

No. 13889

# Supreme Court of Illinois

Haines.

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vs.

Brower.

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71641  7

Plas to a term of the County Court  
begun and held at the Court house  
in the City of Irvine, within and for the  
County of Izard and State of  
Missouri the Third Monday of the month  
of January in the year of our Lord  
One Thousand eight Hundred  
and Fifty Eight, it being the eighteenth  
day of said month before the  
Honorable John W. Bush Judge  
of said County Court

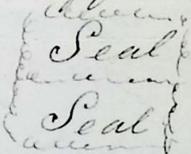
Be it Remembered that on the 1st day of  
January in the year of our Lord  
one Thousand eight Hundred and Fifty  
Eight Peter A. Brewer filed a  
Transcript. Appraisement and others  
Papers in the words and figures following  
to wit:

Appraisement  
of Bonds, " Know all men by these presents that we Peter A.  
" Brewer and Peter Weyrich are held and firmly  
" Bound unto James A. Coines in the penal sum  
" of one hundred and Twenty Seven Dollars Lawful  
" Money of the United States for the payment of which  
" well and truly to be made we bind ourselves our heirs  
" and administrators jointly Severally and firmly  
" by these presents. Witness our hands and seals this  
" 20th day of November 1857. The condition of the

" above obligation is such that whereas the said  
" James Haines did on the 18 day of November  
" 1857. before Mr Tackaberry a justice of the peace  
" for the County of Tazewell recover a judg-  
" ment against the above bounden Peter A. Brower,  
" for the Sum of Sixty Three Dollars <sup>3/100</sup> debt and  
" from which judgement the said Peter A Brower  
" has taken an appeal to the County Court of  
" the County of Tazewell aforesaid and State  
" of Illinois. Now if the said Peter A Brower  
" shall prosecute his appeal with effect and  
" shall pay whatever judgement may be rendered  
" by the Court upon dismissal or trial of said  
" appeal then the above obligation to be void  
" otherwise to remain in full force and effect

P. A. Brower

P. Weyhrich



Approved by me at my office in Peekin  
" the 20<sup>th</sup> day of November, 1857,

Mr Tackaberry, J. P.

" State of Illinois  
" Tazewell County  
" The people of the State of  
" Illinois to any Constable of  
" said County Greeting,

" You are hereby commanded  
" to Summon P. A. Brower to appear before me at  
" my Office in Peekin on the 18<sup>th</sup> day of November 1857  
" at one O'clock P. M. to answer the complaint of

" James Haines Treasurer of Mississippi and Orabash  
" Rail Road Company for a failure to Pay him  
" certain demand not exceeding one hundred dollars  
" and hereof make return to me according to Law  
" Given under my hand and Seal the 10<sup>th</sup> day of  
" November 1857

W. Tackenberg, J. P.

On which was endorsed the following return, to wit:  
" Served the within writ by reading the same  
" to Peter A Brower. Nov 11<sup>th</sup> 1857

Wm A Tinney, C. J. C.

James Haines

Transcript

vs

" P. A Brower November 10<sup>th</sup> 1857 Suit on a  
" Note given by defendant for \$50.  
" date August 1<sup>st</sup> 1853 due 60 days from day  
" from date. Summons issued to Tinney C. J. C.  
" returnable on the 18<sup>th</sup> day of November 1857 at  
" One o'clock P. M. Summons returned endorsed  
" Served by reading to defendant November 10<sup>th</sup> 1857  
" Wm A Tinney C. J. C. Cost 25, November 18<sup>th</sup>  
" 1857 one o'clock P. M. defendant made default  
" and judgement rendered in favor of Plaintiff  
" against said defendant for sixty Two Dollars  
" and Fifty Two Cents debt and costs of suit.

Justice 56

C. 25

Bond Transcript 75  
156

Nov 20<sup>th</sup> 1857,

A Bond for an appeal to the County Court  
approved this day.

State of Illinois  
Pagewell County I certify that the foregoing  
is a correct Transcript of  
all Proceedings had before me in the above entitled  
Cause Given under my hand and Seal the 20<sup>th</sup> day  
of December 1857

Mr Jackson J. P.

And now afterwards To Wit: on the 1<sup>st</sup>  
day of January in the year of our Lord One Thousand  
Eight hundred and Fifty Eight. The Clerk Issued  
an appeal Summons in the words and figures  
following to wit:

State of Illinois  
Pagewell County The people of the State of  
Illinois to the Sheriff of  
Said County: Greeting

We Command you that you Summon James  
Haines if he shall be found in your County person-  
ally to be and appear before the County Court of  
Said County on the first day of the next term  
thereof to be held at the Court House in Pekin  
in Said County on the Third Monday of January  
next to prosecute his Suit against Peter A.  
Brower. Late appealed from before Mr. Jackson  
And have then and there this writ with

Appeal  
Summons

" endorsement thereon in what manner you shall  
" have executed the same

" { S. S. } Witness John Gridley Clerk of  
" Our Said County Court and the  
" Seal thereof at the City of Pekin  
" the 1<sup>st</sup> day of January A.D. 1858  
" John Gridley, Clerk County Court  
" per Erastus Phelps, Deput  
" Which Summons was returned on the 14<sup>th</sup> day of  
" January A.D. 1858. Enclosed. Served by reading  
" to the within named James Haines Jan 5<sup>th</sup> 1858  
" C. Williamson S. J. C.

And now afterwards to wit: at a Term of the  
County Court began and held at Pekin within  
and for the County of Page well and State of  
Illinois on the Third Monday of the Month of  
January One Thousand Eight Hundred and  
Fifty Eight Present. Hon John M. Bush  
Judge. C. Williamson, Sheriff. John Gridley  
Clerk. The following proceedings were had to wit:

Wednesday February 3<sup>rd</sup> 1858  
James Haines }  
vs } Appeal  
P. A. Brower }

And now on this day came  
the Parties by their Attorneys. Whereupon

" Came a Jury of Twelve Good and Lawful  
men to wit: William Dixon Robt. Thompson  
Joel Jones Lucius Case David Williams  
J. B. Peeres Wm. F. Roberts Jonathan Hall  
William Eagle S. L. Thomas Joseph Stewart  
James Hamson, who having heard the allega-  
tion and proof of the Parties and arguments  
of Counsel thereon. for Verdict Say We the  
Jury find for the Plaintiff in the Sum of  
Sixty Three <sup>00</sup>/<sub>100</sub> Dollars

It is therefore ordered and adjudged by the  
Court that the Plaintiff Recover of the Defen-  
dant the amount found as aforesaid  
and Likewise the Costs and Charges by him  
about his Suit Expended and That Execution  
be Issued therefor

Thereupon the Defendant  
prayed an appeal. It is therefore ordered  
by the Court that the Defendants have leave  
to file Bond in Twenty days with Peter  
Weybrieh as Security, in the Sum of One  
Hundred and Fifty Dollars

And now afterwards to wit: on  
the Third day of February in the Year One Thousand  
Eight Hundred and fifty Eight Come the Defendant  
by his attorney and filed his bill of Exceptions  
in the words and figures following to wit:

" James Haines Treas. } Jaywell, Co, Court.

" Miss & Wabash R.R. Co }

" AS

" Peter A. Brower }

" Be it remembered that  
" on the trial of this cause the plaintiff read and  
" gave in Evidence the note sued on in in these  
" words

" \$ 50 <sup>00</sup>

No. 51

" Office of the Mississippi and Wabash Rail Road Company

" Pekin 1<sup>st</sup> August 1853

" Sixty days after date I promise to pay to the  
" order of James Haines, Treasurer of the Mississippi  
" and Wabash Rail Road Company Fifty Dollars  
" at the Banking House of Rupert Gill and Compa-  
" ny in Pekin for Value received

" P. A. Brower

" And rested his cause

The Defendant then called  
" James Haines the Plaintiff in this suit (Under the  
" Provision of the Statute) who was duly sworn and testif-  
" iced that he was present when the Wabash and Missi-  
" sippi Rail Road Company was organized, that  
" one William B Doobittle then presented the  
" Subscription of the Defendant to within with  
" many other subscribers of Pekin to the capital  
" stock of said Company for \$1000. dollars and  
" then paid for said Defendant the 5<sup>th</sup> cent

" thereon being \$50 dollars, and thereupon as the  
" Proxy of Said Defendant he thinks by Virtue of  
" a power of attorney (voted the Stock of Said  
" Defendant in the Election of the Officers of the  
" Said Company, Said Doolittle had a power  
" of attorney from most of the Petkin Subscribers  
" think from Brewer but cant say positively, the  
" power of attorney is in the hands of John Gridley, now  
" or ought to be. This organization was in June  
" 1853 and that the Witness let Doolittle have the  
" of \$50. dollars to pay Said first instalment of \$50.  
" dollars so paid by him at the time of the Election  
" That Witness was at that time Elected the Treasur-  
" er of Said Company and that afterwards and  
" after the date of Said note the Said Doolittle  
" Brought to Witness the note now sued upon  
" and paid or delivered it over to him as so  
" much of the Capital Stock of Said Company,  
" paid in, and the same was immediately credited  
" to the Company on his Books as Treasurer, and  
" the witness was immediately charged therewith as  
" so much cash on Said Brewer's Subscription  
" and issued and delivered to the Said Doolittle  
" for Said Brewer, or to Said Brewer receipt of and  
" for the Payment of so much on his Subscription  
" to the Capital Stock of Said Company That this  
" note was given by Brewer as payment of or in Lieu  
" of the first payment of Defendants Subscription

to the Capital Stock of Said Rail Road Company  
The defendant then offered to prove by  
the witness that the City of Pekin made a  
Subscription of a hundred thousand dollars  
for Stock of the Company and advanced  
City Bonds of five thousand dollars as the  
first payment and that after the pretended  
organization of the Company, this payment  
was returned to the City? To the giving of which  
evidence the plaintiff objected and the Court  
sustained said objection and ruled and  
decided that said evidence should not be  
admitted. To which ruling and decision the  
defendant by his counsel then and there  
excepted. The Defendant then called John  
Gridley who testified that he was now  
Secretary of the Mississippi and Babash  
Rail Road Company and that in the years  
of 1853 & 1854, he was Treasurer of the City  
of Pekin he produced the Subscription  
book of said Company from which it appeared  
that one B Kellaggy Jr. subscribed seventy  
five thousand dollars for Stock to said  
R R Co and that D P Henyon subscribed  
for twenty five thousand dollars of Stock  
to the said Company and he testified that  
they paid the first payment of five percent  
on their respective subscriptions to the

11 Treasurer of the Co (Plaintiff in the Suit)  
11 That Shortly after the organization of the  
11 Company Said Subscription was transf-  
11 erred by Kellogg & Kenyon to the City of  
11 Pekin and the five per Cent so paid by them  
11 was returned by the Company to the City on  
11 the City giving the Company a bond  
11 which is not in possession of the Witness  
11 but is in the possession of the Plaintiff in  
11 the case who is Treasurer of the Company,  
11 That witness got the money for the City on  
11 Checks drawn by Witness on the Plaintiff  
11 as Treasurer of the Company. witness further  
11 Said that he was not sure the bond had  
11 been delivered to the Plaintiff  
11 All the above Evidence of John Grierley  
11 was objected to by the Plaintiff and the  
11 Plaintiff duly excepted.  
11 That the above was all the Evidence given  
11 upon the trial. The Court at the request  
11 of the plaintiff gave the Jury an instruction  
11 in these words, That the note itself is  
11 prima facie Evidence that it was given  
11 for a valuable Consideration and that the  
11 burden of proving a want of Consideration  
11 therefore or a failure of the Consideration  
11 therefor is thereon by Law upon the Defendant  
11 and that unless they believe the Defendant

Consideration and no action can be maintained  
upon it, which instruction the Court refused  
to give, to which decision of the Court the  
Defendant did then and there Except  
The defendant asked the Court to instruct the  
Jury as follows, That if they believe from the  
Evidence that Seventy five thousand or a hundred  
Thousand dollars of the Stock was subscribed  
not with interest that such Stock should  
be taken but only to enable them to organize  
No 5 and that the Company have voluntarily return-  
ed the Money paid upon it That would be  
such a fraud upon the other subscribers  
as would release them from their subscriptions  
Which said instructions the Court refused to give  
in that form and without material modification  
to which refusal of the Court the defendant did  
then and there Except.

The Court was also request-  
ed by the defendant to charge the Jury as  
follows. That the alterations made in the  
Charter of the Company since the defendant  
subscribed to its Stock are of such a character  
as to release the defendant from his subscrip-  
tion and the payment of the note unless the  
Plaintiff has proved that the Defendant assen-  
ted to such alteration of the Charter, which  
instructions the Court also refused to give

" To which decision of the Court the defendant  
" did then and there duly Except

" The defendant also asked the Court to  
" instruct the Jury as follows

" That unless the Plaintiff has shown that the  
" Company have commenced and prosecuted  
" the building of their road as required by  
" their Charter they must find for Def. Which  
" said instructions the Court refused to give

" To which decision of the Court the defendant  
" then and there Excepted

" The Court on his own motion in lieu of the  
" instructions above marked (No 3) instructed  
" the Jury as follows

" That if they are satisfied  
" from the evidence that the Note was given  
" on account of the Subscription for Stock  
" to the M & W R. R. Co that then they must  
" find for defendant provided the Evidence  
" Shows the organization to have been promptly  
" effected. To the giving whereof the  
" Defendant duly Excepted.

" And the Court also of his own <sup>Motion</sup> Modified the  
" instruction above (marked No 5) by adding  
" after the words "voluntarily" when the  
" same occur therein the words "and without  
" Consideration" to which modification  
" the defendant also Excepted

" the Court also on motion of the defendant  
" gave to the Jury the following instructions which  
" were each severally objected to by the Plaintiff  
" Counsel and to the giving of each of which  
" the Plaintiff duly Excepted, to wit:

1<sup>st</sup> " That if they believe from the evidence that  
" Mrs Doolittle advanced the amount of the  
" Note for Defendant to the Company that  
" then the plaintiff cannot recover upon it.  
" That <sup>there</sup> in such case the action should be  
" brought by Doolittle for money paid  
" to the use of Defendant "

" And the defendant prays that his  
" bill of Exceptions may be Sealed and  
" entered of Record. Which is done.

John M. Bush *[Signature]*  
Co Judge Payne, &c

And now afterwards, to wit: on the Third day  
of February in the Year of Our Lord One Thousand  
Eight Hundred and Fifty Eight come the Defend-  
ant and filed his power of Attorney Given to  
Mrs B. Parker. in the words and figure following  
to wit:

I hereby constitute and appoint

" Open B Parker My true and Lawful attorney  
" for me and in my name to Execute any  
" necessary appeal Bond or other Paper which  
" may be necessary or proper to Enable me to take  
" an appeal to the Supreme Court from a judy-  
" ment rendered against me in the Tazewell  
" County Court in favor of James Haine Treasre  
" &c against me

Dated 3 February 1858

" Witness

" A. L. Davison.

P. A. Brower <sup>seen</sup> L.S.

And now afterwards to wit: on the Eighth  
day of February in the Year of our Lord  
One Thousand Eight Hundred and Fifty Eight  
came the Defendant by his attorney and filed  
his appeal Bond in the words and figures  
following, to wit:

" Know all men by these presents  
" that we Peter A Brower and Peter Weyhrich  
" of the County of Tazewell and State of Illinois  
" are held and firmly bound unto James Haines  
" also of the Same County and State in the penal  
" sum of One Hundred and fifty Dollars. (Sum  
" fixed by the Court) Current Money of the United  
" States for the payment of which well and truly  
" to be made we bind Ourselves Our heirs execu-  
" tors and administrators jointly severally and

" and firmly by these presents.

"  
" Witness our hands

" and Seals this 8<sup>th</sup> day of February A D 1858

" The Condition of this obligation is such where-

" as the said James Haines, did on 3<sup>rd</sup> day

" of February A D 1858 in the County Court in and

" for the County and State aforesaid

" recovered a judgement against the above

" bounden Peter A Brower for the sum of Sixty

" Three <sup>7</sup>/<sub>100</sub> Dollars Damages and Eleven <sup>3</sup>/<sub>100</sub>

" Dollars Costs from which said judgement

" of the said County Court the said Peter A

" Brower has prayed for and obtained an

" appeal to the Supreme Court of said State

" Now if the said Peter A Brower shall duly

" prosecute his said appeal with effect and

" shall moreover pay the amount of the judg-

" ment Costs and interest and Damage rendered

" and to be rendered against him in case the

" said judgement shall be affirmed in the

" said Supreme Court then the above obligation

" to be void otherwise to remain in full force

" and virtue.

" Taken and Entered

" into Before me at my

" Office in Pekin this 8<sup>th</sup>

" day of February A D 1858

Peter A Brower L.S.

By W<sup>m</sup> B Parker L.S.

Peter Wehrich L.S.

Geo Grubley Clerk, Peter A. Brower Seal

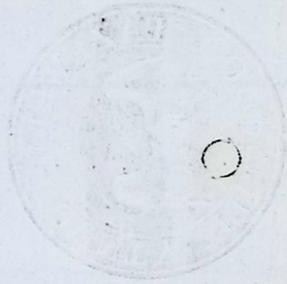
State of Illinois  
Pope County

I John Gridley Clerk of  
the County Court within and for said County  
do hereby Certify that the foregoing sixteen pages  
contain a true and perfect copy of all the papers  
and the Record of the Proceedings had in the  
Cause therein named as the same appears of Record  
in my Office.

Witness John Gridley Clerk of  
the said County Court and the  
Seal thereof hereto affixed at Pekin  
this 5<sup>th</sup> day of March A.D. 1858.

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James Hains  
vs  
P. A. Brown



Complete Record

~~27/5~~

Filed May 5, 1858  
L. Leland C. B.

send bk to ~~Patterson~~  
Judt 1/6 3u 0 2  
Dy 0 8 6 30

Rec ~~147~~ 5.10

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