

No. 12447

Supreme Court of Illinois

Chicago, Burlington & Quincy
R. R. Co.

vs.

Minard, et al

137. 136 = 154

The Chicago Burlington &
Quincy Rail Road Co.

vs

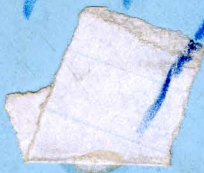
Elias Minard &
Charles C. Parker

Opinion

136

1858

12447



X
Prepared

1
State of Illinois vs Phas vs the Honorable
Sadler County vs Medison E. Hollister Judge of the
north judicial district of the State
of Illinois and the presiding Judge of the Sadler
County Circuit Court at a term of said Court
commenced and held at the Court House in
Attene in said County on the second Monday
in the month of June the term being the eighth
day of June in the year of our Lord one thousand
eight hundred and fifty seven and of the Independence
of the United States of America the eighty first
Present

The Honorable Medison E. Hollister Presiding Judge

John S. Nash Clerk

Washington Bushnell State Attorney

E. L. Waterman Sheriff

It is remembered that on the 4th day of May AD
1857 a bond for an appeal was filed in the office
of the Clerk of said Court in the words and figures
following to wit:

"Know all men of these presents
that in the Chicago Burlington & Quincy Rail Road
Company as principal & David S. Hough as security
an bond of firm bond with Elias Meinaud &
Charles E. Post in the penal sum of one hundred
& twenty five dollars. Saufed money of the United
States for the payment of which bond & duty to be
made in kind over to our heirs & administrators
jointly severally & firm of these presents. In witness
whereof Amos T. Hall Secretary of the said Chicago
Burlington & Quincy Rail Road Company has
hereunto set his hand & affixed the Corporate Seal
of said Company & the said David S. Hough has
hereunto set his hand & seal this day of April
AD 1857.

2
The Condition of the above Obligation is such that
whereas the said Elias Meinard Schaefer & Co
did on the 18th day of April A.D. 1857 before John Reid
a justice of the peace for said County of LaSalle render a
judgment against the above named Chicago, Burlington
& Quincy Rail Road Company for the sum
of forty nine dollars & seventy one cents & cents of said
sum which judgment the said Chicago, Burlington
& Quincy Rail Road Company has taken an appeal
to the Circuit Court of the County of LaSalle of said
and State of Illinois. Now if the said Chicago
Burlington & Quincy Rail Road Company shall
prosecute its appeal with effect & shall pay whatever
judgment may be rendered by the Court upon
dismissal or trial of said appeal then the above
Obligation to be void, otherwise to remain in full
force and effect.

Filed
CO

Amos T. Hall
Secretary of the Chicago Burlington
& Quincy Rail Road Company
David S. Knight Filed

And on the day of the filing of said bond a
summons was issued in the words and figures following
to wit:

"State of Illinois } The People of the State of Illinois
LaSalle County } to the Sheriff of said County Greeting
We command you to summon Elias
Meinard Schaefer & Co. of to be formed in person
personally to be and appear before the Circuit Court of
said County on the first day of the next term thereof
to be holden at the Court house in Ottawa on the 8th
day of June next to prosecute their suit which they
instituted against Chicago Burlington & Quincy
Rail Road Company and recover judgment upon
John Reid a justice of the peace of said County on the

18th day of April 1837 for the sum of \$49,711 besides
Costs from which said judgment said Rail Road
Company have taken an appeal to the Circuit Court
of said County and further to do and perform
whatever said Court may there and then consider
in the premises. And hear you then and then
this writ.

Witness John F. Nash Clerk of said Court and
the seal of said Court at Ottumwa this 4th day
of May AD 1837 John F. Nash Clerk

which said summons was returned by the Sheriff
of said County & filed in said Clerk's office on the
5th day of June AD 1837 with the following endorsement
thereon to wit:

"Served by reading to the within
named Charles E. Porter Elias Meinard not found
in my County May 18th 1837

E. L. Waterman Shff

Also on the same 4th day of May last a preceid
and after the filing of said bond a suspensio
was issued out of and under the seal of said Court
directed to the justice of the peace who tried said cause
commanding him to suspend all further proceeding
and which suspensio is in the words and figures
following to wit:

"State of Illinois To The People of the State of Illinois &
La Salle County & John Reed a justice of the peace and
a constable in and for said
County Greeting: Whereas in a certain suit lately
depending before you the said John Reed wherein Elias
Meinard & Charles E. Porter are plaintiffs & The Chicago
Burlington & Quincy Rail Road Company defendants
judgment has been rendered in favor of the said Meinard
& Porter for the sum of \$49,711 dollars besides Costs, as by

the transcript of the said judgment from the
 docket of the said justice filed in the Clerk's office
 of our circuit Court in and for the said County by
 the said Rail Road Company in this behalf appears
 and whereas the said Rail Road Company has taken
 an appeal from the said judgment and has
 given bond with security to the said Richard & Cook
 for the due performance thereof according to law
 which said bond is filed as of record in the said
 Clerk's office. We therefore command and enjoin
 you the said John Reid to bring justice and
 execute as aforesaid that you do entirely suspend
 and desist from proceeding any further in said
 suit; and that you do forthwith suspend all proceedings in
 relation thereto and cease from molesting the said Rail
 Road Company in any wise on that account, until the
 said Circuit Court shall make other order to the
 contrary. And thus you are in no wise to err at
 your peril.

In the Sheriff of said County to execute.

Witness my hand & Seal of said Court at Ottawa this 4 day of
 May A.D. 1857 J. A. Ashlewick

Which Supremacy was returned to the said Clerk's
 office & placed on file from 2^d 1858 with the Sheriff's
 return in the words and figures following viz:

"Served & reading the within writ to John Reid this
 22^d day of May 1857 E. L. Waterman Shff."
 per A. E. Long Deputy

The justice of the peace sent up his transcript
 which was filed on the 2^d day of June 1857 in said
 Clerk's office and is in the words and figures following
 to wit:

Edwin Reinard & Charles P. Foster vs Chicago
 Burlington & Quincy Rail Road Company
 Plaintiffs Costs = process fees = issuing summons 18^{3/4}
 Decketing writ 12^{1/2}, issuing subpoena 18^{3/4}, issuing
 writ 25. Summing up 37^{1/2}, " Transcripts 18^{3/4},
 Constable to send up 6^{1/4}, entering judgment 25, execution
 25 = \$ 1.87^{1/2} = Constable fees. Serving summons on
 agent & having copy 37^{1/2}, mileage on same 5, returning
 subpoena 12^{1/2}, mileage on same 5, serving writ
 5, attending trial 25 = \$ 1.35 = from fees 1.50
 Witness fees 1.50 = \$ 3.00 = Total Costs \$ 4.23 =
 Transcripts 25 =

1837 April 9th Summons issued returnable the 18th
 inst at 10 o'clock pm = Sum demanded \$5.00 Costs
 due 50c. April 10th personally served on J. N. Perkins
 agent of C. B. & Q. R. R. Co. of making and having a
 copy of same of. McIlroy Constable (for \$ 38
 April 18th parties appeared, plaintiff agrees to have
 jury trial - jury sworn and returned of same of.
 McIlroy Constable with the following named of jurors
 viz: James L. Kimpton, Gardiner Ross, Elting
 Dickerson, N. J. Whitney, Henry Carter and Peter
 Summa who appeared and were sworn to try the cause
 the parties give issue, the plaintiff deposes in affidavit
 for corn that the defendants received at Waukegan station
 as common carriers to deliver to the plaintiffs agent in
 Chicago - the amount of corn received at Waukegan
 station was about 390 Bushels but that the defendants had
 only delivered 250 for bushels instead thereof - John W.
 Perkins, W. Dickerson and Samuel Peter Summa
 witnesses on part of the plaintiffs and charging fees.
 After hearing the testimony the jury return under the charge
 of James P. McIlroy sworn for that purpose and return
 into Court and say they find a verdict in favor of the
 plaintiffs for the sum of forty nine and 70 cents
 (\$49.70) and Costs.

It is therefore considered that the plaintiffs have and

6. Meas of the defendants said sum of \$49.71 for their
damages and also the sum of 24 and $\frac{23}{100}$ dollars 6.23 for
their costs and charges about themselves expended and
that they have execution therefor. = Damages 49.71
Costs 6.23 Transcript 25 Total \$50.19 = May 22
supremacy send notifying of the appeal to the Circuit
Court.

Justice Court Adelle County State of Illinois
I hereby certify the foregoing to be a correct copy & transcript
from my docket in the entitled case of Elias Meinard
& Chas. E. Park vs Chicago Burlington & Quincy Rail
Road Company - Given under my hand and seal this
27th day of May 1857 John Read Esq Justice of the peace

Afterwards to wit on Wednesday December 2. 1857
the court being one of the days of the term of the
said Court for the year 1857 an order was made
and entered of record in said cause in the words and
figures following to wit:

"Elias Meinard &
Charles E. Park vs
Chicago Burlington
& Quincy Rail Road Company

This day the plaintiffs came
of their clerk their attorneys and the defendants by D. S.
Humph their attorney, and thereupon came the following
jurors of a jury to wit: Joseph Hall, Thomas D. Mack
James Pickens, Mr. W. Dimmock, A. M. Squires,
A. St. George, George Smith, John M. White, Thomas
J. Wade, Brad Ford, David Thompson and D. A.
Kiehlhorn who are duly elected and sworn to
swear and try by the issues herein according to the
evidence; and after hearing the testimony and

7.
arguments of counsel the jury return to consider of
their verdict; and after due deliberation thereon had
return into court the following verdict to wit: "We the
jury find the issues for the plaintiffs and assess their
damages at fifty dollars". Plaintiffs attorneys move
verdict five dollars of said verdict. Defendants
move the court for a new trial, which
motion is overruled by the court.

It is therefore considered by the court that the plaintiffs
have and receive of the defendants the sum of fifty five
dollars for their damages and also their costs and
charges by them herein expended as well as in the
court below, and that they have execution therefor.

Defendants move for an appeal
to the Supreme Court, which prayer is granted upon
condition that the defendants within five days from
this date file with the clerk of this court an appeal
bond payable to the plaintiffs in the penal sum of
One hundred dollars with David L. Hough as their
security. And on motion of defendants attorney it is
ordered that he have ten days to prepare and under
a bill of exceptions to be filed more in time.

And afterwards to wit: on the 2 day of December
1857 the defendants attorney filed his bill of
exceptions in the words and figures following to wit:

"Elias Meinaud & Charles
E. Foster

The Chicago & Burlington
& Quincy Rail Road Company

At 1857 of the LaSalle County Circuit Court this cause
came on to be heard by the court & a jury the
same being an appeal from a judgment of justice

It is remembered
that on the 2 day of
December AD 1857 the
same being one of the
days of the summer term

8
of the place for the County of Saballe, the original
summons from said justice being in the words &
figures following to wit:

"State of Illinois } The People of the State of Illinois to
Saballe County } Any constable of said County
Greeting: You are hereby commanded
to summon Chicago Burlington & Quincy Railroad
Company to appear before me at my office in
Whitfield on the 18th day of April 1837 at 1 o'clock
P.M. to answer the complaint of Elias Reinard &
Charles E. Porter for a failure to pay them a certain
demand not exceeding one hundred dollars & they
make due return as the law directs.

Given under my hand and seal this 9th day of April
A.D. 1837

John Read *Justice*
Justice of the peace

Wherein which said summons was the following
indorsements — Demand \$45.44 — Cts. p. 56
April 10th personally served on John H. Jenkins agent
C. B. & Q. R. Co. of making & having aff. service
25 — aff 12 1/2 — mileage 1 — 5 . 38 James J. Stoll
County — And the transcript from said justice
was in the words & figures following to wit:
(See transcript set out above)

And therefore the said plaintiffs to
maintain the issue on their part introduced the
testimony of John H. Jenkins, which tended to prove
that before the commencement of this suit plaintiffs
shipped corn in the cars of defendants at Warrick
in the County of Saballe consigned to Leander Carr
of Sturgeon & Armon at Chicago. Plaintiffs also
introduced in evidence the testimony of James E.
Porter who testified that before the commencement of this
suit, William Keating admitted to plaintiff Porter
that one hundred fifty bushels of plaintiffs corn had
been lost from defendants cars, that said corn was

9
with forty cents per bushel and promised on behalf
of defendant to pay said plaintiff fifty dollars
for said corn.

It was conceded that said Martin was the
genuine freight agent of the defendant, & authorized
to settle for said freight.

No other or further proof was given in this
suit. Whereupon the jury retired to consider of their
verdict & returned to the Court a verdict in favor of
said plaintiff of fifty dollars, of which said verdict the
Court for said plaintiff immediately remitted
five dollars. And thereupon the Court for said
defendant moved the Court for a new trial and
in arrest of judgment because that said Court was
not warranted of law in rendering a judgment
against said defendant, & in favor of said plaintiff
for said sum of fifty five dollars. But the Court
overruled said motions & rendered judgment in favor
of said plaintiff & against said defendant for the said
sum of fifty five dollars.

To which decision of said Court in overruling
said motions for a new trial and in arrest of
judgment & in rendering said judgment, the
Court for said defendant then & there excepted
& pray that this bill of exceptions might be signed sealed
& made a part of the records, which is done.

M. E. Hollister, Judge 

The defendant filed its appeal bond on the
24th day of December 1857 in the words and
figures following to wit:

"Know all men by these
presents that we the Chicago, Burlington & Quincy
Railroad Company, as principal, & David L. Hough,
as Security, are held & firmly bound unto Elias
Minard & Charles E. Pooler in the penal sum of

Two Hundred dollars, lawful money of the United States, for the payment of which, well & truly to be made, we bind ourselves, our heirs, executors, & administrators, jointly, severally & firmly by these presents. — In witness whereof the Secretary, of said Chicago, Burlington & Quincy Railroad Company has hereunto set his hand & affixed the Corporate Seal of said Company & the said David L. Hough has hereunto set his hand & Seal this 23^d day of December A.D. 1857.

The condition of the above obligation is such that whereas the above named Elias Minard & Charles E. Pooler did at the November Term of the Circuit Court, held in & for the County of La Salle, in the State of Illinois, A.D. 1857, recover a judgment against the above Founders, Chicago, Burlington, & Quincy Railroad Company, for the sum of Fifty five dollars, & the costs of suit, to reverse which said judgment, the said Chicago, Burlington & Quincy Railroad Company has taken an appeal to the Supreme Court within & for the Third Grand Division of said State.

Now, if the said Chicago, Burlington & Quincy Railroad Company shall duly prosecute said appeal, & pay or cause to be paid all judgments, costs, interest & damages which the said Supreme Court shall adjudge against the said Chicago, Burlington & Quincy Railroad Company & abide the orders & judgments of said Supreme Court, in this behalf, then this obligation is to be void, otherwise to remain in full force & effect.



Chicago, Burlington & Quincy Railroad Company
By Amos T. Hall Secretary
David L. Hough Seal

11.

State of Illinois } J. H. Ashbrook Clerk of the
 said Court in and for
 said County and State do
 hereby certify that the within and foregoing contains
 a true full perfect and complete record of the
 judgment of the Court and all the papers on file
 in the case of Minard & Porter vs Chicago
 Burlington & Quincy Rail Road Company
 as the same appears of record and on file in my
 office. In Testimony Whereof I have hereunto set
 my hand and the Seal of said Court at
 Ottawa this 4th day of April 1858
 J. H. Ashbrook

Received & Entered
 of
 Chicago, Burlington & Quincy Railroad
 Company } State of Illinois
 Supreme Court - 3^d Division
 April Term AD 1858
 of
 Minard & Porter }

And now comes the said
 appellant by counsel & Balcan, its attorney,
 & says that in the record & proceedings, & in
 the pending judgment in said Court there
 is error in this to wit -

1st The Court erred in overruling motion of
 defendant below for a new trial -

2^d The Court erred in overruling motion
 of defendant below, in arrest of judgment
 over

3^d The Court ended in rendering judgment
for plaintiff below, for the sum of fifty five
dollars, & costs of suit

For that, & other ends appeared
on the face of the record, the said appellant
prays that the judgment of the Court below
herein may be reversed, & wholly set
nothing attempted

Henry W. Balcan
Attorney for appellant

And the appellee now comes & B. C. Coote
his atty and says that in the record & proceed-
ings aforesaid is no error & he prays that
said Judgment be affirmed

B. C. Coote
attly for appellee

Chicago. Burlington
Quincy Rail Road Co
No 138

Elias M. Mearns &
Charles E. Pook
Recd

Filed April 19. 1858
S. Leland
Clerk.

Recd \$4.35

[124475]

STATE OF ILLINOIS, SUPREME COURT, TO APRIL TERM, A. D., 1858.

APPEAL FROM LA SALLE.

THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
APPELLANT, *vs.* ELIAS MINARD AND CHARLES E. POOLER
APPELLEES.

Abstract of Record.

THIS action was originally brought before a Justice of the Peace, by the plaintiff below, to recover from defendant below, damages for the loss of a quantity of corn delivered to said defendant, to transport to Chicago, and brought by appeal into the La Salle County Circuit Court.

Pages 1 and 2.

1st. Bond on appeal from judgment of Justice of the Peace, filed in the office of the Clerk of La Salle County Circuit Court.

Pages 2 and 3.

2d. Summons issued out of La Salle County Circuit Court on appeal.

Pages 3 and 4.

3d. Supersedeas issued from the Circuit Court, directed to the Justice of the Peace.

Pages 4, 5 and 6.

4th. Transcript of docket of Justice of the Peace of proceedings before him.

Pages 6 and 7.

5th. Trial by jury, and verdict for plaintiff below, assessing damages at \$60. Plaintiff remits five dollars of said verdict. Defendant below moved for a new trial, and in arrest of judgment. Motions overruled. Judgment for plaintiffs below for \$55.00 and costs. Defendant prays an appeal to the Supreme Court, which is granted.

Pages 7, 8 and 9.

6th. Bill of exceptions, as follows:

Elias Minard and Charles E. Pooler

vs.

The Chicago, Burlington and Quincy
Railroad Company.

Be it remembered that on the second day of December, A. D., 1857, the same being one of the days of the November term, A. D., 1857, of the La Salle County Circuit Court, this cause came on to be heard by the Court and a jury, the same being an appeal from judgment of Justice of the Peace for the County of La Salle; the original summons from said Justice being in the words and figures following, to wit:

State of Illinois, }
La Salle County } SS.

The People of the State of Illinois to any Constable of said County Greeting:

You are hereby commanded to summon Chicago, Burlington & Quincy Railroad Company to appear before me at my office in Whitfield, on the 18th day of April, 1857, at 1 o'clock, P. M., to answer the complaint of Elias Minard and Charles E. Pooler, for a failure to pay them a certain demand not exceeding one hundred dollars, and thereof make due return as the law directs.

Given under my hand and seal this 9th day of April, A. D., 1857.

JOHN READ, { SEAL. }
Justice of the Peace.

Upon which said summons were the following endorsements:

Demand, \$45.00; Costs, \$0.56; April 10th, personally served on John H. Jenkins, Agent C. B. & Q. R. R. Co.; by reading and leaving copy; service, 25; copy, 12 ½; mileage, 1-5, 38. James J. Millary, Const. And the transcript from said justice was in the words and figures following, to wit:

(See transcript set out above.)

And therefore the said plaintiffs to maintain the issue on their part, introduced the testimony of John H. Jenkins, which tended to prove that before the commencement of this suit, plaintiffs shipped corn on the cars of defendant at Waverly, in the County of La Salle, consigned to Culver, care of Munger & Armour, at Chicago. Plaintiffs also introduced in evidence the testimony of James T. Pooler, who testified that before the commencement of this suit, William Martin admitted to Plaintiff Pooler, that one hundred and fifty bushels of plaintiffs corn had been lost from defendants cars, that said corn was worth forty cents per bushel, and promised, in behalf of defendant, to pay said plaintiffs sixty dollars for said corn.

It was conceded that said Martin was the genuine freight agent for defendant, and authorized to settle for lost freight.

No further proof was given in this suit. Whereupon the jury retired to consider of their verdict, and returned to the Court a verdict in favor of said plaintiffs of sixty dollars, of which said verdict the said plaintiff immediately remitted five dollars. And thereupon the counsel for said defendant moved the Court for a new trial, and in arrest of judgment, because the said Court was not warranted by law in rendering a judgment against said defendant, and in favor of said plaintiffs, for said sum of fifty-five dollars. But the Court overruled said motions, and rendered judgment in favor of said plaintiffs, and against said defendant, for the said sum of fifty-five dollars.

To which decision of said Court in overruling said motions for a new trial, and in arrest of judgment, and in rendering said judgment, the counsel for said defendant then and there excepted, and prays that this bill of exceptions may be signed, sealed, and made a part of the record, which is done.

M. E. HOLLISTER, Judge. { SEAL. }

7th. Bond filed, on appeal to Supreme Court.

THE ERRORS ASSIGNED ARE,

1st. The Court erred in overruling motion of defendant below for a new trial.

2d. The Court erred in overruling motion of defendant below, in arrest of judgment.

3d. The Court erred in rendering judgment for plaintiffs below, for the sum of fifty-five dollars, and costs of suit.

HOUGH & BASCOM, Attornies for Appellant.

Filed May 22, 1878
L. Leland
Clerk

Chicago, Burlington & } State of Illinois
Quincy Railroad Company } Supreme Court - 3^d Division
of } Appellate Term. A.D. 1838
Quincy & Rootes } Appellate from Cassette
County Circuit Court
Appellants Brief

The appellant relies for a reversal of the judgment below, upon the fact that appellee recovered a judgment below for \$55,00, while the amount of the demand embodied on the summons issued by the justice of the peace, before whom the suit was originally commenced, was only \$45,00.

See bill of exceptions in which said summons is set forth in full.

This question has been decided in 11 Ills Rep 619 & 3 Scammon 193

D. L. Strong
Att^y for Appellants

C.B. & D. R. Co

vs

Minard & Pooled

— " —

Appellants Brief

— " —

Filed May 22, 1858

L. Deland
clerk

STATE OF ILLINOIS, SUPREME COURT, TO APRIL TERM, A. D., 1858.

APPEAL FROM LA SALLE.

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vs.

The Chicago, Burlington and Quincy
Railroad Company.

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State of Illinois, } SS.
La Salle County }

The People of the State of Illinois to any Constable of said County Greeting:

You are hereby commanded to summon Chicago, Burlington & Quincy Railroad Company to appear before me at my office in Whitfield, on the 18th day of April, 1857, at 1 o'clock, P. M., to answer the complaint of Elias Minard and Charles E. Pooler, for a failure to pay them a certain demand not exceeding one hundred dollars, and thereof make due return as the law directs.

Given under my hand and seal this 9th day of April, A. D., 1857.

JOHN READ, { SEAL. }
Justice of the Peace.

Upon which said summons were the following endorsements:

Demand, \$45.00; Costs, \$0.56; April 10th, personally served on John H. Jenkins, Agent C. B. & Q. R. R. Co.; by reading and leaving copy; service, 25; copy, 12 $\frac{1}{2}$; mileage, 1-5, 38. James J. Millary, Const. And the transcript from said justice was in the words and figures following, to wit:

(See transcript set out above.)

And therefore the said plaintiffs to maintain the issue on their part, introduced the testimony of John H. Jenkins, which tended to prove that before the commencement of this suit, plaintiffs shipped corn on the cars of defendant at Waverly, in the County of La Salle, consigned to Culver, care of Munger & Armour, at Chicago. Plaintiffs also introduced in evidence the testimony of James T. Pooler, who testified that before the commencement of this suit, William Martin admitted to Plaintiff Pooler, that one hundred and fifty bushels of plaintiffs corn had been lost from defendants cars, that said corn was worth forty cents per bushel, and promised, in behalf of defendant, to pay said plaintiffs sixty dollars for said corn.

It was conceded that said Martin was the genuine freight agent for defendant, and authorized to settle for lost freight.

No further proof was given in this suit. Whereupon the jury retired to consider of their verdict, and returned to the Court a verdict in favor of said plaintiffs of sixty dollars, of which said verdict the said plaintiff immediately remitted five dollars. And thereupon the counsel for said defendant moved the Court for a new trial, and in arrest of judgment, because the said Court was not warranted by law in rendering a judgment against said defendant, and in favor of said plaintiffs, for said sum of fifty-five dollars. But the Court overruled said motions, and rendered judgment in favor of said plaintiffs, and against said defendant, for the said sum of fifty-five dollars.

To which decision of said Court in overruling said motions for a new trial, and in arrest of judgment, and in rendering said judgment, the counsel for said defendant then and there excepted, and prays that this bill of exceptions may be signed, sealed, and made a part of the record, which is done.

M. E. HOLLISTER, Judge. { SEAL. }

7th. Bond filed, on appeal to Supreme Court.

THE ERRORS ASSIGNED ARE,

1st. The Court erred in overruling motion of defendant below for a new trial.

2d. The Court erred in overruling motion of defendant below, in arrest of judgment.

3d. The Court erred in rendering judgment for plaintiffs below, for the sum of fifty-five dollars, and costs of suit.

HOUGH & BASCOM, Attornies for Appellant.

HOLLIS E. BASCOM, Attorney for Plaintiff.

for the sum of fifty-five dollars and costs of suit.

32. The Court erred in rendering judgment for plaintiffs below, in arrest of judgment.

33. The Court erred in overruling motion of defendant below for a new trial.

34. The Court erred in overruling motion of defendant below

THE VERDICT VERDICT VERDICT

The Court then on appeal to Supreme Court.

M. E. HOLLISTER, Judge. { SEAL }

excepted, and made a part of the record, which is done.

said judgment, the counsel for said defendant then and there for a new trial, and in arrest of judgment, and in rendering

To which decision of said Court in overruling said motions defendant for the said sum of fifty-five dollars.

rendered judgment in favor of said plaintiffs, and against said fifty-five dollars. But the Court overruled said motions, and said defendant, and in favor of said plaintiffs, for said sum of

cost was not warranted by law in rendering a judgment against

for a new trial, and in arrest of judgment, because the said

And thereupon the counsel for said defendant moved the Court

said verdict the said plaintiff immediately remitted five dollars

a verdict in favor of said plaintiffs of six dollars, of which

and a verdict of their verdict, and returned to the Court

No further proof was given in this suit. Whereupon the jury

verdict for defendant, and authorized to settle for lost freight.

It was conceded that said Martin was the genuine freight

box and plaintiffs six dollars for said corn.

box and plaintiffs six dollars, and promised, in behalf of defendant, to

and to lose from defendant's care, that said corn was worth

the fact, that one hundred and fifty bushels of plaintiffs corn

ment of this suit, William Martin admitted to Plaintiffs

plaintiff of James T. Proctor, who testified that before the

Yarns of Chicago. Plaintiffs also introduced in evidence the

the City of La Salle, consigned to Culver, care of Munger &

plaintiffs shipped corn on the care of defendant at Waverly, in

plaintiffs prove that before the commencement of this suit,

plaintiffs introduced the testimony of John H. Jenkins, which

And therefore the said plaintiffs to maintain the same on their

(See transcript of one above.)

the words and figures following, to wit:

J. Millers, Const. And the transcript from said Justice was in

bearing copy; service, 32; costs, 13 1/2; mileage, 1-2, 38. James

on John H. Jenkins, Agent C. R. & O. R. R. Co.; by reading and

Demand, \$45.00; Costs, \$0.00; April 10th, personally served

Upon which said summons were the following endorsements:

JOHN REARD, Justice of the Peace.

1887.

Given under my hand and seal this 25th day of April, A. D.

1886
Chicago. Bmr. & Co.
R R Company

23
Olias Martin

Chicago, Burlington & Quincy, Railroad Company
 vs
 Elias, Muzzard & Charles E. Pooler

State of Illinois
 Supreme Court - 3^d Division
 April Term A.D. 1838
 Appeal from LaSalle County
 Circuit Court

State of Illinois }
 LaSalle County } ss

David L. Strong, being first duly sworn, on oath deposes & says that he is attorney for appellant in the above entitled cause. That early in the present term of this Court he handed to the Clerk of this Court, printed abstracts of the records in this cause, to be filed, & has never withdrawn said abstracts from the files of this Court, & until this morning supposed they were on said files. And affiant further says that he also furnished R. C. Cook Esq with a copy of said abstracts, said Cook being attorney for said appellee.

Subscribed & sworn to before me this 22nd day of May A.D. 1838

David L. Strong

Isaac C. Blair
 by J. B. Rice Deputy

C. B. & J. R. Co

vs
Minnard & Pooleraffidavit

Filed May 22, 1858

L. L. Lemp
Clerk.

136-

L. B. & L. R. R. Co.

vs

Elias Minard et al

} Brief for appellants -

The evidence shows that this judgment was justly rendered -

The point made by the appellant is that it was for more than the demand on the summons

The original summons was not in Court on the trial -

I insist that it is not before this court at all

It is not shown by the certificate of the Clerk of the Circuit Court that this summons was one of the ^{original} papers on the files of said Court - or that it ever was filed in said Court -

The court in the Bill of exceptions undertakes to say "The original summons from said justice being in the words & figures following to wit"

What right had the circuit Court to certify in the Bill of Exceptions what the original summons before the justice, was in

The Statute provides that if during the progress of the trial either party shall allege an exception to the opinion of the Court and reduce the same to writing, it shall be the duty of the Judge to allow said exception and sign & seal the same and it shall thereupon become a part of the record.

Purple's State p 824. sec 22.

What can the Judge make part of the record?

Clearly nothing but his decisions which were excepted to, and the facts of the case sufficient to show what that decision was.

He can not certify a paper which was never judicially before him.

There is nothing in this record to show that this summons was ever before the court at all. And if it was a part of the records of the Circuit Court the Judge of that Court could not certify that fact to this Court.

He may by his certificate make certain things a part of the record; but he has no right to certify what that record is.

From aught that appears in this case, this original summons was brought up & shown to the Judge of the Circuit Court after the trial was entirely concluded.

I think that if the Judge of the Circuit Court can certify what the original summons before the Justice was when it was never judicially before him then he may just as well certify what the original contract between the parties was when they have kept it in their pockets.

The certificate of the clerk shows that the record ~~contains~~ as certified to by him "comprises a true, full, perfect and complete record of the judgment of the court and ~~under papers on file~~ in the case of Minard & Pooler vs. Chicago Burlington & Quincy Rail Road Company as the same appears of record and on file in my office" -

And the record itself (~~pages~~) shows that this summons was not one of the papers on file in the clerk's office -

This then is a clear case of the judge's attempting to certify something which was never judicially before him -

The original summons was not on the records of the circuit court - It was not read in evidence in the circuit

court, consequently it was not
before the circuit therefore is not
before this court

Shower dooty for
appellum -

L. B. + L. R. R. R.
136-
Edward R. R. R.

Brief for
Appl.

Glenn R. R. R.