(Excepted)

Answer — I think certainly not — I would say also that it would be very proper as far as the economy of construction is concerned to have completed the Head race and bulk Head before you raised the water by the Dam —

14th Intgy (Excepted) — Who was President of the Board of Directors of the Sterling Hydraulic Company at the time of its organization and how long did he continue such?

Answer (Excepted) — Hugh Wallace, of Sterling was President at the time of its organization and continued to be President until some time in the year 1854

15th Intgy (Excepted) — State if you know whether the Sterling Hydraulic Company have ever located the place for building the dam at any other point on the river than that where it is now built — If so state when, which way and how far from the present location?

Answer — The Company did locate the place for the erection of the dam at a point in the river above the present dam from 400 to 700 feet I think really about 550 feet or 600 feet — I think it was done on the day that the form

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of the deeds and some of the deeds were presented to the Board which was I think in the winter of 1852 – I think in December.

(Signed) John Demond
" "

James Sterling called on Sworn
by Complts

1st Intgy – What is your name age and residence, and how long have you resided there?

Answer – James Sterling, age between 50 and 51 years, residence Palmyra Lee, Co, Ills. Have resided there for the last 12 or 13 years –

2nd Intgy – Have you had any experience in building Dams and other structures for Hydraulic purposes, if so state what experience you have had?

Answer – I Have. Have been engaged in building some 3 or 4 dams as a contractor, Have also been engaged in Milling purposes for 15 or 20 years –

3d Intgy – Are you acquainted with the Dam and other works of the Sterling Hydraulic Company, if so what opportunities have you had of knowing the character of said works for strength and durability?

Answer – I have seen them – I never saw them until after they were said to be completed

4th Intgy – Did you see the said works on the 1st day of October 1855, if not when did you see them first after that date, and what was the condition of the works at that time?

Answer— I cannot say as to dates, the second time I saw it was after there had been some difficulty with the Bulk Head works—

5th Intgy— State the condition of the works at that time?—

Answer— There had been a break in the Bulk Head, and it
(Excepted) was repaired again—

6th Intgy— State your opinion of the sufficiency of the Bulk Head
(Excepted) for the purpose for which it was intended at that time?

Answer— I thought it not as good as it ought to be—

7th Intgy— In what manner had the Bulk Head at that time
(Excepted) been repaired?

Answer— The repairs were temporary— to answer for the present until the water should go down, it was then high—

8th Intgy— State what if anything had been done towards building a Head race or Canal connected with the Dam, and if any thing how much of the same was at that time completed?

Answer— There had been work done— and they had put in some Coffer dams, and were preparing to put in others— and the wall was started, raised some 3 or 4 feet above the water— I should say the wall was so started for 40 or 50 feet below the abuttment— Not any of it was completed at that time—

9th Intgy— State whether the head race or canal was at that time in a condition to receive and retain the water to be used for Hydraulic purposes?

Answer— It was not—

10th Intgy What do you understand by the term "Head race"

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when speaking of Hydraulic structures?

Answer — I understand it to be a reservoir for retaining and conveying the water to the wheels for use

11th Intgy — To have made the water power created by the dame available for propelling machinery, would there have been any thing improper or injudicious in having a Head race or Canal completed for the reception of water, as soon as the dam was completed?

Answer — I think there would not —

12th Intgy — Where, with reference to the dame and mills is the Head race placed for the production of Hydraulic power?

Answer — It is placed along side of the dame and in connection with it the use of the head race, is to convey the water from the pool to the Mills —

13th Intgy — Do you consider the Bulk-Head spoken of above a part of the Dam, or otherwise?

Answer — No —

14th Intgy — Does the dam in question extend from one side of the river to the other without the Bulk-Head?

Answer — It is the connecting link —

15th Intgy — Look on paper marked "A," and made an exhibit in this case — And state whether in your opinion, a Dame built upon the plan there represented, by a cross section of the same, and planked, and filled up as there represented, has sufficient strength to resist the power of water and ice at all seasons of the year — at the point where the Sterling dam is located?

(Excepted)

Answer — My opinion is it would stand on any common contingency there are contingencies against which it is very difficult to

to guard in building dams —

(Signed)

James Sterling

Robert L. Wilson
Nelson Mason
Lewis D. Crandall
Daniel R. Beck, et al.
Vs.
John Galt & Sterling
Hydraulic Company

Application before Hon. S. W. Drury for injunction —
Bill in Chancery in Whiteside Cir. Court

January 22nd 1856 — Parties met by their respective counsel at the Examiners Office, when the following proceedings were had —

January 22 — Douglass R. Bushnell, sworn on his voir dire — By complainants —

1st Intgy — Are you a member of the Sterling Hydraulic Company?
Answer — I am not —
2nd Intgy — Do not you own any Stock in said Company?
Answer — I do not.
3d Intgy — Have you never owned any Stock in said Company? If Yes. How and when did you dispose of it?
Answer — I have owned stock, but finally disposed of it yesterday —
4th Intgy — To whom did you sell it?
Answer — To John Van Norwick —
5th Intgy — How many shares of Stock did you sell, for How much and in what manner did he make payment?

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Answer — I sold forty shares, for one thousand dollars, and took his note payable on demand

6th Jntgy — Had you any understanding with him or with any person for him as to the terms on which you may at some future time become interested in the Stock of said Company either directly or indirectly?

Answer — None whatever with any person —

7th Jntgy — Are you in any manner interested in any of the lots in controversy in this suit?

Answer — Not at all — — — — —

Douglas R. Bushnell, Sworn in chief by Deftts. Objected to by Complts. —

1st Jntgy — What is your name age and residence, and how long have you resided there?

Answer — Douglas R. Bushnell, am 31 years old — have resided in Sterling nearly two years —

2nd Jntgy — Are you acquainted with the complainants, and defendants, or either and which of them, and how long have you known them respectively?

Answer — Am acquainted with Mr Wilson, Mason, Jamieson, know Mr Beck by sight — know Mr Crandall, know all the defendants. Do not know the other parties, have known those that I mentioned from six to eighteen months

3d Jntgy — What is your occupation and profession, and how long have you been engaged in it?

Answer — Am a Civil Engineer by profession have been employed in that business between eleven and twelve years

4th Jntgy — In whose employment were you in the summer of 1855.

Where did that employment commence and how long did it continue?

Answer — Was in the employ of the Sterling Hydraulic Company — commenced I think in April 1855 — and continued till December of the same year

5th Jntgy — What was your business while in the employment of the Sterling Hydraulic Company?

Answer — I had charge of the building of a dam across Rock river, and other works connected with it —

6th Jntgy — In what capacity had you charge of said works?

Answer — As the Company's Engineer

7th Jntgy — Look on the Paper now shown you, marked "A," and made an exhibit in this cause, And state what that Paper is and why it was made?

Answer — It is the original sectional plan of the Dam, and was made to show the manner in which the work was to be done

8th Jntgy — State whether or not said dam was built in accordance with that plan?

Answer — It was —

9th Jntgy — Was any other plan of a dam submitted by you, and was it adopted and if not; why not?

Answer — There was a plan of a timber and stone dam submitted by me (similar to the dam at Rockford) with estimates.

It was not adopted and the reason was that as there was so little difference between the estimates of the cost of the two Dams, the stone Dam being considered the best. That plan was adopted —

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10th Judge — When was the Dam that was built commenced and when was it finished?

Answer — Do not know the exact time it was commenced, Was about the last of April or the first of May 1855. and completed about the 15th of September of the same year —

11th Judge — Of what material was the Dam built, and what was the manner of its construction?

Answer — It was built of timber and stone — on the first place was a Stringer 12 inches by 12 inches lying lengthwise of the dam, immediately under the face or down stream side of the Masonry, bolted to the rock in the bottom of the river every ten feet. The bolts extending into the rock not less than one foot — Dove-tailed into that Stringer at intervals of ten feet, ties eleven feet in length, of the same dimensions of the Stringer, and extending up stream — In each tie at the distance of eight feet from the face of the Masonry, is a perpendicular post, dovetailed, and securely framed into the tie, upon and between this timber work the Masonry commences. The dimensions of the wall are eleven feet thick on the bottom — eight feet on the top, and the height of the Masonry with the timber and plank is seven feet on the down stream face, which face is perpendicular and on the back the height is six feet — The Masonry was about what is called second class Masonry. well connected together, and the down stream half of it laid in Hydraulic Cement, On top and on the back of the Masonry. There is a Stringer 12 inches by 12 inches ~~it~~ with the perpendicular posts dove-tailed into it on the

top and face of the Masonry is a Stringer of the same form and dimensions secured to the back stringer by ties every ten feet dove tailed into each, half way between the two top Stringers and parallell with them is a smaller stringer 4 inches by 4 inches halved into the ties and pinned to them, and the dam is all planked over with 2 inch oak planks each plank pinned with 5 oak pins, The Dam then is backed up with broken stone and gravel 16 feet up Stream - sloping from the back of the top of the dam to the bottom of the river. The Masonry is built up flush with the tops of the Stringers before planking — The stones used in the face of the Masonry were all large and were trimmed off so as to make good joints and good face

12th Intg — What do you mean by second class Masonry?

Answer — Masonry built more for durability than for looks

13th Intg — State whether your business required you to be upon this work while in progress of construction, and if so how often were you there?

Answer. It required my attention from most of the time, I was there every day more or less —

14th Intg — Did you notice the manner in which the work was done as to workmanship, and if so state what the character of that work was as to workmanship?

Answer — I made that my business looking to the manner in which the work was done; It was according to the plan and specifications

15th Intg — Was said dam built in a skillful and workmanlike

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Excepted to by Complts

manner or otherwise, and if otherwise, How otherwise?

Answer — According to my judgement it was built in a skilful and workmanlike manner —

16th Jntgy — State whether the plan on which said dam was built, was a plan calculated to promote strength and permanance in the dam or otherwise, and if otherwise, how otherwise

Excepted to by Complts

Answer — In my judgement the plan is a good one to promote permanance and durability —

17th Jntgy — Are you acquainted with the dam across Rock River at Rockford, And if so state whether that dam or the dam in question in this cause is the more substantial and durable, and why?

Excepted to by Complts

Answer — I was living in Rockford at the time the dam there was building, was very frequently on the dam, and am acquainted with the manner of its construction, Mr Ster Leavitt & myself, got up a plan for a dam similar to the dam at Rockford for the dam here, And on getting up our estimates on the present dam here found that the cost would not exceed that of a timber Dam but a few (3 or 4) thousand dollars therefore this plan being considered the best on account of the material being less destructible, was adopted, The dam here is the more substantial and durable for the reason above stated, that the material is less destructible

18th Jntgy — State when the dam at Rockford was built and whether it is now standing?

Excepted to by Complts

Answer — I think it was built in the summer of 1852, and was standing when I saw it last, about a month ago

19th Jntgy — Where is the dam in question in this cause located?

Excepted to by Complts

Answer — It is located at the town of Sterling at a point on Rock River south of the West line of Locust Street, about 60 feet, and 10 feet west of the ~~west~~ ~~of the~~ ~~line~~ line of said Street extended to the River. The race wall connected with said Dam is so located —

20th Interr — In which direction is the Rail road depot, at the town of Sterling from this Dam, and how far is it from it?

Answer — It lies north of the Dam about 150 or 200 feet, and parallel with the river —

21st Interr — How far does the said depot extend east and how far west of the said Dam?

Answer — About 500 feet east and about 1300 feet west —

22nd Interr — Look on the Map now shown you, marked "B" and made an Exhibit in this cause, and state what that map is designed to represent?

Answer — It is to show the water power in connection with the town and Rail Road —

23d Interr — State whether that map correctly shows the relative position of the town, Railroad and the Dam and works connected with said dam, or otherwise, and how otherwise?

Answer — It is a correct representation of the different points mentioned, on a scale of 300 feet to the inch —

24th Interr — State whether the Sterling Hydraulic Company have built any other works in connection with their dam, and if so state what those works are?

Answer — They have built a Head race or Canal — That is all —

25th Interr — Of what was that headrace composed, and how was it constructed?

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Answer — The north abutment of the dam is a part of the south wall of the race. The North wall is on the north shore of Rock River parallel with the south wall of the race — at the distance of 100 feet —

26th Int'gy — On which bank of the river is this Head race you have spoken of?

Answer — It is on the North or West bank —

27th Int'gy — State whether any part of this head race was completed on or before the first day of October 1855, and if so state what part and how much of it?

Answer — There was forty-six feet finished by the first of September 1855 — 22 feet above the Gates and 24 feet below —

28th Int'gy — State whether on or before the 1st day of October 1855, Hydraulic power could have been use advantageously at said Head race for the propelling of Machinery?

Answer — It could —

29th Int'gy — How many run of stone at said time could have been operated successfully by the power which could have been used at said head race —

Answer — The race is 100 feet wide, There could have two mills of 50 ft wide each placed across the race, which would have capacity for from four to six Run of stones each, with any quantity of power to spare by shafting off —

30th Int'gy — How much money has been expended on said dame and improvements to the present time, And how much had been expended before October 1st 1855?

Answer — There has been about Twenty-eight thousand dollars expended up to this time and about Twenty-three thousand of

that amount had been expended before the 1st day of October 1855.

31st Jntgy — State when the said company ceased their work on said head race, and why, and what the length thereof now is?

Answer — They ceased their work there about the 1st of December on account of the frost and cold weather — The race is about 300 feet in length at the present time.

32nd Jntgy. — Look on the paper now shown you and marked "C, made an exhibit in this cause and state what the same is?

Answer — It is a sketch showing the upper end of the Sterling Hydraulic Company's race, showing the number of feet completed by the 1st day of October 1855.

33d Jntgy — (Objected to by Complt) — State whether the said company have made any preparations for the further enlargement and continuation of their works and what?

Answer — They have now a contract with contractors for enlarging and completing said race, The company have disposed of water-power of 50 feet front of the race, commencing at a point 290 feet from the Bulk Head and they are to excavate the race far enough to accommodate that power and they are hauling stone on the ground for that purpose now. By enlarging — I mean lengthening

(Signed) D. R. Bushnell

+ Cross Interrogatories On the Part of the complainants

1st Jntgy — Do the figures on Exhibit "A," representing cross sections of the dam — show correctly the size of the stone used

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and the manner in which they were laid up throughout the whole of the Dam?

Answer — Those small figures represent the size of the timber used in the structure and the other figures show the heights of the dam — The diagram simply shows the manner of laying up the Masonry and not the size of the stone —

2nd Intgy — Were the other portions of the stone work cut and fitted with the same care that they were in the face of the wall and did the stone average of the same size

Answer — The front half of the dam was laid in the same manner as the face, and with the same quality of material. The remaining portion was laid up of smaller material with a good Bond throughout the work —

3d Intgy — Was there not a considerable portion of the wall last finished upon which you could not make the Cement stay owing to the water running through?

Answer — There was a part of the wall at the point of closing on which it was difficult to make the Cement stay probably 100 feet or 150 ft — but there were larger stone used at that point —

4th Intgy — Is the stringer which you have mentioned as lying on the top of the face of the dam fastened in any way to the stone if so how?

Answer — It is not —

5th Intgy — Have you noticed at any time since the dam was built whether any portion of it has settled, if so explain the reason of its settling?

Answer — There was a portion on the ground about 10 or 15 feet which settled about one inch and a half or two inches do not know the cause — afterwards the planking was taken off and the Masonry raised —

6th Interr — Was there not at the point you speak of some pieces of wood placed under the stringer on the top of the Masonry to raise that part up level with the other portions of the Dam after it had settled as mentioned in your last answer?

Answer — There were some pieces of plank driven in for that purpose —

7th Interr — How many pieces were driven in and how close together?

Answer — Cannot tell how many pieces — They were driven close together as they could be so as to make a good job —

8th Interr — Was the Dam built from shore to shore in the manner described in your answer to defendant 11th interrogatory if not how were the other portions built?

Answer — The dam was built from an abutment 100 feet from the south shore to an abutment 100 feet from the north shore on a curve of about 2000 feet reading, curving up stream. Between the south abutment and the south shore of the river there is an embankment 14 ft high 20 ft wide on top and about 60 feet on the bottom, with a wall on the lower side extending from the abutment to the shore, that is eight feet high, five feet thick on the bottom and three on the top, sloping two ft on the lower side — on the north side of the river the

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race intervenes between the abutment and the shore

9th Intgy — Explain what prevents the water from escaping from the pond into the race?

Answer — The Gates — They are supported by a wooden structure across the race called the Bulk Head —

10th Intgy — Explain the manner in which the Bulk Head was constructed on the 1st day of October 1853?

Answer — There were two bottom sills 12×12 bedded in the rock in the bottom of the race extending across the race, and into the abutment ~~six inches~~ and into the race wall six inches, bolted to the rock every ten feet with 1¼ inch iron bolts extending into the rock not less than 15 inches — these sills lie parallel, and are eighteen feet apart from outside to outside. There were 11 posts 14×14 inches framed into each of these sills — the two posts next to the bulk head wall and also next to the abutment are let into the Masonry six inches, on the top of the posts immediately over the lower sills there is a cap of the same form and dimensions and extended into the Masonry in the same manner as the sills below — In each up stream post extending to each opposite down stream post there is a girt 12×12 inches, between each of the up stream posts, at a point six feet below the top of the cap is a girt 10×12 inches extending from each of the up stream posts at a point directly below the 12×12 girt, is a brace 8×10 inches, laying firmly against the up stream side of the lower sill — There is also a brace from the lower side of each of the down stream posts 8×10 inches about 22 feet long, extending to the rock and bolted

there to — The Gates, are about 10 feet wide each, there are 10 of them — The gates, work in a rabbit on the up stream face of the up stream post — The whole structure of the Bulk Head is fourteen feet high above the top of the sill.

11th Intgy — State what if any additions have been made to the Bulk Head since the first day of October 1855?
(Objected)

Answer — Nothing except some extra bracing — There was a lot of diagonal braces 10 in number placed horizontally on the top of the Bulk Head in a manner to strengthen the Bulk Head — and also a lot of braces 9 in number reaching from the bottom of the up stream posts to a point about in the center of the opposite down stream posts, and also another set of braces nine in number to replace the old ones extending from a point in the center of each down stream post 30 feet down stream, bolted to the Rock with two 1¼ inch iron bolts two feet long in each brace and also another set of braces 10 in number extending from the lower side of the cap on the up stream tier of posts diag=onally, to the end of the small girt in the opposite up stream posts — that is, the next post in the same tier in a manner to resist any upward pressure, also a set of iron straps, spiked to the cap, and to each post imm=ediately below —

12th Intgy — What experience if any have you had in building dams before the commencement of the work on the dam of Sterling Hydraulic Company?

Answer — Had had no actual experience in building dams

before that time.

13th Jntgy (Excepted) — Are the Dam, Bulk Head and race, as now constructed built in accordance with the plan adopted by the Company before or at the time of the commencement of the work. If not explain how otherwise?

Answer — They are with the exception of the extra bracing spoken of in the Bulk Head.

14th Jntgy (Objected) — Was it intended in the original plan of the Bulk Head and race that the water should be taken directly from the Gates of the Bulk Head - and discharged under or through Mills down the race?

Answer — I do not think that was the original intention of the company - although there was talk of using the water through a Flume from the Gates.

15th Jntgy — What is the distance of the Gates of the Bulk Head from the west line of Locust street continued to the river?

Answer — From 40 to 50 feet.

16th Jntgy — How far below the lower timbers of the Bulk Head had the river side of the race been completed on the 1st day of October 1855?

Answer — I did not measure it at that time, except for the purpose of making a final estimate for the Contractors, it was six feet.

17th Jntgy (Excepted) — State if you know who were the President and Directors of the Sterling Hydraulic Company at the time the dam was located, where it is now built?

Answer — John A. Holland was I think President of the

Board at that time, Hugh Wallace, John Galt
David Leavitt were directors – do not ~~know~~ whether
James L Crawford was or not

18th Int'g. State if you know whether any of these persons mentioned as directors were interested, in what is known as Wallace's addition to the town of Sterling at the time said location was made, and state what that interest was?

(Explain)

Answer – Mr Wallace and Mr Holland ~~owned~~ the land where that addition is located – equal interests – Mr Leavitt became interested to the extent of an undivided 1/16 afterwards –

19th Int'g – Was your interest in the Sterling Hydraulic Company sold and bought that you might become a witness in this cause?

Answer – That was the reason of the sale I can't say as to the purchase –

(Signed) D. R. Bushnell

~~Dated~~ ~~Examined~~ ~~Sworn~~
~~By Dep't.~~

~~1st Int'g~~ ~~State the manner in which~~

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Direct Examination resumed by Defts

1st Interr. State the manner in which you drove the pieces of plank under the top of the dam as stated by you on your cross examination and your reasons for doing it?

Answer. They were driven in as tight and as snug as far as they could be driven in for the reason that they were better for the purpose than thin stone they were driven in for the purpose of filling up the space between the top of the Masonry and the timber and for leveling up the timber.

2d Interrogatory. When was that done & have you observed any settling of the dam at that point since it was done?

Answer. It was done some 3 or 4 weeks before the water was turned over the dam probably about the middle of August 1855. Have discovered no settling since.

3d Interrogatory. State why that part of the dam

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between the South Shore & the south abutment was built differently from the rest of the dam? —

Answer The abutment was placed out in the river so as to give a chance to take water from the Pond for Hydraulic purposes — Without making a heavy excavation in the bank of the river — and for that reason this bank & wall was put between the abutment & the shore as it could be more easily removed than any of the plans — when they should want to use the power on that side of the river. —

4th Interogatory

State whether that part of the dam last put in was built in a strong and substantial manner or otherwise?

Answer — As strong & substantial as any other part of it — D. R. Bashnell.

Jany 23d — On the Part of the Defts —

Alexander B Moore Sworn —

1st Interogatory —

What is your name, age, and residence and how long have you resided there?

Answer A. B. Moore. residence Goshen Litchfield Co Ct age 35 have resided there 9 Years —

2d Interg —

Are you acquainted with the parties Plffs & Dft" in this suit: or any or either of them and how long have you known them?

Answer I am not acquainted with any of the Plffs — am acquainted with some of the Stock holders in said company. — But not with the company as a corporation do not know Galt —

3d Interg

What is your occupation and how long have you followed it?

Answer — Miller — have followed that business for nine years —

4th Interg

Have you had any experience in building dams. and if so state what and how much experience you have had

Answer

Have had some Experience. I cant define how much am one of the owners of the Geneva dam — We have rebuilt the whole dam and made it new — That is about the extent of my experience in dam building —

5th Interg

How long have you been one of the

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owners of the Genoa Dam. And when was it rebuilt?

Answer

Have been one of the owners about eight years — Think about 200 feet of it was rebuilt in 1849. — or 1850 — The rebuilding of the ballance of the dam has been done at different periods a portion of it almost every year The dam is 436 feet long between the piers.

6th " Interr

Where do you carry on the busines of Milling. how long have you carried it on at that place and who owns the Mill in which you carry on such busines? —

Answer — at Genoa Kane County Ill: have carried on the busines there about nine years — I am the owner of the said Mill

7th " Interr

State whether during that time. You have had experience in the use of Hydraulic power & in the reparing and building of dams? —

Answer — I have —

8th Interr

State whether such experience has led you to observe the structure of dams

the action of Water upon them and their power of resistance to such action? ——

Answer — It has. —

9th Interr — Do you know upon what plan the dam of the Sterling Hydraulic Company is built? And if so state your opinion of the character of such plan in respect to strength and permanence

Answer. —

I know it only as I see it on the profile as it appears on Exhibit A and from seeing the dam as it now appears —
My opinion would be that it is a strong durable Dam —

10th Interr

Have you seen the Head race and Bulk head of the dam in question in this cause and have you observed their shape and Structure? —

Answer. I have — This Morning —

11th Interr

Supposing the side Walls to said race to have been completed to a distance of 24 feet below the up stream end of the Bulk Head would said race have been a race sufficient for the production of any Hydraulic power and if so state how many run of

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Stones might have been used there advantageously?

Answer — I should say it was sufficient for the production of Hydraulic power I could not define the amount of power that could have been derived from it. —

12th Interr Will you explain how your Mill is situated in respect to the race and dam. and state how many run of Stones there are in it?

Answer It Stands directly over the race and within two feet of that part of the Bulk head that the gates are in — The Mill Stands on piers and the race is drawn right thro' it — The wall of the Mill on the river side forms the wall of the race — There are four run of Stones in it —

13th Interr What is the Width of your race (Objected) and the hight of your dam —

Answer Width of the race 40 feet hight of the dam 6½ feet — about —

14th Interr —

How many run of Stones can be operated to advantage on the race in question in this cause. When

the side walls & excavations are completed to the distance of 300 feet from the gates? —

Answer — I could only give an opinion. I will set the power low enough & will put it at 25 rev It expires about 300 cubic inches on a six foot head to drive one run of Stone

15th Interr — Can you give an opinion of the number of run of Stone that might be driven by building a mill across the race in question in the manner in which your mill is built — and by using the water in the same manner And if so state what that opinion is? —

Objected

Answer — With the same size Mill there could be four run — That is all could be got in to it. —

16th Interr — Supposing a Mill was built at or near the Bulkhead across this race in question directly over and across this race. Would there be any difficulty in taking the water directly through the Mill and discharging it on the down stream side of it? —

Answer — I think there would be no difficulty

17th Interr — In case the water were taken through that may how many run of

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Stone could there be operated by the water in said race &—

Answer — One run of Stone for each six feet in width across the race —

18th " Interr — Objected to Do you know of any Mills being operated in that way & if so where? —

Answer — I do — One at Elgin and one at Aurora. So far as discharging water from the Mill is concerned it is the same as on the last question — Do not know that the same space I spoke of is taken for each run of Stone in these Mills. —

Cross Interrogatory by A. B. Morris by Complt

1st " Interr — Were you acquainted with the condition of the dam of the Sterling Hydraulic Company and the other works connected with it on the first day of October 1855 —

Answer — I was not —

2d " Interr — If any portion of the dam has settled since it was constructed would that fact indicate defective construction and can you account for its settling? —

Answer — I could not answer that question

3d " Interr" — Supposing it to have settled for 10 or 15 feet in length on the dam — near the middle & on the comb of the dam would that indicate defective construction

Objected

Answer — I should think not — unless it had settled more than two or three inches —

4th " Interr. — Are you acquainted with Rock River at different Stages of Water and at different seasons of the year and if so what experience have you had & how much? —

Answer — I am not. —

5th " Interr — Look on Cross Section of the dam now Exhibit — A — now shown you and say whether in your opinion a Dam planked in the manner there represented would be safe against the action of the ice and water at all seasons of the year? —

Answer — I should think it would —

6th " Interr. — Did you ever see the dam in question, Bulk head or Head race until Yesterday? if so when did you see it first?

Answer — Never saw it — 'till to day.

7th " Interr — Will you explain in what manner the water power could have been used advantageously with the side walls of the race

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completed only to a distance of 24 feet below the upper end of the Bulk head as mentioned by you in your answer to Defts 14th Interrogatory?—

Answer I consider that the water could have been used advantageously the width of the race By setting the Mills across the race and discharging the water on the down river side—

8th " Interg. Would Placing the Mills & discharging the water in the manner mentioned in your last answer exhaust the whole of the water power at that point? if not explain how it could be further used—

Answer— Should not think it would exhaust the power— But it could not be any further used at that point—

9th " Interg.— Will you explain how the water could be used at any other point with the Mills arranged & the water discharged in the manner spoken of in your last two answers?—

Answer— It could not be used at any other point unless there was another Bulk head on the other side of the River—

10th " Interg.— In your opinion could the water power have been used at that point advantageously for the propul-

sion of Machinery with the walls only 24 feet below the upstream end of the Bulkhead in any other manner than by placing the Mills over the race and discharging the water on the down river side? —

Answer. — It might by letting the walls of the Mills form a part of the river side of the race and discharging the water directly into the river. —

11th " Intgy — Would it be necessary before using the water in the manner mentioned in your last answer that the walls of the race should be continued in some manner more than 24 feet below the upper end of up stream side of the Bulkhead?

Answer — It is not necessary that the walls of the race should be continued any further if the walls of the buildings make a part of the race. Otherwise it would be necessary —

12th " Intergatory — Should you judge from the appearance of the Dam Bulkhead and race, that the same had been planned for the purpose of Setting the Mills over the race & discharging the water on the down river side? —

Objected to

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Answer — Should think they had been planned to discharge the water directly into the river.

Re Examination } A B Moore —
By Defendants }

1st Interogatory. — Will you state what you understand a Head race to be? —

Answer — I understand it to be that portion of the race above the Bulk head gates. —

2d Interg — To a person building a Mill to discharge into the river from the race would it be more advantageous to have a wall built between the race & the river then for him to build such wall as a part of the foundation of his Mill? —

Answer — I do not think it would. — for the reason that there has got to be the issues to discharge the water thro" the wall for each wheel. — Suppose you was to build a Mill within the length of the wall now then each of the issues already in that wall would be only sufficient to discharge the water from one wheel A B Moore —

Christian B Lodsen
Sworn on the part of Defts" —

1st Interogatory. — What is your name age and residence and how long have you resided there? —

Answer— Christian B Dodson. —46 years residence Geneva Kane county Ills. Have resided there & in Chicago together 22 years —

2nd " Interr. — What is your occupation and how long have you followed such occupations —

Answer— Contractor on public works off & on for the last 25 years. —

3d " Interr. State whether you have had any experience in building dams & if so State how much experience you have had of that kind —

Answer— Have had some experience. I have built two dams in this country — One across a Stream that empties into Fox River And I was interested in a dam on Kish waukie at New Berg And I have built a pretty extensive dam in California across the Yuba River —

4th " Interr? — Have you had any other experience in building Structures or works in Rivers and if so state what that experience has been? —

Answer —— I Built the masonry for the Rail Road bridges across Fox and Rock Rivers on the Dixon Air Line Rail Road at Geneva

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and two Miles above Sterling — The masonry of these two Bridges consisted of heavy Stone work — The Abutments and Piers —

5th Interg. — State whether your experience in building the Dams & other works above mentioned has been such as to cause you to observe the action of water upon them and their power of resistance to such action. —

Answer — I think it has ——

6th Interogatory — Have you seen the Dam and other works built by the Sterling Hydraulic Company at Sterling and if so State when and how often you have seen the same. —

Answer —— I have seen it three times during the progress of the work. When I cannot recollect the dates. I was here at the commencement of the work about the first laying of the stone abutments. Then I was here at the time of the Rail Road celebration (July 25, 1855) and I was here later some time in the latter part of October — and saw the works at that time

7th Interg — Do you know the plan on which that Dam was built and if so State your opinion of the plan for Strength and permanency

Answer — I know the plan — and I should think it a good one. —

8th Interg — At the time you saw the work when in progress did you notice the manner of the execution of the work sufficiently to observe its character for workmanship — and if so State whether such work was executed in a skillful & workmanlike manner or otherwise. —

Answer — I will explain — I saw the Dam when there was considerable work done on the Abse abutments & they were laying Stone — I saw it again when the Bulk head was completed with the exception of putting down the gates and at that time the dam was completed except a small portion that the water was running over. Then I was there again when they were making at the race and laying the wall for the race With the above explanation I answer the interogatory in the affirmitive —

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9th Interrogatory — Are you acquainted (Objected) with the plan upon which the dam Rock is built —

Answer — I am not. Only from Report —

10th Interrogatory — How do you understand the plan of that dam to be from report —

Answer — I Knew at one time but do not now remember —

11th Interrogatory — State whether in your answer to the eighth Interrogatory you intended to say that the work on the dam in question in this cause was done in a skillful and workmanlike manner? —

Answer — I did —

12th Interrogatory — Are you acquainted with the shape of the head race & Bulk head connected with the dam in question? —

Answer — I am —

13th Interrogatory — What do you call a head race? —

Answer — What I suppose to be a head race is the portion of a race above where it is used for Hydraulic purposes —

14th Interrogatory — On the 25th day of July

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above mentioned did you observe how much race was completed?—

Answer— A portion of the race was done by the forming of the abutment. How much at that time I do not remember

15th Interrog— If the race was 24 feet in length from the upper end of the Bulk head below would such a race be a sufficient race for the production of any Hydraulic power?——

Answer— It would——

16th Interrog. — How many run of Stone could be driven advantagously by the power as produced?——1

Answer— I should suppose at least 20 could be in the distance across the Bulk head and space below.——

Cross Interrogatories 3
By Complainants Solr B. Dodson.

1st Interrog— Will you explain in what manner. Mills would have to be built and the water used by discharged from the wheel to make use of the water power as mentioned in your answer to the Defts 15th Interrogatory with a race wall only 24 feet long below the up stream end of the Bulk head?

Answer— I suppose by either building across

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the Bulk head or setting Mills on piers so that the water would issue thro' under the Mill — If the Mills were built across the race the water would be discharged down the race — If built on piers partly in the race they would discharge directly into the river —

2d. Interrogatory — If the Mills were built across the race in the manner spoken of in your last answer and the water discharged down the race would that exhaust the whole of the water power

Answer — I should suppose it would if the whole of the bulk head was occupied by the Mill —

3d Interrogatory — If the Mill were built on piers as mentioned above would it not be necessary that there should be other race walls than the 24 feet mentioned above? If yes state what and how much? —

Answer — In case of building a Mill on piers I should suppose the wall of the Mill would be the race wall on the river side

4th Interrogatory —

In the case mentioned in the last answer what is to retain the water from escaping from the west

side of the Mill? —

Answer — I should suppose the Bank dam would be sufficient. —

5th Interrogatory — Have any additions (Objected) been made to the timbers of the Bulk to by Defts) head having a tendency to strengthen it since you saw it in July — If so What?

Answer — There has been some timbers put in since — some extra braces I think. —

C. L. Dodson.

Selden McChurch
Sworn on the part of Defts

1st Interrogatory —

What is your name age and residence and how long have you resided there? —

Answer — Selden McChurch — age 52 years Residence Rockford — Have resided there about 19 years. —

2nd Interrogatory — Have you any acquaintance with water power its use and management and if so state how such acquaintance was obtained —

Answer — I have some considerable acquaintance with water power I have been for over two years the superintendent and managing director of the Rockford Water Power

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company works at Rockford – on Rock river in this State –

3d " Interrg – Have you seen the dams and other works connected with it belonging to the Sterling Hydraulic company if so when? –

Answer – I have – Saw them this morning

4th " Interrg –

State whether your connection with the Rockford Water power company has been such as to enable you to determine how Hydraulic power may be applied for the propulsion of Machinery? –

Answer – I think it has. –

5th " Interrogatory. – State whether a race 24 feet in length below the up stream side of the Sterling Hydraulic company's Bulk head would be such a race as could be used in propelling Machinery? –

Answer – I think it could –

6th " Interrogatory – In what way could you apply the power under such circumstances? –

Answer – I think it could be applied by making the wall of the building the river side of the race with arches thro" it of sufficient capacity to carry what wheels might be necessary – It might be done by building

directly acrofs the race and discharging thro" the building down Stream of the race I think so that a wheel might be let in the frame of the Bulkhead as it is put in there with an upright shaft and draw the water from one gate only & in that case it might discharge directly down the race

7th Interrogatory — How much water power can be used by building acrofs the race in the manner mentioned by you? —

Answer — I suppose as much power as you could get wheels in there to drive — Wheels enough could not be put in to use the amount of power that could be drawn thro" the gates —

8th Interrogatory — How near the Bulk head could a building acrofs the race be placed. Such as you have mentioned for Hydraulic purposes? —

Answer — The building might cover even a portion of the Bulkhead there would be no necessity for its extending further below the gates than to make room for a few bay Say 10 or 12 feet — to enclose the wheels —

9th Interrogatory — Can you tell how many inches of water can be used with a building Standing acrofs the race as you have mentioned above if so State —

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Answer — I could not state very accurately my opinion is about two thousand inches. if the building was large enough to accomodate the machinery that would drive —

10th Q. Energy — What is the difference in power between a six foot and a seven foot head! —

Answer — I do not know that — I can tell exactly — I think they are in the proportion of their squares that is as 36. is as to 49 —

11th Q. Energy. — Do you know of any instances where buildings are placed across the race as above stated by you? — if so State! —

Excepted

Answer — The Rockford Water power company have a building extending across the race but the machinery is not driven as I have spoken of — There is a grist-mill there is built at Rockford right up at the end of the race where the water is drawn from the end of the race — thro" the mill. The Mill forms the lower wall of the race — Except the opening for passing off waste water —

12th Q. Energy — How near the Dam at Rockford is water used for propelling machinery discharged

Excepted

Answer — I do not know the precise distance but think the wheel sits within four feet of the face of the dam. —

13th Interrog — How far below the dam is the point in the race from which the water is taken to drive that wheel

Exception

Answer — I cant say the point precisely — it is some 12 or 15 feet below the Bulkhead

14th Interrog — Do you know the plan upon which the Sterling dam is built — if so State what the character of that plan is for strength and permanance —

Answer — I know nothing of the plan except what appears from exhibit A in my judgment it would be a substantial permanent dam —

15th Interrog — Do you know the plan of the Rockford Dam if so State which of the two plans is the best? —

Exception

Answer — I do know the plan of the Rockford Dam — If the two plans were exhibited to me at equal costs I think I should prefer the plan of the Sterling Dam —

16th Interrog — When was the Rockford dam built — and what is its present condition? —

(Excepted)

Answer — It was built I think in the summer of 1852 — and is apparently permanent except some planking knocked

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off the apron below the dame by the ice —

17th Interrg — On what-way is the top of
Excepted the Rockford dam secured- and of what
is it- composed? —

Answer — It- is composed of Plank Spiked to the timbers at-each end and at-the middle The plank are I think eight feet- long and are I believe sound and in their places as they were placed — They slope one foot-about-towards the up stream —

18th Interrg — State what-you consider a head race to be? —

Answer — I consider a head race to be a race that-is above gates thro" which water passes from one body of water to another

Selden W Church

Cross Interrogatorys
By complt's

1st Interrg — Should you judge from the appearance of the dam Bulkhead and race in question as they appear when you saw them last-that they were intended to be used by placing the buildings receiving & discharging the water in either of the modes explained in your answer to defendants sixth interrogatory

Answer — I should not think it was designed to be used in either of those modes except perhaps the first — That would be by using the race wall which now appears to be built as a foundation for the building — I think that mode would be the preferable mode of improving as far as the first portion of the wall extends —

Selden N Church

January 24th 1871 By Defts —

S L Mallory Sworn —

1st Interogatory — What is your name age and residence and how long have you resided there? —

Answer — I L Mallory — age 45 years residence Rome county Ill — have resided there 3 years. —

2nd Interogatory — What is your occupation and how long have you followed it —

Answer — Am engaged as a contractor of Mason Work & Grading on Rail Roads and have been so engaged for the last two years —

S[2437-87]

3d Interrog — Have you ever had any experience in the use of Water power or the building of dams and if so State how much experience of that kind you have had ——

Answer —— Have been connected with the use of Water power for 15 years and during that time had more or less to do with building Dams ——

4th Interrog — In what manner have you been connected with the use of Water powers ——

Answer — In the manufacture of Wheat and flour — Lumber and Plaster ——

5th Interrog — State whether your experience in the use of Water power & the building of dams has been such as to cause you to observe the strength of dams and the action of Water upon them ——

Answer — I should think it had ——

6th Interrog — Have you seen the Sterling Hydraulics Company's dam and do you know the plan of it and the mode of construction?

Answer — I have seen the dam — or was on it while they were building it — and I have a knowledge of the plan of the dam —

7th Interrg — What is your opinion of the character of that plan as to strength and permanance?

Answer — I think it to be a good plan —

8th Interrg — State whether in your opinion a dam built upon that plan would be sufficiently strong and substantial to resist the action of the water of Rock River at the place where it is located or otherwise? —

Answer — Yes Sir I think it would

9th Interrg — What is your opinion of the dam in question in that respect?

Answer — I think it is sufficient —

10th Interrg — Were you on or about the dam in question while in progress of construction and if so when and how often?

Answer — From some time in June to the latter part of August — I was there occasionaly could not say how often —

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11th Interrogy — Where did you live at that time and what was your business —

Answer — Lived in Lane County — was doing masonry work for the Galena Rail Road company on the Depot buildings at this place —

12th Interrogy — How far was the place you were working from the dam in question

Answer — Ten or 15 rods I should think —

13th Interrogy — When you were upon the dam or about it did you observe the manner in which the work was executed as respects workmanship — and if so State whether such work was done in a workmanlike manner or otherwise!

Answer — Yes Sir — I looked at the work more or less when I was down there and I think it was done in a workmanlike manner —

14th Interrogy — Did you see the dam in question and other work connected with it — on the first of October 1853 or just previous to that time and if so state the condition of said dam and works when you saw it at that time?

Examined

Answer — I saw the dam sometime in September — The dam appeared to be completed The water was running over it — The head gates were in — The place below the head gates I suppose it might be called a head race or Bulk head it was so constructed as to erect power there —

Cropsey Cr

15th Interrog — Do you recollect what the length of the race wall next to the dam was at that time if so State —

Answer — There was one wall built there — From 30 to 50 feet is my impression now —

16th Interrog — What amount of Power could have been used advantageously at that time?

Answer — Fifteen or 20 run of Stones may be double that —

17th Interrog — State in what way you would have applied that power? —

Answer —

I should have drawn it from the head race thro" the wall carried it in a flume along the building and took it out and used it at different points — would have placed the Mill on the River side of the race —

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18th Interrogatory — How much power can
(Objected) be used there now in the present con-
dition of the work?

Answer — There is power enough there for
50 runs of Stones I should think —
S. L. Mallory. —

Cross Interrogations by —
By complainants
1st Interrogatory — State what knowledge you
have if any of Rock River at the town
of Sterling at different stages of the
water and at different seasons of the
year? —

Answer — I have no knowledge of the river
except from June last up to the present
time —

2nd Interrogatory — In what capacity were
you connected with the use of water
power and what part had you
in building the dam during the 15
years as mentioned in your answer
to Defendents 2d Interrogatory?

Answer — Part as owner — Part as connected
with others and was working with my
father when he built one — and was
around and about superintending
the same —

3d Q Interrg — When did you see the dam and other works of the Sterling Hydraulic Company first after the first day of October 1855 — and what distance of the race walls was completed at that time?

Answer I cant tell you the first time — It might be in October and might be in November — I cant tell —

4th Q Interrogatory —

When did you see the dam and other works connected with it last before the first day of October 1855 — and how much of the walls was completed at that time?

Answer —

Some time in September — there was probably from 30 to 50 feet of Race Wall — I supposed it sufficient for the purposes it was intended for — I could not tell how far the wall was built below the lower sill of the Bulkhead —

5th Q Interrg —

Could the water power have been used advantagously at that time with so much race wall then was built — if yes — in what manner would the Mill be placed how would the water be removed

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on the wheels and when discharged from the wheels! ——

Answer — I think it could — There is different ways it could be placed You could run a Mill back into the river Should take the water out of the head race into a flume. Then I should have the gates so constructed as to let the water on the centre of the wheel and discharge on the outside of the wheel or you could place the Mill across the race. It is owing to the kind of Wheels you used where the Mill should be located you could receive the water by a shute from a flume and discharge from the wheel into the river ——

6th Interrg — In case the Mills were run back into the river as in the first case supposed in your last answer from what part of the head race would you take the water to drive the wheels!

Answer —— I could take it from below the Gates in the Bulk head —

7th Interrg — When you saw the race last in September were the walls completed so as to retain the water in that part of the race below the Gates of the Bulkhead! —

Answer — I should think not ——

S. S. Mallory ——

Amendar P. Thomas
Sworn by the Defts

1st Int'y — What is your name age and place of residence and how long have you resided there?

Answer — Amendar P Thomas — age 44 years Residence Sterling Ills — Have resided there since the 27th day of August last

2nd Int'y — Do you know the parties — Plaintiff & Defendant — in this cause or any or either of them and how long have you known them respectively —

Answer — I do not know that I know any of the Plffs — or Defts —

3d Int'y — What is your occupation? —

Answer — For the last five years I have worked at building dams and improvements upon Hydraulic works —

4th Int'y — Where have you been employed for the last two years in building dams and Hydraulic works? —

Answer — At Rockford in Winnebago Co Ills and at Milford Winnebago Co Ills on the Kishwaukie river and at Sterling Ills —

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5th Interrog — Are you acquainted with the plan upon which the dam and the works connected therewith across Rock river at Sterling was built — and if so state whether in your opinion the plan is a good one for the place where it is built — or not —

Answer — I have seen the plan and examined it — I call it a good plan for a dam across Rock river at the place where it is built —

6th Interrog — Are you acquainted with the dam across Rock river at Rockford and the plan on which it was constructed and if so state whether the plan upon which that is constructed or the one at Sterling is preferable for strength & durability

Answer — Yes Sir I am acquainted with the plan of the Rockford dam and that of the Sterling dam and they are similar except as to material — The Rockford dam is all Timber — The one at Sterling is Stone & Timber — For durability I like the Sterling dam the best — as to strength I would not know which to choose —

7th Interrog — What opportunities have you had to judge of the manner in

which the dam at Stirling and the works connected therewith were built and constructed? —

Answer — I saw the dam after it was completed which is the only opportunity I had They had not shut down the head gates no water was running over the dam I saw no defect in it — The work was done as near as I could judge in accordance with the plans —

8th Interrog — What in your opinion was the manner in which it was constructed as to material and workmanship — State fully your opinion —

Answer — The material first rate and the workmanship was well done as far as I could see having never seen it until after the work was finished —

9th Interrog — When did you last see the dam and works in question previous to the 1st of October 1885 —

Answer — It was 23d of September last —

10th Interrog — What was the condition of the dam and how much of it was completed at that time and how much of any head race or canal was then completed?

Answer — The gates were shut down and the waters running over the dam

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all completed — I should think from 22 to 24 feet of head race and from 25 to 30 feet of tail race or canal were completed ——

11th " Qntyn — What do you mean by Head race and Tail race as stated in your last answer?

Answer —— A Head Race is a race leading or directing water to an issue or discharge a Tail race is below the gate to discharge the water

12th " Qntyn —

(Excepted) Was or was not the Head race completed on the 23d " of September last?

Answer —— It was completed ——

13th " Qntyn —

State whether in your opinion the dam head race and works in question were on the 23d " of September last sufficient for the production and use of Hydraulic power and if yes — How many runs of Stone would the race at that time have furnished power for? —

Answer —— Yes sir — It was sufficient for the use and production of Hydraulic power and it was sufficient to produce power to turn one hundred runs of Stone — certain —

14th Interr — State whether in your opinion it would have been advantageous or judicious in the company to have extended and completed the canal or race further down than it was at the time mentioned in your last answer — Except as they sold or disposed of water power and knew the character of the Mills and Machinery to be used from time to time

Answer — I should think it would be judicious for them to extend it as they sold it only

Excepted

Amanda P. Thomas

Cross Interrogations
By Complainants —

1st Interr — When you last saw the dam and other works connected with it previous to October 1st 1855 how much of the race wall on the river side had been built over and above the Abutment of the dam? —

Answer — I call it all race wall from the gate down. it forms an abutment for the dam and a wall further on — I should think from six to eight feet below the abutment of the dam had been then built —

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2nd Int. — How far did the head race extend below the line of the breast of the dam continued to the shore —

Answer — It did not come down to it —

3d Int. — At the time you saw the dam last before the first day of October 1855 in what manner should the Mills have been placed and the water rec'd on the Wheels and where discharged from the wheels to have made it available to drive one hundred runs of Stone as mentioned by you above?

Answer — Set the Mills on the bank below the gates. build a forebay right close to the gates below them put in two wheels Eight feet diameter centre discharge drawing 2000 inches each direct the water on to them from a shute from this forebay discharge from the wheels right to the river Shaft from them any way you please

4th Int. —

Should you judge from the appearance of the dam Bulk head and race that they were planned to be used in the manner mentioned in your last answer

Answer — I should not think they were —

5th Interr — At the time spoken of above when you saw the dam and other works in September was the bulkhead in your opinion sufficient to resist the action of the water above it?

Answer — My opinion is now that it was not —

Amander P Thomas

Direct examination
Resumed by Defts

1st Interr — Give your reason for the opinion expressed in your answer to Plffs' last interrogatory? —

Answer — The 7th of October I returned to Sterling. One of the posts in the Bulkhead had split off a part of the sill and let out one of the Gates The occasion of that splitting out was that the tenant of the post was put in to the end of the splice in the sill and the tenant carried off the lower part of the sill below the tenant —

2d Interr — What if anything has been done by the Sterling Hydraulic company to repair the damage in the Bulkhead

Exhibit 5

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described in your last answer. Station and whether it is well done or not.

Answer — There has been 11 diagonal braces under the cap and over the girt above the gates and 10 diagonal braces horizontally gained into the top girts 9 braces reaching from the lower posts 8 feet from the sill to the upper posts one foot above the sill bolted to the posts at each end with iron bolts. bolted with an iron bolt where they cross the other braces running the other way Nine large braces running from the posts on the lower side 8 feet from the sill from 28 to 30 feet down stream Let on to the rock and bolted at the foot with two heavy iron bolts in each brace driven through the timber from 18 to 24 inches into the solid rock also 21 iron straps reaching from the upper cap down on to the posts on the upper side — Those 9 braces running down the race were in lieu of 9 smaller ones taken out and the upper ends placed into the posts from 2 to 3 feet lower than the those taken out — and a stick of timber 16 x 16 inches put against the foot of

the posts that was split out running to the lower sill bolted at the upper end into the posts and at the lower end into the sill & rock bolted —
And I think the repairs are well done —

3d " Interr — When you said on your cross examination that the head race did not extend down to a line with the breast of the dam what did you mean by the word head race

Answer — I meant the head race above the Bulkhead —

Amandar T Thomas

Crop Interrogatins
By Defts renewed

1st " Interr — In your opinion was the splicing of the sill at a point where the tenant of the post would enter near the end of the splice as mentioned by you above doing the work in a skillful and workmanlike manner? —

Answer — I should not have been put in so much if this had secured the splice There is nothing against the skill or workmanship of it only in not securing it properly —

2d " Interr — In your opinion was the neglect to secure properly the splice doing

Exceptions

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the work in a skilful & workmanlike manner and in this case was it properly secured? —

Answer — It was not properly secured There is nothing about the workmanship so far as what was done. It does not add to or diminish the skill of it —

3d Interrogatory — In your opinion would it have been necessary in order to have spliced the sill mentioned by you above in a skillful and workmanlike manner that the splice should have been properly secured —

Answer — The splice was I belive properly secured as they executed —

4th Interrogatory — Do you decline to give your opinion of the skill and workmanship displayed in splicing the sill and neglecting to secure it properly mentioned above if not What is your opinion? —

Answer — No Sir —

My opinion is the same as above stated

Amandus P. Thomas.

1856 Jany 29 —

Parties met by their ~~Attorneys~~ respective counsel at the Examiners Office when the following proceedings were had —

David Leavitt a witness called by Defts Counsel on his Voir dire duly sworn & examined

1st Interrog — By whom are you employed?

Answer — I am not employed by any one —

2d Interrog — Are you or not interested with the said company before or at the time of the commencement of this suit — If so state what that interest was? —

Answer — I was before and at that time I was the owner of 40 Shares in the stock of said company —

3d Interrog — Up to what time did that interest continue?

Answer To the 21st inst or 22d inst of the present month

4th Interrog — To whom did you dispose of said interest & How and in what manner were the payments made for the same? —

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Answer — To John Vanderwick By Sale Rec'd in payment his note for $1000. payable on demand. —

3rd Interrogatory — Had you at any time any understanding with John Vanderwick or any one for him as to terms on which you may at any future time become interested in the stock of said company directly or indirectly? —

Answer — I have had at no time any such understanding with him or any person for him. —

4th Interrogatory — Are you in any manner interested or have you at any time been interested in any of the lots in controversy in this suit Either directly or indirectly? —

Answer — I am not interested in any of them and have never been at any time Except so far as my interest in the stock of said company made me interested in said lots — David Leavitt

Cross Examination
By Defts Counsel —

1st Interrogatory — Do you consider that you have at this time any legal interest in the event of this suit? —

Leavitt

Answer — I do not —

2nd Interr — What interest if any had you in the lots in question in this suit after you sold and disposed of your stock as above mentioned? —

Answer — None that I know of —

David Leavitt

David Leavitt Sworn in Chief by Defts — and objected to by Compltt

1st Interr — What is your name age and residence and how long have you resided there? —

Answer — David Leavitt age 33 years residence Sterling Ills — Have resided there about one year —

2nd Interr — What is your occupation and how long have been so employed?

Answer — Civil Engineer — have been so employed about 9 years —

3d Interr — What experience have you had in the construction of dams and other Hydraulic works and obtaining a knowledge of their capacity to resist the action of the water? —

Answer — I have had no experience except in the construction of the dam

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here and the one at Rockford of which last I had the charge as Engineer —

4th Q. Design —

What other means than that mentioned in your last answer of obtaining a knowledge of the proper construction of dams and other Hydraulic works have you had?

Answer — My business has led me to observe & study more or less the characters of such structures and I have had occasion as Engineer and contractor to attend to the construction of coffer dams in putting in foundations for bridges —

5th Q. Design —

Look on the paper now shown you marked A and made an exhibit in this cause and state what if you know the figures and drawings on that paper were intended to represent and why it was made and what knowledge you have of it? —

Answer — One figure represents a cross section and the other a partial front end & top view of a section of the dam at this place —

another figure represents a section of the timber works and the manner of its framing — The other figure represents a plan that was got up for a Bulkhead which plan was afterward abendoned. The paper was made to show the manner in which the dam at this place was to be constructed — I assisted in setting up the plan —

6th Int. — State what opportunities you had to know the manner in which the dam and other Hydraulic Works connected therewith Erected at Sterling by the Sterling Hydraulic company were built and of the materials of which they were composed —

Excepted

Answer — As a member of the Executive committee of that company I acted in letting the contracts for those works: and during their progress was almost daily and frequently the entire day upon the works in order to see that the work should be done in a substantial manner and in accordance with the plan —

7th Int. — Upon what plans were those works built and was there any other plan submitted and why was the plan on which they are now built adopted?

Excepted

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Answer — The dam was built on the plan represented in Exhibit A — Except that some other piles and a few of the posts were put in of flatted instead of square timber Another plan similar to the dam at Rockford composed of cribs of timber filled with broken stone and planked & backed up in the same manner as this dam was submitted — according to the estimate of the costs of the two dams The present dam would cost about $41000. the most — and it was thought by the committee that the difference in the character of the ~~of the~~ dams for permanence & durability would warrant the extra expenditure therefor this plan was adopted —

(Excepted)

8th Int. Q. When was the dam at this place & other works connected therewith commenced — and when were they finished —

Answer — They were commenced I think about the last of April —
The dam & abutments were completed I think about the first of September The Bulkhead and a portion of the race were completed during the months of September And work was continued

on an extension of the race all about the 1st of December last —

9th Interr — Of what material was the dam built and what was the manner of its construction? —

Answer — Of Stone heavy timber gravel and Iron & water lime and it was constructed in a workmanlike & substantial manner — & in accordance with with the plan — If I Should give the details of the construction this would be substantially the same as I heard given here by Mr Bushnell the engineer —

10th " Interr — State your opinion of the character of said dam as built & constructed for Strength & durability? —

Answer — I consider it a very strong & durable dam —

11th " Interr — Where is the dam in question (Excepted) in this cause located —

Answer — at the town of Sterling between the line of locust Street and the next street west thereof — & mean between an extension of the lines of those Streets —

12th " Interr — In which direction is the Rail Road Depot at the town of Sterling from the dam and how far distant? —

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Answer — It is North of it. I should think from 20 to 25 rods —

12th Interr — How far from the race connected with the dam?

(Excepted) Answer — About 7 rods left —

11th Interr — Look on the paper now shown you marked B and made an Exhibit in this cause and state if you know what that map is designed to represent? —

Excepted

Answer — It is designed to represent the relative positions & distances of the dam and other works of the company the Rail road Depot Grounds & other points in the town of Sterling —

13th Interr — State whether this map correctly shows the relative position of the town Rail road & the dam & works connected therewith above mentioned or otherwise & how otherwise

Excepted

Answer —

It shows them correctly I believe —

14th Interr — State what part of any of a head race was completed by said Hydraulic company on or before the first day of October 1855 and if so State what part & how much —

Answer — All the head race being dam

22 feet in length was completed and a portion of the main race 24 feet in length —

17th Interr — What other or further works and improvements have been made by said company connected with said dam since the first of October 1855 —

Answer — They have been extending the main race by excavations and by the construction of a wall on the river side to a distance of some 250 or 300 feet from the gates —

18th Interr — On which bank of the river is the head race located spoken of by you? —

Answer — On the north or west bank —

19th Interr —

Of what was it composed and how was it constructed? —

Answer — A channel 100 feet in width was excavated to a level with the bed of the river & heavy walls of masonry were laid up on each side to the height of 14 feet and a Bulk head & gates put in —

20th Interr —

State whether or not by reason of said improvements made by said company on the said first day of Oct 1855 a water power was produced

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for Hydraulic purposes & if so what amount if any! —

Answer — A water power was produced available for hydraulic purposes at that time — A very large amount — I would not undertake to define the exact amount —

21 Q. 11 Interp — ~~That~~ constitutes a head race? —

Answer —

A Race is a passage or channel to conduct water from a pond to Mills. A head race I consider to be that portion of the channel or passage above the gates by which the head can be retained & the water controlled

22 Q. 11 Interp — Look on the Diagram marked D.1 and made an exhibit in this cause and state what it represents and if so if it is a correct representation? —

Answer — It represents the pier abutment and side walls of the race and the position of the gates of that portion of the race I mean that was completed before Oct 1st 1855 — And correctly with the exception that the line of the shore is not represented as extending above the lower end of the shore abutment The excavation was at that time really completed to the lower end of the abutment

28th Int. Ques. — State whether or not it would have been advantageous or judicious to have extended the race further down than it was completed on the 4th day of October 1855 except as the company sold water power and knew the amount of machinery & character of the wheels to be used? —

Answer — That is a question I have frequently thought of and hardly been able to decide in my own mind. There are reasons in favor of both cases No doubt in the construction of Mills as the works now are large portions of the existing walls may have to be taken out to make pieces to suit the judgements of the owners of the Mills in which case the money expended on such portions would seem to be wasted — Again parties might prefer to buy power on ground situated as last would be at the lower extremity of the present race in that case it would be desirable that the race should be extended. These are some of the reasons for my indecision on that question —

David Seavitt

Cross Int. by Complts

1st Int. Ques. — By Complts

State whether any of the gates in the

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Bulk head have been carried out by the water since they were placed there in & if so State how many and at what time? —

Answer — One of the gates has been carried out by the water. I think it was on the morning of Oct 14th My impression is it was on Sunday morning —

2nd Interr — Did you sell your Stock in said company as stated above by you for the the purpose of becoming a witness in this cause? —

(Excepted)

Answer — I sold it with that expectation —

David Leavett —

January 31th 1856 —

Parties met by their respective Counsel at the Examiners office and by consent adjourned until next day at 9 o'clock A.M.

January 31st Parties again met as above When the following proceedings were had —

P. C. Nye A Witness Called & Sworn —

By Defts —

1st Interr — By Defts —

What is your name age and residence and how long have you resided there —

Answer — Russell C. Mix age 49 Years
Residence Aurora Rawles Ills
Have been Here 24 Years —

2nd Interr — What is your occupation and how long have you been engaged in it —

Answer — My occupation is Millwright —
Have been engaged in it 25 years —

3d Interr —

What Experience if any have you had in the construction of dams & Mills & other works for the production and use of Hydraulic power & where & on what Streams? State fully? —

Answer —

I have been in the business of building Mills & constructing Dams for the last 25 Years. I commenced first in the State of New York. from thence to Michigan. Then in Ohio Illinois Wisconsin & Iowa The principal Streams in Michigan were Stony Creek and Paint-Creek. Those in Ohio were principally on the Muskingum River Those in Illinois were on the Fox River & Kishwaukie in Wisconsin was on Turtle creek. Those in Iowa were on the Red Cedar & Turkey River & the little Maquoketa — I have built or caused

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to be built dams and mills on all those streams ——

4th " Interr — State whether or not that experience has been such as to enable you to judge of the proper manner of constructing such works and the manner of using the power created thereby? —

Answer — I think it has —

5th " Interr — State whether or not you have seen the dam & works of the Sterling Hydraulic Co" at Sterling and if so where did you see them? —

Answer — I have seen them. —
This morning ——

6th " Interr — Look upon the paper now shown you being Exhibit marked A" and examine the figures & diagram on the same and state what in your opinion would be the character of a dam for strength and durability constructed on the plan thus represented? ——

Answer — I think the dam would be a good one. if well built on that plan

7th " Interr — What do you understand by the term "Head race" when used in connection with dams or other Hydraulic works ——

Answer — What I should term a head race would be the portion of a race to convey the water from the pool of a dam to the place where it is intended to be used

8th to 11 Interp —

Assuming that the dam and side walls excavation of the race & the Bulk head therein were completed to a distance of 22 feet above and 24 feet below the gates as represented in Exhibit B now shown you. State whether or not in your opinion there would be a head race or canal sufficient for the production & available for the use of Hydraulic power? —

Excepted

Answer — I should think there would be —

9th Interp — What would you call the channel or space between the walls in which the Bulk head is placed and above the gates of the Bulk head as represented on Exhibit C" —?

Answer — That would be the head race as there represented —

10th Interp What would you call the space or channel between the walls in which the Bulk head is placed and above the gates of the Bulk head as you saw them this morning when looking at the dam & other

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works of the Sterling Hydraulic Company

Answer — That is a part of the head race —

11th Q. Interp — How could power have been used to advantage when the works were in the condition as represented in the exhibit marked C now shown you? —

Answer — A building could be placed right over the Bulk head below the gates A building could have been placed below the pier on the river side partly upon the pier or it could rest below the pier —

12th Q. Interp — What amount of Hydraulic power was produced when the dam & walls of the race were completed together with the Bulk head & gates as represented on Exhibit C —

Answer — There could be about 15 wheels put in in front of that race. Those wheels could be constructed to drive 15 runs of Stones & mills to each wheel & the necessary machinery for making flour

13th Q. (Excepted) Interp — What amount of power is now produced by said dam and improvements as you saw them this morning? —

Answer — I think 30 or 35 runs of

of Stone with the necessary machinery for the manufacture of flour. That would be about the amount of Power that is there made by that Head race —

14th Qu'y — What advantage if any would there be in extending the race any further down there as represented on Exhibit "B" except as water power is sold & disposed of for Mills or Machinery? —

Answer — There would not be any —

Cross Qu'y By Complt — 1st Qu'y — In case the Building were placed over the Bulkhead as mentioned by you above into which side of the building would the water be received & where discharged

Answer — It would be received on the up stream side of the Mill & be discharged on the down stream side —

2nd Qu'y — In case the mills were placed below or partly over the pier as mentioned by you above from what part of the race should the water be taken to drive the Machinery? —

[12437-103]

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Answer — It should be taken from the part below the Bulkhead —

R. C. Mix —

Days attendance & Miles travel of Witnesses on the part of complainants—

A. W. Benton —	One day. —	25 Miles
Harley. Thurber —	One "	5 "
Luther Bush —	One "	
E. B. Worthington —	One "	
Joel Harvey —	One "	4 "
Samuel Rice —	One "	
Orson L. Payne —	One "	4 "
Richard Airey —	One "	2 "
Rufus Delgarno —	One "	
John Dement —	One	12 "
James Sterling —	One "	10 "

Dfts Witnesses —

D. K. Bushnell.	Two days —	
A. B. Moore.	Two "	77 Miles
L B Dodson	Three "	77 "
Selden M Church	Four "	76 "
S L Mallory.	Two "	88 "
Amander P Thomas	Two " —	
David Leavitt	One "	
R L Mix	Two "	94 Miles

Commissions fee

By agreement of counsel

11 days at $5 — per day. $ 55.00

[12437-104]

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The Exhibits referred to in the body of the foregoing Deposition given in Evidence before me by the complainants herein and marked respectively 'A' 'B' and 'C' are hereto attached and made a part of this report - all of which is respectfully certified by the undersigned unto this Honorable Court —

Signed —

Edw N Kirk
Special Commissioner

State of Illinois
Whiteside County ss

I, R. L. Wilson Clerk of the Circuit Court in and for said County and State do hereby certify that the within is a true full correct and perfect copy of the original deposition in the within entitled cause. on file in my office

Witness R L Wilson Clerk of our Circuit Court and the Seal of said Court this 10 day of April 1867

R L Wilson
Clerk

State of Illinois } ss.
Whiteside County }

Please in the circuit court of White
= side County and State of Illinois began
and held at the Court house in the said County and State
on the 14th day of April 1856. To wit on the second Monday
of April 1856.

The Judge not arriving on Monday the 14th
inst, Court stood adjourned and commenced and organi=
=zed on Tuesday morning April 15th A.D. 1856.

Present =

" Hon J. Wilson Drury

Judge of the sixth Judicial
Circuit in the State of Illinois.

" William F. Miller

Circuit Attorney for said sixth
Judicial Circuit in said State of Illinois.

" Robert L. Wilson

Clerk of the circuit court in
Whiteside County Illinois, and

" William Manahan

Sheriff of Whiteside County
Illinois.

And afterwards to wit, on the 25th day of April
A.D. 1856. (The same being on the tenth day of said Term of
said Court) said Court sitting in Chancery, in the
record of the proceedings of said court on said day the
following order were entered, to wit,

Robert L. Wilson }
Nelson Mason }

(12487-106)

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Daniel R Beek
Leonard Nichols
Charles Nichols
Lewis D Crandall
Elezabeth Nichols } Injunction.
vs.
John Galt & Sterling
Hydraulic Company

This day came the Complainants by Sackett their Solicitor and the said defendants by Henry their attorney and by agreement of parties this cause is continued, and the same was set for hearing on the second of June 1856. at the Chamber of the Hon. J. Wilson Drury Judge of the sixth Judicial Circuit in the State of Illinois in the City of Rock Island.

And afterward, to wit, at a term of the Circuit Court began and held at the Court house in the Town of Sterling in said County and State on the 8th day of September, to wit, on the second Monday of September 1856. The Judge not arriving on the 8th Court Commenced and organized on Tuesday Morning Sept. 9th A D 1856. in the proceedings of said day in said Court Setting as a Court of Chancery the following proceedings were had in the following cause.

Robert L. Wilson }
Daniel R Beek }

Nelson Mason
Lewis D Crandall
Elizabeth Nichols
Leonard Nichols and
Charles Nichols
vs
John Galt & the Sterling
Hydraulic Company.

Injunction.

This cause having been heard before the Hon. J. Wilson Drury Judge of this Court at his Chamber in Rock Island in pursuance of a Stipulation between the parties in this cause (filed herein) on the 13th day of June 1856, on pleadings and proofs in this cause and Counsel having been heard both on the part of the Complainants, and defendants, and after having heard all the proofs and allegations of the parties, and being fully advised in the premises, and it appearing to the Court that the Complainants are not entitled to the relief sought by them in said bill against said defendants, nor to any relief. it is ordered and adjudged and decreed that the said bill of the Complainants be unconditionally dismissed and that the said Complainants pay the costs in this cause, and that the defendants have and recover the same against the Complainants, and have execution therefor.

Signed

J. W Drury.

$12437-107

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Thereupon the complainants by their attornies entered their motion for an appeal to the Supreme Court of the State of Illinois.

And afterwards to wit, on the 18th day of September 1856 to wit on the 11th day of said term.

Present,

" Hon. J. Wilson Drury Judge of the Sixth Judicial circuit in the State of Illinois.

" William L. Miller

Circuit attorney in said circuit

" Robert L. Wilson

Clerk of the circuit court in Whiteside County Illinois,

" William Monahan

Sheriff of said County & State,

In the proceedings of said day said court sitting as a court in chancery the following entries were made and entered of record to wit,

Robert L. Wilson, Daniel R. Beck
Nelson Mason, Lewis D Crandall
Elizabeth Nichols, Leonard Nichols
and Charles Nichols

vs.

Dolittle Galt & Sterling Hydraulic Company

Injunction.

This day came the said complainants by Sackett & Ware their Solicitors and the said defendants by Knox & Henry their Attorneys, and the Motion of the complainants by their Solicitors made and entered of record on a former day of this term of this Court praying an appeal to the Supreme Court of the State of Illinois from the decree, Now this day coming on for hearing and after mature deliberation it is ordered and decreed by this Court that the said complainants herein be allowed their appeal in this cause to the Supreme Court if they the said complainants execute a good and sufficient appeal Bond in this cause according to the Statute in such cases made and provided, in the penal sum of Five hundred dollars with Geo. H. Wells and Pepe Penrose as their Securities and that they file the same in the office of the Circuit Clerk of the Whiteside County Circuit Court in sixty days from the adjournment of this Court,

State of Illinois } ss. I, R L. Wilson Clerk of the
Whiteside County } Circuit Court in and for said County
and State do hereby certify the foregoing transcript to is
a true full correct and perfect copy from the records of
the proceedings of said Circuit Court sitting as a
Court of Chancery of all orders decrees and entries
made and entered of record in said Court in the before
mentioned entitled cause of Robert L. Wilson, Nelson
Mason, Daniel R. Beck, Lewis D. Crandall, Leonard
Nichols, Charles Nichols and Elizabeth Nichols

[12437-108]

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~~206~~

Against John Galt & the Sterling Hydraulic Company in an Injunction in Chancery now pending and undetermined between said parties in said Court.

And the bill herein Marked 1, hereto annexed is a true full correct and perfect copy of the original bill in said cause on file in My office the defendants answer Marked 2, hereto annexed is a true full and perfect & correct copy of the defendants (Sterling hydraulic company) original answer in said cause on file in My office. The agreement between the original Donors and the said Sterling Hydraulic Company Marked 3. hereto annexed. is a true, full correct and perfect copy of said original agreement on file in My office. John Galt one of the defendants answer herein Marked 4, is a true full and perfect copy of his original answer herein on file in My office. The complainants replication Marked 5, hereto annexed is a true full correct and perfect copy of said complainants original replication on file in My office. to the Sterling hydraulic company (one of said defendants) separate answer herein The complainants replication Marked 6, hereto annexed is a true full correct & perfect copy of the original replication of complainants on file in My office, to John Galts separate answer herein one of said defendants herein & The agreement between said complainants and the said defendants by their attornies hereto annexed Marked 7, and Marked in defendants answer as Exhibit A, is a true correct and perfect copy

of an original agreement on file in my office in this cause, a duplicate copy of said original accompanies the depositions hereto annexed. the depositions are marked 11. as herein after mentioned,

The agreement or Stipulation between the said Complainants and said defendants by their Attornies hereto annexed marked 8. is a true full. correct and perfect copy of the said original agreement on file in my office in this cause,

The appeal Bond Made and executed by said Complainants in this cause marked 9. is a true full Correct and perfect copy of the original appeal bond on file in my office in said cause

The duplicate copy of agreement as described herein marked. 7. and the depositions taken before Edward N. Kirk Special Master which was taken by the agreement of parties by their attornies herein and marked 10. is a true full Correct and perfect copy of the original depositions taken in this cause and on file in my office.

The maps hereto annexed marked 11. 12, and 13. refered to in the depositions taken herein and marked and refered to and as exhibits A. B & C, are each a true full correct & perfect Copies of the original maps on file in my office in said cause.

Witness R.L. Wilson Clerk of our Circuit Court and the seal of said Court this 10th day of April A.D. 1857.

R. L. Wilson Clerk

{12437-189}

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State of Illinois }
3d Grand Division } Supreme Court

Robert L. Wilson et als,
vs.
John Galt & The Sterling
Hydraulic Company

And now come the Appellants by Leland & Leland their Solicitors, & say, that in the record & proceedings in said cause there is manifest error, in this, to wit;

1st The decree is against the law and the evidence.

2d The Court erred in rendering the decree dismissing Complainants' Bill -

3d The Court should have rendered a decree for the Complainants -

Leland & Leland

5/18437-MD

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Robert L. Wilson
et als. vs.

John Galt &
Sterling Hydraulic
Company.

Assignment of errors.

Filed April 27. 1857
S. Leland
Clerk

No. 2115

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Robert S. Nelson et al

vs

Sterling Hydraulic Co.

Transcript

Filed April 20, 1887

J. Lelevier

Clerk

Supreme Court Illinois 3d Grand Division

The Sterling Hydraulic
Company
vs
John Holt
appellee

and

Robert Wilson et al
appellees

And now comes the above
appellants by Mr. Wright their attorney
and say that there is no such error in the
record & proceedings in this cause as the said
appellants have above thereof in the behalf
assigned

Mr. Wright
atty for appellants

Supreme Court
Sterling Hydraulic Co
vs
Robert Wilson et al
Appellees

Joinder in Errors

Mr. Wright
atty for appellants

Filed April 24 1857
S. Leland
Clerk

[12437-13]

Stirling Hydraulic Co
ads
Wilson and others

This is a suit in Chancery the Complainants ~~filed~~ expected to dft Stirling Hydraulic Co deeds of certain lots in ~~Stirling~~ Stirling in Sect that in and the Stirling Hydl Co should by a before the 1st day of Oct 1855 complete a dam at Stirling and a canal & head race therewith, then the lands were to be conveyed to the said Company in fee

The ~~dft~~ built a dam cast which there is no real question and completed it by the 1st day of October 1855. A head race was also built a portion of the head race which the Co built was not completed ~~until~~ until after the 1st Oct while a ~~dam~~ it is the intention of the Company still further to extend this race — but on the 1st Oct 1855 a small part of the head race had been completed which including the flume between an abutment on the shore and a pier at the end of the dam from which the race takes, of the race was by timber down stream was something over ~~50~~ 50 feet long — across this part of the head race a ~~canal~~ bulk head had been built. this bulk was not strong enough to withstand the press of a freshet and about the 1st of Oct a portion of it had been carried away. this was promptly repaired by the Co and is now good & better now —

The Complts have filed this bill for an injunction stating that the conveyance of the lots

5/12/37-11

to the Co. The Co answer denying all
right & equity upon their right to the
lots as a purchase and set up an Agreement
between the then citizens of Italy and persons
who were to locate such lots upon which agreement
was signed by most of the Complts whereon they
agreed to build a dam by the 1st Oct 1855
(which dam was also provided by said Act
and in which they were said about two
feet) Provided that the Co should receive
of $150 00

The grounds set out by the Complts in
their bill for an injunction are two they are
that the dam was not built at Italy but 250
feet from it

That the head race was not built to
the true line mentioned in the Act dated
Oct 1st 1855

A large amt of testimony was taken by
both parties directly & especially to the point whether
or the dam was a good one, the Complts having
alleged in their bill that it was not, but
testimony established beyond all question that the
dam was a good one and that was not controverted
on the argument.

The whole testimony does not in any respect
tend practically to conflict with the facts as to the
head race and as I have above stated & there
is also to the tail head

In regard to the location not a great
deal of evidence was given the diagram or map
which accompanies the depositions together with

the testimony of Bushnell and I think Lewis there where the dam was located that it was located near the town line of the original town of Shelby as originally laid, & within about 50 feet from the termination of that of said town and that the Rail Road depot was near the dam extending still further down Stream. Some evidence was given that at a meeting of the citizens a location somewhat further to the East was agreed upon & talked of

But the only question under the pleadings in respect to this matter is was the dam located at Shelby I do not see how under the pleadings it can be regarded as any where else - it is to be remembered that the petitioners in error if it did not so locate the dam proved it does not appear but that the location of the dam is the best that could be got and the location talked of is by letter and I conclude that the meeting could not prevent the directors of said Corporation locating the dam in the best location they could & such location might have been the opinion of the meeting

Was there a hearing on the 1st Oct 1855. There was not a jury returned or called for the purpose of this suit I insist there was one The docket entry will observe by its condition and provision was not as particular in respect to

12487-118

the race as in regard to the dam to form size or dimension to the race and by the deed required it was simply to be a canal or head race.

Many of the witnesses and of the opinion that there was a head race there that is channel or canal formed by the abutment or embankment and piers of the other was a head race like some other witnesses whose opinions and testimony that there was no head race but that the thing now was regarded by them as

A head race I take to be a passage of water or canal used for the purpose of conducting water from the pond above to the machinery below the dam. From the depositions we from the several witnesses taken by this examination I think there was a head race by the first canal formed by appendix A on the diagram accompanying the depositions the one marked B first named shows the condition of the race Oct 1st 1855 and by that you will perceive the race then built was 100 feet across and something over 50 feet up and down the river. the part of the diagram marked B shows what the race was to be when finished and how as it now appears.

We suppose it to be necessary to show the proper advantage for this race we could be obliged to show that it was then capable without any further addition of being used for Hydraulic purposes and was then passed

of ~~town~~ Broadford Works, that a large quantity of machinery ~~owned~~ ~~to~~ the property of the Co and mine work have been flooded that they could have all been prevented by the water in the race without any further expense & that the shaft could not only be reclaimed but ~~could~~ be used in future with little expense if it were properly secured

In connection with this you will see the Original Agreement made by the parties that only £1500 was contributed by the Co to the works when the proof shows that on the 1st Oct 1855 £2500 had been expended on the works This fact & the Story Evidence that the condition of the first deed had been complied with on the 1st Oct 1855 in respect to the race as well as in respect to the other walls

A large amt of Evidence was given in respect to the brick head and incident which happened about the 1st Oct 1855. The brick head is probably a part of the head race, it was skilfully built but was not strong enough and the Co were obliged to strengthen it which it appears they did very effectually. The duration of the Partnership of the head race or brick head is not provided for in the trust deed nor do they or either in good faith in respect to it, it appears to me that they are not to

£ 10437-116

to be held in a Court of Equity to protect valuable rights for a mere trifle while ~~the~~ counsel is trying to see and which they properly retired.

It appears to me that these conditions in this last deed, and in regard to the matters in dispute mentioned therein and subsisting a contract which somewhat appears complicated by the company and that ~~the~~ the contractor ought to be stated against the ~~Co~~ Co'ys and ~~Liberty~~ Liberty towards the Co

I hold the position of the Co in my suit to this Co, to have been that of purchasers paying a fair & full and complete consideration for the same, and that even ~~on the~~ giving the Co'ys the benefit of all they claim the most of the purchase price had been paid on the day and a very inconsiderable part remained to be ~~paid~~ due in such case Courts of Equity will disregard mere technical objections of priority and will compel a specific performance of the contract see 2 Fish Rep. 334 & 11 Hare 666. in this case the purchase price had not only on the hypothesis that the position of the Co'y and rights paid almost the entire purchase price before the day of payment but on their accepting from the Liberty and it being true that the Co'ys ~~have~~ are under to the Co

who had sold the Citizens purchase price of their land

the way they expected to realize the enhanced value of their land by the erection of the dam and the improvement of their water power the Corporation there was an advance of two fold in the value of their lands after the completion of said works and it is clear that the loss of a few days storms or labor in the completion of the works could not reasonably have affected those prices

I think this fully sustains the position that the Company is responsible and I refer for that reason See 2 Story Equity Jurisprudence 1319. 4 Johns Chan Rep 431

L 10487-117

Watson
v
Staley Hyde & Co

Statement of
the case

Supreme Court

Shirley Hydraulic Co et al
appellants

and

Robert L Wilson et al
appellants

Mr Pk for appellees submit an additional suggestion to which is confined to the written Statement on file

I understand it is made a question whether the word used as a stand for watering the dam was made before that the dam in question had no sluice in it

This is an entirely new point Being urged for the first time in this Court and if waived does not appear at all in the Record

Pltffs bill makes no allegation that there is no sluice in the dam and does not charge relief for that reason

It says that dam was originally an unskilful structure and not at this point thereby where it should have been built and that the head race was not complete in time but no allegation is to the bill that there was no sluice

Moved to strike from the Record and file to find any words that the sluice was not

§ 1243-1187

built and presume there is no such Ordinance and it appears to me that this new point is not only taken at too late a day but is unsupported by the Record

And this been made a point below we would have instructed, to have destroyed its force we would have decided against, but his rights. here for the first time we are deprived of any opportunity of meeting the Point

The Point itself is merely technical and if the Court should not settle them today unless this Court intends to bind its Jurisdiction to exist a perpetuity, which I have not seen by inspection of this day as yet the State is not a necessary part of the Corporation to constitute a due; it is necessary perhaps to protect the franchise of the Company for perpetuity but can be supplied at any time before proceedings further proper are commenced and until perpetuity of this franchise the Corporation get all the benefit they stipulate for

I do not permit on the argument of this cause and out of kindness & courtesy for the talents of opposition I wish to submit these suggestions as I am more accurate with the whole case than I suppose the

Counsel who argued it cited
by Mr. Wright
for appellee

[12487-119]

117

Sup Court

Robert L Wilson
& others Appellants

v

Sterling Hyde & Co
and others
Appellees

Points for Appellees
Ide Wright

R. L. Wilson et al.
vs
Sterling Hydraulic Co
&
John Galt.

This is a bill filed praying an injunction against defendants. The answer & replications are filed and depositions taken on both sides & by the last stipulation of the parties the cause is to be finally heard on this application.

The bill charges that complainants executed & delivered to John Galt certain trust deeds conveying certain lots in the town of Sterling on condition that the Co build & complete a good and sufficient dam and a head race or canal on the west side of the river at the town of Sterling on or before the 1st day of October 1853.

The answer of the defendants repudiates these Trust Deeds, and claim that they are entitled to a conveyance of the Lots by virtue of an agreement signed by the parties & delivered to them and made part of their answer & contend that they were not parties to the contract between complainants & John Galt and are not bound by the conditions of the Trust Deeds. The conditions in both instruments are substantially the same except as to the canal or headrace. This is a cu-

(2487-120)

diction in the Deeds and not in the original agreement — The first question then is by which instrument are the rights of the parties to be determined —

Rufus De Gamo testifies that Hugh Wallace was President of the Hydraulic Co, that he prepared the draft for the Trust Deeds & that he, (the witness) prepared the Trust Deeds from the draft furnished by Wallace —

John Demmet testifies that he was a member of the board, and alludes to the time when the deeds were accepted by the Company at a certain meeting of the Board — These facts go to prove that the Trust Deeds were made executed & delivered by the consent of the Company & that the form of them was accepted by the Company —

Another fact (which is an act of the Company) goes far to establish the position taken by complainants, which is, the giving the notice contemplated by the Trust deeds, in a public paper that they would apply to the said John Galt, for a conveyance of the Lots — If they repudiate the Trust Deeds, why did they give this notice? why do they not seek their remedy under the original agreement —

This fact, taken in connection with the testimony of De Gamo & Demmet satisfies me that the Trust Deeds were made by the Grantors to the accepting

of the Hydraulic Co — The conditions in the said deeds then operate as a covenant on the part of the defendants —

It has been held by our supreme Court that when a deed is executed with conditions & accepted by the other party that this is a covenant on the part of the grantee that he will perform on his part the conditions of the deed —

The next question is then, have the defendants performed the covenants on their part to be kept and performed —

In considering this question I must regard this contract between the parties as a contract of sale and purchase — One party agrees to sell & convey by a certain time and for a certain consideration, the other party agrees to pay the consideration by a certain time — The consideration was the expenditure of fifteen thousand dollars by the defendants in the construction of a dam and head race on Rock River at the town of Sterling — The evidence proves that the consideration has been paid & that by the time fixed (Oct. 1st) ten thousand Dollars more than the sum agreed upon had been expended by the Co in their works — & that the other party were receiving the consideration in the increased value of their Lots, the Lots having increased

[13437-12]

in value from fifteen to thirty to four or five hundred dollars — But it is contended that the dam and head race or canal was not completed by the time fixed in the contract — The evidence shows that the dam was completed on Oct. 1st and was a good and sufficient dam, & this fact was admitted in the argument, but that the head race or canal was not completed at the time fixed by the parties

Was time material in this contract? It has frequently been held by our own and other courts, that in equity time is not material or of the essence of a contract unless made so by the parties — In the case of Adams and others vs Sullivan (2d Gilman 334) the Court says, "that time is not necessarily deemed of the essence of the contract in "equity and Courts of equity are frequently "called on to relieve when the terms of the "performance & completion of the contract have "not in point of time been strictly complied with" — In this case the time fixed was the 9th day of June — There was no formal tender of performance until August following — yet the court say that this lapse of time is not material and "deem a specific performance — In the case of Glover vs Patten (1st Illinois. Reports 666) the court holds the same doctrine as above as to time but in this case a

period of fourteen months, had elapsed before a formal tender of performance was made, yet the Court held that Glover had a right to a conveyance and decreed a performance

In the case before the Court the evidence shows, that the Hydraulic Co were prosecuting their works with vigor and that at the time fixed in the contract their entire works were approaching completion, and that during all the time they were acting in good faith. Under such circumstances I think it would be violating rules of equity and overturning the decisions of our Supreme Court to hold them to the exact time, fixed in the contract —

But aside from the above considerations I think it may well be questioned whether the defendants have not complied with their covenant as to time — On this point however the testimony is very conflicting — The language of this part of the condition or covenant is, "and a head race, or canal on the west side of the river —

The from time or dimensions of the canal or race is left entirely indefinite and whether it was so left because the parties could not agree on its dimensions or whether they intended to leave it entirely to the discretion of the Co or whether it was intended in this particular way to fix its locality is only matter of speculation

The testimony of those best acquainted

S 12437-132

with the work that forty six feet of the head race or canal was completed by the first of October, & that power was thereby created sufficient to drive a large amount of machinery — as to the amount of machinery capable of being driven at this time the evidence varies and ranges from ten to one hundred runs of stone

I am inclined to the opinion that it was to be left to the discretion of the company as to the size or extent of the race — and if this is so then the Co have complied both as to dam & race within the time fixed in the Deeds —

If this construction is not given to it then who is to regulate it & what is to be the limit of it — I think it would not do to say, that a head race that will exhaust the whole power should be completed by the time fixed — This would be imposing a monstrous burthen on the Co, which would result in no practical benefit to the Grantees in their deeds.

If the race is completed as fast as power is called for or the wants of the country demand, I think it is all the parties are entitled to under their contract. The Co have shown their good faith by their acts — since the 1st Oct, they have been extending their race

and were only stopped by the cold weather in December at which time the canal was about three hundred feet in length.

I have examined the other points made by complainants but cannot consider them well taken — I think the dam is located at the town of Sterling as it was at the time the contract was made & is at or near to, as the town now is —

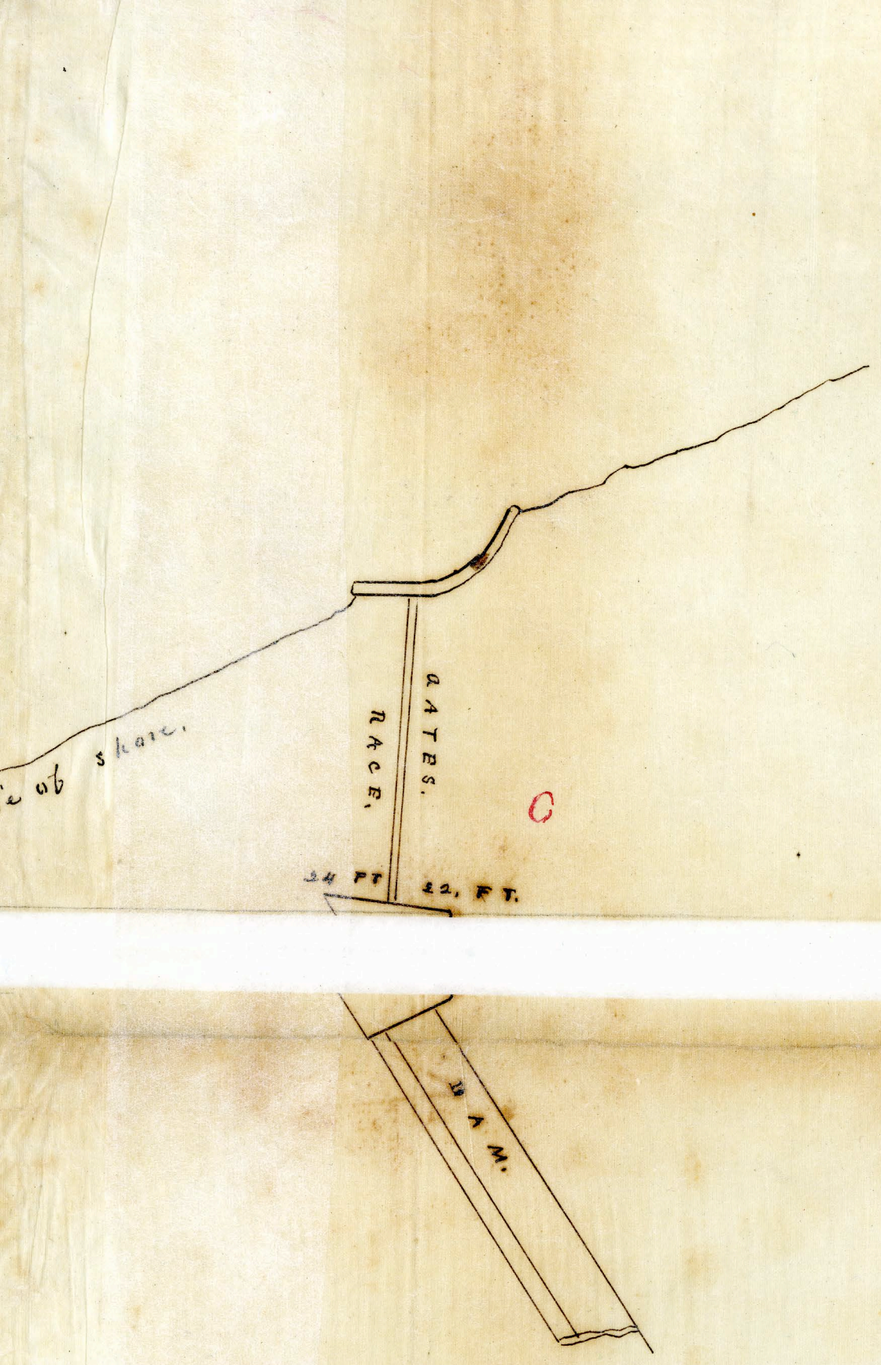
I think it a fair contract and one that should be enforced. The Co have expended their money in good faith, in developing the water power at Sterling, and the other party have received their consideration for their property in the greatly increased value of their Lots —
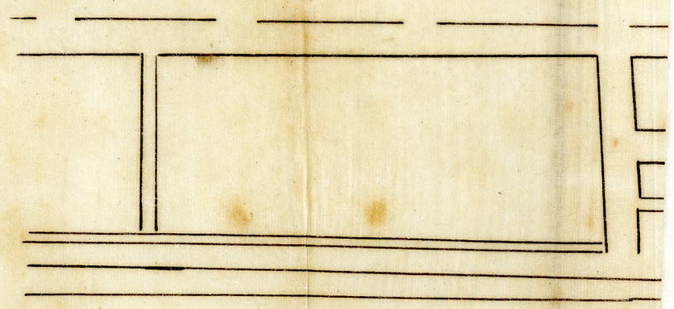
The parties must be held to their contract.

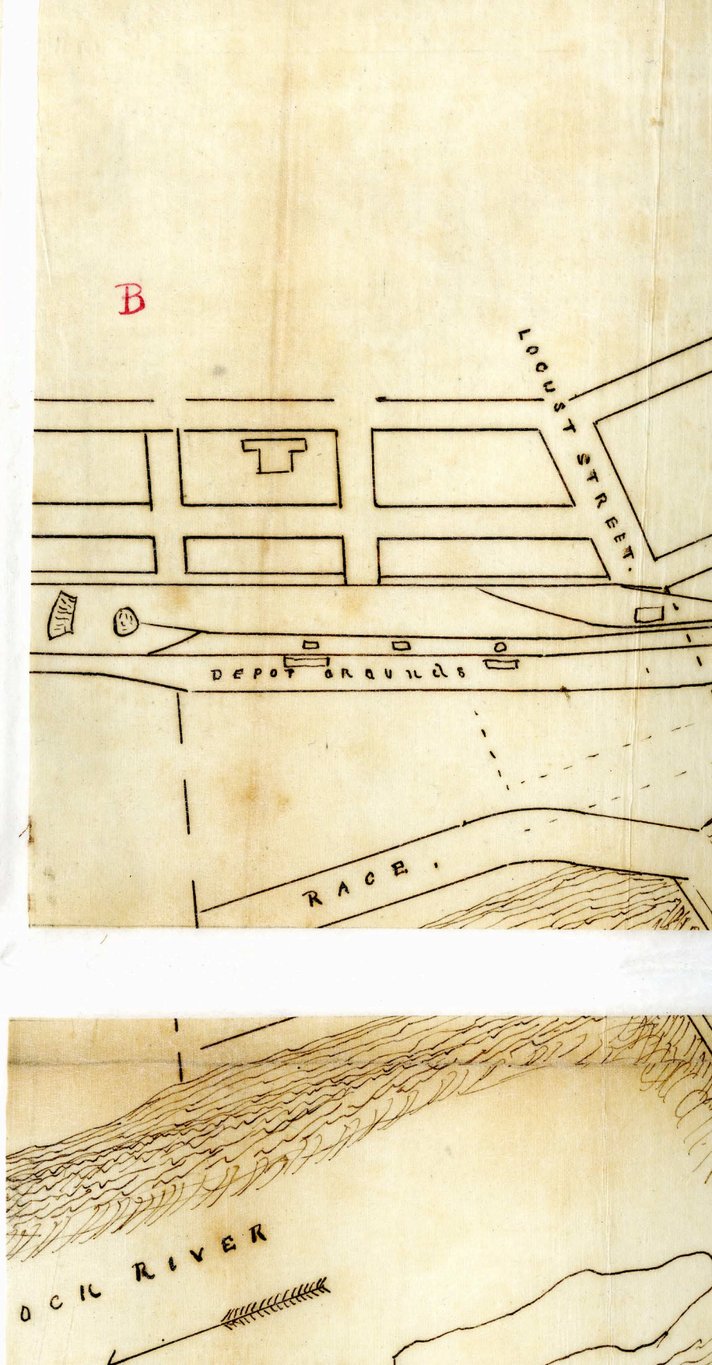
as by the agreement this is a final hearing, the order will be that the injunction is refused and the Bill dismissed —

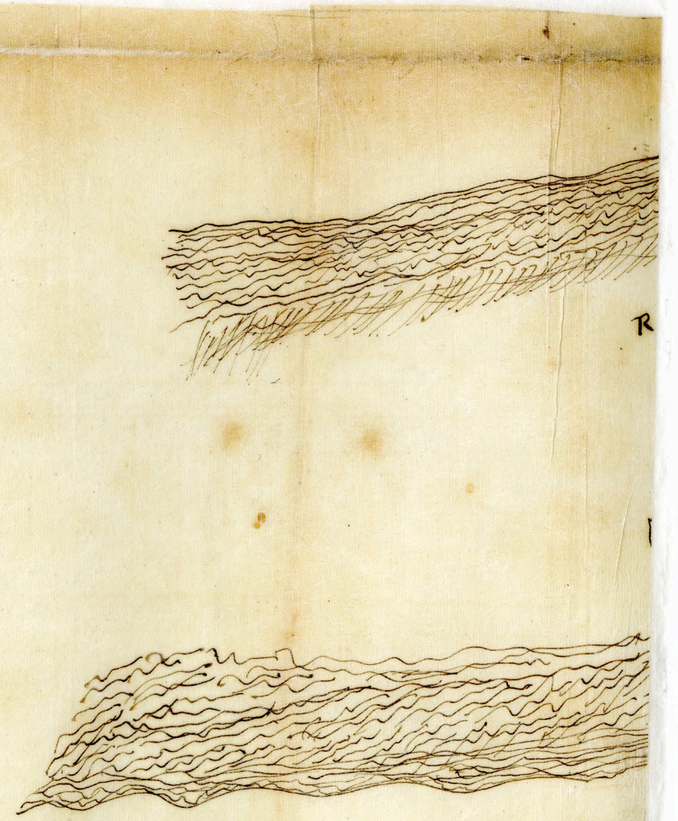
(Signed) D. M. Dewey —

R. L. Mitchell
vs
Sterling Hydraulic Co
Opinion
of
Judge Drury


C
RACE.
GATES.
24 FT.
24 FT.
WAM.




B
LOCUST STREET.
DEPOT GROUNDS
RACE.




ROCK RIVER

B

LOCUST STREET.

DEPOT GROUNDS

RACE.

Rock River.

DAM.

ROCK RIVER

Rock River.

PLAN OF STONE DAM.

A

A

LINE of Backing

4 X 6

12 X 14 = 10 X 10

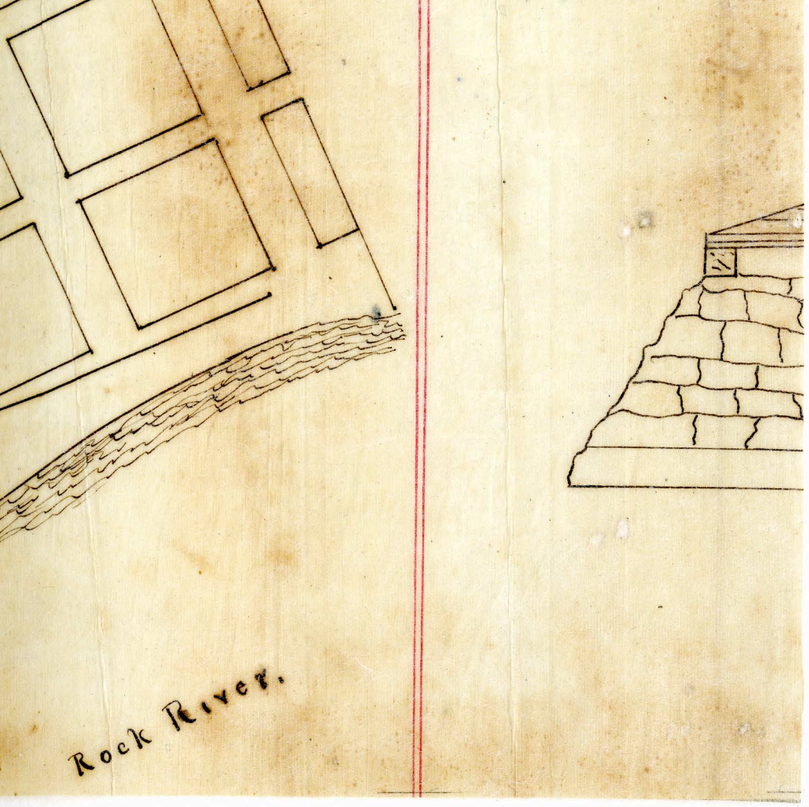
12 X 12

STONE SECTION

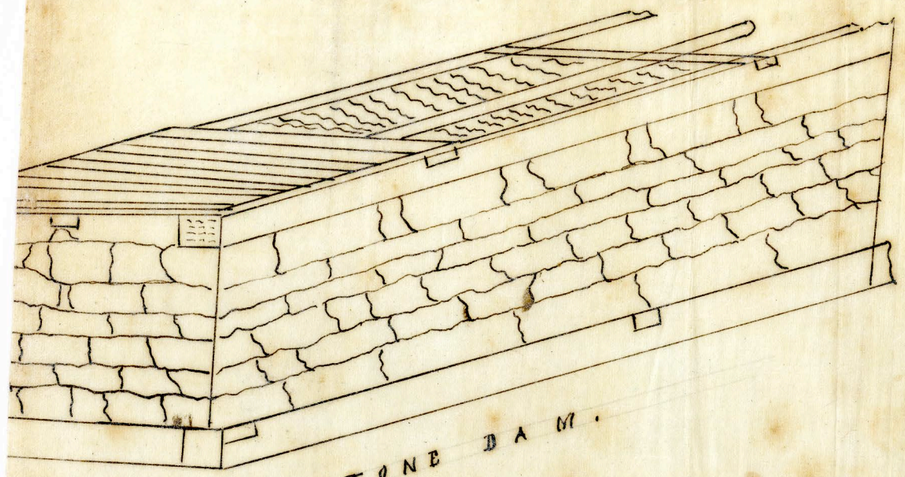
A

Timb

er WORK IN DAM.

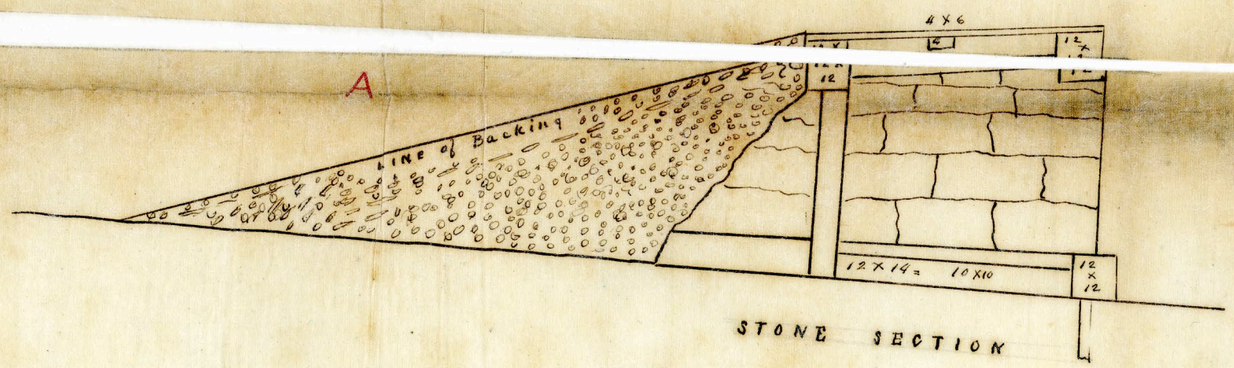


Rock River.



PLAN OF STONE DAM.

A



STONE SECTION

