

No. 13726

Supreme Court of Illinois

Neill

vs.

Peoria & Oquawka R.R.Co.

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Then, to the Circuit Court of
Sageville County, State of Illinois,
at a Term begun and held at Peking,
on the fifth Monday of the month
of April, in the year of our Lord
One thousand eight hundred and
fifty four: Before the Honorable David
Davis, Judge of the Eighth Judicial
Circuit of said State, composed of the
Counties of Sangamon, McLean,
Sageville &c.

Do it Remembered, that on the 11th day of April
Anno Domini Eighteen hundred and fifty four,
in a certain Cause, removed by change of
venue from the Circuit Court of Peoria County,
to the Circuit Court of said Sageville County,
and wherein Thomas Mills is Plaintiff, and
The Peoria and Aquanoha Rail Road Company
the Defendants, Transcript, Declaration & Process
marked "A" Summons marked "B" Pleas 1 & 2
marked "C", and Demurred to 2^d Plea marked "D",
were filed in the words and figures, as follows;
to wit:

Trans-
script "Proceedings at a Term of the Circuit Court begun
and held at the Court House in the City
of Peoria, in and for the County of Peoria
in the State of Illinois on the first Monday of
March, in the year of our Lord One thousand
eight hundred and fifty five, it being the
first day of said month. Present, the Honorable
Amos A. Peters, Judge of the Tenth Judicial
Circuit in the State of Illinois—
To wit:

Monday March 12th 1855.

over

Thomas Neill

"^{vs}
Peoria & Aquanaka
Rail Road Company

Affidavit

The Judge of this Court being
interested in the result of this suit, It is ordered
that the venue in this Cause be changed to the
County of Pajewell in this State, and that the
Clerk of this Court, transmit to the Clerk of
the Circuit Court of Pajewell the papers in
this Cause, and a transcript from the Records of
the proceedings of this Court, herein, duly certified
according to Law.

State of Illinois
Peoria County

I, Jacob Gale, Clerk of the
Circuit Court in and for the County of Peoria,
in the State of Illinois, do hereby certify, that the
 foregoing is a full ~~and~~ and correct transcript
from the Records of said Court of all the record
entries in a certain Cause of Thomas Neill against
the Peoria and Aquanaka Rail Road Company removed
from said Court, by change of venue, into the
Circuit Court of Pajewell County in said State,
and that the accompanying papers marked (A) (B)
(C) & (D) respectively are the papers filed in said
Cause in my Office.

(Seal)

Witness, Jacob Gale, Clerk, of
said Court, and the seal thereof
at Peoria this tenth day of

April AD 1855

Jacob Gale Clerk

Exhibit "A." To wit:

"State of Illinois } In the Circuit Court of Peoria
 "Peoria County } County Court Term A.D. 1854.
 " Thomas Keill Plaintiff in this
 "suit Complainer of the Peoria and Aquanuk Rail
 "Road Company, which said Company is legally
 "organized and duly incorporated by a certain act
 "of the General Assembly of the State of Illinois
 "approved February Twelfth A.D. 1849 and entitled
 "An Act to incorporate the Peoria and Aquanuk
 "Rail Road Company" defendant in this suit in an
 "action of Trespass on the Case on promise, for that
 "whereas George Spruce and William Hughes by and
 "under the names and style of Spruce & Hughes
 "heretofore, to wit: on the tenth day of March A.
 "D. 1854 at Peoria, that is to say in the County
 "aforesaid made this certain Bill of Exchange
 "in Writing bearing date a certain day and
 "year therein mentioned to wit: the day and year
 "aforesaid, and thereby then and there requested the
 "said Defendant to pay to the order of the said
 "Plaintiff the said sum of Two Hundred Dollars
 "and then and then delivered the said Bill of
 "Exchange to the said Plaintiff, which said Bill
 "of Exchange the said Defendant afterwards, to wit,
 "on the day and year aforesaid, upon sight thereof
 "accepted, payable sixty days from the fourteenth
 "day of March A.D. 1854 which period has elapsed
 "by means whereof the said Company then and
 "there became liable to pay the said sum of
 "money in the said Bill of Exchange specified,
 "according to the tenor and effect of the said
 "acceptance of the said Bill of Exchange, and being
 "so liable, the said Defendant in Consideration thereof
 "afterwards, to wit, on the day and year aforesaid

Declaration & Receipt

at the County aforesaid, undertook and then and
there faithfully promised the said plaintiff to pay
him the said sum of money in the said Bill
of exchange specified according to the tenor and effect
of the said acceptance thereof.
And whereas also George Spruck and William Hughes
by and under the names and style of Spruck
& Hughes heretofore to wit: on the tenth day of
March A.D. 1854 at Peoria, that is to say at the
County of Peoria made their certain Bill of Exchange
in writing bearing date the same day and year
aforesaid and thereby then and there requested the
Peoria & Aqueduct Rail Road Company to pay to the
order of the said Plaintiff the said sum of
Three Hundred dollars, which said Bill of Exchange
the said defendant afterwards to wit on the day
and year aforesaid at the County aforesaid
upon sight thereof accepted by means whereof
the said defendant then and there became liable
to pay the said plaintiff the said sum of
money in the said Bill of Exchange specified
according to the tenor and effect of the said
Bill of Exchange, and of the said acceptance
thereof, and being so liable, the said defendant
in consideration thereof afterwards to wit, on
the day and year aforesaid, at the County aforesaid
undertook and then and there faithfully promised
the said plaintiff to pay him the said sum of
money in the said Bill of Exchange specified
according to the tenor and effect of the said
Bill of Exchange, and of the said acceptance thereof.
And whereas also the said defendant afterwards to
wit: on the day and year last aforesaid at the
County aforesaid was indebted to the said plaintiff

"in the further sum of Six Hundred Dollars for so
 "much money before that time lent and advanced
 "to the said defendants, at their special instances
 "and request. And also in the further sum
 "of six Hundred dollars for so much money
 "before that time by the said Plaintiff paid, laid
 "out and expended to and for the use of the said
 "defendants at their said special instances and request.
 "And also in the further sum of six Hundred dollars
 "for so much money by the said Company before
 "that time had and received to and for the use
 "of the said Plaintiff, And being so indebted
 "the said defendant in consideration thereof, afterwards
 "to wit on the day and year last aforesaid at the
 "County aforesaid undertook and then and there faithfully
 "promised the said Plaintiff to pay him the last
 "mentioned sum of money when the said defendant
 "should be thereunto afterwards requested.
 "Yet the said defendant although requested has not
 "paid the said several sums of money in each of these
 "Counts mentioned or any or either of them or any
 "part thereof but has refused and still refuses to
 "the damage of the said Plaintiff Six Hundred dollars
 "and therefore he brings his suit &c.

Purple & Sanger Plff's Attys

Bills of Exchange & acceptance.

Born March 10th 1854

"Secty of
 "P. O.
 "to the
 "sum
 "\$300.00"

Accepted by
 Aqueduct Rail Road
 Company
 14th May 1884
 J. H. S. from Mexico
 of Co

to the Order of Thomas Nail the
 Six Hundred Dollars & charge to Ac of
 Spruck & Hughes

"Peru & Aqueduct Rail Road Company
 To Thomas Nail

Dr.

" the first day of the term of the said Court to be
" held as aforesaid.

" Witness, Jacob Gale, Clerk of our said
" Court, and the seal thereof. at Peoria
" this 31 day of August in the year of
" our Lord one thousand eight hundred
" and fifty four.

" Jacob Gale Clerk,
" I read this with by reading to George L. Bestor
" and Henry Kolb, and also delivered a true
" Copy of the same to each.

" August 31st 1854

" Serving 100 2 mile Trunk 10 L. B. Cornwell Sheriff P. Co.

" 2 copies att'd 50 Return 10 - \$1.75

Exhibit "C"

" State of Illinois

" Peoria County. vs. Peoria Circuit Court November
" Term A.D. 1854

" Peoria & Aquawake Rail

" Road Company

" and

" Thomas Neill

" And the said defendant
" Comes and says the said defendant did
" not undertake or promise in manner
" and form as the said plaintiff hath above
" complained against the said defendant: and
" of this the said defendant puts itself upon
" the Country.

" Julius Manning atty
" Purple & Sanger for Plff. for def.

2nd. And for further plea in this behalf the
" said defendant says actio Non, because

Pleas 14-2

"the said defendant says that after the said
"accepted by the said defendant the said
"bill of exchange was duly assigned to and
"came to and was in the possession of one John
"Elting, who was the legal holder of said bill
"of exchange, and was so in his possession,
"when the said accepted became due and
"payable by the said defendant according to
"the terms thereof: and at the same time when
"said accepted so became due and payable, the
"said John Elting was and still is largely
"indebted to the said defendant that is in the
"sum of one thousand dollars upon and for
"the subscription of the said John Elting to the
"Capital Stock of the said Peoria and Ogawa
"a Rail Road Company which amount far
"exceeds the damages of said Plaintiff, claimed
"in said declaration: and out of which
"said defendant is ready and willing and
"hereby offers to set off and allow to said
"Plaintiff his said damages. And the said
"defendant avers that said bill of exchange
"was retransferred from said said Elting
"to said Plaintiff long after said bill of
"exchange and said accepted thereof
"became due and payable - and that the
"said defendant is ready to verify wherefore
"said defendant prays judgment &c.

" Julius Manning for deft
" Copy of acct. of set off
" John Elting
" To Peoria & Ogawa R.R. Co
" To Am't of your Subscription to Capital
" Stock of said Co. \$1000.00

And, now, afterwards; to wit: on the fourth day of said Term of said Court, being the third day of the month of May A.D. 1855 the following proceedings were had in said Cause.

" Thomas Keill

" vs

" Georgia & Equanoka

" Rail Road Company

Assumpsit

Illinois

Order
Now, on this day came
" again the Plaintiff by Purple and Sanger and
" the defendant by Manning, and the Court
" having heard argument on the Plaintiffs demur-
" rer to the 3^d plea: and, being sufficiently advised
" of and concerning the premises, is of opinion
" that said demurrer be overruled. It is, therefore,
" ordered and adjudged by the Court, that
" the defendant recover of the Plaintiff, the costs
" and charges by them about the said Demur-
" rer expended, and that execution go
" therefor.

And, now, afterwards; to wit: on the 10th day of said Term, being the tenth day of said Month of May, the Plaintiff files his replica-
tions 1. 2. 3. to the defendants second plea in
the words and figures: as follows; to wit:

Replications
And for Replication to said defendants 2^d
" Plea the plaintiff says pueri di Now,
" because he says that the said Bill was not
" assigned to said Etting as, stated in said
" Plea & of this he puts himself upon the Country
" & C Purple for Plff

"And the defendant doth the like

Manning for deft

2^d Replications

"And for further Replication to said Plea Plain-
"tiff says Pucludi now because he says
"that said Etting was not and is not in-
"debted to said defendants as stated in said
"Plea & of this he puts himself upon the Coun-
"try &c

"May 10, 1855

Purple for Plff

"And the deft doth likewise

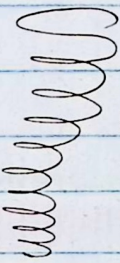
"Manning for deft

"Thomas Keill

"vs

"Peoria & Ogawka

"Rail Road Company



Tazewell Circuit Court

3^d Replications

"And for further Replications
"to the said Defendants plea by him secondly
"above pleaded the said Plaintiff says
"pucludi now because he says that on
"the 5th day of November A.D. 1853 and before
"the commencement of this suit the said
"Defendant commenced their certain actions
"of trespass on the Case on premises in the
"Circuit Court of Peoria County Illinois
"against the said Plaintiff and afterwards
"to wit on the 4th day of November A.D.
"1853 filed his declaration in said cause
"claiming therein and seeking to recover
"in said suit of and from the said John
"Etting the same identical subscription of
"the said John Etting to the Capital Stock

of the Peoria and Oquawka Rail Road Compa-
ny, in the said Plea mentioned and there-
in proposed to be set off in this suit and
such proceedings were afterwards had in the
said suit that the same was afterwards by
change of venue removed to the Circuit Court
of Tazewell County. And afterwards to wit on
the 22nd day of November A.D. 1855 the said
John Elting filed his Demurrer to the said
Plaintiff's Declaration in in said Cause
upon which issue was joined by the said
Peoria & Oquawka Rail Road Company the
Plaintiff in said suit - and thereupon af-
terwards to wit on the 10th day of May
A.D. 1855 at the County of Tazewell aforesaid
at a circuit Court then and there held in
and for said County, the said suit came
on to be tried and was then and there
tried in due form of law upon the said
Demurrer to the said Declaration aforesaid -
and the said Court being then
and there fully advised in the premises,
sustained the said Demurrer to the said
Declaration in said suit; and it was
thereupon then and there ordered and ad-
judged by the said Court that the said
defendant in said suit should have and
recover of the said Plaintiff in said suit
his costs and charges by him in said
suit expended and that execution should
issue therefor - And the said Plaintiff in
this suit avers that the said trial and
judgment aforesaid in the Court aforesaid
was a trial and judgment upon the
merits of the said Claim in said Dec

"duration and in said 2nd Plea mentioned
"as by the Records and proceedings in said
"Cause, Now to the Court here shown
"will fully appear & this the said Plaintiff is
"ready to verify wherefore he prays
"Judgment &c. *Purple for Plff*

And, now, afterwards; to wit: on
said tenth day of said Term, 3. The
Defendant by their said attorney filed
his Demurrer to the Plaintiffs 3^d Replication
to the defendants 2nd Plea, in the words
and figures, as follows; to wit:

"State of Illinois }
"Jagwell County } Jagwell Circuit Court
" } April Term A.D. 1855
"Peoria & Aquawake }
"Rail Road Company }
" } acts
"Thomas Kittle }

" } And for rejoinder to
"the 3^d replication to defendants 2^d Plea de-
"fendants come and crawl over of the com-
"plete record of the said suit of the said
"defendants against the said John Elting
"which is read to them in the words and
"figures following;

"Pleas, to the Circuit Court of Jag-
well County State of Illinois, at
a Term begun and held at Pekin,
on the first Monday of the month
of October, in the year of our Lord

*Demurrer to 1st Plff & Replication
to Defendants 3^d Plea*

One thousand Eight Hundred
and fifty four, Before the Hon.
David Davis, Judge of the Eighth
Judicial Circuit of the State of
Illinois, Composed of the Counties
of Sangamon, McLean, Tazewell &c.

Be it remembered, that on the 30th day of
September, in the year of our Lord, one thou-
sand Eight Hundred and fifty four, in a
certain Cause, removed by change of venue
from the Circuit Court of Peoria County, to
the Circuit Court of said Tazewell County,
And wherein The Peoria & Ogawatha Rail Road
Company are Plaintiffs, and John Elting De-
fendant, Transcript, Precept, Marked ("A"),
Declaration & copy of Instrument sued on Marked
("B") Summons, Marked ("C"), and Demurrer to
Declaration Marked ("D") were filed in the
words and figures, as follows; to wit:

Proceedings at a Term of the Circuit Court
begun and held at the Court House in
the City of Peoria, in and for the County
of Peoria in the State of Illinois on the
second Monday of September in the year
of our Lord One thousand eight hundred
and fifty four it being the Eleventh day
of said Month, Present the Honorable
Enslow Peters Judge of the Sixteenth Ju-
dicial Circuit in the State of Illinois,
Leonard B. Cornwall, Sheriff, Elbridge G. Johnson,
State attorney and Jacob Gale, Clerk to wit:
Tuesday September 19th A.D. 1854.

"Peoria & Oquawka
"Rail Road Company }
" vs } Assumpsit.
"John Elting. }

"The Judge of this Court being
"interested in the result of this suit, it is order-
"ed that the venue in this Cause be changed to
"the County of Tazewell in this State, and that
"the Clerk of this Court transmit to the Clerk
"of the Circuit Court of said Tazewell County
"the papers in this Cause and a transcript
"from the Records of the Proceedings of this
"Court herein to the Clerk of the Circuit Court
"of Tazewell County, duly Certified according
"to Law.

"State of Illinois
"Peoria County ss. I, Jacob Gale, Clerk of the
"Circuit Court in & for the County of Peoria &
"State of Illinois, do hereby certify, that the
"foregoing is a full & correct transcript from
"the Records of said court of the proceed-
"ings therein in suit of the Peoria & Oquawka
"Rail Road Company against John Elting
"removed by change of venue from said
"court into the Circuit Court of Tazewell
"County in the State of Illinois & that the ac-
"companying Papers marked (A) (B) (C) (D)
"respectively are all the Papers filed in
"said Cause in my office.

"In witness
"whereof, I hereto set my hand
"and affix the Seal of said Circuit
"Court of Peoria County this 27th

"day of September in the year of Our Lord
" One thousand Eight Hundred
" and fifty four,
" Jacob Gato clerk

Exhibit "A"

"State of Illinois

"County of Peoria

Peoria Circuit Court

November Term A.D. 1853.

"The Peoria and Ogawatha

"Rail Road Company

"John Elting

" Clerk of said Court, Please
" issue a summons in said Cause return-
" able to said term in a plea of trespass
" on the Case on promises damages One
" thousand Dollars.

" Julius Manning
" Atty for plf.

Exhibit "B"

"State of Illinois

"County of Peoria

Peoria Circuit Court

November Term A.D. 1853.

"John Elting the defendant in this suit
" was summoned to answer the Peoria and
" Ogawatha Rail Road Company the plain-
" tiff in this suit of a plea of trespass on
" the Case on promises and thereupon the
" said plaintiff by the said Plaintiff's at-
" torney complains &c.

" For that whereas

dofores to wit: On the 12th day of February A.
D. 1849 the Legislature of the State of Illinois
passed a certain act entitled an act to in-
corporate the Peoria and Aquonka Rail Road
Company which act was approved by the
Governor of the said State on the 12th day of
February A.D. 1849 and became a Law of
the said State: And also afterwards to wit:
on the 10th day of February A.D. 1851 the said
Legislature of the State of Illinois passed a
certain other Act entitled an act to amend
an act entitled an act to incorporate the
Peoria and Aquonka Rail Road Company,
Approved Feb. 12. 1849 which last mentioned
act was approved by the Governor of said State
on the 10th day of February A.D. 1851 and
also became a Law of said State which said
two acts are now to the Court here shown,
and which said acts became and were laws
of the said State of Illinois before the doing of
the acts of the said defendant. And the mak-
ing of the promises and undertakings of the
said defendant herein after mentioned.
And whereas also afterward to wit:
on the fourth day of February A.D. 1850 at
Peoria in said County for the purposes of or-
ganizing the said Company under the said
Company under the said acts and Laws
of said State and becoming a Stockholder
therein and securing to himself the bene-
fit and advantages of being such Stockholder
the said defendant (in conjunction with
certain other persons not parties hereto) made
and subscribed his certain agreement in

"in writing in the words and figures as following
"to wit: "We the Subscribers severally agree to
"become Stockholders in the Peoria and O.
"quawka Rail Road Company to the Number
"of Shares placed opposite our names respect-
"ively and to pay the amount thereof in
"such installments as may be called for
"by order of the President and directors
"of said Company.

"Perior fourth day of February 1850"
 "To which said agreement in writing the
 "said defendant then and there subscribed
 "his name, and placed opposite to his
 "name so subscribed the number of Ten
 "Shares, and the amount of One thousand
 "dollars as his the said defendants. Sub-
 "scription to the Capital Stock of the said
 "Company the said Ten Shares, being the said
 "Sum of One thousand Dollars And after-
 "wards to wit: on the 20th day of June A.
 "D. 1850 at Knoxville to wit: at the County
 "of ~~Sevier~~ ^{Perior} a sufficient amount of said Stock
 "being subscribed the said Perior and Agents
 "a Rail Road Company became duly or-
 "ganized under the said Acts and Laws
 "by the Stockholders of said Company elect-
 "ing the officers thereof as in said Laws
 "provided. And the said Company being
 "so organized accepted of the said Subscrip-
 "tion of the ^{said} defendant, and the said de-
 "fendant paid to the said plaintiff five
 "per cent upon his said subscription
 "that is the sum of fifty dollars on his
 "said subscription of one thousand dol-
 "lars. By means whereof the said de-

"pendant then and there became a stock-
"holder in said Company, and became
"liable to pay to the said plaintiff the said
"sum of One thousand Dollars, his said
"Subscription (except the said sum of fifty
"dollars paid as aforesaid) in such install-
"ments as might thereafter be called for
"from him the said defendant by order of
"the President and directors of said Company.
"And being so liable he the said defendant
"in consideration thereof and in consideration
"of the premises afterwards to wit: on the
"day and year last aforesaid at the County
"of Pavia aforesaid undertook and then and
"there faithfully promised the said plaintiff
"to pay said Plaintiff the said sum of One
"thousand Dollars, (except the said sum of
"fifty dollars paid as aforesaid) in such install-
"ments as might thereafter be called for from
"him the said Defendant by order of the Pres-
"ident and directors of the said Company.

" And the said Plaintiff avers
"that afterwards to wit: on the fifteenth day
"of January A.D. 1852 the president and directors
"of said Company to wit: at the County aforesaid
"by their order called for an instalment of
"ten per centum upon the said Defendant's
"said Subscription of one thousand Dollars
"from the said defendant to wit for the
"sum of One hundred dollars part of the
"said sum of one thousand dollars so sub-
"scribed by the said defendant as aforesaid,
"of which the said defendant had Notice.
" And that afterwards to wit

" on the first day of April A.D. 1852 at the
" County aforesaid the said president and di-
" rectors of said Company by their certain
" other order called for a certain other in-
" stalment from the said defendant on his
" said subscription of the amount of two per
" centum on the said defendants said
" subscription to wit: the further sum of
" one hundred dollars other part of the
" said defendants said subscriptions of
" one thousand dollars, of which the said
" defendant also had notice.

" And that afterwards to wit:
" On the first day of June A.D. 1852 at the
" County aforesaid the said president and
" directors of the said Company by their
" certain other order called for a certain
" other instalments from the said defendant
" upon his said subscription of five per cen-
" tum thereon - that is for the further sum of
" fifty dollars other part of his the said
" defendant's ^{said} subscription of one thousand
" dollars of which the said defendant also
" had notice.

" And that after wards to wit: on the
" first day of November A.D. 1852 at the
" County aforesaid the said president and
" directors of said Company by their certain
" other order called for another instalment
" of five per centum upon said defendants
" said subscriptions from the said defendant
" that is for the further sum of fifty dollars
" other part of the said defendants said
" subscription of one thousand dollars
" of which the said defendant also had

" Notice. And that afterwards to wit: on the
" first day of January A.D. 1853 at the County
" aforesaid the said president and directors of
" said Company by their certain other order
" called for another installment of ten per
" centum upon the said defendants said Sub-
" scription from the said defendant that is
" for the further sum of One hundred dollars
" other part of the said defendants said
" Subscription, of which the said defendant
" also had notice.

" And that afterwards to wit: on
" the first day of February A.D. 1853 at the
" County aforesaid the said President and
" directors of said Company by their cer-
" tain other order called for another in-
" stalment of ten per centum upon the
" said defendants said Subscription from
" the said defendant that is for the further
" sum of One hundred dollars other part
" of the said defendants said Subscription
" of One thousand Dollars of which the
" said defendant also had Notice.

" And that afterwards to wit:
" on the first day of August A.D. 1853 at
" the County aforesaid the said president
" and directors of said Company by
" their certain other order called for an-
" other installment of ten per centum on
" the said defendants said Subscription
" from the said defendant that is for the
" further sum of One hundred dollars
" other part of the said defendants said
" Subscription of one thousand dollars, of

" which the said defendant also had
" notice

" And that afterwards to wit: on the
" first day of September A.D. 1853 at the
" County aforesaid the said president and
" directors of said Company by their certain
" other order called for another instalment
" of ten per centum upon his said subscrip-
" tion from the said Defendant that is for
" the further sum of one hundred dollars.
" other part of the said subscription of the
" said defendant of one thousand dollars,
" of which the said defendant also had
" notice

" And that afterwards to wit on the
" first day of October A.D. 1853 at the
" County ^{of Florida} aforesaid the said several instal-
" ments being then and there due and paya-
" ble to the said plaintiffs from the said
" defendant the said plaintiff specially
" requested the said defendant to pay the
" said plaintiff the said several instal-
" ments above specified

" Yet the said defen-
" dant not regarding his said several prom-
" ises and undertakings but contriving and
" intending to wrong injure and defraud
" the said plaintiff in this behalf has not
" as yet paid the said plaintiff the said
" several sums of money so called for
" as aforesaid, nor any part either of
" them nor any part thereof altho' often
" requested so to do, but to pay the same
" or any part thereof has hitherto neglected
" and refused to the damage of said

" plaintiff of One thousand dollars and there-
" fore the said plaintiff brings suit &c.
"

Julius Manning
Atty for plf

" Copy of instrument sued on above
" We the subscribers severally agree to become
" stockholders in the Peoria and Aquiaoka Rail
" Road Company to the number of shares
" placed opposite our names respectively
" and to pay the amount thereof in such in-
" statements as may be called for by order
" of the president and directors of said Com-
" pany

" Given South day of February 1850
" Signed John Elting, No. shares Amount paid
 10 1000.00 \$ 50.00

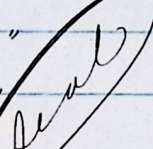
Exhibit "C"

" The People of the State of Illinois,

" To the Sheriff of Peoria County Greeting:

" We command you to summon John Elting
" if he may be found in your County,
" to appear before our Circuit Court on the
" first day of the next term thereof, to be
" held at Peoria, within and for the said
" County of Peoria, on the third Monday of
" November instant then and there, in our
" said Court to answer unto the Peoria
" and Aquiaoka Railroad Company of a
" plea of trespass on the case upon premises,
" to their damages One thousand dollars as
" they say and make return of this writ,
" with an endorsement of the time and

"manner of serving the same, on or before
"the first day of the term of the said Court
"to be held as aforesaid.

"
"
"

"
"
Witness, Jacob Gale,
Clerk of our Said Court, and the
Seal thereof at Peoria, this fifth day
of November in the year of our Lord
One thousand eight hundred and fiftythree.
Jacob Gale, Clerk.

" State of Illinois
 " Peoria County I served this summons
 " by reading to the within named John
 " Elting this 10th day of November A.D. 1853
 " J. B. Cornwall Sheriff
 " by John Bryner Deft
 " Serving 50
 " Copy 25
 " Ret 10
 " 1 Mite 5
 " 90

Exhibit "D"

"The Peoria & Oquawka
"Rail Road Company
" vs
"John Elting Junr.

In the Circuit Court
of Peoria County
November Term 1853.

And now comes the said Defendant by his attorneys Purpler & Sanger & Johnson and says that the said Plaintiffs declaration and the matters and things therein contained in manner & form as therein stated & set forth are not sufficient in Law for the said Plaintiff to have and maintain his action aforesaid against the said defendant and that he is not bound in law to answer the same and this he is ready to verify —

" wherefore he prays Judgment &c.

" Purple & Sanger & Johnson
for Defendant.

" And the said defendant comes & shews to the
" Court the following Special Causes of Defense

" 1. Because the averments in the said declar-
" tion are inconsistent & contradictory in this
" That the Laws of the 12th Feby 1849 & 10th Feby
" 1851 became laws, before the organization of
" the Company & Subscription of Stock by de-
" fendant which it is averred took place on
" the 4th February 1850.

" 2. Because it is not averred what am-
" ount of Stock was subscribed nor what per-
" cent. or that any per cent. of said Stock was
" paid in at or before the time of the organi-
" zation of said Company.

" 3. Because it is not shewn that the Com-
" pany on calling for payments on instat-
" ments of Stock gave 30 day Notice in 3 News-
" papers as required by law of the time and place
" when said payments were to be made

" 4. Because the Declaration shews that
" there has been no promise made to the
" Plaintiff And that their only remedy
" is in a Court of Chancery.

" 5th Because after defendants Subscription
" to the Stock, the General assembly by the
" Act of Feby. 10 1851, Authorized the

" Company to proceed with the Road when
" \$100,000 should be subscribed thereby changing
" the character of his contract

" 5 Because the said Act of Feby 10th 1851,
" authorized the construction of a branch
" Road from Maumouth to the Mississippi
" at or above Shocketon, not contemplated
" by the Original act under which the
" defendant's subscription was made.

" 6 Because the General Assembly by an
" Act of June 23 1852 without the Consent
" of the defendant, increased the Capital
" Stock of said Company to \$3500,000,

" 7. Because said General Assembly by
" said Act without the Consent of Defendant
" changed the Route of said Road, and
" also the Branch to the Mississippi —

" 8. Because by said Act said Company
" was authorized to construct Ferries across
" the Illinois & Mississippi — Enterprise to which
" this defendant did not subscribe

" 9. Because by said Act said Company
" were authorized to extend said Road
" to the State line of Indiana

" 10. Because by said Act said Company
" is authorized to Borrow Money on the Credit
" of the Company & pledge the Capital Stock
" & Mortgage the Road or give a deed
" of Trust on the same to construct

" the whole including the Eastern Extension
People & Sanger & Johnson
for Defrs.)

And, now, afterwards; to wit: at a Circuit
Court begun and held at Pekin, within and
for the County of Tazewell on the first Mon-
day of the Month of April, in the year of
Our Lord, one thousand eight hundred
and fifty five. And on the tenth day of
said Term, being the tenth day of May
A.D. 1855, the following proceeding was had
in said Cause.

" Perin and Acquawka }
" Rail Road Company }
" vs } In Assumpsit.
" John Elting }
"

Now on this day came
" again the Parties, and the Court being sufficient
" by advised of and concerning the premises,
" is of opinion that the defendant demurres to
" the declaration be sustained. It is therefore
" ordered and adjudged by the Court, that the
" Defendant recover of the said Plaintiff, the
" Costs and charges by him about his said
" demurmer expended and that execution
" issue therefor.

" Whereupon the said Plaintiff says
" he will abide by his said declaration, /

" the whole including the Eastern Extension
People & Sanger & Johnson
(for Deft.)

And, now, afterwards; to wit: at a Circuit
Court begun and held at Pekin, within and
for the County of Tazewell on the first Mon-
day of the Month of April, in the year of
Our Lord, one thousand eight hundred
and fifty five. And on the tenth day of
said Term, being the tenth day of May
A.D. 1855, the following proceeding was had
in said Court.

" Terrio and Aquawka }
" Rail Road Company }
" vs } In Appropos.
" John Elting }
"

Now on this day came
" again the Parties, and the Court being sufficient
" by advised of and concerning the premises,
" is of opinion that the defendant demurres to
" the declaration be sustained. It is therefore
" ordered and adjudged by the Court, that the
" Defendant recover of the said Plaintiff, the
" Costs and charges by him about his said
" demurres expended and that execution
" issue therefor.

" Whereupon the said Plaintiff says
" he will abide by his said declaration, /

State of Illinois }
Tazewell County } J. John A. Jones, Clerk
of the Circuit Court, do hereby certify, that the foregoing Transcript
commencing on the 13th and ending on the
21st Page is a true full and complete copy
of all the papers filed and proceedings in said
entitled cause of the Terrio and Aquawka Rail
Road Company, as fully and completely the
same as the Record in my said Office
In testimony whereof I have here-
unto set my hand and affixed
my official seal at Pekin this
28th day of May A.D. 1855
John A. Jones Clerk

" Which being read the said defendant says
" the said 8th Replication is not good and

were had in said Cause; to wit:

" Thomas Keill

" vs

" Georgia and Aquawake

" Rail Road Company

In Assumpsit

Now, on this day came
again the parties; and, a Jury having been
waived by consent the issues herein are submit-
ted to the Court for trial. And the Court
having heard the proofs and allegations
of the parties and arguments of counsel
finds the issues for the Plaintiff and
assesses his damages by reason of the breach-
es of promises in the declaration mentioned
to the sum of Three hundred and Seventeen
dollars and seventy cents \$ 317.70. It
is therefore ordered and adjudged by
the Court, that the Plaintiff recover of the
said defendant the damages aforesaid
in form aforesaid, and likewise the Costs
and charges by him about his suit ex-
pended, and that execution issue there-
for.

whereupon the Defendant presents a bill
of exceptions to the Court which is signed,
sealed and ordered to be made part of
the records in this Cause.

And now the said Defendant prays an
appeal to the Supreme Court. It is therefore
ordered, that said Appeal be allowed.
upon the ~~Defendant~~ within Twenty days
from this date filing in the office of the
Clerk of this Court, a Bond payable to the

Order

"Plaintiff in the sum of six hundred dollars
 " with William Kellogg as surety, which bond.
 " shall be conditioned for the ^{payment of} judgment, costs
 " and interest and damages in case this judy-
 " ment shall be affirmed and for the due pro-
 " secution of the Appeal.

And, now, afterwards; to wit; on the ^{Said} 11th day
 of said Term, being the 11th day of the Month
 of May. the defendants filed their bill of Ex-
 ceptions. in the words and figures as follows;
 to wit;

" State of Illinois }
 " County of Tazewell }
 " Tazewell Circuit Court
 " April Term A.D. 1855

" Thomas Neill
 " vs
 " The Peoria and Ogunda
 " Rail Road Company

" Be it remembered
 " that on the trial of said Cause, a jury
 " having been waived by agreement of the
 " parties, and the said Cause being thereupon
 " submitted to the Court for trial the Plaintiff
 " to sustain the issue on his part offered in
 " evidence the following bill of exchange
 " or order

" (George March 10. 1854
 " City of Peoria
 " P. O. R. Co.
 " sum of
 " \$ 300.00
 " order of Thomas Neill the
 " hundred Dollars & change to ap of
 " (Spink & Hughes)

Bill of Exceptions

acc'd to
 10-11-54
 Peoria
 May 11th 1854
 day from March 14th 1854

B. H. H. Co.
 47 C.

paid for non payment

George March 10. 1854

Peoria
 11-11-54

" To the introduction of which as evidence the
" defendant objected generally without specifying
" any particular objection but the Court
" overruled the said objection and permitted
" the same to be read in evidence there was
" no proof of the execution or acceptance there-
" of

" And the Court at the request of defendant
" has signed and sealed this bill of excep-
" tions, according to the Statute in such case
" made and provided

" D. Davis (Seal)

And, now, afterwards; to wit: on the
25th day of May A.D. 1855. the defendants
filed their appeal Bond, in the words and
figured, as follows; to wit:

Know all men by these presents that we
" The Peoria and Ogawka Rail Road Company
" as principal and William Kellogg as se-
" curity are held and firmly bound unto
" Thomas Neill in the penal sum of Six
" hundred dollars (\$600) for the payment of
" which well and truly to be made we
" hereby bind ourselves our heirs executors
" administrators successors and assigns jointly
" severally and firmly by these presents. In
" witness whereof the said Company have
" caused their Common seal, to be hereto
" affixed by Henry Kolt their Secretary, and
" the said William Kellogg hath hereto set
" his hand and seal this 19th day of May
" A.D. 1855.

Appeal Bond

" Whereas the said Thomas Neill
" did at the April Term of the Circuit Court
" A.D. 1855 in and for the County of Sagwell
" in the said State of Illinois recover judgment
" against the said Peoria and Aquawake Rail-
" Road Company in a certain ~~plea~~ of
" Treppaf on the case on promises then tried
" and determined by said Court, for the sum
" of Three Hundred & Seventeen ⁴⁰/₁₀₀ Dollars damages
" and the Costs of the said Neill by him in
" the said plea in that behalf expended:

" From which judgment the said Peoria and
" Aquawake Railroad Company prayed and
" obtained an appeal to the Supreme Court
" of the State of Illinois upon Condition that
" the said Company should within thirty
" days file with the Clerk of said Circuit
" Court an appeal bond in the penal sum
" of Six hundred dollars with William
" Kellogg as security according to the Statute
" in such case made and provided

" Now therefore the Condition of the above
" obligation is such that if the said Compa-
" ny shall well and truly pay all judg-
" ments, costs, interests and damages made
" rendered in case the said judgment of
" the said Circuit Court be affirmed in
" the said Supreme Court, and shall also
" duly prosecute the said appeal, then the
" above obligation shall be void - otherwise
" it shall remain in full force and effect

Henry Holt

See P & O R.R. Co. Wm. Kellogg, Secy.

State of Illinois

I, John A. Jones
Clerk of the Circuit Court, in and for
said County, do hereby certify, that the
 foregoing "Thirty six pages" contain a true
full and complete Transcript of all
the papers filed and all the proceedings
which had in said entitled cause, as
fully and completely as the same are
entered in my said Office
In testimony whereof, I have
hereunto set my hand and
affixed the seal of said Court
at Pekin this 29th day of
(May A.D. 1855)

John A. Jones Clerk

Fee for Transcript \$8.00

State of Illinois: Supreme Court
June Term A.D. 1855.
Pekin & O. Rail Road Co. vs
Thomas Neill

And now comes the
said plaintiff and says that in the record
and proceedings in said cause there is
manifest & manifest error; and shows to
the Court here and assigns as error
1. The Court error in overruling the demurrer
of the plf in error to the 3^d replication to the

2^d plea

2. The court erred in permitting the bill of exchange to be read in evidence

4. The court erred in permitting said bill of exchange to be read under any count in the declaration:

5. The court erred in permitting said bill of exchange to be read without further proof of its execution, and acceptance by the company

Wherefore, said Plf in cross
prayer that said judgment may be
reversed

Irvin Manning
Atty for P. & O. R.R. Co

79
Thomas Neill

79 at
The Second and Aqueduct
Rail Road Company

1855

13726

Transcript

Filed June 12th 1855.
S. Keland Ck

1855

Emor assigned.

The \$450 + cost 25 - \$475
\$1,100