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recognized as Engineer - the plan of Nichols spoken
of, was discussed and adopted, and this was
the resolution of the board of which I have spoken.

There was some action taken afterwards as to
employing plaintiff as engineer. I don't know
that it was in the same resolution. My mem-
ory is that the employment of plaintiff as en-
gineer was by vote and resolution. Myself and
my brother, bought the mill, and the same day
gave us a lease of the Water Power. This deed was
made in June 1857. The water was to be furnished
from the improved plan of dam. At the time
we bought we were furnished with water from the
old dam.

The said plaintiff also produced as a
witness one E. N. Parsons, who being duly
sworn deposed as follows in his direct Exam-
ination,

I am of the firm of Williams
and Parsons referred to. I have lived at Moline
for three years. I know the parties to this suit,
have known the plaintiff since 1855; he arrived
at Moline, I think, about the middle of May,
1857. - He was taking surveys and levels of the
water there, for the purpose of erecting a water
power. We had a contract with the then
company, which I think was dated in the fore

part of July 1857. Plaintiff was engaged there from the middle of May until the tenth of November. After our contract was made, he had general supervision of the work, ~~as we had~~ ~~under his direction~~ as engineer of the Company, making estimates &c. We worked under his direction as Engineer of the Company. The work was not completed when we stopped. I think the want of funds was what stopped it; it was still good weather at that time. I left about the 15th of November and went to New York, where I remained until July, 1858. The plaintiff made estimates of our work every month. I haven't our contract with me. Mr. Williams carried it with him into Iowa. I was served with a subpoena to produce it on Saturday noon, day before yesterday.

And therefore this witness was permitted to stand assigned, with leave to either party to recall him hereafter.

The said Mainstiff also produced as a witness one Charles H. Stoddard, who being duly sworn testified as follows on his Direct Examination.

I am a surveyor and Civil Engineer; have been engaged in it about 16 years. I am not acquainted with hydraulic Engineering. Have been engaged at it some little. I know something about the Machine Water Power. I have seen it.

Whereupon Counsel for the plaintiff, put to the witness the following question.

Question "State what in your opinion would be a fair compensation for the services of a Civil Engineer for a year"?

Def't's obj'n And to this Question defendant by its Counsel then and there objected, and for cause of said objection assigned to the Court first that witness cannot testify as an expert, and hath not as yet shown himself to be expert, in the matter in question; Second, that the question is irrelevant because, the plaintiff was not employed for a year or by the year, as appears by the testimony.

Over-ruled But the Court having heard the arguments of Counsel, over-ruled the said defendant's objection, and permitted said question to be put by counsel and answered by the witness.

Excp. in

And to this ruling and decision of the Court, the said defendant by its counsel then and there, and at the time thereof excepted.

Witness in reply to said Question,

said:- "I should say from \$1000. to \$10000." "according to the Engineer's ability, and the " "importance of the work, but not very often" "as high as the latter. I know but very little" "of this work except what I have heard, I " "have heard some of the testimony."

Counsel for the said Plaintiff then put to the witness the following Question:-

Question? "From your knowledge of the importance" "of this work, how much in your judgment" "would be a fair compensation for a good, " "competent civil Engineer employed by " "the year?"

Objn. of Deft.

And to this question also the defendant by counsel then and there objected; and for ground of said objection assigned, and insisted to the Court, first it had not been shown that plaintiff was "a good competent civil Engineer", and second, that it had not been shown that said plaintiff was employed by the year, or for a year.

Over-ruled But the Court having heard the arguments of Counsel, overruled the said defendant's aforesaid objection and permitted said question to be put by Counsel, and answered by the witness.

Expi taken And to this ruling of the Court said defendant by its counsel then and there excepted.

Witness said in answer to the foregoing question. "I should not expect to get"

Answer "the services of a competent Engineer for" "such a work, for less than from \$2000. to \$3000." "at the time when this work was done?"

Counsel for the Plaintiff then put to the witness the following Question.

Question? "What would the work of such an engineer," "at such employment, be worth, from May" "to December?"

Objⁿ by D^f And to this question, the defendant by its counsel then and there objected, and for cause of said objection, then and there assigned to the Court, that the same was irrelevant to the matter in issue.

Overruled

But the Court having heard the arguments of Counsel, overruled the aforesaid objection of the ~~XXXX~~ said defendant, and permitted said question to be put by counsel, and answered by the witness.

Except taken And to this ruling and decision of the Court the defendant by its Counsel then and there also excepted.

Witness in reply to said question, said:-

Answer

"More than half the salary, the work in 'winter' would be worth a good deal less than 'the work during the summer'."

On Cross Examination witness testified as follows:-

I have practiced my profession in New York, Iowa, Illinois and Pennsylvania. I regard the reputation of an Engineer as affecting the amount of his salary, and the value of his services. Persons who haven't much reputation do not in general command so high a price for their services, as others.

Generally, an engineer gets his pay whether at work or not, if under his employer's orders. If an Engineer finished his work

at the end of six months and his employment ceased, he ought ^{not} to charge as much as for the year: though I should charge at least two thirds of a years salary for a summer work. I don't know that this is the usual custom. For six months work during summer, at a yearly salary of \$1500, I should charge \$1000. My engineering has been mostly railroad Engineering.

Thereupon the said plaintiff produced and offered to read in evidence to the Jury a certain contract in writing, and no objection being made the said contract was read to the Jury, in these words & figures, to wit:

Contract of
Williams &
Parsons with
Defendant.

Articles of Agreement made and concluded this tenth day of July in the year one thousand Eight hundred and fifty-seven between Nelson L. Williams and Elizer N. Parsons parties under the name and style of Williams and Parsons, of the first part; and the Motion Water power and Manufacturing Company, a Corporation under the laws of Illinois, of the second part; whereby it is covenanted and agreed as follows, to wit: the aforesaid parties of the first part in consideration of the prices agreed to be paid to

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them by the party of the second part, hereby
covenant and agree to construct and com-
plete in the most substantial and work-
manlike manner from sixteen to twenty
four, as may be directed by the executive
committee of said company of the second
part, of the piers for the improvement of the
hydro water power together with the timber
and iron work connected therewith so as
to conform to the specifications herunto
annexed which are to be considered as a
part of this contract. It being the desire and
intention of the said party of the second
part to complete as much of the contem-
plated improvement as possible during
the present season so as to make the water
power created available, the said parties
of the first part shall begin the building
of said piers at the upper end of the line
next the dam or Chantrelain and Dean's
mill and build sixteen piers and put in
the wood and iron work between the same
and complete that much of the work as
soon as men and money may reasonably
do it, and to the end that this object
may be accomplished, the parties of the
first part agree to do no work below the
sixteenth pier without consulting and

obtaining the consent of the engineer in charge until the work shall have been completed above and including the fixtures etc. The work shall be executed under the direction, inspection and supervision of the engineer in the employ of the Company of the second part by whose measurements and calculations the quantities and amounts of the several kinds of work performed under the contract shall be determined and whose determination shall be conclusive upon each party, and who shall have power to reject or condemn all work or materials which in his opinion do not fully conform to the spirit of this agreement, and shall decide every question which can or may arise between the parties relative to the execution thereof, and his decision shall be final and binding on both parties. The work during its progress shall be prosecuted in such order and at such places and parts of the work and at such times and seasons as said engineer shall direct. The work and materials delivered for the same shall at all times be subject to the inspection of said Engineer. If any materials brought in for the use of the work shall be condemned, by

the engineer as unsuitable for the same, the said contractors shall forthwith remove said materials entirely away from the line of the work as said engineer shall direct so as effectually to guard against their introduction into the same.

Whenever work is required to be done which is not now contemplated or is not covered by ~~prices~~ herein mentioned the engineer shall fix such prices for the work as he shall consider just and equitable, and the said parties shall abide by such prices provided the parties of the first part enter upon and commence such work with a full knowledge of the prices so fixed by the engineer; but if the parties of the first part decline executing said work at the prices fixed by the engineer, then the party of the second part may enter into contract with any other person or persons for the execution the same as if their contract had never existed. If extra work not provided for in this contract is performed by the contractors without protest or notice in writing to the engineer before prices shall have been fixed for such work, then the engineer shall estimate the same at such prices as he shall deem just and reasonable, and

his decision shall be final and the contractor shall accept of the said prices in full satisfaction of their demand against the Company for said extra work. But nothing shall be considered extra work that can be measured or estimated under the provisions of this contract.

On the condition of the fulfillment of the foregoing provisions of this contract by the said parties of the first part, the said party of the second part hereby covenant and agree that whenever in the opinion of the engineer in their employ this contract shall have been wholly completed by the parties of the first part, they the said Waterpower and Manufacturing Company by their Treasurer will pay for the performance of the work in full for materials and workmanship the following prices, to-wit:-

For excavation of solid rock as specified at the rate of one dollar --- per cubic yard.

For excavation of loose rock at the rate of fifty cents per cubic yard.

For excavation of earth as specified at the rate of fifteen cents per cubic yard.

For embankment as specified at the rate of fifteen cents per cubic yard.

For slope wall at the rate of one dollar and fifty cents per cubic yard.

For hauling earth or rock per 100 feet after the first three hundred feet, at the rate of one cent per cubic yard.

For vertical wall laid dry, at the rate of three dollars per cubic yard.

For masonry in piers as specified at the rate of eight dollars — per cubic yard.

For timber work as specified at the rate of thirty dollars per thousand feet.

For iron work and nails at the rate of ten cents — per pound.

For cutting holes in rock for foot of braces, one dollar per hole.

For drilling holes for bolting sills to the rock at the rate of fifty cents per hole.

The prices above specified are to be in full compensation for all the materials and labor required to put the same into the work herein contracted for, and complete the same in all respects as provided in this contract.

In order to enable the contractors to prosecute the work advantageously the engineer of the company in charge of the work shall make estimates from time to time, not

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often than once in each month as the work progresses so as to arrive at an approximate result of all work done and report the same to the executive committee of the Company who shall provide for the payment of the same less fifteen per cent to be retained until the completion of the work, as a guarantee for the performance of the contract. The engineer shall certify in writing the amount of the estimate before the same shall be paid by the treasurer of the Corporation. It is expressly understood that estimates shall be made only when the work is prosecuted agreeable to the provisions of this contract, and with such progress as is satisfactory to said engineer.

It is further agreed that if in ^{the} opinion of said engineer the said contractors shall neglect or wilfully refuse to prosecute the work embraced in this contract with sufficient energy to secure its completion within a reasonable time, or violate any of its provisions, or perform the work in an improper manner, the said engineer may certify the same in writing to the board of directors of the aforesaid Company, and thereupon the said directors may declare the said contract abandoned by the said contractors, and may proceed

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to contract the work with any other person.

On abandonment of this contract as aforesaid the contractors shall forfeit to the said company any moneys that may remain unpaid whether they are due or not due at the time.

It is further agreed that whenever this contract shall be completely performed on the part of the said contractors, and the said engineer shall certify the same in writing together with his estimate of all the work which has been done by the said contractors on said contract, the said company by their treasurer shall within thirty days after the receipt of such certificate pay to the said contractors the balance which under the contract shall remain due.

Provided that when the work is completed and the fifteen per cent reserved becomes due and payable to the parties of the first part the said party of the second part shall have the right to pay to the said parties of the first part an amount equal to ten per cent upon the whole cost of the work, in the bonds of the Company ordered to be issued by the board of directors and dated 1st June 1857, with ten per cent interest coupons attached, payable in New York

semi-annually and the principal of said bonds payable in ten years.

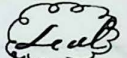
In consideration that the said parties of the first part will drive and complete the work herein contemplated at an early day as possible and in a good and substantial manner, the party of the second part covenant and agree that the said contractors shall not lose anything by their contract owing to the same estimate being too low.

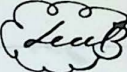
It is also agreed that any stone suitable for the work found on the premises of the Company of the second part may be used by the contractors without charge.

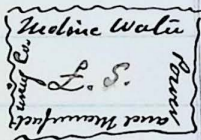
For a more full explanation of the form and dimensions of materials and parts and of the manner of constructing the work in all its details plans and when necessary bills of timber plank and iron will be furnished by said engineer who will give such directions from time to time during the progress of the work as may appear to him necessary and proper in order to make the work complete and perfect in all respects as contemplated in the annexed specifications. And said plans, bills and directions shall in every

respect be complied with.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written. The said Contractors in person and the said Motive Water Power and Manufacturing Company by their President and Secretary, and witnessed by their seal.

N. L. Williams 

Elijah N. Parsons 



Attest

Cyrus Pitts President

Wm Pitts Secretary

Specifications of the manner of improving the Motive Water power.

The improvement to be made by constructing a dike composed of stone piers placed forty-five feet apart from center to center and of timber and plank. The first pier to be placed at the intersection of the line of the East side of Sickles Mill with the line of the North side of Chamberlain and Davis saw mill the direction of the dike for one hundred and eighty feet to be parallel with the North end of Sickles Mill; Thence curving to the right with a radius of 1400 feet a distance

of 405 feet, thence on a straight line tangent to the last mentioned curve a distance of 450 feet; thence curving to the right with a radius of 300 feet a distance of 45 feet; and thence by the most practical direction to connect with the shore. A connection to be made at the upper end with the South side of Chamberlain and Dean's Mill by the most practical way, that may be determined upon by the Company's engineer.

The height of the piers will be about 18 feet, the top of each to be one foot lower than the level of the door sill of the basement of Shaw and Reed's store. The piers to be four feet by twelve feet on top, the front end to be vertical, the sides to batter one inch to the foot and the rear end to offset five inches to the foot increasing in size downwards.

The masonry to be laid in courses of not less than twelve inches in thickness, the sides to be rock dressed but the front end of each to be faced to $\frac{1}{4}$ of an inch joint. The breadth of bed of the face stone shall not be less than 18 inches, but if the thickness of the course shall exceed 18 inches, it shall have as much breadth of bed as height. Each course shall have a bond with the course on which it rests of at least six inches, and each course

except the bottom one shall have at least two headers on each face extending back from the face two thirds of the thickness of the walls. The beds and end joints to be dressed to one fourth of an inch joint the whole to be laid in mortar made of the best quality of hydraulic lime and clean sharp sand, in such proportions as said engineer shall direct, and the interior grouted with similar materials.

A sill nine inches by fifteen inches shall be bedded and bolted to the rock immediately in front of the piers the whole length of the dike with bolts of one inch diameter entering the rock from 18 to 20 inches and in four and a half feet. The top of the sill to be 17 1/2 feet below the top of the piers. Into these sill posts 8 by 12 inches are to be framed once in 4 1/2 feet 16 feet and 11 inches long from shoulder to shoulder, the face of each post to be two inches back of the face of the sill.

On the rear side of each post two boxings one inch deep and two feet lengthwise of the post to be made to receive the supporting beams and braces. Each beam to be bolted to each alternate post between the piers with two bolts of one inch iron and to the intermediate posts with one bolt in each. Each alternate

post to have two braces at an angle of 45 degrees the lower ends set into the rock and the upper ends bolted to the posts with one inch bolts.

Each post to be secured to the sill by a mortise and tenon and by a wrought iron T. bolted to each side of the sill and to the post in such a manner as to allow the bolts to be withdrawn and the post to be removed and another inserted in its place whenever it becomes necessary for repairs without interfering with the sill.

The top of the posts to be capped with a plate 8 by 12 inches running the whole length of the dike, the front side of the posts to be planked with two inch plank leaving 8 feet way spaces 46 by 48 inches between each pair of piers. All the materials used in the construction of said dike shall be of good quality and shall be approved by said engineer before it is used in the work.

Excavation.

Under this head shall be classed the preparing the foundations to receive the masonry or timber work removing the earth or rock or whatever is in the way, cutting drains, enlarging the channel of the river or grading sheets that may be necessary for the improvement of the water power and

shall be classed as solid rock excavation, loose rock excavation or earth excavation.

Said rock excavation shall include all rock that in the opinion of the Company's Engineer requires blasting in order to be removed, including boulders measuring half a cubic yard and upward. Rock which can be conveniently removed without blasting shall be termed loose rock, and all other shall be termed earth excavation.

All the materials taken from excavation shall be deposited in such places and in such manner as said engineer shall direct and if deposited within three hundred feet of the place from which it is taken shall be paid for as excavation only, but if carried over 300 feet a stipulated price per cubic yard per one hundred feet will be paid for hauling, the count to commence after the first 300 feet.

All earth deposited for embankment not taken from excavation will be paid for at a stipulated price per cubic yard for embankment measured in the bank.



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Therefore the witness E. W. Parsons was
recalled by leave of the Court, and being
Cross-examined by Defendants Counsel
testified as follows: -

I knew of the hiring of the plaintiff.
I saw him in New York before he ever came
out here, and told him Pitk, Gilbert and
Pitk wanted an Engineer to do some engi-
neering on the water power at Mohine; he
said he was at liberty, and would come.
I then sent word to Messrs. Pitk, Gilbert and
Pitk that he would come. I waited some
time to hear from them, and did not, and
then I came up to Mohine. Mr. Reed told
me I had been telegraphed to, to have Nichols
come up. Reed was then at Mohine.

I told Mr. Gilbert & Mr. Pitk, and they told
me to write to him, and have him come.
I did so, and he came pretty soon after. This
was Hiram Pitk told me so. Plaintiff came
on, and after that they made their own bar-
gains; I don't know that they made any
new bargains; he went to work for Pitk, Gil-
bert and Pitk. I say so because I know of no
others that employed him. I don't re-
collect that Mr. Reed told me who had
telegraphed to me.

On Re-examination witness testified as follows:-

I was living in the same town with the plaintiff & I went and employed him at Mr. Reed's request. Mr. Reed is the present President of the Company.

Pitt Gilbert and Pitt were then largely engaged in the lumber business. I did not then know of the existence of this Corporation, the Motine Water Power Company. I didn't when I employed the plaintiff know or speak of any today but Pitt Gilbert and Pitt. I didn't then know there was any such thing as the Water Power Company.

I employed plaintiff to make a survey of the Water Power. This was probably in February or March 1857 as near as I recollect.

The plaintiff came out, and after that they made their own bargains, but with whom or about what I don't know. When Mr. Reed told me I had been telegraphed to, was about the first of May 1857.

On Cross Examination witness testified as follows:-

By saying that after plaintiff came out, they made their own bargains

I merely mean that I had nothing further
to do with it.

Mo. by Dep't. W. Thereupon the defendant by its counsel
Exclude Testimo. moved the Court to exclude from the jury
of Hiram & Cyrus Pitt all the testimony of the two witnesses
Pitts. And for
cause of said motion assigned, that the
said witnesses are interested in the result
of this suit.

^{his}
Overruled

And the Court having heard the ar-
guments of counsel overruled the said
defendants' aforesaid motion, and re-
fused to exclude from the jury the testimony
of said witnesses Hiram Pitt & Cyrus Pitt.

Exceptio

And to this ruling and decision of the
Court the defendant by its counsel then
and there, excepted.

The said plaintiff also produced as
a witness one Daniel Gordon, who being
duly sworn depose as follows, in direct
examination

I have lived at No. 10 several
years. I know the property of the defendant
there. In the fore part of the summer of 1857,

I was engaged doing some work for the defendant and was introduced to the plaintiff. I saw him there, while I was at work there, and occasionally for sometime after. engaged as an engineer would naturally be engaged, with his instruments. He remained employed until fall. Don't know the value of an engineer's services.

And counsel for defendant declining to cross-examine this witness, the plaintiff produced as a witness one Amos Stillman, who being duly sworn testified as follows, in Direct Examination.

I am a civil engineer and surveyor. I have been actively engaged as a surveyor & engineer, ever since 1835. I know there is such a water power, as the Motine Water Power. Civil Engineers are worth from \$1000. to \$5000. per year, in proportion to the value of the services rendered. I should say \$2000. in this Western Country would be a good price, in 1857. And by a good price I mean a fair price. Engineers were worth more in 1857 than now. I think \$2000 would be fair now.

Defendants' Counsel declining to cross examine this witness, the plaintiff also produced as a witness one Gilbert F. Taylor who being duly sworn deposed as follows:-
in his Direct Examination

I am a civil engineer and have been since 1846. An Engineer engaged in such work as planning and superintending a system of improvements for a water power like that at Mohine, would be worth \$2000. to \$2500. per year.

On Cross-Examination witness said:-
"I base my estimate on the supposition that the man is competent to take charge of such a work."

Cross Q the witness before sworn, being recalled testified as follows, in Direct examination by Plaintiff's Counsel.

The plaintiff was the company's engineer, at the time the work was being carried on by Parsons and Williams as contractors.

(Witness shows the agreement between the defendant Corporation of the one part, and Messrs Williams and Parsons of the other part)

I can't say whose handwriting this contract is in. I think the plaintiff drew it up, and Mr. John P. Cook amended it.

The counsel for plaintiff then put to the witness the following Question:

Question

At the time this contract was drawn, or about that time, did you hear defendants, at their meetings, say any-thing as to the company's right to dismiss plaintiff, if dissatisfied with his services?

Def's Objn

In which Question the defendant by its counsel then and there objected, and assigned for cause of said objection that the said question was irrelevant to the matter in issue.

Over-ruled

But the Court having heard the arguments of counsel overruled the said defendants' aforesaid objection, and permitted said question to be put by counsel and answered by the witness. and to this ruling and decision of the court the defendant by its counsel then and there excepted.

Excpn. taken

Answer

Witness answered

"There was some conversation, but I can't say that it was at this meeting."

"I don't know that this talk was at a meeting of the directors: there was a talk of some kind among some of the directors."

The plaintiff thereupon recalled the witness William Pitt before sworn, who testified as follows: - to the Court in examination by plaintiff's counsel: -

(Witness shown two letters addressed to the plaintiff and dated respectively April 2nd A.D. 1858, and February 19. 1858) These letters are in my handwriting. I wrote and sent them to the plaintiff. (Witness was also shown two certain other letters dated respectively June 19. 1858 and August 29. 1858.) I know the handwriting of S. S. Goodwin, have seen him write. These two letters last shown me, are in Goodwin's handwriting. Goodwin was not treasurer of the company when these letters of his were written - He is reputed to be now. - I saw a notice of his election as such, in a newspaper in 1858.

In answer to a question by the Court witness said, "when I wrote these letters" "I was secretary of the Company"

Letters offered. Whereupon plaintiff's counsel offered to read

in evidence to the jury the foregoing letters, first above mentioned written by the witness Hiram Pip to the plaintiff.

Def't's obj'n

In the reading of which said letters in evidence the said defendant by its counsel, then and there objected, and for ground of said objection, assigned, and insisted to the Court 1st that it did not appear that said witness Hiram Pip had any authority to write the said letters, 2nd that the writing of said letters had not been proven to the jury, 3rd that said letters are irrelevant to the matter in issue.

Overruled

But the Court having heard the arguments of counsel overruled the said defendant's aforesaid objection and permitted said letters to be read to the jury, and to this ruling and decision of the Court, the defendant by its counsel then and there excepted.

Excp'n

Whereupon the said two letters so offered were read in evidence to the jury by plaintiff's counsel, in words and figures as follows, to wit:

Provine, Ill. Feb, 19 1858

Letter of H. Pip to L. L. Nichols Esq
W. L. L. Nichols

Dr. Sir.

Yours of the 13th is rec^d. We are now waiting the arrival of 3 or 4 Gentlemen from N. Y. with whom we have been negotiating to decide in regard to our operations the coming season ~ We hope well to secure a portion of the property - so as to provide means for the improvements without disappointment or delay ~ We expect them tomorrow evening, and as soon as we have time to conclude anything will write you the result ~ If we succeed in the operation we shall of course want your assistance and we shall make every effort to do so because the property without the improvement is unproductive. ~ We cannot say definitely what will be done until we confer with them, as we are determined to have ample provision made for the work before recommencing - All well here - You have probably heard of the death of my brother D. B. Pitt who dropped away on the 8th Dec. a few weeks previous he went over to Mr. Gilberts to make a visit, expecting to return and then make his home with me as I had rented the house I occupy on his account. ~ The weather grew cold and rough & he gave up the idea of returning as his strength seemed to fail him rapidly ~

Mr P. & myself shut up our house and went on the river and staid there until his death about two weeks.

We have had recently about a foot of snow which makes good sleighing - After November, we had no winter until abt the 1st of this month. Since which with the snow ~~and~~ & cold weather it seems quite wintry - The ice in January all melted out of the pond but we have now 8 inches of good ice and are putting it up for summer are not daring to wait any longer.

Yours Truly

William P. P.

Letter of W. P. P.

or

L. L. Nichols

Providence Ill April 2^d 1858

L. L. Nichols Esq

Dr. Sir

Your favor of Feb, 13 was rec^d and laid away for answer and I had supposed I answered it about 2 weeks after - but Mr. Post rec^d a letter from you since and from that letter and from his recollection I think I must have been in an error -

In regard to the improvement we had supposed we should have been ready to commence before this time - We have had P. P.

Red Eq. making arrangements in New York for some 2 months past so as to be prepared to go on without any hindrance the coming season - but sickness in his family, and among the parties he was negotiating with has delayed matters and last evening we received a notice of the death of one of his daughters aged abt 17.

He was in N. Y. negotiating with several persons there when he was suddenly called home by news of his daughter's dangerous condition & is now at home we expect.

We feel very confident that he will succeed but do not know how long it may take to perfect the arrangements - And shall want your services whenever we can ascertain - We do not think you will run any risk in moving out here at once - It is a fine time to do the work.

Labor plenty & cheap - Rent & living much cheaper than last year - There is an abundance of eatables at reasonable prices.

Flour \$3²⁵ W 4⁵⁰ Corn 25^{cts} Potatoes 25^c
Butter 12^{1/2} Eggs 8^d Rent from \$5.00 W \$12 -
per month about $\frac{2}{3}$ last year prices (or a little less) Lumber at from $\frac{2}{3}$ W $\frac{3}{4}$ last year prices. We wish to make the thing perfectly sure this time so that there will

be no delay or trouble.

Yours truly

Wm. P. P. S. Secy

Water Power Co.

The said plaintiff also offered to read in
 Godwin's Letter evidence to the jury the said two letters of
 Offered S. J. Godwin directed to the said plaintiff.
 In the reading of which said last mentioned
 two letters in evidence the defendant by its
 Counsel then and there objected, and for cause of
 said objection assigned and insisted to the
 court. 1st That the writing of the said let-
 ters hath not been proved to the jury. 2nd
 That said Godwin at the time of writing
 said letters was not a member, or officer or
 agent of the defendant.

Over-ruled But the court having heard the arguments
 of counsel over-ruled the said defendant's
 aforesaid objection, and permitted the
 said letters of the said Godwin, to be read
 in evidence to the jury; and to this ruling and
 decision of the Court the said defendant
 by its Counsel then and there excepted.

Whereupon said letters were read in
 evidence to the jury, on the part of said
 plaintiff in these words and figures, to wit:-

Chicago Ills June 19th 1858

L. L. Nichols Esq

S. J. Goodwin

Dear Sir

or

Plaintiff

1st letter

I have just ret.

from Mobile, where I have been together with Mr. Reed from Onondaga County, for the past week negotiating with Messrs Pitts Killist & Pitts for the Mobile Water Power and Man. Co. property. And now Sir, I should like to see you and have some conversation with you about your returning there soon, to take charge, as engineer, of the unfinished part of the improvement contemplated by your specifications and for that purpose would like to meet you at "Rochester" I shall leave here Monday morning and if we make the regular connections I shall be in Rochester at 9 o'clock on Tuesday morning. If not I shall come on the next train. And if convenient for you to come there would see you in the office of the Depot, and would recognize you if you would when the train say at 9 o'clock arrives you would put under your "hatband", a card ("plain blank card") when I could see it at a glance

Respectfully Yours
Saml J. Goodwin

8382-

Notine, Ill: Aug^t 29th/58

L. L. Nichols Esq.

S. J. Gordon

Dear Sir

to

Plaintiff

2^d letter

On my arrival

here I find the water is altogether too high to do any work, at present except to get the Stone and timber ready, we have also made a new bargain with Messrs. Williams and Parsons which is that you are to make a new estimate of the work which we propose to do, and the price you fix is to be the price, that they agree to do the work for, as in consequence of the difference in the Money Market now from what it was when you made your former estimate the work can be done for much less than it could then. Lumber and Labor have fallen off very materially, which Messrs. Williams and Parsons are aware of, and consequently they agree to do the work at the estimate you now may make upon the work. Lumber is about Eight dollars per thousand less now than when you were here, and Labor full one fourth lower. We have concluded to build 15 more piers than are now built, which will make 19 piers in the whole work when finished. Now, we want you to make a full estimate of the entire cost of doing

the whole work and finish it complete, that is for the 15 additional piers to be built and the bulk head from the piers to the shore, with every material for completing the same, and you will please make a price for the bailiing, based upon the work being done in low water, and also a price for Bailiing (if there is any difference) if the work should be done in high water. Please make this out and send it to me at Astoria, just as soon as you possibly can, as I suppose you have everything with you necessary for your information that you need to make out said estimate.

Just as soon as the water is down so that the work can be done we will send for you, it is falling now.

As you will probably not have to alter your former estimates, except on Lumber and Labor you can finish the estimate, and send it to me, very soon after you receive this, as I am in a great hurry for it.

In haste Yours

Sam. J. Goodwin.

Thompson Plaintiff by his counsel produced and read in evidence to the Jury, without objection a certain recitation the deed which was shown to the witness H. F. Sickle.

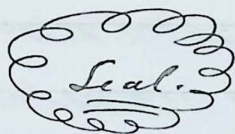
and the execution of which was proved by him,
And which said recital in said deed was
and is in words and figures as follows, to wit:-

Deed of the
Company, to
H. P. Sickles
Bn.

This Indenture made and entered into
this 20th day of June A.D. 1857 by and between
the Machine Water Power and Manufacturing
Company, a body corporate under that name
and style incorporated by the Legislature of
the State of Illinois by Act approved on the 14th
day of February A.D. 1855, and whose place of
business and operations is at the Town of
Moline in Rock Island County in the State of
Illinois of the one part, and first party
and Hiram P. Sickles and Horace Sickles of the
Down County and State aforesaid, witnesses,

The said party of the first part hereby agree
to furnish said parties of the second part three
hills and assign Power - or so long as the
power can be created - Eight hundred super-
ficial inches of water indicated upon a Seven
foot head of water in accordance with the sur-
vey, plan, specifications and estimates of Loren
L. Nichols the Engineer of the said party of
the first part which said plan and speci-
fications have been adopted by said party of
the first part - ~ ~ ~ In testimony
whereof the said party of the first part have

caused them presents to be executed by its President and attested duly by the Secretary thereof, and have caused the seal of said Incorporation (the seal now used being a temporary one) to be hereunto affixed this 20th day of June A.D. 1857



Attest E. C. Pitts President
Hiram Pitts Secretary

Said plaintiff also produced as a witness one Harry Post who being duly sworn deposed as follows, in his Direct examination

I have lived at No. 10 since 1857 - I know the parties to this suit. I was present at a meeting of the Water Power Company, in the fore part of 1857 - I think it was a stockholder meeting, and that nearly all of them were present. They called for the Engineer's report, which Mr. Nichols read. It was presented by the plaintiff and read by him. It was discussed by the stockholders generally. I had been employed by the plaintiff in making these surveys. The Report was approved, but I don't know whether by resolution or otherwise.

I was clerk for Pitts Gilbert & Pitts that season; they & the plaintiff and the defendant

Company, all had their office in the same building. I assisted the plaintiff in making these surveys and measurements. During that season I kept the books of P. B. Gilbert and P. B. I know of payment having been made to him by P. B. Gilbert and P. B.

On Cross-examination by defendant's counsel, witness testified as follows.

I was present at the first meeting of the Stockholders of the Motine Water Power and Manufacturing Company after I arrived at Motine - Say in May or June 1857. There were present P. B. Gilbert and P. B. Lickler, Deane, and a large number of the Citizens of Motine, some of whom afterwards became stockholders.

That was a public meeting; the citizens were interested in having the work built up. I don't - who it was called for the Engineer's report, as I have before testified; it was some one of those who were then or afterwards connected with the Company.

Then Mr. Nichols came forward with a written report, which he read to the meeting, giving the capacity of the water power, and a sketch of a plan for the improvement of it.

I don't think I assisted plaintiff more than two or three weeks. I then went into the

office of Pitt Gilbert & Pitt. I assisted him occasionally, when no one else was convenient. I assisted him sometimes in determining the capacity of the power, and sometimes in fixing a plan for the improvement. During a few weeks I was selling lumber for Pitt, Gilbert & Pitt, in their yard and occasionally had license to render assistance to the. Nicked after that, I took charge of Pitt Gilbert & Pitt books and that occupied me all the time.

I was not engaged by plaintiff and was not paid by him. I was employed by Pitt, Gilbert & Pitt. The time which I worked for plaintiff was paid for by Pitt, Gilbert & Pitt and charged to the Defendant ~

(Within shown certain books, the same identified by the witness William Pitt, as the books of Pitt, Gilbert & Pitt.)

These are the books of Pitt Gilbert & Pitt. I was directed to charge my time during which I assisted plaintiff to the Water Power Company. This direction was given a month or maybe more after it. Within being requested to refer to this account of the Defendant in the Ledger of Pitt Gilbert & Pitt and having made such reference said, I do not find the charge made here to the Water Power Company.

And being requested to refer to his own

account in said Ledger, and having refused to said account, said that he did not find himself credited with his services in assisting plaintiff, but that these services were included in his fees.

Shrupm witness was requested to turn to the account of the plaintiff with Pitt, Giltat and Pitt, in this said Ledger.

Witness turned to said account and read the same, in the following words and figures, to wit:-

"Dr. L. L. Nichols				Cr. "			
"June 1857	23	To Cash	\$ 2 00	1857 Dec: 31	By Real Estate	\$ 3 00	"
"July	11	" "	20 00				"
" "	31	" "	132 00				"
"Augt	28	" "	10 00				"
"Oct.	5	" Scamsom Buligheimer	30 40				"
"Nov	21	" Sickles & Bro.	42 50				"
"Oct 16		" Cash	10 00				"
" 1858							"
"Jan 1		" "	50 00				"

And witness being requested to turn to the account of the defendant in the said Ledger of Pitt, Giltat and Pitt refused to said account, and having examined the same depared that none of the items so charged to the

plaintiff in the foregoing account between him and Pitt Gilbert & Pitt, was charged on to the said defendant.

Hiram Pitt the witness before sworn being recalled by plaintiff's counsel and examined in chief, deposed as follows:-

We had no books of the Company prepared when the Company commenced its operations.

Question

Witness was then asked to explain the manner in which the books were kept, with Nichols and the Water Power Company, as testified of by the last witness.

Objⁿ

And to this question the defendant by its counsel then and there objected, and for ground of said objection assigned and insisted with the Court, that the books already produced and in evidence, showed of themselves the manner in which said books were kept.

Over-ruled

But the court having heard the arguments of counsel overruled the said defendant's assigned objection and permitted said question to be put by counsel and answered

by the witness, and to this ruling of the Court the said defendant by its counsel, then and Ex pte taken there objected.

Witness in reply to said question said-

Answer.

The Treasurer of the Company, Mr. Gilbert resided on the other side of the river, the office of the Company was the office of P. B. Gilbert and P. B. The business of the Company for this reason to a considerable extent went through the hands of P. B. Gilbert and P. B. in his absence generally. We had no books of the Company open - they were in preparation, and these entries were made so for that reason - This explains why so large an account was opened between the Company and P. B. Gilbert & Co. P. B. It was because the Company had no books and because the Treasurer was so often absent.

Counsel for the said Plaintiff then put to the witness the following Question?

Question?

"were abstracts of these payments made by you to plaintiff presented to the Company at their monthly meetings?"

Obj's

And to this question the defendant by its counsel then and there objected, and for

cause of said objection assigned that the said question was irrelevant.

Over-ruled

But the Court having heard the arguments of counsel, overruled the said defendants' aforesaid objection and permitted said question to be put; and to this ruling and decision of the Court the said Defendants by their Counsel then and there excepted.

Excpin

Witness said in reply to said Question:-

Answer

"For the purpose of knowing the financial condition of the Company abstracts were made out from time to time showing the amount paid, and were kept with the papers of the Company."

The Court stated that if the abstracts ~~mentioned~~, were produced the above answer of the witness might go in to the jury; otherwise it should be stricken out.

.....

Plff. Rests

And thereupon the said plaintiff rested his case.

The said defendant by its Counsel therefore
 Defendants' Mr. [unclear] moved the Court to exclude from the jury so
 to strike out all [unclear] much of the foregoing evidence produced and
 testimony [unclear] given by the said plaintiff, as relates to each
 of the items of the said plaintiff's account
 filed in this cause ~ and also the whole of
 said evidence.

And for grounds of said
 motion the said defendant by its counsel
 assigned the following:-

First that as to the first and fifth items
 of the said plaintiff's account there was no
 evidence to show that the defendant had
 ever undertaken to pay the said traveling
 expenses of the said plaintiff.

Second that as to the second, third, fourth,
 and fifth items of said account, there was
 no evidence to show that the said plaintiff
 had ever been authorized by the said defend-
 ant to purchase said axe, or said stationery,
 or to employ said D. Pajin to render assistance
 ~ or that the said defendant had ever un-
 dertaken to pay, for the same; nor that said
 plaintiff had ever advanced any money
 for board, nor that the defendant had un-
 dertaken to refund any such money.

Third that as to the seventh item of the
 said plaintiff's account, it had been clearly
 shown that the said plaintiff never was

employed either for a year or by the year, and further that, no understanding was ever made for the payment to said plaintiff of any specific salary, and this was all of the evidence touching said seventh item.

Fourth that as to the said eighth item of the said account, there was no evidence that plaintiff had ever made any estimate as is therein charged.

Mo. Over-ruled

But the Court having heard the arguments of Counsel in the matter, over-ruled the said defendants' said motion, and refused to exclude from the jury the aforesaid evidence so produced and given by the said plaintiff or any part thereof.

Def'ts' Excepts

And to this ruling and decision of the Court the said Defendant by its Counsel then and there excepted.

Defendants' Case }

Whereupon the said defendant by its Counsel to support and prove the issue aforesaid on its part produced as a witness one John P. Cook who being duly sworn testified as follows, upon Direct Examination by Defendants' Counsel.

I know the defendant in this case.

I know the Plaintiff slightly. I know Hiram Pitt, Cyrus Pitt, E. S. Gilbert, John Lee, and H. G. Rickles of Motine.

Before the spring of 1857 there was a suit pending against Pitt Gilbert & Pitt a firm in Motine, in which Charles Atkinson and others were Plaintiffs; who claimed to have purchased the Water Power property of Pitt, Gilbert and Pitt; this suit was settled by the parties in my absence; during this suit I had become familiar with the Charter of the Company, and with the business of Pitt, Gilbert and Pitt; they wished to purchase the charter and have me go in with them. The first interview I had with any one about it, was with Mr. Gilbert, afterwards I saw Hiram Pitt and perhaps both of them together and had some talk about it. I then went to work, to organize the Company so as to purchase the Charter; this I should think was in February A.D. 1857. I know the Plaintiff. I was present at the first meeting of the Company at which the Plaintiff was present; this was about the 25th of June.

It was in June 1857, that I first acquired any interest in the Company; it was after the increase in the amount of the Capital Stock. Myself and John Lee and

H. F. Sickles joined the Company. I don't think Cook & Dillon ever owned any stock. I don't now know what amount I subscribed for. The subscriptions made by Allen, Sickles and myself were made for the purpose of making us Eligible as Directors. I think the subscriptions were made on a few loose sheets of paper or perhaps in a bound book.

The original Capital Stock was \$75,000. That was what Pitts Gilbert & Pitts purchased when they settled their law suit. Pitts, Gilbert & Pitts owned all this. Afterwards the stock was increased to \$200,000 and Pitts Gilbert and Pitts took all this. This was April 28th 1857. I owned no stock up to that time. The three Pittses and Gilbert were elected Directors at this meeting.

On the 25th of June 1857 the Directors were increased to seven, and Hiram Pitts, Cyrus Pitts, D. Benton Pitts, Elias S. Gilbert, John Allen, John P. Cook and H. F. Sickles chosen.

My subscription for stock was in writing, I don't exactly remember now what was in the written subscription, all conditions were out side of the writing. At the time we subscribed Pitts Gilbert & Pitts owned all the stock of the Company. I am not in-

tain now that I did subscribe for any stock,
were signed the stock book.

The Counsel for the said Defendant then
put to the said witness, the following Question?

Question? "Was there at the time of your taking
"stock in this Company any parcel agreement
"made by you with the firm of Pitt, Gilbert
"and Pitt as an inducement to your taking stock
"in this Company"?

Obj'n And to this question the said Plaintiff by
his counsel objected.

Obj'n overruled But the Court having heard the argu-
ments of Counsel, overruled the said objection.

The witness said in reply to said question
Answer "There was".

Witness was then asked by defendant's
counsel the following question?

Question "What was that agreement?"

Obj'n And to this question also the said
Plaintiff by his counsel then and there
also objected.

Overruled But the Court having heard the arguments of Counsel overruled said objection, and permitted said question to be put by counsel and answered by the witnesses

Witness in answer to said question testified as follows, to wit:-

After the settlement of this law suit Pitt, Gilbert & Pitt proposed to go on and improve the water power - For that purpose they wanted to borrow money. They wanted Mr. Dillon and myself, particularly myself, to take stock in the concern. We loaned them money, some of it our own, and some our clients - that is money which had been sent over for investment.

My first interview with anyone concerning this was with E. S. Gilbert. I afterwards had an interview with him and Abraham Pitt, and perhaps Cyrus Pitt was also present. I saw them frequently about the matter.

The three Pitt and Gilbert then owned all the stock - it was necessary to keep their charter, that they should keep up the organization. I had the whole management of this. They depended entirely upon me for it. In answer to their several propositions about taking stock (for

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They were repeated) I declined doing so unless they would make arrangements which would result in the improvement of the power. I did not then regard it as a good investment. I agreed if they would make the improvement contemplated, either by furnishing funds, or by issuing bonds on long time which they could dispose of for the money, Mr. Dillon and myself would take some stock. I couldn't say exactly when this agreement was arrived at, nor where, it was in the Spring or Summer of 1857, it was talked of twenty times - Hiram Pitt knew all about it, I don't know that Cyrus Pitt and myself ever had any talk about anything I proposed to become interested in. There was no direct agreement with reference to Mr. Nichols, it was agreed that they should furnish the material aid to carry out this improvement. This was all before Nichols came on. It was in 1857, and in the Spring or first part of the Summer. I ~~don't~~ know where Mr. Nichols first came on, or was apprised of it soon after. They bonds they were to sell were to be issued by the Company. They proposed by sale of these bonds to raise money to finish the improvements but they could not succeed

in selling them - In the mean time Cook & Dillon were lending them money, all the time.

These bonds I think were issued on the first of June.

Ans. to Exclude } Thereupon the Counsel for the said Plaintiff moved to exclude all the foregoing testimony of the witnesses relating to the bonds of the defendant Company.

But the Court having heard the arguments of Counsel overruled the said objection.

The witnesses continued as follows upon further Direct Examination.

I told Pitt Gilbert and Pitt I would aid them to get money, and do all I could to assist them in keeping all the proceedings regular. I generally met with them at Mobile, or else drew up the orders, and resolutions, in shape, for them. The first time I appear by the Records as a stockholder (within refers to the records of Defendant) is June 25, 1857.

Pitt Gilbert and Pitt bought the charter of Attimou and carried on the whole thing, that is the improvement.

The stock where I went in was increased. My contract with them was that Cook and Dillon

would take \$5000.⁰⁰ of that stock, indicated upon a capital of \$200,000.- My contract was with Pitt, Lillist and Pitt and not with the company. We were to take the stock, at a price below par. We were to take it in part payment for what they owed us, in case they succeeded in completing the improvement.

On the 25th of June, when it was concluded to increase the number of Directors I agreed with Thomas Pitt to take certain stock for the purpose of making me eligible as a director. I didn't pay anything for it, and didn't get anything for it, when in November A.D. 1858 I transferred it, at the request of Pitt Lillist and Pitt, to those who bought them out. I know when Mr. Lane took stock - I was at Notice on two or three different days. - I don't remember exactly when it was - but it was about the time I did.

I was at Notice after Mainett came out here - and before any plan had been agreed on by the Directors. I don't know of the adoption of any plan by the Directors or the executive Committee. John Deane, Cyrus Pitt and myself was the Executive Committee. (Within was here shown a book of Records) This is the book of records of the Company; contains minutes of the

proceedings of the Board of Directors, and of Stockholders' Meetings.

Record of the up-
pointment of
Ex. Com. offered

The said defendant thereupon, by its counsel offered to read in evidence to the jury, on the part of ~~the~~ said defendant, a certain resolution or by-law adopted by the said defendant corporation, and of record in the aforesaid book of said Company, and which said resolution was then and there shown to the Court.

Objⁿ

And to the reading of said resolution in evidence the said plaintiff by his counsel then and there objected.

Over-ruled

But the Court having heard the arguments of counsel in the matter, over-ruled the aforesaid objection and permitted the aforesaid resolution to be read in evidence.

Whereupon the said resolution was read in evidence from the aforesaid book of records, on the part of the said defendant and in these words, to wit:-

Record of the
Resolution Read

"At a meeting of the Board of Directors of this Company held at Monroe June 30 1857

Present all the Directors. On motion it was unanimously ordered that the President of this Company together with John Reed and John P. Cook constitute an Executive committee who he and are hereby authorized in their discretion to make contracts and transact such business as they may deem necessary or proper for the interest of the Company— Provided that their action shall be unanimous. Cyrus Pitt President.

Attest 3 Wm Pitt Sec'y.

The examination of the said John P. Cook being resumed, said witness testified further, as follows:—

This was the first I knew of the executive committee being appointed, the time mentioned in the Record. I don't remember of any meeting at which the plaintiff came forward as engineer— there may have been such. I had several consultations with him and with others, but don't remember any such thing at any meeting of the Directors. I remember when Williams and Parsons were employed; their contract was approved at a special meeting held

July, 20th 1857. Mr. Sickles took stock about the time I did - I don't know the day. Sickles was present June 25, 1857. He wasn't there July 20th, 1857, as appears by the record.

I have no recollection of the Plaintiff appearing before the Board of Directors as Engineer. I don't remember of his plans and specifications being discussed before the Board of Directors, though they were discussed. I don't remember of his being present.

The Plaintiff was recognized as the Engineer in charge of the works by the Board of Directors in a contract which they made with Sickles when they sold him that mill. I cheer up the proceedings of that meeting. Nothing was done then to recognize him as the Engineer employed by the Company. At a meeting of the Board of Directors held May 16th 1857 the Plaintiff was recognized as the Engineer in charge of the works. I cheer up the record of this meeting. There never was any formal or informal order of the Directors or of the Executive committee employing the Plaintiff, or directing him to go on with the work.

I had repeated conversations with the Plaintiff as to his relations, and how he was hired there. They were mostly in the office of P. B. Lathrop and P. B. I had a

conversation with him as to Pitt Gilbert and Pitt being able to dispose of the stock.

He asked me how we got along in procuring subscriptions to the stock, we had before that conversations in reference to the plan of operations — what Pitt Gilbert and Pitt were doing. I told him in answer to his question just how I stood in reference to the matter, as I have already stated. In this or some other conversation he told me he came here at the request of Mr. Reed, the agent of Pitt Gilbert and Pitt. They were the owners of the Stock and Charter of the Mohave Water Power & Manufacturing Company. I could say that he said anything distinctly as to whom his pay was to come from. I don't remember that he ever told me anything further about this matter. I knew of the sale of this company to Peter R. Reed and S. J. Goodwin — this purchase began to be negotiated in the summer of 1858, and was consummated somewhere between October 20th and November 1st A.D. 1858. The final consummation of this agreement, was sometime between the 15th and 20th of October I think. They negotiated for a long time previous to that, and had finally got the whole thing agreed upon in detail, but they stuck

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on the Williams and Parris Claim, and
this one. Reed wouldn't buy, until they
removed these liabilities - I mean by "they"
Pip Hittet and Pip neither Lane nor
Sickles, nor myself were consulted.

The proposition was to purchase the
charter, and the Real estate of the Company,
and additional real estate, which belonged
to Pip Hittet and Pip. I hadn't a direct
interest in the concern didn't own \$5000
of stock. I had subscribed for a little I be-
lieve to make me a Director, and had agreed
to take more, if the conditions of the agreement
were complied with. About the 20th of Octo-
ber, or between that and the 1st of November, I
went to business at the request of Mr. P. H. or
Mr. Hittet. I found there Mr. Cable, Mr. Reed,
Mr. Danforth, as his attorney, that is the Man
(whom here pointed Mr. Danforth out) Mr.
Lane and Mr. Sickles. I was there two or
three different days. I recollect when Mr.
Reed agreed to close up the bargain. There
were present, I think both the P. H., Mr. Hittet
Mr. Reed, Mr. Danforth, and myself. Mr. Sick-
les and Mr. Lane were in and out occa-
sionally, during the interview whenever they
were wanted. There were three difficulties
which I went over there to try and arrange.

one of these was ^{as} to some matter of Mr. Cullis's. The second was as to a matter of which one firm had the control, and the third was the claim of Mr. Nichols.

When I went to Wabine, I found that the Williams and Parsons matter had been settled. The matter of Mr. Nichols came up. Reed objected to trading, that the plaintiff might have a claim against the Company, and he wanted to be satisfied in regard to it. Mr. Davenport came to me and told me the stick was. I found negotiations had to be made outside of the presence of Reed and the Pitts. I went to Hiram Pitts and E. S. Gillet and learned their version of the difficulty, and finding the Nichols matter was the only thing in the way of consummating the contract, I inquired of Hiram Pitts how much he owed Mr. Nichols and he said "not much, if any thing, it certainly couldn't exceed three or four hundred dollars."

I went back to Reed and Davenport with Pitts and Gillet, went into the main office, there were present the parties I have named, ^{and} perhaps others. I said to Mr. Reed it was a very small matter that was splitting them; then Mr. Hiram Pitts made this remark. "It don't make any difference

difference any, how; we employed Mr. Nichols, and if we owe him anything, we are responsible to him, and not the Company;" - he said either "the Company," or "The Motive Water Power Manufacturing Company;" I don't recollect which. I have stated his language, as nearly as I can. I turned to Mr. Davenport, and said to him that that ought to be satisfactory. Mr. Davenport said certainly, if the Motive Water Power Company didn't employ Nichols, there could be no liability over, against the corporation. Don't mention that

Mr. Pitt made any reply to this. I don't think I could tell exactly all who were present at that time. I have stated as nearly as I recollect. Mr. Reed and Mr. Davenport were on one side of this negotiation and Mr. Pitt and Mr. Gillett on the other. I couldn't say that Sickles or Lane were present at the time of this statement; they may have been.

I could name any one, as being present aside from the contracting parties. When I first went up. I went to Davenport, who was the attorney, for Mr. Reed, to find out what the difficulty was. I went over as attorney for Pitt, Gillett and Pitt. They, or some one of them, sent for me. I think this settlement of the Nichols matter, cleared up all difficulties.

Upon Cross Examination by the said Plaintiff's counsel, the said witness testified as follows:

I think the first business I was called for Pitt Gillet and Pitt, was in the suit with attention of which I have spoken. I don't think that I was employed in this negotiation as an attorney, but they had talked with me fifty times during the summer, about it.

This declaration of Hiram Pitt that they employed the plaintiff was made in the front part of Pitt Gillet and Pitt office; it was a public place, quite a number were there at times. It was in the back of the office that I had the private conversation.

At the time of their statement by Mr. Pitt in the front office, there were present Hiram Pitt, Mr. Reed, Mr. Darvport and myself, and I think it highly probable Mr. Gillet, Mr. Lickly, and Sylvester Reed were also there. When we went to the front office after I had made the remark that it was a small matter which split them, Hiram Pitt said "we employed Mr. Nichols, we owe him little or nothing any more, and we are responsible to him, and not the Machine Water Power Company" or "the company"; he was referring to the defendant company. That is all I recollect of his say-

ing. I think I didn't vote for issuing bonds, to
 to raise money to complete the improvement.
 I wasn't then a member of the Company,
 though I knew of it. The bonds were not then
 out. They had been voted, and a form for them
 drawn up. I was made a trustee in the
 bonds for certain purposes. This was to
 raise funds to carry on these improvements.
 I knew Nichols was recognized as the Engi-
 neer of the Company, then in charge by one of
 the Company's records, which record I drew up.
 Reed's objection was that the Company would
 be responsible for his services.

I wanted to know before I took any stock
 in the Company, that, the water Power should
 be improved. I did become possessed of
 some stock, which I think I purchased
 from Pitt or Gilbert. I didn't pay anything
 for it, and was not to pay anything.

As between Pitt Gilbert and Pitt and my-
 self I wasn't bound to pay anything for it -
 as between the world and myself I suppose
 I was an absolute stockholder. I don't
 know of Plaintiff ever having been discharged.

I never was to advance any money to
 complete this improvement - I didn't sub-
 scribe for any stock, and never agreed to pay
 anything until it was ^{actually} the improvement

could be completed. This agreement was with Hiram Pitt and E. S. Gilbert; This understanding was tacitly carried out in our settlement with them after the sale was made to the present company. We settled, and they stipulated upon our books that we had no stock of the company, and owed none —

They never pretended that we had to pay any assessments on stock, and we never did pay any, though we let them have thousands of dollars, and took as security this very stock.

When I contracted with the firm of Pitt, Gilbert and Pitt, there were four members in that firm. I contracted with the firm in reference to the Water Power Company matter, because the firm owned all the stock. I never saw or made any contract with Cyrus Pitt and D. Benton Pitt individually.

While the negotiations for the sale of the stock, and charter &c. to this new company, hanging on Hiram Pitt called on me and obtained my consent to the sale — they called to obtain my consent not as a stockholder, but because I held, and controlled these titles.

On Re-examination. 4, said Defendants' Counsel said witness testified as follows.

I don't know how much stock I sub-
scribed for. What P. B. called on me for
was to reduce lines which I held in the
property, and which the New Company
should assume, from some \$21,000 to some
\$19,000. When we lent money to P. B. Gil-
bert and P. B. I contracted with Hiram
P. B. and E. S. Gilbert; the notes were always
given in the name of P. B. Gilbert and P. B.

The said defendant also produced
as a witness one Gideon W. Davenport,
who being duly sworn testified as follows,
upon his direct examination.

I know the defendants. Know of the
sale of the stock and Charter, by the owners
of it to Peter R. Reed and others, - it was
about the fall of 1858. I was present at the
sale, I was called on by Mr. Goodwin in
Chicago to come here. I understood the
trade had been negotiated, but they, but
they wanted to counsel me in regard to
closing it up, the papers and one thing
and another. I was present when it
was finally agreed to by the parties to con-
summate the sale - it was in the office of
P. B. Gilbert and P. B. in Mobile. I think it

was a little after the middle of October. though I can't state the day. There were present Mr. Reed, Mr. Cook, Hiram Pitt, and

I am very confident that E. S. Gilbert was present too, and I think S. B. Reed.

I believe everything had been cleared up, before that, excepting this Nichols' matter, and that was the only obstacle. When Mr. Cook came up, I stated to him the difficulty in the way. He was acting for the Pitt, as I supposed, as he was consulting with them. Mr. Hiram Pitt and Mr.

Cook, came into the office where we were sitting. Mr. Cook said it was a small matter that was preventing the settlement, and we had better go on with it. Hiram Pitt then said in substance that there was little or nothing due Nichols anyway.

My impression is he said he had been partly, (and I think he said mostly) paid, and that he had been employed by Pitt, Gilbert and Pitt, and that they alone were responsible. And on this the bargain was closed up. I think they immediately proceeded to execute the papers. Some parties who were nominal Directors were called in I think and they held a formal meeting, and the matter was closed up.

On cross examination by plaintiffs counsel witness said:-

I am an attorney at Chicago. I came to Motine as an attorney for Reed and Goodwin. I am a brother-in-law of Reed's
 vs. [B] Thereupon the said plaintiff offered to read to the jury the certain account marked [B.] which was shown to the witness, Steven Polk and by him proved to be in the handwriting of the said plaintiff.

And to the reading of the said account
Obj'd by Plff. } In evidence, the said plaintiff by his counsel there and there objected.

Over-ruled } But the Court having heard the arguments of counsel overruled the said plaintiff's aforesaid objection.

And thereupon the said account was
vs. B. Reed } read in evidence to the jury, and which said account is in words and figures as follows to wit.

"The Motine Water Power and Manufacturing Company,

vs. L. L. Nichols

Plff

Contra

Def

May 11. Travel Expense	\$20.00	June 23. 1857	Cash	\$2.00
" 15. Stationery	2.00	July 4 "	"	20.00
June 23 1 Q ^{rs}	0.75	" 24 "	"	32.00
Nov 27. Account of D. P. J. in	3.00	" 30 "	"	100.00
" 22. Board	100.00	Aug. 29 "	"	10.00
" " Travel Expense	25.00	Oct 4 Clothing Store Bill		30.40
Sept 5 1858 Making out an		" 16 "Cash		10.00
estimate by request of S. J. Ford		Nov 7 Order on Sickles		42.50
win	20.00	" 22 my order in favor of		
one year salary	\$2000.00	Mrs. Fayler		100.00
	\$2170.75			346.90
		Balance		1823.85
				\$2170.75

Letter "A"

Whereupon the said Defendant also offered to read in evidence to the jury, the certain letter marked "A" which was shown to the witness Hiram Polk, and by him proven, to have been written by him, and sent as therein directed.

Objⁿ

And to the reading of the said letter in evidence the said plaintiff by his counsel then and there objected.

Over-ruled

But the court having heard the arguments of counsel overruled said plaintiff aforesaid objection, and permitted said letter to be read in evidence.

And thereupon the Counsel for the said
Letter "A" defendant read the aforesaid letter to the jury,
read, on the part of said defendant, in the same
words and figures ^{above} as it is set forth.

The said Defendant also introduced
as a witness on his part, one John Deere, who
being duly sworn deposed as follows upon
Direct examination by the Defendant's Counsel.

I know the parties. I became acquainted
with the plaintiff in the Spring of 1877. I own no
stock now in the defendant corporation.

I did take \$5000. of stock in the Old Company.
There was a condition annexed to my subscrip-
tion; but there was no condition on the subscrip-
tion book; there was a written agreement
between myself and the Petter about it. (wit-
ness here shown a writing.) This is it.

Whereupon the said defendant offered
in evidence to the jury the said writing.
And the same was so read without objection
in the following words and figures, to wit:

Thirum Pitt &
Cyrus Pitt
And to
John Deere

Witness my hand and seal this 1st day of June 1878

"Know All Men by these presents that we"
"Thirum Pitt & Cyrus Pitt of Rock Island County"
"Illinois, one held and firmly bound unto"

"John Deere of the County and State aforesaid"
 "in the penal sum of Ten Thousand dollars"
 "to the payment of which well and truly to be"
 "made, they bind themselves their heirs Executors"
 "and Administrators and assigns jointly by"
 "these presents."

"The condition of the above obligation is"
 "such that whereas" the above named John
 Deere has taken an interest in the Machine
 Water Power Co. Now therefore if the said
 John Deere shall at any time after an year
 from this date wish to withdraw from the
 said Company, and the said Cyrus Polk
 and Hiram Polk shall take said Deere's
 stock and refund to the said John Deere
 all moneys paid out or costs expended by
 the said John Deere in and for said com-
 pany, with interest thereon, then this obligation
 be void, otherwise to remain in full force and
 effect.

In witness whereof the said parties have
 hereunto set their hands & seals this 30th day of
 June 1857.

Witness.

L. E. Hummerway

Hiram Polk

Cyrus Polk

Seal

Seal

The said witnesses continued, upon further
 Direct Examination.

I never executed any note in payment for stock, nor for any assessments on my stock.

I did execute a note, but it wasn't in connection with my subscription for stock; it wasn't for an assessment upon my stock. It was a note given for the accommodation of Hiram Pitt and E. S. Gilbert; it was for \$1200 and over, and was dated in 1857. It was not given at the time I took the stock, nor when the bond which has been read in evidence, but a considerable time. Hiram Pitt and E. S. Gilbert gave me a bond with indemnity, for giving the note, (which shows a writing) This is the one.

The said defendant by its counsel then produced and read to the jury without objection the said Bond, last shown the witness, which is in words and figures as follows, to-wit:

And of E. S. Gilbert
+ Hiram Pitt
to
John Deere

" Know all men by these presents that we
" Hiram Pitt & E. S. Gilbert of Maine, are held
" and jointly bound John Deere of Maine in
" the sum of Twenty Five Hundred Dollars, to
" be paid to the said John Deere, to the payment
" of which we jointly and severally bind ourselves
" and our representatives herein jointly by these
" presents. Sealed with our seals, dated the

"Thirteenth day of October A.D. 1857."

"The condition of this obligation is that
 "if the said Hiram Pitt & E. S. Gilbert, either
 "of them shall indemnify the said John Allen
 "against all loss, cost, damage and expense to
 "which he may be subjected by reason of his
 "signing a note of even date herewith for twelve
 "hundred & fifty dollars, payable to the order of
 "E. S. Gilbert, at their request then this obligation
 "is void
 "Witness
 "L. E. Humeurway.

E. S. Gilbert *Leab*

Hiram Pitt *Leab*

The witness John Allen continuing upon
further examination by Defendants' Counsel,
testified as follows.

The note named here was a mere ac-
 commodation note, it was not given for an as-
 sessment on stock, or any thing of the kind.
 This is the only note I ever signed for them or
 with them.

On Cross Examination by the said Plain-
 tiff's counsel the witness testified as follows:-

The note spoken of was given wholly
 Pitt Gilbert and Pitt raise money on.

I don't consider that it was given for an assessment upon my stock. My recollection is that it was given as an accommodation note, for them to raise money on to complete the improvement of the Water Power; if it had been given for an assessment ^{on} stock, I shouldn't have taken a second bond of indemnity, as I did; the first would have been sufficient. I had \$5000.⁰⁰ of stock in the Company and was a Director. This arrangement between the Pithers and myself, was merely a private arrangement. I was a stockholder, and there was no condition attached to my subscription in the books.

On Re-examination by Defendants counsel the said witness testified, as follows:-

When this note was given I think there was no talk about stock, I should have recalled it if they had come in and wanted my assessment, and I had given my note for it.

On a Second Cross-examination by Plaintiff's counsel, said witness testified, as follows:-

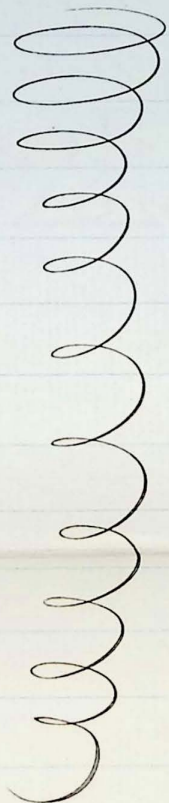
I thought this \$1250 note was given to raise

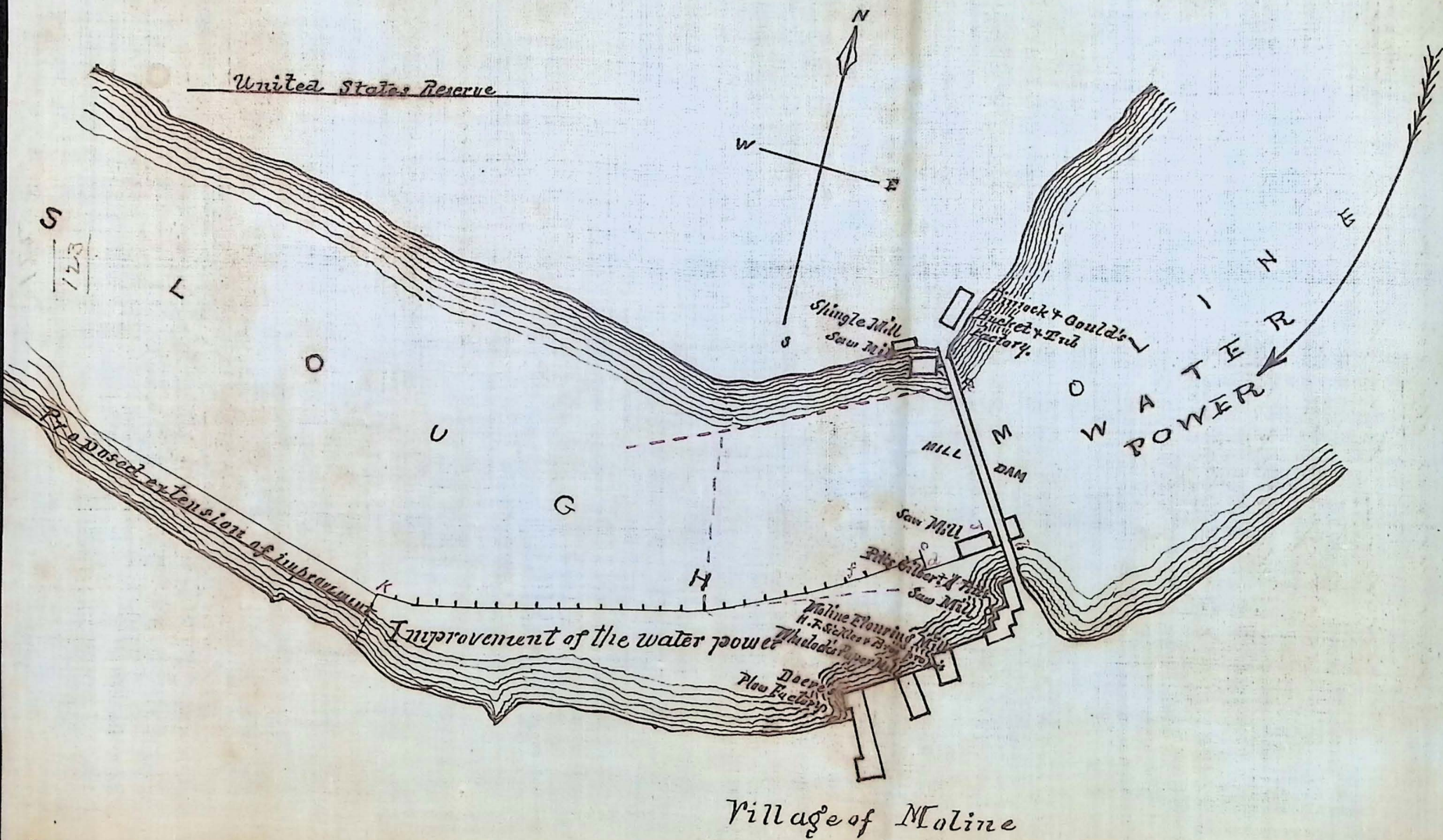
money for that improvement because I know they were bound to raise it.

The said Defendant by Counsel, also produced as a witness, on his part one Plt A. Dey, who being duly sworn testified as follows, on Direct Examination:

I know Mr. Nichols, and the president and one or two of the stockholders of the defendant. I am a civil engineer. I have been in the business fourteen years, and have been occupied all the time. I have been employed on the Erie Canal, the Cayuga and Seneca Canal, the New York and Erie Rail Road, the New York Central Rail Road, the Michigan Southern Rail Road, the Chicago and Rock Island Rail Road, and the Mississippi and Missouri Rail Road. I have spent some time in examining hydraulic engineering, and have had some practical experience. I have paid considerable attention to the subject. I engineered the system of improvements last adopted and carried out by the defendant corporation at Motine in this County. I know of the race built under the engineering of the Plaintiff at Motine. I saw it while the wall was still standing.

and spent some time in examining it with
a view of using it in carrying on that im-
provement. I examined it for that purpose,
Mr. Nichols came to me one day, about the
improvement, and explained to me in gen-
eral terms, the plan, and said he would
send me his plans and papers. I afterwards
received them. I came to Motine in a few
days afterwards, and saw it, Mr. Parsons, Mr.
Williams & Mr. Dene showed it to me, as the
dam built by Nichols. Mr. Sears did the
same. This was at Motine, in May, and
June 1858. (Then the witness was shown
a certain map, whereof here follows a true copy,
and which map was shown to the jury, &
referred to by witness in his testimony.)





X
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Mr. Nichols sent this map to me, in pursuance with his agreement. The double line across the river at $a = b$ represents the old dam. the work in question was a wall running down the river from the old dam to K. the black line with dots on it represents the one which which was shown me, as having been engineered by plaintiff, and which I examined, as accurately, as it could be done.

The old dam extended across the slough until you got pretty near the Moline shore, and there there was a race and a bridge across it. I mean by a race a flume down which the water ran to the mill, on the Old Dam was a mill which is marked J on this map; this new race commenced at the mill I, this mill connected with the old dam, and a wooden structure, connecting with the Old Dam, near the mill, was erected, running down on the South side of the mill to some little distance below the mill, (nearly I should think the length of the mill), it then turned at d to the North, at the corner d where it turned there was the same wooden structure continued; from d it ran forty feet into the river to a stone pier at c as marked on map, with which it connected. This wooden structure from the

the dam to the pier C, was made as follows: a sill either 8 or 10 inches by 12 inches was let into the rock at the bottom of the river, and bolted in with iron bolts; in that about every five feet were up-right posts, upon the top of which was a cap-sill. These posts were about 17 feet, the highest I think was eighteen feet, but as I don't know the precise size of the sills, I can not give the exact height of the Posts.

These posts were tenanted into the sill above and below; from these posts about half way up, extended braces about six inches by eight inches, at about an angle of 45° degrees with the posts, toward the river side, their foot resting in the rock at the bottom of the river, in places chipped for them. On the Mohine side, planks were nailed on to these up-right posts. Below this wooden structure there were four stone piers, the one at C, was 14 feet square the others were 7 feet by 14 feet, built with their longest direction, across the river; these piers were from forty to fifty feet apart. I should say forty five feet; a plank work, similar to that extending from the old dam to the pier at C, was built in between each of these piers - the sill at the bottom was let into the rock, and the pier was built over it, and the cap sill was let into the masonry work of the piers at

the top. The plan was as Nichols told me to build a line of stone piers down the river W.K. as marked on the map, and then put in a bulk head.

All I know as to the manner in which the power was to be applied is what Mr. Nichols told me; he told me they intended to put in the wheels, between the stone piers - and shaft from there over the pond to the Mills on the shore - The water was to be let out between the piers, at openings left in the planks.

The Mills are on the Illinois shore. The distance from Sickles mill to the long pier at c was two hundred and fifty feet. I paced out on the old claim. The dots ^{on the line} running down the river, from d. W. K. are intended to represent the piers, the posts are not marked here at all. The plan was to complete the wall represented on this map, running down the river - The water was to be let out opposite the Mills all along the line of the wall. The structure was up, as far as the fourth pier marked f on this map; this was the end of the work as I saw it.

I was called to examine it with a view of using it, either by completing it, as originally proposed or in some other way; the talk was of building another wall

between this, and the Noeline Shore, and taking the water on the Noeline side, so as to avoid shafting so far, I advised the Company to take the wall out. My opinion of that work, has changed since I examined it.

Is a question by plaintiff's counsel
witness said.

I know nothing about building mills ~ my father owned a water power, and I helped them build races, and plan them out. I have built two or three races to run water Mills ~ one at Seneca Falls N. Y., I was a long time employed on the Erie Canal. I think I did say to Mr. Sickles that I knew little or nothing about hydraulic engineering.

Witness continued on further Direct Examination by defendant's Counsel.

I have paid some attention to hydraulic engineering; in studying engineering for the building of canals, bridges and races, one has to study the principles of hydraulics. I don't pretend to know anything about the application of power to water wheels - and this is what I refused to when I told Mr. Sickles I knew nothing of hydraulics.

engineering. I have studied the nature and force of water, and how to confine it, its force on embankments. I permitted the plan for the improvement of the water power at Motine which, has been built there by the present company. I examined the location before I did it - the ground, and the river &c. Mr. Nichols furnished the surveys of the shore line, and also his measurements of the river. - he foraged the river and traversed the shore - I had his measurements.

For the purpose of creating a water power I do not think Nichols plan a good one -

My first objection to it was that timber structure was not strong enough. I thought the supports or braces liable to accident, from any floating body striking them or from ice in the season of the river's breaking up.

This structure was so high that - depended materially upon the braces for its strength.

The braces butted against the rock. The ice in the spring of the year when the river rose would be apt to knock them out.

Another objection in my mind was that the shafting was too long - being so long it would materially increase the expense of it.

, and it would be much more liable to get out of order. I am satisfied that the plan was a bad one, and I think the work which was done, was not any benefit to the Company.

On Cross-Examination by the said Plaintiff counsel the witness testified, as follows:-

I didn't think the plaintiff's plan of improvement a good one - I made the plan for the race at Motine, built by the Present Company; it is located, about as marked on the map by the dotted red line, it commenced on the Motine side, of the slough, about 100 feet South of where the race built by Nichols connected with the dam; my plan was to use the power by letting out the water on the side towards the mills and shafting over the tail race. The wall of the improvement which I planned, was built of masonry - a piece of this wall went out last winter. I think about thirty feet of it. - I couldn't say exactly how much, it was a full break in the masonry. It broke towards the Motine shore. This improvement had two walls wit, one on the Motine side and one towards the Island, connected by a bulk-

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head as marked here. I furnished the plans and specifications for this work, but I didn't superintend the building of it.

My idea of the plan proposed by Nichols was that the ice, when the river froze up in the winter, and before it was entirely closed, would be moved about by the wind and currents, and would knock out the braces, on the river side, which supported the wall. Most of the braces were knocked out when I saw the wall. I know the plaintiff, but don't know what his experience has been, I never saw him, until he called on me.

I don't know how far Dan has to shaft to Mill now, but I don't think it is 200 feet, it is not so far I should think as it was in Mr. Nichols improvement.

The wall as I surveyed it, on the Michigan side runs at first towards the center of the river ~ after you get below Doc's the shore runs towards the wall faster than the wall recedes.

On a Re-examination by Defendants' counsel said witness testified as follows:

I don't think the plan proposed by Nichols for the improvement was of any benefit

to the Company. I ordered the whole work to be taken out; not because of any defect in the execution of the work, but on account of the defect in the ~~specifications~~ in the plan. I don't think the work of any value to the Company, nor were the plaintiff's work in superintending.

The part of the wall built under my plan, which went out, fell not on account of any defect in the plan, as I think, but on account of a defective execution of the work. I didn't superintend the construction of it. The defect was in not getting the wall down to the rock; they didn't entirely take off the clay, at that place, and when that washed out the wall fell.

The shafting to Sickle's mill, was according to Nichols' plan two hundred and fifty feet long. Iron is generally used for such shafting. Shafting of this length would have to be supported in the middle, in some way, & according to Nichols' plan, the supports would have to be in the pond, in still, deep water, and the ice forming around them, would be likely to throw them out of line, if it moved, at breaking up of river.

The supports for the shafting, according to my plan are in some two feet water, and

in Nichol's plan, they were in some ten foot. The supports would have to be stronger, standing in deep water, than in shallow.

On a Second Cross-Examination by Plaintiff's Counsel the witness testified as follows:-

The supports would be more likely to be moved in still deep water than in shallow water. I worked by some of Mr. Nichol's surveys.

The Counsel for the plaintiff then put to the witness the following question.

Question:

"Supposing a good engineer was retained, and kept in the employ of a party 18 months", to the exclusion of his being employed elsewhere, and during that time performed "twelve months labor, what would his service" "worth?"

Objⁿ?

And to this question the Counsel for the Defendant then objected, and for ground of said objection assigned, first that there was no evidence to show that the plaintiff was a good engineer, who had been employed as supposed, who had performed 12 months labor as supposed by the question, posed by the question. Secondly, that the

subject matter of the question was not proper upon the cross examination of this witness.

Over-ruled. But the Court having heard the arguments of counsel overruled the said objection of the said defendant, and to this ruling and decision of the Court, the said Defendant by its counsel then & there excepted.

Witness in reply to said question testified as follows:—

Answer "The services of a man competent to do that" "work ought to be worth about \$150.⁰⁰ per month;" "Prices are not very different, now from what" "they were in 1857."

I worked from the plaintiff's survey of the river, in preparing my plan for the improvement of the river; I thought plaintiff competent to make a survey. I think his claim wasn't strong enough. I don't know precisely how the power was to be applied, except from what he told me.

I didn't approve of the work done on my wall, I didn't give Williams & Parsons a certificate that it was well done. I saw the work on it started, but did not see the

foundation laid, on that part of it which went out. I never saw Nichols' wall tried, I don't know of any breaks in the bulk head of my work; there were no repairs of it required. There was some stone, and dirt put in there after the water was let in, but that was a part of my plan. On a portion of the work the bulkhead wasn't built, as I directed in my specifications, and I directed the omission to be supplied. The wall which was built under Mr. Nichols' superintendence, was pulled down before mine was built.

The said Defendant by its Counsel also called as a witness one B. B. Brayton, who being duly sworn deposed as follows, on his Direct Examination, by the said Defendant's Counsel.

I am a Civil Engineer. I live at Davenport, Iowa; have been engaged in Engineering twenty four years; I have been continuously employed about 19 years of that time. I have been employed as Engineer on the Erie Canal, on the Hudson River Rail Road, on the Chicago and Rock Island Rail Road and the Mississippi and Missouri Rail Road.

I haven't given hydraulic engineering much

attention. I have built some bridges, but never had much to do with building dams. I never designed any. I superintended the building of the Rail Road bridge over the Mississippi at this point. My attention has necessarily been called to the force of currents, and the power of water when dammed up. I know the Mobile Water Power. (Then the witness was shown the map, testified to by the witness Day, & before set forth, and the testimony of said witness describing the work engineered by the plaintiff was read to him) and he was asked to give his opinion upon that plan of improvement.)

Witness continued

I was at Mobile before this structure was removed, and saw some part of it still standing, and when I saw it, I thought the plan of shafting so far from the wheels to the shore, was a bad one; it would require heavier shafting and an extra expense in supporting it.

I thought the timber work wasn't sufficiently strong to support the pressure of the water; and that it was liable to be carried away. I should suppose the freezing of ice around the braces; when there was a gorge below the Island, and the River rose would

carry those braces out, and throw the whole structure down. I didn't see it tried, but I have seen operations like it tried.

It would cost more to brace the shafting in deep water, than in shallow; and the supports or braces to the shafting would be more liable to be injured by ice moving in the dam; supports in running water would not be so liable to be injured. I saw the Plaintiff's plans for this improvement, in Pitt, Gilbert & Pitt's office at Mobile, before any work was done. I went and examined ^{them} with a view to bidding for a contract. I didn't think then it was a good plan. My opinion is not at all changed. I don't think the plan was worth anything to the Company. So far as they used Nichols' surveys for the other engineer, I should think they ought to be paid for.

For surveying, preparing to making plans for such a work, a man ought to have \$150.⁰⁰ per month. It would take about a month, I should think to make the surveys necessary for such a work as this.

On Cross Examination by the Plaintiff's counsel, the said witness testified as follows:-

To make a plan for such a work as this, a man ought to make a survey of the river for a half a mile. He need not survey above the head of the dam, to ascertain what power could be obtained.

I don't know how strong this wall was, it didn't look strong enough to me. I don't know anything about putting in shafting. I have seen a great deal of it put in.

According to the plaintiff's plan, a broad race must be had to supply the wheels, and the shafting must be long. I have no practical experience in building and supporting shafting.

The said Defendant to further maintain & prove said issue on his part called as witnesses, Charles Atkinson, who being duly sworn deposed, as follows, on Direct Examination.

I live at Astoria - I have lived there about seventeen years - I am acquainted with the river and water power there, and have been during all my residence there; I built a Mill there in 1846 - the mill marked T on this map. (Witness shown the same map exhibited to the witness Deeg.) I built it with other parties, but I had the superintendence.

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ence of it. I am well acquainted with the action of the water there and of the ice, when the river closes up, and opens.

The first dam there was built in 1841 or 2. I have frequently seen and examined the work engineered there by Mr. Nichols. The map shown to me seems to indicate it, pretty accurately. I lived at Mohine, and was frequently there looking at the work, as it was going on; I examined it frequently. I never built but one dam before I came here, that was in Vermont, on a Mountain Creek. The dam at Mohine has frequently been changed, during my residence there, and I have then had an opportunity to observe the force of the water there. I was familiar with the old dam, and with the bulk head which extended from Siekles Mill to the Old Mill, and with the work built there by Mr. Nichols. The description of the work given by the witnesses is substantially correct.

I regard the wooden part of his work as entirely insufficient: - the whole of it.

It seemed to me that the braces on the outside were not sufficient to support the pressure of the water; I thought the braces laid too nearly flat, so that the ice which always

forms more or less below the dam, would
 lift them up; the braces lay too flat, giving
 the ice more lift. If the ice had lifted
 the braces out it would have let the whole
 thing down. Some of the braces I saw broken
 nearly in the middle during the latter part
 of the winter of 1857-58. I suppose they were
 broken by the ice, but don't know. I should
 think the piers were good enough; the wood
 aside from the braces was entirely insuffi-
 cient; was entirely insufficient. I have
 no doubt about it. ~ The piers were from 35
 to 45 feet apart. I have seen the ice below
 the dam, where there was a gorge in the
 river below the Island, rise from three to six
 feet in an hour. The first movement of
 the ice in the stough is back and forth. It
 frequently acts in this way when the river
 breaks up. I can not see how, according
 to Mr. Sickle's plan shafting could be substituted
 without great expense. Pottery in shafting
 is not my business, but I know something
 of it; I have been quite familiar with
 mills, and with the manner of working
 them. According to this plan of improvement
 proposed by Mr. Nichols, the shafting would
 have to run across the pond; it might per-
 haps be supported but it would require a

great out-lay. I think it would require heavy stone piers, that would not be affected by the moving of the ice, which always forms in still water: it forms in the pond above the dam at No. 10, from one $1\frac{1}{2}$ to two feet thick. I think that if this plan had been completed as contemplated, and the piers or supports for the shafting had been large enough, and heavy enough, and enough of them, they would have materially interfered with the flow of the water to the wheels.

That part of the wall engineered by Mr. Day, which was carried away, was not put down upon the rock. I saw the water, before it fell, working through at the bottom, - and after it fell & went out I took a chisel on a long pole, and worked down where it had stood and found clay.

On Cross-examination witness testified as follows:-

I don't know a great deal about shafting. - I shouldn't think a small pier in the center of the pond, and a timber laid along on that would be sufficient to keep shafting as stiff as it ought to be. The pier needn't be close in front of the water wheels. I know Mr. Day's bull-head, I think it will answer a better

perforce than the wall built by Mr. Nichols, because the braces stand more perpendicularly. It is true that a brace at an angle of 45° is the strongest that can be.

The ice I don't think would lift out the braces put in to support Day's bulkhead - it would slide from them - Day's bulkhead is put in about this position. (Witness described it as in the following figure.



And the weight of the water in the Pond keeps the bulkhead down, because it is upon it: - The braces are nearly perpendicular.

The said Defendant also called as a witness on his behalf, Amos Stillman, before sworn on the part of the plaintiff who on his Direct Examination, testified as follows: -

I am a civil and hydraulic engineer. I never saw the work erected by the plaintiff at Boston, except in passing by there. I have heard it described by the witness Day. - I understood the plan. I think the work was very light &

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retain the head of water. The posts were too light. I have built similar kinds of flume work, but heavier, and I always found it necessary to blank onto the braces, so as to protect them. I think unprotected these braces would be very likely to be swept away. I don't think the plan was the best one that could be adopted. The shafting would have to be very long and very heavy. I think this wall was too light to hold ten feet of water, if he had put in these braces, and protected them, by blanking them over it might have done. The foot of the posts need protection more than the top.

On Cross examination by plaintiffs counsel the witness testified, as follows:-

If there was only a seven foot head of water - the timbers wouldn't need to be so heavy; if there were two braces, they might do to hold a seven foot head.

The said Defendant also called as a witness on its part David B. Sears, who being duly sworn deposed as follows: upon Direct Examination by the said Defendant's counsel. -

I live near Mobile in this County. I have lived at Mobile, and near there, for nearly twenty five years. I have been practically engaged in building dams, for many years, as much as twenty five years.

I have built dams for myself and for others. I have seen and examined the work engineered by plaintiff at Mobile; I saw it very frequently while it was in progress. - Mr.

Nichols exhibited his plans to me - The plan was for this wall, built under his supervision, to hold a head of water between itself and the shore the wooden structure between the stone piers was built of pine timber; I don't think the work sufficient for the purpose.

My first objection to it is that the shore forms one side of the race. Whatever head there is in the dam, necessarily runs against the buildings on the shore, thereby destroying the basement story of all the mills there. -

My next objection is the extra cost of shafting. I calculated that it would have cost more than it would to have built another wall up there. The plan of the wood work down to the first stone pier was imperfect. I think the water would have carried it out. The entire plan was imperfect; though the work was well executed. The pressure of water upon a perpendicular

dam, braced by a brace standing at an angle of 45° , never to lift the dam up, then the foot being loose is carried forward, and the whole thing goes down. Mr. Patterson put in one for me, near the same place with this work, in the fall of 1843, upon the same principle and went out, when there was only about a 5 foot head. Patterson and Hallam put up two dams in Rock River on the same principle, and the water, with only a three foot head, racked them so that they went out.

The work was done exactly as well as on this dam of Mr. Nichols, and better.

The work on this dam was well done - all except putting in these braces; instead of being framed in they were sawed forked, and rested against a cross timber bolted in to the post and when the ice rose that winter they split and tripped, and the wooden work racked, and leaned over; - this was in the winter of 1858, about nine months after it was put up. The foot of these braces was let into the rock, the rock is brittle, and shelly there; it is not sound, and the upper braces, came out by the lifting of the ice.

The plan I think was a bad plan - the putting it up and superintending the work was utterly worthless - I think it

would make any company that hadn't large means, to work on it.~

The Cross Examination by the said plaintiff counsel, the witness testified as follows:-

Will Wright it is said are always in a dispute. I don't know of any two engineers who agree as to the best mode of improving that water power - I don't know any thing about whether they do agree or not. I am not familiar with engineers. I have conversed with several engineers, and I never agreed with any of them.

The counsel for the plaintiff then put to the witness the following Question.

"While this work was being carried on" "did you see the officers, and stockholders of" "this Company present?"

And to this question the said defendant by its counsel then and there objected, and for cause of said objections assigned, first that the said question doth not relate to any matter drawn out upon the direct examination of this witness, Second, that said question

Objection

is irrelevant to the matter in issue.

But the Court having heard the arguments of counsel overruled the said defendants' aforesaid objection and permitted said question to be put by counsel and answered by the witness.

And to their ruling and decision of the Court, the said Defendant by its counsel excepted then and there excepted.

Witness continued in reply to said question, and upon further cross examination.

The Pitts, Mr. Dickles and Mr. Deere resided there. I saw Thomas Pitts in the office of the Company. I don't remember of ever going to the work with any of them. Saw Mr. Cook in motion frequently, while the work was progressing - it was in plain sight from the town, for every one moving about on the street.

The timbers constituting the sides of this dam - were perhaps strong enough - they were very good size, but there was not enough of them. The size of posts was right - there were timbers enough to hold the head if it were not for the action aforesaid. The extreme head of water there is 7 feet. it varies from that to

4 feet. ~ the top of the top brace was nine feet from the rock, i.e. half way up the post; and the lower one's top was 5 feet from the rock.

The braces might have supported the head if the rock had been strong enough to hold the wall to it ~ but the rock is shelly there, and not strong enough to hold the dam down. The sill between the piers couldn't have come up without breaking ~ as the piers rested upon it.

Then upon the said defendant recalled the witness John Deane, before sworn, who upon Direct Examination deposed, as follows: -

I had at one time some talk with Mr. Nichols about the work and his plan; He was near my shop, taking levels, or something of the sort. I asked him if he had made up his mind on a place for ^{the} improvement of the power. He said he had, and went on and described to me the one he afterwards drew up ~ this one on which he worked.

I asked him if he was satisfied that that was the best plan; he said he thought so. My reason for asking him was that it was ^a very important matter to all the mill owners, and mill users. It appeared to be perfectly

willing to risk it on that plan.

I know nothing of the effect of the water upon this work. I saw that it was racked around a good deal, but I never saw any of the braces out, as I remember. The water in the dam, if this plan had been carried out would have ruined the use of the first floor of my flour factory, and of Wheeler's and Lickli's Mills - there were basement stories.

The said Defendant by counsel also called as a witness on its behalf Jefferson Gaylor, who being duly sworn testified, as follows, on Direct Examination.

I know the plaintiff; became acquainted with the plaintiff when he came to Monroe on the 18th of May 1857. He boarded with me, when he left me he gave me an order on Hiram Pitt. I put the amount of it to my credit on the between myself and Mr. Pitt. I boarded several other men for them. That order was satisfied in my accounting with them.

On Cross Examination The witness testified as follows:—

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This order was reckoned in in the settlement of an account for the rent of the house we occupied; An allowance, was made for this order on settlement.

The said defendant also called as a witness on its behalf Nelson L. Williams who being duly sworn, testified as follows:—on Direct Examination.

I knew the plaintiff. I knew the witness Dey. Mr. Nichols was at Grinnell in Iowa in 1859 doing some work which we let him have, I was at Proctor about the first of June, and Reed inquired of me if Nichols had his soundings, and measurements, when I went to Grinnell, I asked Mr. Nichols about it; he said he hadn't them with him—but he would go and get them, and furnish the papers, if they would pay his bill. I think he said it was \$60. or \$70.— I paid him \$60.— for the Water Power Company; I couldn't tell the exact time this took place it was in June 1859, when Mr. Dey wanted the papers.

On Cross Examination witness said that the plaintiff was then at work in Iowa, Railroad making: He had to go back to New York for the

Paper - He never came on here again. He said when he went after the papers that he wanted to go home.

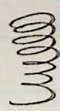
The witness Peter A. Day was then recalled by the counsel for the defendant, and testified as follows -

I received the papers which Mr. Nichols sent me by Express.

And thereupon the said Defendant rested the case.

Whereupon the said plaintiff by its counsel moved the Court to exclude from the jury, all the testimony of the witness John P. Cook touching the conditions upon which said witness took stock in the Defendant Company.

But the Court having heard the arguments of counsel over-ruled the said plaintiff's aforesaid motion, and refused to exclude the said testimony from the jury.

Whereupon the said Plaintiff by his
 Plaintiff's  counsel, to rebut the aforesaid testimony so
 Rebutting  produced and given on the part of the said

Defendant, offered and read in evidence to the Jury from the Records of the Defendant Corporation the following.

Defendant's " we the undersigned do agree to take and
Records " do hereby subscribe for the number of shares
set opposite our respective names in the
Moline Water Power and Manufacturing Com-
pany (being in the increased capital stock of
said Company), and we agree to pay for the
stock respectively subscribed by us, in installments
in such amounts, and at such times as may
be prescribed by the Board of Directors of said Com-
pany, or by the rules, and regulations of said corpe-
ration -

Dated April 28th 1857

Names	Number of Shares	Dollars
Hiram Pitt	Three hundred & seventy five shares	18,750
Elias S. Gilbert	Three hundred & seventy five shs	18,750
D. Benton Pitt	Three hundred & seventy five shs	18,750
"Cyrus Pitt	Three hundred & seventy five shs	18,750 "

" At a special Meeting of the Board of Directors of this Company held at the house of Cyrus Pitt in Moline, the fifteenth day of May A.D. 1857. present all the Directors to wit: Cyrus Pitt, D. Benton Pitt, Elias S. Gilbert and Hiram Pitt:-

" The President reported that since the last meeting of the Board he had procured the

proper title papers from Messrs Pitt, Gilbert and Pitt
for the Real Estate and Water Power described
in the proposition of said Pitt, Gilbert & Pitt at the
last meeting of the Board, which are now here
produced, and accepted by the board.

At the request of Messrs Pitt, Gilbert and
Pitt it is ordered, that three thousand shares of
full paid stock be issued to the following named
persons, being the amount respectively subscribed
by them to the stock of this company, and
which will be in full payment to them (Messrs.
Pitt, Gilbert & Pitt) for the consideration express-
ed in the deed of Hiram Pitt, Cyrus Pitt, D.
Benton Pitt, and Elias S. Gilbert to said Com-
pany for the said Real Estate Water Power &c

Hiram Pitt	750 shares
Elias S. Gilbert	750 "
Cyrus Pitt	750 "
D. Benton Pitt	750 "

3000 shares

Attest

Hiram Pitt, Secy,

Cyrus Pitt, Pres.

3

" And now upon this 16th day of May, the
Directors, to wit Cyrus Pitt, D. Benton Pitt, Elias
S. Gilbert & Hiram Pitt, met at the house of
Cyrus Pitt in motion, for the transaction of such

business as might come before them.

E. S. Gilbert offered the following resolutions which after consideration were unanimously adopted, to wit

1. Resolved that this Company do now proceed to improve the motive water Power so as to create a greater head of water and increase the facilities for the use of water power to lease to such persons as may apply, and construct with this Board for the use of water; and to this end, that upon the report of Mr. Nichols the Engineer now in charge - and making the necessary surveys, we then adopt such plan of Improvement as may be deemed most desirable to effect such object.

(The 2^d and 3^d Resolutions being irrelevant were not read to the Jury)

Cyrus P. P., Pres. "

"Attest

Hiram P. P. Secy.

Therefore the said plaintiff by his counsel called upon the Defendant for the Stock book of the Corporation -

It was admitted that since the commencement of the trial the defendant had been verbally notified to produce said stock book, and further that the witness Hiram

business as might come before them.

E. S. Gilbert offered the following resolutions which after consideration were unanimously adopted, to wit

1. Resolved That this Company do now proceed to improve the Motion Water Power so as to create a greater head of water and increase the facilities for the use of Water power to lease to such persons as may apply, and construct with this Board for the use of water; and to this end, that upon the report of Mr. Nichols the Engineer now in charge - and making the necessary surveys we then adopt such plan of Improvement as may be deemed most desirable to effect such object.

(The 2^d and 3^d Resolutions being irrelevant were not read to the Jury.)

Cyrus P. P., Pres. "

"Attest

Hiram P. P. Secy.

Therefore the said plaintiff by his counsel called upon the Defendant for the Stock book of the Corporation -

It was admitted that since the commencement of the trial the defendant had been verbally notified to produce said Stock book, and further that the witness Hiram

Pitt testified that he had delivered to Peter R. Reed Esq. President of the Company, all the books of the Company.

And thereupon the said plaintiff recalled the witness — — H. F. Sickles, before sworn —, and by his counsel put to said witness the following question,

Question? "Did you ever see the names of John P. Cook or Cook and Dillon, and John New, either of them" "on the stock book of this Company, as subscribers for stock" and if so was there any condition to such subscription"

Ob. ja To which question the said Defendant by its counsel then and there objected; and for ground of said objection assigned and insisted to the Court, First, that it had already been shown, that the condition named, was not expressed in the said subscription, Second, that no written notice to produce the said stock-book, had ever been served upon the said defendant.

Over-ruled. But the Court having heard the arguments of counsel, overruled the said defendant's said objection, and to this ruling and decision of the Court the said

Excp'n

Defendant by its counsel then and there
excepted.

Witness said in reply to said question;—

Answer

I did see the names of all of
them. I want to be positive as to Dillon's name,
but I think it was there. I saw them there
at different times. I didn't see any conditions
annexed to their subscriptions. I should have
been likely to have seen them if there had been
any, then.

I was present in Providence,
while this work was going on. I was one of
the Directors. No fault was ever found
with the plan. nor was plaintiff ever directed
to follow any other. This was the plan the
Company adopted, and directed the plaintiff
to build.

I have had considerable to do with
Mills, Water Power &c for the last 12 or 14 years;—
I have operated water Mills. I never built any
dams. I have prevented this work to be done—
and have frequently seen it progressing.

I have been acquainted with these works at
Providence the past six years. My attention
has been called to the different works, and
their strength. The piers and wood-work,
of this work were not as strong as I should
have liked. This was according to the plan

we directed in the meeting of the Company.

The flume work was built from the old dam was of wood - it stood some five years. It wasn't exactly like this of Nichols.

On Cross-examination the witness testified as follows:-

This flume was a double frame. Two frames of timber set at a distance from each other, and braced together. The shore made one side of it, and this frame was about 60 feet off. The frame was of timber built - the posts of the built were some 10 or 12 inches square, and the two frames were braced together; and there were also braces against the rock to keep the water from pressing it out. The flume was floored over at the bottom; timbers were laid down on the bottom of the flume, and these were planked over; this flooring extended over the whole surface of the pond; the framing on the side was joined to this, and the weight of the water kept the floor down. There was a good deal more timber and stronger timber in this race, than in the work done by Mr. Nichols, in proportion to the water it held.

On Re-examination the witness testi-

jud as follows: 157

The timber structure between the
piles was made light because one flume
were intended to go back of this on the
down river side; the building of the flumes
would double and quadruple its strength.

And thereupon also the said Plain-
tiff stated his case. The foregoing was all
the evidence offered or given at the trial of
said cause, and after argument of said
cause by counsel on the part of said plaintiff
and said defendant respectively, the said
Plaintiff prayed the Court to give the jury
the following instructions.

All of which several instructions, so prayed by the said plaintiff, were marked "given" by the Court, and ⁱⁿ open Court read to the jury: And with the giving of each and every of the said instructions so prayed on the part of said plaintiff, and the whole thereof, the said Defendant by its counsel, then and there excepted.

The said Defendant by its counsel also prayed the Court to give to the jury the following instructions on its part:-

Lorain L. Nichols
vs.
The Motine Water Power
& Manufacturing Company



Instructions asked on the part of the Defendant.

1. The Plaintiff in this case having by the account filed with his declaration charged the defendant with "a years salary", the Jury must (unless they believe from the evidence that the defendant employed the Plaintiff for a year, or by the year, and at a fixed price or sum to be paid for his services) - as with that item of the account filed for the

Refused.

defendant.

2.

Although the jury may believe from the evidence that the plaintiff has, before the beginning of this action, made surveys, and divided a ~~blance~~ for the improvement of the waterpower belonging to the defendant, and may have superintended, the works upon such improvement, as engineer yet unless the jury believe that the defendant was employed to make such surveys and, perform such other services, as engineer, either by the defendant corporation, or by some of its officers having authority, so to employ him, or by some authorized agent of the defendant, or that such services of the plaintiff were performed with the knowledge of the officers of the defendant and with the understanding on the part of the plaintiff that the same were to be paid for by the defendant, they shall as to so much of the plaintiff's account as refers to such services, find for the defendant.

3.

If the jury believe from the evidence that the plaintiff was employed by the firm of Pitt, Gilbert & Pitt & not the defendant, to perform the services as engineer, for the value of which the plaintiff is in his account has

charged the defendant, and that such services were by the terms of such employment to be paid for by said Pitt, Gilbert & Pitt & not the defendant, they will as to so much of the plaintiffs account as refers thereto, find for the defendant.

4. In order to determine, by whom the plaintiff was employed, and by whom his services as engineer were to be paid for, the jury may consider, any evidence as to whether the person by whom the plaintiff was directly retained to come from his residence to the line, was, in making such retainer, acting as the agent of the defendant or of the firm of Pitt, Gilbert & Pitt - all admissions of the plaintiff, as to whether he was employed by said firm, or by the defendant: - & all evidence as to whether such payments, if any, were made to said plaintiff in account of such services, were made by the defendant, or by said firm, or by any one of said firm, for the firm - giving to such evidence, that weight, to which together with the other evidence in the case, it may in the opinion of the jury be entitled.

5.

If the jury believe from the evidence that before the performance of the services, as engineer, for which the plaintiff seeks to recover in this action, said plaintiff was employed by the witness Parsons, acting as the agent of Pitt, Gilbert & Pitt, and then disclosing such agency, to the plaintiff, to come from New York to motive for the purpose of performing such services, and that by reason of being so employed by said Parsons, the plaintiff came to motive for the purpose of performing such services, then the plaintiff, can not recover therefor of the defendant although such services were performed upon & about the works and property of the defendant - unless the jury further believe from the evidence, that after the plaintiff came to motive - a new contract was made, and the plaintiff was employed as the Engineer of the defendant.

Lover.

11.

The deed of the defendant corporation naming the plaintiff as the engineer of the defendant, is only evidence that the plaintiff was the engineer of the defendant at the time of the execution of the deed in question; and even as to that is not conclusive as against the defendant.

Lover.

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and if the jury believe from the other evidence in the case that the plaintiff was in fact in the employment of Pitts Lumber & Pitts as engineer, and not in the employment of the defendant, then the jury will, as to all charges & claims of the plaintiff, for services performed, as such engineer find for the defendant.

7. If the jury believe from the evidence that the witness Hiram Pitts was in giving his testimony knowingly, sworn falsely, as to any material fact - or has ~~subsequently~~ denied his recollection of any material fact, then the jury may disregard all the testimony of said witness, Hiram Pitts.

Lyons

8. Although the jury may believe from the evidence that the plaintiff was in fact employed by the defendant as engineer, to make surveys and levels of the river & water power at Mohave, and to devise a system for the improvement of the defendant's said water power, and that in fact the plaintiff did make such surveys and levels and did devise a plan for said improvement, and did superintend the partial construction

Lyons

of the works. Therefore, yet if the jury believe from the evidence, that the plan or system of improvements so devised by said plaintiff, was insufficient for the purpose, and that the said services of the plaintiff as engineer were entirely worthless to the defendant, they will as to so much of plaintiff's account as relates to said services, find for the defendant.

9.

Although the jury may believe from the evidence, that the plan or system ~~is~~ devised by the plaintiff for the improvement of the defendants' water power, was approved by the officers and members of the defendant corporation, and the work ordered to be erected according to that plan, yet if the jury believe from the evidence, that the plaintiff was employed as Engineer, and deemed to be a scientific person, skilled and experienced in such matters, and that the said plan or system devised, by him, was approved by the officers and members of the defendant by reason of the plaintiff's representations to them that the same was sufficient and by reason of their confidence in the assumed skill & experience of the plaintiff & relying upon the

live

same and that in fact the said class was insufficient, and the services performed by the plaintiff in devising the same, and in superintending the hasty prosecution thereof, were entirely valueless to the defendant, then the jury will not in their verdict allow the said plaintiff for his services. —

10.

If the jury believe from the evidence that the testimony of the witnesses, Hiram Pitts has been contradicted, in any material point, by one or more credible witnesses, then the jury may consider this fact, in determining the weight to which the testimony of said witness Hiram Pitts is entitled, whether they believe that said witness Pitts has, as to the point in which he has been so contradicted, sworn falsely, through defective recollection, or wilfully.

11.

Unless the plaintiff has proved a contract or agreement between plff. and defendant to pay the travelling expenses and the board of the plaintiff, the jury will find for the defendant as to those items of plff's ac. unless plff. has shown proven that it was customary in employing engineers to pay travelling expenses

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& board in addition to the salary of the employee.

12.

Given

The jury will find for the defendants as to the item of \$20.- charged in plff's account for making out estimate by request of Goodwin, unless the plff. has proven that said Goodwin did request such estimates and that he was authorized by the defendant to request the same from Plaintiff, and unless the jury further believe from the evidence that said plaintiff did make such estimates. "

The first of which said instructions was refused by the Court, and the remainder of which were severally marked "Given" by the Court and read to the jury: And to the aforesaid ruling and decision of the said Court refusing the said first instruction prayed on the part of the said Defendant, the said Defendant by its Counsel, then and there excepted.

And the jury having heard and considered the evidence aforesaid, and the arguments of counsel in the matter and the aforesaid instructions, as given

by the Court, - thereupon returned into Court their verdict as follows

" We the Jury find for the Plaintiff, and
assess the damage at Fifteen hundred
and ninety-seven $\frac{22}{100}$ Dollars
\$1397 $\frac{22}{100}$ "

$$\cancel{1397} \frac{22}{100}$$

And thereupon at the time of the rendering of said verdict the said Defendant, by its counsel, suggested to the Court and filed with the Clerk of said Court in writing a motion for a new trial of the same which said motion is in the following words and figures, to wit:-

State of Illinois
Rock Island County  Of May Term A.D. 1860 of
Rock Island Circuit Court.

The Twine Rope and Manufacturing
Company. Defendants
vs
Lorain L. Nichols, Plaintiff

And now at this day comes
the said defendant by Hawley & Wells its
attorneys and moves the Court here to set

by the Court, - thereupon returned into Court their verdict as follows

" We the jury find for the Plaintiff, and assess the damage at fifteen hundred and ninety seven $\frac{22}{100}$ Dollars

\$1397 $\frac{22}{100}$ "

And thereupon at the time of the rendering of said verdict the said Defendant, by its counsel, suggested to the Court and filed with the Clerk of said Court in writing a motion for a new trial of the said issues which said motion is in the following words and figures, to wit:-

" State of Illinois }
 Rock Island Circuit Court }
 Of May Term A.D. 1860 of }
 Rock Island Circuit Court.

The Motion made Pursuant Manufacturing }
 Company, Defendant }
 vs }
 Lorain L. Nichols, Plaintiff }

And now at this day comes the said defendant by Hawley & Wells its attorneys and moves the Court here to set

aside the verdict of the jury, needed him
and grant unto this defendant a new
trial,

1st Because the Court improperly and
unanimously instructed the jury - at the
request of the plaintiff.

2^d Because the verdict of the jury is
contrary to the instructions of the Court.

3^d Because the said verdict is contrary
to the Law & the evidence.

4th Because the Court admitted im-
proper evidence on the part of the plaintiff.

5th Because the Court excluded proper
evidence offered on the part of the defend-
ant.

6th Because of improper conduct on the
part of the jury.

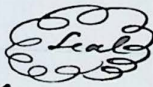
7th Because the Court improperly and
unanimously refused the first instruction
prayed on by the defendant.

Hawley & Wells
p. 12

And the said defendants said motion for a new trial coming on to be heard, by the Court, was overruled, and to this decision of the said Court overruling its said motion for a new trial, the said defendants by its Counsel, then and there, at the time thereof, excepted.

And because these several matters do not appear by the record in said cause, the said Defendant proposes that its said bill of exceptions, and prays his Honor the Judge of said Court to sign and seal the same, and make it part of the Record herein.

And at this same term, and at the time of the trial of said cause, in open Court, it is done.


J. H. Howe, Judge
Judge 6th Circuit, Illinois

To Hon J. H. Howe

Rock Island, Aug. 18. 1860

The foregoing 8th Bill of Exceptions is satisfactory to us.

Hunt, Reed & Webster

Plffs Atty

State of Illinois Rock Island County 3rd

I Edward H Bourneman Clerk of the Circuit Court within and
for said County do hereby certify that the foregoing is a full
true and perfect transcript of the record of proceedings her-
etofore had in said Court in that certain cause wherein
Lorain S. Nichols was plaintiff, and the Moline Water Power
and Manufacturing Company was defendant, as the same
appear to me affixed in my office -

In witness whereof I have hereunto set my hand
and the seal aforesaid Court this second day of
April A.D. 1861

Edward H Bourneman Clerk

State of Illinois. In the Supreme Court
at April Term A.D. 1861 -

The Moline Water Power and
Manufacturing Company, Appellant
vs
Lorrain L. Nichols, appellee

And now comes the Said "Moline
Water Power and Manufacturing Company"
appellant, by Hawley and Wells its Attorneys,
and says that in the record and proceed-
ings aforesaid, and in the Judgment aforesaid
of the Said Circuit Court, there is Manifest
error in this to wit -

1. That on the trial of the Said Cause in
the Said Circuit ^{Court}, Said Circuit Court admitted
improper evidence on the part of the Said
Lorrain L. Nichols
2. There is also error in this to wit, that Said
Circuit Court overruled the Motion of the Appellant
in Said Circuit Court to exclude from the jury
the testimony introduced by the Said appellee

3. There is also error in this to wit: that the said Circuit Court ~~took~~ overruled the Motion of the said Appellant in the said Circuit Court, to exclude the testimony of the said Hiram Pitts, and Cyrus Pitts, from the Jury,
4. There is also error in this to wit: that the said Circuit Court on the trial of said Cause in the said Circuit Court, excluded from the Jury proper evidence offered on the trial of said Cause in the said Circuit ^{Court} on the part of the said Appellant—
5. There is also error in this to wit: that the said Circuit Court at the request of the said appellee erroneously instructed the Jury on the trial of said Cause in the said Circuit Court—
6. There is also error in this to wit: that the said Circuit Court refused the said first instruction prayed on the part of the said Appellant, on the trial of said Cause in the said Circuit Court—

7. ^{ay} There is also error in this to wit: that the
Said Circuit-Court overruled the Said Motion
of the Said Appellant, for a new trial

8. ^{ay} There is also error in this to wit: that the
Said Circuit-Court entered judgment against
the Said appellant, and in favor of the said
appellee —

And for the errors aforesaid, and for the
Manifest other errors in the record and proceed-
ings aforesaid, the said appellant pray that
the Judgment aforesaid may be reversed, an-
nulled, and from henceforth for nought be-
held &c

Hawley & Wells
Attys for Appellant —

And now comes the appellee
in the above cause by A. Webster
his attorney and as to the
errors assigned on the forego-
ing record by the said Appell-
ant says that there is not
any error in the said Record
Proceedings & judgment &
therefore said appellee
prays that said judgment
may in all things be
affirmed

A. Webster
atty for appellee