

12155

No. _____

Supreme Court of Illinois

Murray

vs.

Ottawa Northern Plank R.R.Co.

71641  7

State of Illinois
LaSalle County
Shas before the Honorable
Edwin S. Geland Presiding
Judge of the Ninth Judicial District
of the State of Illinois at a Circuit Court
Commenced and held in & for the County
of LaSalle at the Court house in Ottawa
on Monday the Ninth day of May
the Seventh being the Second Monday
of said Month of May in the Year of
our Lord one thousand eight hundred
and fifty three the same being the
Seventy Seventh Year of the Independence
of the United States of America

Present
The Honorable Edwin S. Geland Presiding Judge

Be it remembered that heretofore to wit
on the 2^d Day of March A.D. 1853 James
B. Murray by Horst Hollister his
attorney filed in the Clerk's office of the
Circuit Court of said County his Bill
of Complaint in words and figures
following to wit

To the Hon Edwin S. Geland Judge
of the Ninth Judicial Circuit and Presiding
Judge of the LaSalle County Circuit Court

Sitting as Chancellor
Your Oretor
James B. Murray of the City County
& State of New York complaining sheweth
unto Your honor that the Ottawa
Northern Plank Road Company is and
was on the first day of July in the Year
of our Lord one thousand eight hundred
and fifty two at and within the County
of LaSalle and State of Illinois an
incorporated Company duly organized
under and by virtue of an act of the
General Assembly of the State of Illinois
Entitled "an act to provide for the
Construction of plank roads by a
general law" approved February 12. 1849
in force April 13th 1849 and the same
acts amendatory thereof by the same
and style of the "Ottawa Northern Plank
Road Company." And as such Company
on the ^{said} first day of July in the Year of
our Lord one thousand eight hundred
and fifty two by virtue and under
the Authority of an act of the aforesaid
General Assembly of the State of Illinois
Entitled "An act to amend the Charter
of the Ottawa Northern Plank Road
Company" to authorize said Company

To borrow money and secure the
payment thereof. And to increase
the Capital Stock" approved Dec 15th
1852. in force Dec 15th 1852 was authorized
and empowered to borrow ^{money} for the
purpose of constructing and operating
said road. And to that end said
company was by said last mentioned
act authorized to mortgage its road or
any part thereof and its revenues by
a deed of mortgage executed by its
president by order of its board of
directors. Which said act which
said act is in substance and to the tenor
& effect following viz

"Sec 1. Be it enacted by the People of the
State of Illinois represented in the General
assembly. That the Ottawa Northern Plank
road Company, organized under an
act Entitled "An act for the construction
of Plank Roads by a General law
Approved February 12th 1849 and
the Amendments thereto, and it
hereby is authorized to borrow money
for the purpose of constructing and
operating said road. And to that end
said company is hereby authorized to mortgage
said road or any part thereof and its

revenue by a deed of Mortgage Executed
by its president by order of its board of
Directors said Company are also authorized
to appropriate and set apart by contract
covenant or otherwise for the purpose of
providing for and effecting the payment
of any such loan the tolls of said road
or any part thereof

Sec 2^d Said Company may increase its
Capital Stock to any amount not
exceeding Twenty five thousand dollars
This act to be in force from and after its
passage

Approved June 15th 1852
and to which said act and the several provisions
thereof Your Orator prays leave for greater
certainty to refer.

Your Orator further shews
that by virtue of the aforesaid act of the
General Assembly Approved February 13th 1849
in force April 15th 1849 and the several acts
emanating therefrom the business and property
of said Company
are required to be managed and conducted
by its board of Directors. To which several
public acts and the provisions thereof Your orator
for greater certainty refers

Your Orator further shews unto Your honor that
on the first day of July in the Year of our

Lords one thousand eight hundred and
fifty two the said Ottawa Northern Plank Road
Company under and in pursuance of the
said recited act, approved and in force
June 15th 1852. borrowed of Your orator the sum
of five thousand dollars in money and for
the payment of which the said Company
under the hands and seals of William
Hickling Loring, Edmund George Morris
John H. Bedford and William M. True who
were then and there the Board of Directors
of said Ottawa Northern Plank Road Company
executed and delivered to Your orator a bond
bearing date on that day a copy of which is
hereto annexed marked exhibit. A. and
made part of this bill

v
And the said Ottawa Northern Plank Road
Company further to secure the payment
of the principal and interest of the said
sum of five thousand dollars ⁵⁰⁰ borrowed
as aforesaid and the same mentioned in
the condition of the said bond did and do
in pursuance of the ^{said} recited act
approved and in force June 15th 1852 by its
president William Hickling (who was by
an order of its board of Directors then and
duly passed, authorized to execute and deliver
to Your orator his heirs and assigns

Such deed of Mortgage in the name & behalf
of said Company at the same time execute
under seal and deliver to Your orator a
Mortgage bearing even date with said
bond. And conditions for the payment of
the said sum of Five thousand dollars
with the interest thereon according to the
conditions of the said bond by which the
said Mortgage or Mortgages unto Your
orator the plank Road of the said
Ottawa Northern Plank Road Company
with its fixtures appurtenances & appendages
and all materials for said Road then
obtained or to be obtained before the
performance of the conditions of said
Bond which Mortgage was duly acknowledged
and was afterwards duly recorded
as a Mortgage in the office of the recorder
of the County of Rutland on the 14th day of
July A.D. 1852 at 9 O'Clock A.M. of that day
and duly recorded in Book 29 of
Deeds pages 152 & 3 thereof as by the said
Mortgage and the Certificate of acknow-
ledgment and of the recording
aforesaid endorsed thereon Copies of which
are herewith annexed marked Exhibit
"B" & made part of this bill or the Originals
or records thereof ready to be produced

mentioned in said bond & mortgage together with interest thereon from the first day of July AD 1852 at the rate of ten per cent per annum and Your orator charges that the sum of five thousand dollars with interest thereon from the said first day of July AD 1852 at the rate of ten per cent per annum is due and unpaid to Your orator

Your orator therefore asks the aid of this Court in the premises that the above named Ottawa Northern & Lake Road Company, the Defendants in this suit may be summoned to appear and answer this bill and that upon the final hearing of this cause the said Company may be decreed to pay to Your orator the said sum of five thousand dollars and interest so due to Your orator as aforesaid and interest hereafter to accrue & Your orator's costs and charges in this suit by a short day to be appointed by this Court and in default of such payment that said Company and all parties claiming by through or under them may be foreclosed from all right & equity of redemption in ^{the} said mortgage property and every part thereof and ^{that} the sum or so much thereof as may be necessary to pay and satisfy the amount so due to Your orator

mentioned in said bond & mortgage together with
interest thereon from the first day of July AD 1852
at the rate of ten per cent per annum and
Your orator charges that the sum of nine
thousand dollars with interest thereon from the
said first day of July AD 1852 at the rate of ten
per cent per annum is due and unpaid to Your
orator

Your orator therefore asks the aid of this
Court in the premises & that the above named
Ottawa Northern Plank Road Company, the
Defendants in this suit may be summoned to
appear and answer this bill and that upon the
final hearing of this cause the said Company
may be decreed to pay to Your orator the said
sum of nine thousand dollars and interest
so due to Your orator as aforesaid and
interest hereafter to accrue & Your orator
costs and charges in this suit by a short
day to be appointed by this Court and in
default of such payment that said Company
and all parties claiming by through
or under them may be foreclosed from
all right & equity of redemption in ^{the} said
mortgaged property and every part
thereof and ^{that} the sum or so much
thereof as may be necessary to pay and
satisfy the amount so due to Your orator

as aforesaid and interest & costs may
be sold by or under the direction of this Court
and that out of the proceeds of the sale
Your orator may be paid the full amount
of said sum of \$5000. & interest from the
said first day of July AD 1852 at the rate
of ten per cent per annum as aforesaid
together with his costs of this suit and
for such further or other relief as the
Nation of Your orators case may require
as shall be agreeable to equity And Your
orator will ever pray &c

Wm. & Hollister

Compt Solr

Exhibit (A)

Know all men by these presents that the
Ottawa Northern Plank Road Company is here
and firmly bound unto James B. Murray
of the City of New York in the penal sum of
Ten thousand dollars good & lawful money
of the United States for the payment of which
well and truly to be made to the said James
B. Murray his heirs executors administrators
and assigns the said Ottawa Northern
Plank Road Company binds itself firmly
by these presents

In witness whereof the President and
Directors of said company have hereunto

Set their seals and signatures this first day of
July as Eighteen hundred and fifty two
Yet upon the following conditions
The said James B. Murray has this day
loaned to the said Ottawa Northern Banks
Road Company the sum of five thousand
dollars (\$5000) for the term of three years
with interest at the rate of ten per cent
per annum payable in semi annual
payments on the first days of January
and July in each year at the Bank of
the State of New York in the City of New
York with the understanding between
the parties that the net income of
the said Company to the extent of
said loan over and above what may
be necessary for the constructing repairing
and operating said Road shall be
by said Company reserved from dis-
tribution among the stockholders
and set apart as a sinking fund to
be applied to the payment of said loan
and upon the further
understanding and agreement that
upon a failure to pay either of said
installments of interest when due then
the unpaid portion of said loan shall
upon such failure immediately become due

and payable

Now therefore if the said
Ottawa Northumberland Road Company
shall well and truly pay said sum of
five thousand dollars (\$5000) and the
interest thereon as aforesaid. And if
the said Ottawa Northumberland
Company shall use as a sinking
fund to the extent of the liability of said
Company for this loan the net income of
said Company over and above what
may be necessary for constructing
repairing and operating said road
to be applied to the payment of said
loan and interest as the same may become
due by the terms of this contract then the
above bonds to be void otherwise to remain
in full force and effect

William Hickling President and Director *(Seal)*

L. Leland Director *(Seal)*

Geo H Morris Director *(Seal)*

John H Mosford Director *(Seal)*

Wm W. Free Director *(Seal)*

Exhibit (B)

This indenture made this first day of
July in the Year of our Lord one thousand
Eight hundred and fifty two by and

between the Ottawa Northern Banks
Road Company of the first part and
James B. Murray of the City of New
York of the other part Witnesseth that
the said party of the first part for and
in consideration of the sum of one dollar
paid by the said party of the second part
and also for the purpose of securing to the
said party of the second part the performance
of the conditions of the bonds this day
executed under which is substantially
as follows

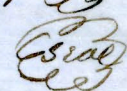
Know all men by these presents
that the Ottawa Northern Banks Road
Company is held and firmly
bound unto James B. Murray of
the City of New York in the principal sum
of Ten thousand dollars good and lawful
money of the United States for the payment
of which well and truly to be made
to the said James B. Murray his heirs
executors administrators and assigns
the said Ottawa Northern Banks Road
Company binds itself firmly by these
presents.

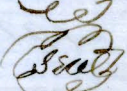
For witness whereof the President
and directors of said Company have hereunto
set their seals and signatures this the

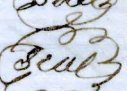
first day of July A D Eighteen hundred
and fifty two
It is upon the following conditions
the said James B Munnay has this
day loaned to the said Ottawa
Northern Plank Road Company the
sum of five thousand Dollars (\$5000)
for the term of three years with interest
at the rate of ten per cent per annum
payable in Semi Annual payments
on the first days of January and July
in each year at the Bank of the
State of New York in the City of New
York with the understanding between
the parties that the net income
of the said Company to the extent
of said loan over and above what
may be necessary for the constructing
repairing and operating said roads
shall be by said Company reserved
from distribution among the stockholders
and set apart as a sinking fund
to be applied to the payment of said
loan. And upon the further
understanding and agreement that
upon a failure to pay either of said
instalments of interest when due ~~and~~
~~payable~~ then the unpaid portion of

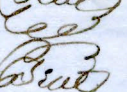
of said loan shall upon such failure,
immediately become due and payable.
Now therefore if the said Ottawa Northern
Plank Road Company shall well
and truly pay said sum of five
thousand Dollars (\$5000) and the
interest thereon as aforesaid and if
the said Ottawa Northern Plank
Road Company shall serve as
a sinking fund to the extent of the
liability of said Company for this loan
the net income of said Company (over
and above what may be necessary for
for constructing, repairing and operating
said road) to be applied to the payment
of said loan and interest as the
same may become due by the terms
of this contract then the above bond to be
void otherwise to remain in full
force and effect.

William Hickling President & Director 

Loring G. Selah Director 

George Morris Director 

John H. Horsford Director 

Wm W. Free Director 

herby grants bargains sells and
conveys unto the said party of the second
part his heirs and assigns the Plank Road

of said Company with its fixtures
appurtenances and appendages and all
materials for said work now obtaining
or to be obtained before the performance
of the conditions aforesaid

Provided always that this
conveyance is upon this express condition
to wit That if the said Ottawa Northern
Flank Road Company shall well and
truly perform each and all of the condi-
tions of said bonds then this conveyance
to be void otherwise to remain in
full force and virtue

In Testimony whereof the said
Ottawa Northern Flank Road
Company by William Hickling
its President duly Authorized by an
act of the Legislature of the State
of Illinois Approved June 15th 1852
and by an order of the Board of
directors of said Company has hereunto
set its hands and seal this first
day of July in the Year of our Lord
one thousand eight hundred
and fifty two

The Ottawa Northern Flank Road Company
By William Hickling Esq
Its President

State of Illinois
Lauderdale County } On this 13th day of July
1852 personally appeared
before me George Fisher Notary Public
for the Town of Ottawa in said County
William Hickling President of the
Ottawa Northern Plank Road Company
to me personally known to be the
Person who executed the within Mortgage
and acknowledges that he executed
the same for the use and purpose
therein mentioned

Given under my hand and
Seal Notarial at Ottawa
July 13th 1852
Geo Fisher Notary Public

State of Illinois }
Lauderdale County } No 483

Filed for record
July 14th 1852 at 9 A.M. & recorded
Book 29 of Deeds page 152 & 3
J. L. Lundy
Recorder

And on said 2^d day of March
1853 the said James B. Murray
by his attorney filed his bond for
costs in words and figures following
to wit)

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 9th
day of May next to answer to a certain
Bill of Complaint filed in our said
Circuit Court on the Chancery side
thereof against them by James B.
Murray and show You then and
there this writ and make return
thereon in what manner You execute
the same

Witness This Lindsey Clerk
of ~~our said Circuit Court~~ and the seal
of said Court at Ottawa this 24 day
of March A.D. 1853
(Seal)

J. Lindsey Clerk
per Trust

And on the back of said Writ
are the following Endorsements
James B. Murray vs Ottawa
Northern Plank Road Company
Term to May Term 1853

Serve this Writ by reading the
same to Darling Thompson as President
of Henry A. Evans as Secretary of Northern
Plank Road Company by leaving

a true copy of ^{the} within with each and every
Thompson & Henry Adams
March 10th 1853 W. Thom Sheriff
Log & Mt 1.102 coppies 1.00 12 min 60. \$2.70

Filed March 10. 1853

Of Sundry etc

And afterwards to wit at the May Term
of said Circuit Court on the 10th day
of said month of May the following
proceedings appear of record in said
Circuit Court.

James B Murray } Bill to foreclose
81 W } on the same
Ottawa Northern & Northern }
Road Company } a Mortgage

This day comes
the Plaintiff by Horst Holister his
Solicitors. And on their motion it
is ordered that the Sheriff have leave
to execute the return he had ^{heretofore} made
on the summons ~~heretofore~~ filed
herein. Also on their motion the
Defendants are ruled to answer
Complainant's bill of complaint on
or before the second Monday of this
term.

And afterwards to wit on the 14th day

of said month of May the Defendants
filed their answer herein in words
and figures following to wit
State of Illinois

La. Salle County; and Circuit Court thereof
May Term AD 1853

The answer of the Ottawa Northern
Bank & Loan Company to the bill of
complaint of Sumner B. Murray
Exhibits ~~exhibited~~ against them in this
Court.

This Defendant having answered
all all advantage of exception that may
be taken to the many errors and
insufficiencies of said Bill for answer
thereto or ^{to} so much thereof as they
ever advised is necessary for them to
answer say

That they admit that that
said Company was organized as
stated in said Bill. And they admit
that a mortgage was executed as in
said Bill stated by the persons named
in said Bill for money borrowed for
the use of said Company by the
Persons executing said mortgage.

And further answering they deny -
That the persons named in said bill

as having borrowed said money or executed
said mortgage were directors of said company
or authorized to bind said company
by mortgage

And further answering
they say that inasmuch as said money
was borrowed for the use of said company
that on the 18th day of January, AD 1853
they paid to said complainant the sum
of two hundred and fifty one dollar
and thirty eight cents which sum
was then and there accepted and
received by said complainant in
full satisfaction and discharge of the
sum of two hundred and fifty dollars
due by the terms of said mortgage
on the 1st day of January AD 1853 and
as for the payment of said installment
of interest

Without this that any other
matter or thing in said bill contained
not hereby sufficiently admitted or
denied is true

And having fully answered
said Defendant prays to be hence
dismissed with his reasonable costs

Glover & Hook

Deft's Solicitors

And on the 26th day of said month
of May the said Complainant by his
Solicitor filed his replication herein
in words and figures following to wit

State of Illinois LaSalle County and
Circuit Court thereof to May Term A.D. 1853

Dennis B. Murphy }
vs } Bill to foreclose
Ottawa Northern Plank
Road Company }

The replication of
Dennis B. Murray complainant to the answer
of the Ottawa Northern Plank Road Company
defendants.

This repliant having answered
to himself now and at all times hereafter
all and all manner of benefit and
advantage of Exception which may
be had or taken to the manifold
insufficiencies of the said answer for Repli-
cation Herunto says that he will aver
maintain & prove his bill of Complaint
to be true certain and sufficient in
the law to be answered unto unto that
the said answer of the said defendant
is uncertain untrue and insufficient
to be replied unto by this repliant

without this. That any other ~~thing~~ matter
or thing whatever in the said answer
contains material or effectual in
the law to be replied unto and not
herein and hereby well and
sufficiently replied unto confessed
or avowed traverses or denied true
all which matters and things this
replicant it and will be ready to
avow maintain and prove at this
honorable Court shall direct and hereby
prays as in & by his said Bill he has
already prayed

Heors & Hollister

Sole for Compt

And on the 15th day of November 1853 the same being one of the days of
the November Term of said Court the
following further proceedings appear
of record to wit

JAMES B MURRAY

vs

The Ottawa Northern
Plank Road Company

Bill to foreclose
a mortgage

This day comes
the complainant by Heors & Hollister
his attorneys & enters a motion ^{that} some
time be set for the hearing of this cause

And on the fifth day of December AD 1853
The Deposition of Peter Hoss was
filed in words and figures following
to wit

The Deposition of Peter Hoss of the City
County and State of N.Y. Under a trust
of lawful age produced from & examined
upon his corporal oath on the 23^d & 24th
days of November 1853 at my office No 140
Broadway in the City of N.Y. by
me a Commissioner duly appointed by
a Uedimus Potestatum or Commission
issued out of the Clerk's office of the Circuit
Court of Cass County, Illinois bearing
teste in the name of the Clerk of the said
Court directed to me as such Commissioner
for the examination of ^{the} said Hoss in
a certain suit or matter in controversy
now pending and undetermined in the
said Circuit Court. Wherein James B
Murray is Complainant & the Ottawa Northern
Plank Road Company are defendants in
behalf of the said Defendants as well as upon
the cross interrogatories of the Complainant
Which were enclosed with said Commission
& upon none other. The said Hoss being first
duly sworn by me as a witness in the said
cause previous to the commencement of his

examination to testify the truth as well on
the part of the plaintiff as the defendant
in relation to the matters in controversy —
between the Plaintiff and Defendants so far
as he should be interrogated
testified and deposed as follows
First Interrogatory

State Your age place of
residence and Occupation

Answer to the first interrogatory

My age is thirty Eight Years my
residence in New York City my business
is buying and selling lands in the western
States and paying taxes thereon
Second Interrogatory

Do You know James B Murray if so
how long have You known him and
where does he reside

Answer to Second Interrogatory

I do know him I have known him two
Years or more he resides in the City of
New York I suppose he does business there
Third Interrogatory

State whether You ever intended to paid
Murray the Complainant any sum of
money for the Defendants if so at what
time was the tender made what amount
was tendered and for what purpose was it tendered

Answer to the third Interrogatory

I did on the 18th day of January, 1853 tender to complainant for Defendant two hundred and fifty one dollar and thirty eight cents it was tendered as the semi annual interest due said complainant on a bond and Mortgage of the Ottawa Northern Plank Road Company to the complainant dated July 1st 1852 two hundred and fifty dollar was for the interest and the balance one dollar and thirty eight cents was for the interest on that interest. the tender was for the purpose of paying that interest and the interest on that interest. I never saw. I never saw the bond and my knowledge of the contents and date of the bond and Mortgage was derived only from my instruction in relation to the tender which directed me to make the tender on such a bond

Fourth Interrogatory

State all that passed between said Murray and Yourself at the time said Tender was made

Answer to the fourth Interrogatory

The tender was made by me as stated in answer to the third and he refused to take the money and stated that the

said bond had been protested and sent
back to complainant and on at Ottawa
and the complainant requested me
to hold on to the draft which he
with which to obtain the money for
the tender till I heard from him the
complainant. The draft was a draft
of the Bank of Ottawa on the American
Exchange Bank of New York City the
amount of the draft was two hundred and
fifty one dollar and thirty eight cents it was
payable to John V. Atter and by him—
Endorsed to me I had the draft in my
hands and turned it to the complainant
I have no recollection of specifically
specifically offering to endorse the draft
to the complainant I had no gold or
silver with me the draft may have
been endorsed by & certified by the bank
on which it was drawn I was ready
to pay the money in gold if required
the complainant he made no objection
to the draft as a payment and did not
decline because the offer was a draft and
not money Gold or Silver Bill

Fifth Interrogatory

Of said Murray at that time gave you
any directions in relation to the money

You tendered State particularly what those directions were

Answer to Fifth Interrogatory

He directed me to keep the draft sent me to pay the interest with till I heard from him

Sixth Interrogatory

State whether you complied with those directions

Answer to the Sixth Interrogatory

I kept the draft till the 15th day of June 1853 when I deposited it in the American Exchange Bank to the credit of the Bank of Ottawa by direction of Col W. A. Hors on the 18th day of January 1853 I wrote Mr Hors that Mr May would not take the money unless that the draft was subject to the order of Mr Hors

Seventh Interrogatory

State what you did with the money so tendered for the next month after it was tendered

Answer to the seventh Interrogatory

It was in my hands in the shape of the draft sent me as stated in my answer to

To Sixth Interrogatory

W. A. Hors

First Cross Interrogatory

Did not the Complainant James B. Murray at the first interview You had with him in relation to the payment of the amounts due on his bond on the first day of January ~~the~~ 1853 positively ~~refuse~~ refuse to receive the draft therefor and did he not then state to You that had he not supposed the directors of the Ottawa Northern Steam Road Company the above named defendant were to sign the bond under their individual responsibility he would not have consented to the loan being made or words to that effect. If not what did he say on the subject ^{to} ~~refuse~~ in this Interrogatory

Answer to the first Cross Interrogatory

He did not refuse to receive the draft he said nothing about the bond he signed by the Stock Holders individually or about it not being so signed by them in that interview. When I say the complainant did not refuse to receive the draft I mean to say he did not do so in words or in any way except that he said that the bond had been protested for non payment of interest and sent to his son

and I must retain the draft till I
hears from him and the matter
pass off in that way he did not receive
it and I kept it

Second Crof Interrogatory

Did You not have another subsequent
interview with said James B Murray
in relation to the same subject matter
and in that interview did not said
Murray remark to You that if the directors
would become personally responsible
and his said Murrays son Bronson
thought one of it he might be induced
to receive the interest or words to that
effect if not what did he say to You upon
the subject referred in this interrogatory

Answer to the second Crof interrogatory

I have a second and subsequent
interview with complainant his said
at that interview that he supposed
when he made the loan that the
directors would become personally
liable on the bond which he now
found was not the case and that
if they became personally liable
he was willing to let the loan remain
otherwise ^{must} ~~must~~ on the loan being called
in. This was all he said on the subject

inquired about in this cross interrogatory
Third Cross Interrogatory

Give us as near as you can the dates
of the two interviews above alluded to
Answer to the third Cross Interrogatory

The first interview was on the 18th day
of January 1853 and the second was
on the 21st day of the same month
Fourth Cross Interrogatory

Did You ever have any other interview
with the said James B. Murray
on the subject of the payment of the
interest due him on this day of
January A.D. 1853 from the defendant in
this cause, if Yes State when and whether
said Murray at such interview accepted
the sum due him as aforesaid, if Yes
When & in what manner & in what funds
was it paid, if any money or funds
were tendered by You to said Murray
State particularly the kind or description
of funds or money tendered, the time
and place of the tender and in whose
presence

Answer to the fourth Cross Interrogatory

I never have but the two interviews
above stated with complainant, and
he never received of me any interest

or money on the first interview I
tendered the interest as I have stated in
my answer to the 4th direct Interrogatory
and on the second interview on the 21st
day of February 1853 at Complainant's
office in Nassau Street in the City of
New York I tendered to Complainant
for said interest on said bonds and
interest on that interest and for
expenses enough to pay all these provided
they did not exceed three hundred dollars
that was the sum I had. It was in
American Gold Coin I had it in my
hands I had counted it before I
went to Mr Murray's office and I offered
explicitly to pay that interest and the
interest on that interest and expenses
out of that gold in my hands. I had
the gold in my hands open. I told
him I had the gold to pay it with
I can assure that Mr Murray saw the
gold. Mr Murray refused to receive
explicitly. I can't say who was present
but there were one, two, or three
Gentlemen there I furnished the
money for the tender at the request
of Mr John V. A. Hors whom I notified
by letter written and sent on the day

of the tender P. S. Hors

J. Randolph W. Townsend of the City
County & State of New York a Commissioner
duly appointed to take the Deposition
of the said Peter Hors a witness whose
name is subscribed to the foregoing
Deposition do hereby certify that previous
to the commencement of the foregoing
examination of the said Hors as a
witness in the said suit he was duly
sworn by me as such Commissioner to testify
the truth in relation to the matters in
controversy between the said plaintiff
and Defendants so far as he should
be interrogated concerning the same
and the said Deposition was taken at
my office No 140 Broadway in the
City of New York on the 23rd & 24th days
of November 1853 and that after said
Deposition was taken by me as aforesaid
the interrogatories & cross interrogatories &
answers thereto as written down were read
over to the said witness & that thereupon
the same was signed & sworn to by the said
witness the oath being administered by me
as such Commissioner at the place & on the days
& Year last aforesaid ^{Signed} J. Randolph W. Townsend
Commissioner fully
#10 3 Commissioner

and afterwards to wit on the 7th day
of said month of December the Defendants
by Glover & Cook its attorneys filed their
exception to S. Cross Interrogatory & the
answer thereto in words & figures
following to wit

James B. Murray

vs

Ottawa Northern & Western

Road Company

} Dr. Chancery

Now Cometh the
Defendant by Glover & Cook his attys
and excepts to the S. Cross Interrogatory
& the answer thereto in the deposition
of Peter S. Cross now on file in said
Cause because the same is not proper
Testimony in the case

Glover & Cook
for S. Cross

And afterwards to wit on the 9th day of
December A.D. 1853 the same being one of the
days of the November Term A.D. 1853 of said
Circuit Court the following proceedings appear
of record

James B. Murray

vs

Ottawa Northern & Western

Road Company

} Bill to foreclose Mortgage

} This day again came

Leave the Defendants by Glover & Hook
their Attorneys who move the Court
to suppress the second long interrogatory
& the answers thereto in the Deposition of
Peter S. Hois and after hearing the
arguments of Counsel the Court overrule
said motion.

And afterwards to wit at
The February Special Term of said
Circuit Court and on the 18th day of
February the following further proceedings
appear of record.

James B. Murray }
vs } Bill to foreclose
Ottawa Northern Bank } a mortgage
Road Company }

This cause having
been brought on this day to be heard
upon the Bill answers and exhibits
the complainant appears by Holsteter &
Cawady his Solicitors. And the Defendants
by Glover their Solicitor And the Court
after hearing the evidence in said cause
and the arguments of Counsel are
satisfied that default has been made
by said Defendants in the payment of
the installment of interest falling due on

the first day of January 1853 according to the conditions of the bond and mortgage set forth in said bill. And that by the terms and conditions of said bond and mortgage upon the failure to pay said interest the whole loan of five thousand dollars became due and payable. And it further appearing to the Court that there is now due the complainant upon said bond and mortgage for said principal and interest the sum of five thousand eight hundred and sixteen dollars and thirty one cent according to the rate of interest found to be paid upon said principal by the by the terms and conditions of said bond and mortgage.

And the Court being now sufficiently advised of and concerning the premises doth order adjudge and decree that said Defendants pay to said complainant or to the master in chancery for the time being of said LaSalle County for the use of said complainant the said sum of five thousand eight hundred and sixteen dollars and thirty one cent within ten days from the date of this decree. And in default thereof it is further

orders adjudged and decreed that all
the mortgaged property set forth in
said mortgage to wit the Ottawa Northern
Plank Road with all its fixtures
appurtenances and appendages and all
materials for said Road now obtained
and in possession of said Defendants be
sold at public Auction by or under
the Direction of the Master in Chancery
of said Federal County upon giving
thirty days notice of said sale by posting
written or printed notices thereof in the
City of Ottawa in four of the most public
places thereof or by advertising the same
in ^{one of} the City papers printed in said City—
particularly describing the property to be
sold and setting forth in said notice
the time & place of sale. And that said
Master in Chancery execute a Certificate
of purchase to the purchaser or purchasers
of said mortgaged property on the said
sale and if not ordered according to
law to execute a deed or deeds therefor
and that said Master in Chancery out of
the proceeds of said sale pay all the charges
and costs including the costs of Court and his
own fees and the balance pay over to said
Complainant or ^{to} his Solicitors to the amount

of Five Thousand Eight hundred and Sixteen
Dollars and thirty one cent the amount so
found due as aforesaid together with the
legal interest which may be due on the same
from the date of ~~this~~ said Decree. And the
Surplus money if any to be paid over to said
Defendants. And it is further ordered adjudged
and Decreed that the purchaser of said
Mortgage premises at Auction be let
into possession thereof as hereinafter
provided. And that said Defendants who
may be in possession of said premises
or any part thereof. And any person who
may have come into the possession of the
same since the commencement of this
suit render ^{them} or either of them. deliver ~~possession~~
possession thereof to the purchaser on production
of the Master's deed for the purchase of the same.

It is further ordered adjudged and
Decreed that the Defendants shall be
entitled to redeem from said sale at
any time within twelve months from
the day of sale by paying to the purchaser
or ^{to} the master in Chancery the amount
for which the premises may have been
sold with interest at the rate of ten per
cent per annum thereon.

Whereupon the Defendants pray an
Appeal to the Supreme Court which
is granted upon Condition that the
Defendants file an appeal bond herein
payable to the Complainant in the
penal sum of seven thousand dollars
within thirty days from this date
with Henry A. Evans, William M. True
and Burton C. Cook as security.

And afterwards to wit on the 10th
day of March A.D. 1854 the Defendants
filed their appeal bond herein in
words & figures following to wit

Know all men by these presents
that we the Otterow Northern Plank
Road Company as principal Henry
A. Evans Burton C. Cook & William M. True
as sureties are hereunto firmly
bound unto James B. Murray in
the penal sum of seven thousand
dollars lawful money for the payment
of which we and truly to be made
we bind ourselves our heirs Executors
and administrators Jointly & severally
& firmly by these presents.

The Condition of this obligation is such

That whereas the said James B. Murray
did on the 18th day of February A.D. 1854
at a term of the Lac du County Circuit
Court then holden before said Circuit
Court obtain a decree against the
above named Ottawa Northern
Plank Road Company by which
said Circuit Court decreed as follows
to wit. That the above named Ottawa
Northern Plank Road Company
should pay to said James B.
Murray the sum of five thousand
eight hundred and sixteen dollars
and thirty one cents in Ten days
from the date of said decree and
that in default of such payment the
Ottawa Northern Plank Road with
its fixtures appurtenances and appendages
all materials for said road then
obtained and in possession of said
Company be sold and from the
proceeds of such sale the aforesaid sum
of money be paid to said Murray
also his costs. from which decree
of the said Circuit Court the said Ottawa
Northern Plank Road Company has
taken an appeal to the Supreme
Court of said State

Now if the said Ottawa Northum Plank
Road Company shall prosecute its said
appeal with effect and without delay
and shall well and truly pay the sum
of money mentioned in said decree
and all costs interest and damages
that have or may accrue in said
cause or be exigencies against them
then this obligation to be void
otherwise in force

In Witness Whereof the said
Ottawa Northum Plank Road Company
by its President & Secretary the said
Henry A. Evans William McInnes
and Burton C. Cook in their proper
persons have hereunto affixed their
names & seals the 7th day of March
AD 1854

	The Ottawa Northum Plank Road Company	
Seal	By Lorenzo Leland President	
Seal	& by William McInnes Secretary	
Attest	Henry A. Evans	Seal
Wm. McInnes	Wm. McInnes	Seal
Secretary	B. C. Cook	Seal

State of Illinois
La Salle County
I Philo Lindley Clerk of the
Circuit Court in said County
do hereby certify that the above foregoing is
a true full and complete copy of all
the proceedings Pleadings orders & Judgment
of the Court therein (except the Commission
attached to Deposition of Peter S. Hoos) in the
foregoing Cause as the same appears of
Record & on file in my office

Our testimony whereof I have
hereunto set my hand & the seal
of said Court this 6th day of
May AD 1854
P. Lindley Clerk

And now comes the said appellant by Horn
& Coon and say that in the record & pro-
ceedings aforesaid and in the decree of said
Court there is manifest error in this to wit
The Court erred in overruling the motion of
defendants to suppress the second cross
interrogatory & the answer thereto in the
deposition of Peter S. Hoos

The Court erred in permitting the answer
to the 2^d Cross interrogatory in the deposition
of Peter S. How

3^d The Court erred in rendering the decree
aforesaid in manner & form aforesaid

1st Because said decree is not warranted
by the evidence

2^d Because the decree is rendered for
a greater sum than is claimed by the
bill

3^d Because the bill is not supported
to support the decree

4th Because there ^{was} no sufficient evidence
to sustain the decree

& for these errors & others in said record
manifestly appellants pray that
said judgment be reversed

Glosterbrook

attys for appellants

And now at this day, ^{comps} James B. Murray the
Appellee by Hollister & Cawley his solicitors
and says there is no error in the record & proceedings
aforesaid, or in giving the judgment aforesaid, And
he prays the Court now him to proceed to examine
as well the record and proceedings aforesaid as the matters

aforesaid above assigned for error, and that
the judgment aforesaid in form aforesaid may
be in all things affirmed &c.

Hollister & Leavary
Solicitors for Appellee

Edward J. Williams
Attorney
Hollister & Leavary
Solicitors

31
1854

1854

Filed May 29. 1854.
L. Celand Clerk.

Proffer
12-155

12-155
9.18
47.25