

No. 11981

Supreme Court of Illinois

Ill. Cent. R. R. Co.

vs.

Reed.

71641 7

(Cook)

Ch. & N. W. R. R. Co.

John S. Reed survivor

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11981

1852

1.

State of Illinois

County of Cook

Sheweth before the Hon-
orable Hugh S. Lickey Judge of the Seventh ju-
dicial Circuit Court of the State of Illinois,
and presiding Judge of the Cook County
Circuit Court, at a term thereof begun and
held at Chicago in said County on the first
Monday (being the birth day of May in the year
of our Lord one thousand eight hundred and
fifty, and of the independence of the United States
the seventy fourth

President. Hon. Hugh S. Lickey, Judge
Samuel M. Clegg, State Attorney
James L. Smith, Clerk

That Louis B. Ward Clerk

James M. Clegg, State Atty.

Chicago Union Rail Road Co. } In debt.

Wm. Arnold & Son Attorneys for Plff.
J. M. Collins " " Deft.

Be it remembered that heretofore to wit on the
29th day of March in the year Eighteen Hundred
and fifty this issued out of the Circuit Court of
the County of Cook in said State of Illinois
under the Seal of said Court The Peoples writ of
Summons, which is in word and figures as
follows that is to say

State of Illinois

Cook County

The People of the State of

Illinois, to the Sheriff of said County, greeting:
 We command you that you summon the Chicago
 Union Rail Road Company of Illinois, shall
 be found in your County, personally to be and appear
 before the Circuit Court of said County, on the first day
 of the next term thereof, to be holden at the Court
 House in Chicago in said County on the first Mon-
 day of May next, to answer unto Isaac Leckie and
 John D. Reed in a plea of Trespass on the Case
 and promises to the damage of the said Plaintiff as
 they say in the sum of Ten Thousand Dollars.
 And have you then and there this writ, with an
 endorsement thereon, in what manner you shall
 have executed the same.

Witness your hand and Seal of the said Court,
 and the Seal thereof at Chicago, aforesaid,
 this 29th day of March A.D. 1850

1850
 1850

L. H. Round, Clerk of
 the Circuit Court

On the back of which was endorsed the following
 words and figures to wit:

Executed by signing a
 Copy of the within on the Secretary of the Chicago
 Union Railroad Co. This 29th March 1850

Service 50

Copies 50

M. L. 5

Turn 10

\$ 1.15

Isaac Leckie

John D. Reed

Co. by

And afterwards on the twentieth day of April
 Eighteen Hundred and fifty The Plaintiff to
 his Attorney, Messrs. Arnold & Lay, filed
 his declaration which is in in words and fig-
 ures as follows, that is to say.

Cook County Circuit Court

Of the May term in the year
of our Lord one thousand
Eight hundred fifty

narr.

Cook County, Ill. Isaac M. Cagg and John
L. Reed late partners under the name style and
firm of I. M. Cagg & Co. plaintiff in this suit by Ar-
nold Lay their Attorneys, complain of the
"Galena and Chicago Union Rail Road Company"
defendants in this suit of a plea of trespass on
the case upon promises. For that whereas the said
plaintiffs heretofore to wit; on the twenty third day of
February A.D. 1848 made and entered into a certain
written agreement with the said defendants and which
said agreement is in substance as follows to wit:

Memorandum of agreement, made & concluded this
twenty third day of February, A.D. 1848 by and between
Isaac M. Cagg & Co. of the County of Cook in
the State of Illinois of the first part and Galena
and Chicago Union Rail Road Company by their
acting director of the second part, in which it is
covenanted and agreed as follows, to wit:

Said party
of the first part for the consideration hereinafter set
forth, hereby covenants and agrees with said party
of the second part to furnish and deliver on some
convenient dock in the City of Chicago to be
designated by said Company, an amount of
Rail Road ties not less than fifteen Thousand nor
more than twenty Thousand in number, in all respects
according to the specifications hereinto annexed
which are to be considered as part of this contract,
Said party of the first part further agrees to furnish
and complete the delivery of said ties on or before the

4.

first day of October A.D. 1848 and that he will prosecute the said work with all due diligence to completion.

Now.

Said parts of the second part, for the consideration herein after set forth, hereby covenants and agrees with said party of the first part, to pay him when the whole of said ties have been delivered as above agreed, at the rate of twenty two cents for each tie, said price to be in full compensation for all of the materials and labor, required to be performed in the fulfillment of this contract.

And it is further mutually agreed between the parties to this contract, that monthly estimates shall be made by the Chief Engineer of said Company of the number of ties delivered and accepted as coming within the provisions of this contract and the specifications heretofore referred to and upon the presentation of such estimates, certified to by the aforesaid Chief Engineer, to the before mentioned Acting Director, payment shall be made by the said Company at the rate of Eighty per cent, upon such estimate until the whole of this contract shall have been fulfilled; and when in the opinion of the said Chief Engineer, the terms of this contract shall be fully completed, on the part of the said party of the first part, payment shall be made in full as heretofore stipulated by the party of the second part.

And it is further agreed by the parties to this contract, that if the party of the first part shall refuse, or in the opinion of the said Chief Engineer, neglect to prosecute the work, as specified in the terms of this contract, with due diligence, or shall perform the work in an improper manner,

Cook County Circuit Court

Of the May term in the year
of our Lord One thousand
Eight hundred fifty

now.

Cook County, Ill. Isaac McLeary and John
McReed late partners under the name, style and
firm of McLeary & Co. plaintiffs in this suit by Ar-
nold Lay their Attorneys, complain of The
"Galena and Chicago Union Rail Road Company"
defendants in this suit of a plea of trespass on
the case upon promises. For that whereas the said
plaintiffs heretofore to wit; on the twenty third day of
February A.D. 1848 made and entered into a certain
written agreement with the said defendants and which
said agreement is in substance as follows to wit:

Memorandum of agreement, made & concluded this
twenty third day of February A.D. 1848 by and between
J. McReed & Isaac McLeary of the County of Cook in
the State of Illinois of the first part and Galena
and Chicago Union Rail Road Company by their
acting director of the second part, in which it is
covenanted and agreed as follows, to wit:

Said party
of the first part for the consideration herein after set
forth, hereby covenants and agrees with said party
of the second part to furnish and deliver on some
convenient dock in the City of Chicago to be
designated by said Company, an Amount of
Rail Road ties not less than fifteen Thousand or
more than twenty Thousand in number, in all respects
according to the Specifications herein to annexed
which are to be considered as part of this contract,
Said party of the first part further agrees to furnish
and complete the delivery of said ties on or before the

4.

first day of October A.D. 1848 and that he will prosecute the said work with all due diligence to completion.

Now.

Said party of the second part, for the consideration herein after set forth, hereby covenants and agrees with said party of the first part, to pay him when the whole of said ties have been delivered as above agreed, at the rate of twenty two cents for each tie, said price to be in full compensation for all of the materials and labor, required to be performed in the fulfilment of this contract,

And it is further mutually agreed between the parties to this contract, that monthly estimates shall be made by the Chief Engineer of said Company of the number of ties delivered and accepted as coming within the provisions of this contract and the specifications heretofore referred to and upon the presentation of such estimates, certified to by the aforesaid Chief Engineer, to the before mentioned acting directors, payment shall be made by the said Company at the rate of Eighty per cent, upon such estimate until the whole of this contract shall have been fulfilled; and when in the opinion of the said Chief Engineer, the terms of this contract shall be fully completed, on the part of the said party of the first part, payment shall be made in full as heretofore stipulated by the party of the second part.

And it is further agreed by the parties to this contract, that if the party of the first part shall refuse, or in the opinion of the said Chief Engineer, neglect to prosecute the work, as specified in the terms of this contract, with due diligence, or shall perform the work in an improper manner,

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the said Chief Engineer may Certify the same in writing to the Director of said Company, and the said Director shall have power to declare the terms of this Contract to have been violated or abandoned by the party of the first part upon such declaration being made by the Board of Directors and notice duly given to said party of the first part, said Contract shall be declared abandoned, and the said Company may proceed to contract for the work or materials with any other person; and all money which may have been retained in the monthly estimates hereinbefore provided for shall be forever forfeited to said Company.

And it is further agreed by the parties to this Contract, that in case of the absence or inability to act of the said Chief Engineer, then and in that case, the Assistant Engineer, having charge of the work embraced in this Contract, shall have discretion vested with all of the powers hereinbefore given to the said Chief Engineer in the premises.

Signed, sealed and delivered }
in the presence of }
Henry & Clark }
Lynn M. Cagge }
John B. Turner }
Act Under for the }
Ct. W. Rail Road Compy.

Specifications

Each of said Rail Road ties to be Nine feet long, six inches thick and hewed or squared or otherwise flattened on two parallel sides, the bearings or feet on the two flat sides to be not less than six inches wide and to contain at least as much timber as if they were six inches by seven inches square. Said ties are to be of Swamp Oak, White Oak, Burr Oak

6. *Red Oak, Red beech, tamarack, Chestnut, or
Star. red or white cedar, and to be of good sound mer-
chantable timber*

And the said plaintiffs aver, that after the ex-
ecution and delivery of the said Contract so
made & entered into as aforesaid by & between
the said parties, the said plaintiffs went
on in pursuance of the said Contract, and
the conditions and specifications therein mention-
ed and set forth upon their part to be done and
performed, and did furnish and deliver on
a convenient dock in the city of Chicago desig-
nated by said Company to wit the dock of the
said defendants, rail road ties according to
the specifications and terms of the said agreement
and were ready and willing and would have
delivered the twenty thousand Rail Road ties
mentioned in said Contract or or before the
first day of October A.D. 1848 according to the
specifications of the said Contract. And the said
plaintiffs aver that before the time for the per-
formance and completion of the said Contract
to wit on the 15th day of June 1848 at Chicago
aforesaid it was then there mutually agreed
by and between the said Plaintiffs and the said
defendants, at the request of the said defendants
and in consideration of the sum of One hundred
dollars to the said plaintiffs paid by the said
defendants the time for the performance and
completion of the said Contract so entered
into as aforesaid should be extended for one
year from and after the time mentioned and
designated in said Contract for the Complete

extended

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Am.

performance thereof, to wit from the first day of October 1848 untill the first day of October A.D. 1849.

And the said plaintiffs in fact say that afterwards to wit: on the fourth day of November 1848 it was mutually agreed by and between the said parties to said Contract above set forth that the dimensions of the ties embraced in the said Contract were to be similar to a lot of ties delivered about the first day of November 1848 flattened, no tie to be less than six inches and to average on the smaller sides full eight inches; that the said defendants were to pay said plaintiffs an additional sum of five Cents per tie making twenty seven Cents per tie, a Memorandum of which said agreement in writing was endorsed upon the foot of the original Contract herein first above set forth by S. Van Northwick Chief Engineer in the Employ of the said Company & Agent for the said Company and which said Memorandum is in substance as follows.

Nov 4, 1848 By mutual agreement the dimensions of the ties embraced in the Contract of Reed and McCagg are to be similar to a lot delivered about the first of Nov 1848 flattened on tie top that six in. and to average on smaller side full 8 in. The following are the dimensions of a lot of said ties as measured, and the said Company are to pay an additional sum of five Cents per tie making twenty seven cents per tie

(Signed)

S. Van Northwick
Engineer

8
Sam-

8 in 7-9-9-10-8-8-6-8-11-8-8-6-0-11
9-7-11-7-8-8-9-8-7-7-8-7-7-9-9
10 11 8 - 7-7- 7-7- 7
9 7 11 6 8 11 10 9
10 7 8 7 9 8 7 7
9 6 7 9 8 8 11
7 11 8 8 6 10
5 11 8 10 8 8 7

And the said plaintiffs in fact say that in pursuance of said contract and the extension and modifications thereof herein above set forth, the said plaintiffs proceeded to deliver and furnish and did deliver and furnish on or before the 25 day of September A.D. 1849 to wit at Chicago aforesaid to the said defendants to wit: the Rail Road Dock in Chicago and at other docks in said City which had been designated by said defendants for that purpose, a large Number of Rail Road ties in all respects according to the specifications and modifications in said Contract herein before set forth to wit the number of 19000 ties which the said defendants then & there accepted and received, And the said Plaintiffs say that afterwards to wit: on the twenty fifth day of September 1849. to wit at Chicago aforesaid the said Defendants then and there gave notice to the said Plaintiffs that they the said Company did not want any more ties and that the said plaintiffs need not deliver to them any more ties under said contracts and the modifications thereof herein before set forth.

And the said plaintiffs aver that they

9. have delivered to the said defendants the said 19000 Rail Road ties at the place and in the times and manner aforesaid, and that they were ready and willing on the said 25 day of September 1849 to wait at Chicago aforesaid, to wait at the dock aforesaid to deliver the residue of the said Rail Road ties according to the terms and specifications & Modifications of the said contract as fully to perform & complete all the agreements upon their part to be done and performed, but the said defendants notified the said plaintiffs, to wit, on the 25 of September 1849 at Chicago aforesaid that they, said plaintiffs need not deliver the residue of said Rail Road ties under the said contract and utterly refused to receive the same, and to perform the agreements upon their part to be done and performed.

Yet the said defendants have not paid the said plaintiffs the said sum of 27 cents for each tie so delivered under the said contract and the modifications thereof nor would they accept the said residue of the said Rail Road ties or any part thereof or from the said plaintiffs or pay them for the same as aforesaid nor would they pay for the said 19000 Rail Road ties ^{50 cts} as aforesaid under the said contract & the modifications thereof at the rate of 27 Cents for each & every tie so delivered as aforesaid nor would they the said defendants cause Monthly estimates to be made by the Chief Engineer of said Company of the remainder of ties delivered, but ~~do~~ to do have hitherto wholly neglected and refused & still do neglect & refuse to the

10 - damage of the said plaintiff of ten thousand
Dollars

2 Count And also for that whereas the said
Plaintiffs on the on the said twenty third day
of February entered into a certain other agree-
ment with the said defendants and which
said agreement is in substance as stated
and set forth in the said first Count of this
declaration, and therein referred to and
was executed and delivered, and after the
execution and delivery of the said Contract
so made and entered into as aforesaid by
between the said parties, the said plaintiffs
went on in pursuance of the said Contract
and the conditions therein mentioned and set
forth upon their part to be done and performed
and did furnish & deliver on a cement
dock in the City of Chicago designated by said
company to wit, the dock of the said defendants,
Rail Road ties according to the specifications
and terms of the said agreement were ready
& willing and would have delivered the twenty
thousand Rail Road ties mentioned in said
Contract or or before the first day of October
A.D. 1848 according to the specifications of
the said Contract.

And the said plaintiffs aver that
before the time for the performance and comple-
tion of the said Contract, to wit on the 15th day
of June 1848 at Chicago aforesaid, it was
then & there mutually agreed by & between the
said plaintiffs and the said defendants that
the time for the performance and completion
of the said Contract so entered into as

aforesaid, should be extended from and after
 the time mentioned and designated in said
 contract for the complete performance thereof
 to wit. from the first day of October 1848
 during the said year 1848, and during the
 season of Navigation in the year 1849 which
 would be until the 15th day of December 1849,
 And the said plaintiffs in fact say that after
 words, to wit: on the fourth day of November
 1848 it was mutually agreed by and between
 the said parties to the said Contract in the
 first Count set forth, that the dimensions of
 the ties embraced in the said Contract were
 to be similar to a lot of ties delivered about
 the first day of November 1848 flattened, no tie
 to be less than six inches, and to average on
 the smallest sides full Eight inches; that
 the said defendants were to pay said plain-
 tiffs an additional sum of five cents per tie
 making twenty seven cents per tie a Mem-
 orandum of which said agreement in writ-
 ing was endorsed upon the foot of the original
 contract herein first above set forth by J. Van
 Nathwick Chief Engineer on the Employ of the
 said Company and as agent for said Company
 & which said Memorandum is in substance
 as follows.

Nov 4, 1848. By mutual agreement the
 dimensions of the ties in the contract of Reed &
 McCagg are to be similar to a lot delivered
 about the first of Nov 1848 flattened, no tie
 less than 6 in, and to average on smaller side
 full 8 in. The following are the dimensions
 of a lot of said ties as measured & the said
 Company are to pay an additional sum of
 five cents per tie making making twenty

Seven cents per tie.

12-

Signed Stanforth
Engineer.

8 in 7- 9- 9- 10- 8- 8- 6- 8- 11- 8- 8- 6- 0- 11
9 7- 11- 7- 8- 8 9 8- 7- 7- 8- 7- 7- 9- 9
10- 11- 8 7- 7- 7- 7- 9
9- 7- 10- 6- 8- 11- 11- 9
10- 7- 8- 7- 9- 8- 7- 7
9- 6- 7 9- 8- 8 11
7- 11- 8- 8- 6- 10
5- 11- 8- 10- 8- 8- 7

And the said plaintiffs in fact say that in pursuance of said contract & the extension & Modifications thereof herein above set forth the said plaintiffs proceeded to deliver and furnish & did deliver and furnish on or before the 25th of September A.D. 1849, to wit: at Chicago, after said to the said defendants at the said Rail Road dock in Chicago a dock which had been designated by said Defendants for that purpose a large number of Rail Road ties in all respects according to the specifications and modifications in said contract heretofore set forth to wit the number of 19,000 ties which the said defendants then & there accepted and received. And the said plaintiffs say that afterwards, to wit on the twenty fifth day of September 1849 to wit at Chicago aforesaid, the said defendants then & there gave notice to the said plaintiff that they, the said company did not want any more ties and that they the said plaintiff. Need not deliver to them any more ties under said contract and the modifications thereof herein before set forth.

And the said plaintiffs say

13. that although they have delivered to the
said defendants the said 19,000 Rail Road
ties at the place and in the time and manner of
said and although they were ready and
willing on the said 25th day of September 1849
to wit: at Chicago aforesaid and thence their
tendered and offered to deliver the residue
of the said Rail Road ties, to wit the balance
of said twenty thousand Rail Road ties at
the dock aforesaid & then & there requested
the said defendants to accept the same & to pay
them for the same. Yet the said defendants have not
paid the said plaintiff the said sum of 27 cents
for each tie so delivered under the said contract
and the modifications thereof, nor would they at
the said time when they were so requested as
aforesaid or at anytime before or afterwards
accept the said residue of the said Rail Road
ties or any part thereof or from the said plain-
tiffs or pay them for the same as aforesaid nor
would they pay for the said 19,000 Rail Road
ties as delivered as aforesaid under the
said contract & the modifications thereof at
the rate of 27 cents for each & every tie so delivered
as aforesaid nor would they the said defen-
dants cause monthly estimates, to be made
by the Chief Engineer of said company of
the number of ties delivered, but so to do
have hitherto wholly neglected and refused
& still do neglect & refuse to the damage
of the said plaintiff of ten thousand Dollars.

3 Counts,

And also for that whereas, the said Plain-
tiffs heretofore to wit: on the second day of
February A. D. 1848 entered into a certain
other written contract with the said defen-

141 - dents, and which said Contract is in substance as follows to wit: Memorandum of Agreement made and Concluded this second day of February A.D. 1848 by and between John V. Reed and Isaac McCagg of the County of Cook in the State of Illinois of the first part & the Galena and Chicago & Northern Rail Road Company by their acting Director of the second part, in which it is Covenanted and agreed as follows, to wit. Said party of the first part, for the Consideration hereinafter set forth, hereby Covenants and agrees with said party of the second part to furnish and deliver on some convenient dock in the City of Chicago to be designated by the Company five hundred thousand feet board measure of Rails in all respects according to the specifications hereunto annexed which are to be considered as part of this Contract. Said party of the first part further agrees to finish & complete the delivery of said rails on or before the first day of September A.D. 1848 and that he will prosecute the said work with all due diligence to completion. Said party of the second part for the Consideration herein ^{before} set forth, hereby Covenants and agrees with said party of the first part to pay him when the whole of said Rails shall have been delivered as above agreed, at the rate of ten dollars per thousand feet board measure. Said price to be in full compensation for all of the materials required to be performed in the full fulfillment of this Contract.

And it is ^{further} mutually agreed between the parties to this Contract, that Monthly estimates shall be made by the

Chief Engineer of said Company of number and quantity of rails delivered and accepted as coming within the provisions of this contract and the specifications heretofore referred to, and upon the presentation of such estimates, certified to by the aforesaid Chief Engineer to the before mentioned Acting Director, payment shall be made by the said Company at the rate of Eighty per Cent upon such estimates, until the whole of this contract shall have been fulfilled, and when in the opinion of the said Chief Engineers, the terms of this contract shall be fully completed, on the part of said party of the first part, payment shall be made in full as hereinbefore stipulated by the ~~said~~ party of the second part.

And it is further agreed by the parties to this Contract, that if the party of the first part shall refuse, or in the opinion of the said Chief Engineer, neglect to prosecute the work as specified in the terms of this contract with ~~the same~~, ~~and~~ due diligence or shall perform this work in an improper manner, the said Chief Engineers may certify the same in writing to the directors of said Company and the said Directors shall have power to declare the terms of this contract to have been violated or abandoned by the party of the first part, and upon such declaration being made by the Board of Directors and notice duly given to the said party of the first part, said Contract shall be declared abandoned, and the said Company may proceed to contract for the work or materials with any other person; and all moneys which may have been retained in the monthly estimates hereinbefore provided for shall be forever forfeited to said

16, Company.

And it is further agreed by the parties to this contract, that in case of the absence or inability to act of the said Chief Engineer then and in that case the Assistant Engineer having charge of the work embraced in this Contract shall and is hereby vested with all the power, heretofore given to the said Chief Engineer in the premises.

Signed Sealed and Delivered (Signed) J. B. Cagg, Jr. (Seal)
In presence of John B. Turner and John
Rich^d B. Morgan } of the O & C W R R Company

Specifications

Each of the said Rails is to be six inches square and in lengths of 15, 17½, 20 feet to average 17½ feet in length and to be of sound fair and square edged good merchantable Norway pine timber, No stick having more than one inch of sap in the deepest place, or loose black knots or shakes will be received. The said rails to be true and evenly sawed.

And the said plaintiffs aver that after the execution and delivery of the said Contract ~~so made~~ so made and entered into as aforesaid by & between the said parties, the said plaintiffs went on in pursuance of the said Contract and the conditions & specifications therein mentioned & set forth upon their part to be done and performed & did furnish & deliver on a convenient dock designated by said Company, to wit: the dock of the said defendants a large quantity of rails to wit: 100,000 feet Board Measure of rails or or

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before the first day of September A.D. 1848 according to & in pursuance of the Specifications of the said Contract.

And the said plaintiffs aver that before the time for the performance and completion of the said agreement, to wit; on the 15th day of June 1848 at Chicago aforesaid, it was then & there mutually agreed by & between the said Plaintiffs & the said Defendants at the request of the said Defendants & in consideration of the sum of One hundred Dollars to the said Plaintiffs paid by the said Defendants, that the time for the performance and completion of the said Contract so entered into as aforesaid, should be extended for one year from and after the time mentioned and designated in said Contract for the complete performance thereof to wit; from the first day of September 1848 until the first day of September 1849.

And the said plaintiffs in fact say that afterward to wit; in the month of May 1849 at Chicago aforesaid they did furnish & deliver to said Defendants at the Rail Road Stock in the said City of Chicago, and which had been designated by said Company for that purpose a large amount of Rails to wit; 100,000 feet of rails board measure and in the month of June 200,000 feet of Rails board measure at the place aforesaid, and in the month of July 150,000 feet of rails board measure at the like place and in all respects according to and in pursuance of the Specifications annexed to said Contract and herein before referred to, which said Rails were then & there accepted by the said

defendants and the said Plaintiffs in fact say that after the said 15th day of June 1848 before the 10th day of December 1849 to which time the performance of said Contract had by Mutual agreement of the parties been extended they did furnish & deliver to said Defendants four hundred and Ninety thousand feet of rails according to the specifications in said Contract & the tenor and effect thereof and that they did afterwards to wit: on the first day of September A.D. 1849 at Chicago aforesaid at the dock aforesaid offer to furnish & deliver at the said Rail Road Dock the full amount called for by the terms of said Contract which then remained undelivered to wit the 50,000 feet Board Measure of rails in all respects according to the Specification in said Contract mentioned & according to the tenor and effect thereof & then & there tendered the same to said Defendants which they said Defendants then & there refused to accept and receive the same or any part thereof the said Plaintiffs in fact say that they did offer to furnish and complete the delivery of said 50,000 feet Board Measure of Rails on the said first of September 1849 at said Rail Road Dock according to the tenor and effect of said contract so as aforesaid extended but the said Defendants wholly refused to accept & receive the same. Yet the said Defendants have not nor would they although often requested pay said Plaintiffs \$10 per thousand feet Board Measure of Rails for said 480,000 feet of Rails so delivered nor would they accept and receive said 50,000 feet Board Measure of Rails or any part or portion thereof nor would they accept

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I receive the said 50,000 feet board measure of Rails although tendered to them ^{or pay for} ^{some of the} at the rate aforesaid nor would they the said defendants cause monthly estimates to be made by the Chief Engineer of said Company of the number of feet of rails so delivered nor did the said Chief Engineer cause such estimates to be made in pursuance of the terms of said Contract, but so to do have hitherto wholly neglected & refused & still do neglect and refuse to the damage of the said plaintiff of ten thousand dollars.

4th Count 4th Count. And also for that whereas the said plaintiffs entered into a certain other Contract with the said defendants on the 2nd day of February A.D. 1848 and which said Contract is in substance as set forth in the said third count of this declaration and to which the said plaintiffs refer and the said plaintiffs aver that after the execution and delivery of the said Contract so made and entered into as aforesaid by & between the said parties, the said plaintiffs went on in pursuance of the said Contract, and the conditions and specifications therein mentioned and set forth upon their part to be done and performed & did furnish & deliver on a convenient dock designated by said Company to wit; the dock of the said defendants a large quantity of Rails to wit; 50,000 feet board measure of rails on or before the first day of September A.D. 1848 according to & in pursuance of the specifications of the said Contract.

And the said plaintiffs aver that

before the time for the performance & completion of the said agreement. to wit: on the 15 day of June 1848, at Chicago aforesaid, it was then & there mutually agreed by & between the said plaintiffs & the said defendants, at the request of the said defendants and in consideration of the sum of One hundred Dollars to the said plaintiffs paid by the said Defendants, that the time for the performance and completion of the said Contract ~~xx~~ entered into as aforesaid should be extended from and after the time mentioned and designated in said Contract for the complete performance thereof, to wit: from the first day of September during the said year 1848 and during the season of Navigation in the year 1849, and which would be until the 15th day of December 1849.

And the said plaintiffs in fact say, that afterwards to wit: in the month of May to wit: at Chicago aforesaid they did furnish & deliver to said defendants at the said Road Dock in the said City of Chicago & which had been designated by said Company for that purpose a large amount of rails to wit 100,000 feet of Rails board measure, and in the month of June 200,000 feet of rails board measure at the place aforesaid, and in the month of July 150,000 feet of rails board measure at the like place and in all respects according to & in pursuance of the Specifications annexed to said contract and hereinbefore referred to which said rails were then and there accepted by the said defendants and the said plaintiffs in fact say that they did afterwards

to wit; on the first day of September 1849 at Chicago as aforesaid at the dock aforesaid offer to furnish & deliver at the said Rail Road dock, the full amount called for by the terms of said Contract & which then remained undelivered, to wit the 50,000 feet board measure of rails in all respects according to the specifications in said contract mentioned & according to the tenor and effect thereof & then and there tendered ~~to~~ the same to the said defendants, which they said defendants then & there refused to accept and receive the same or any part thereof & the said plaintiffs in fact say that they did offer to furnish and complete the delivery of said 50,000 feet board measure of rails during the said season of navigation in the year 1849 to wit on the first day of December 1849 at said Rail Road Dock according to the tenor and effect of said Contract as aforesaid extended, but the said defendants wholly refused to accept & receive the same.

Yet the said Defendants have not nor would they although although after requested pay said Plaintiffs \$10 per thousand feet board measure of rails for said 450,000 feet of rails so delivered or any part or portion thereof nor would they accept & receive the said 50,000 feet board measure of rails although tendered to them as aforesaid nor pay for the same at the rate aforesaid nor would they the said defendants cause monthly estimates to be made by the Chief Engineer of said Company of the number of feet of Rails so delivered nor did the said Chief Engineer cause such

22- estimates to be made in pursuance of the terms
of said contract, but so to do have hitherto whole-
ly neglected & refused & still do neglect & refuse
to the damage of the said Plaintiff of
ten thousand dollars.

Money Counts And whereas also the said Defendants
hitherto to wit; on the 1st day of March
A.D. 1850 at Chicago in the County of Cook
were indebted to the said plaintiffs in the sum
of Ten thousand dollars lawful money of
the United States of America for divers goods,
wares and merchandise, lumber, scantling,
rail road ties, and rail road timber, and
materials by the said Plaintiffs before that
time sold and delivered to the said Defts
and at the special instance and request of
the said Defendants; and being indebted,
they the said Defendants in consideration
thereof, afterwards, to wit; on the same day
and year last aforesaid at the place aforesaid
undertook and then and there faithfully
promised the said Plaintiffs well and true-
ly to pay the said Plffs the said sum of
Ten thousand dollars when they the said
Plffs should be thereunto afterwards requested.
And whereas also afterwards, to wit on the
same day and year aforesaid and at the
place aforesaid, in consideration that the
said Plffs, at the special instance and
request of the said Defendants have before
that time sold and delivered to the said Defts.
divers other goods wares and merchandise
Lumber, Scantling, and Rail Road ties
Rail Road timber and materials of them
the said Plffs, the said Defts undertook and
then and there faithfully promised the

23. Said Plffs. to pay them so much money as
the said last mentioned goods wares and
merchandise, lumber Rail Road ties, scant
ling, timber and materials, at the time of
said sale and delivery thereof were reason-
ably worth when the said defendants should
be thereunto afterwards, requested. And the
said Plffs. aver that the said last mentioned
goods wares and merchandise, lumber
scantling, and rail road ties, rail road
timber and materials at the time of said
sale and delivery thereof were reasonably
worth the further sum of Ten thousand
dollars of like lawful money of aforesaid
to wit: at the place aforesaid; whereof
the said defendants afterwards to wit;
on the same day and year last of aforesaid
and at the place aforesaid had notice.

ofc stated, And whereas also the said Defts afterwards
to wit, on the same day and year and at the
place aforesaid were indebted to the said
Plffs in the further sum of ten thousand
dollars of like lawful money as aforesaid
for divers other lumber scantling rail
road ties, and Rail Road beams and
timber and also for divers materials by
the said Plffs before that time said and
delivered to the said defendants, and at the
said special instance and request of the
said defendants, And being so indebted
they the said Defendants in consideration
thereof afterwards to wit, on the same day
and year, at the place last aforesaid un-
dertook and then and there faithfully prom-
ised the said Plffs well and truly to pay
them the said sum of Ten thousand

dollars) when they the said Defts should be hereunto
24. afterwards requested

And where^{also} afterwards to wit, on the same day and year aforesaid and at the place aforesaid in consideration that the said Plffs at the like Special instance and request of the said Defendants had before that time sold and delivered to the said Defts divers other lumber Veanthing, railroad ties and Rail Road timber and beams and also divers materials by the said Plffs before that time sold and delivered to the said defendants, the said Defendants understood and then and there faithfully promised the said Plffs so much money as the said Plffs reasonably deserved to have of the said Defts for the same when they the said defendants should be thereunto afterwards requested, And the said Plffs aver that they reasonably deserve to have of the said Defendants for the same The further sum of ten thousand dollars of like lawful money as aforesaid to wit, at Chicago aforesaid whereof the said Defts on the same day and year and at the place aforesaid had notice.

Quantum
meruit

And whereas also the said Defendants afterwards to wit on the said first day of March A.D. 1858 at the place aforesaid were indebted to the said Plffs in the sum of ten thousand dollars lawful money of the United State of America for money before that time lent and advanced by the said Plffs to the said Defts and at the Special instance and request of the said Defts. And for other money by

the said Plffs before that time paid laid out and expended for the said Defts, and at the like request of the said Defendants, And for other Money by the said Defendants before that time had and received to and for the use of the said Plffs, And being so indebted the said Defts afterwards in Consideration thereof, to wit on the same day and year and at the place last aforesaid undertook and then and there faithfully promised the said Plffs the said Sum of Money in this Count mentioned when that the said Defts should be thereunto afterwards requested,

as stated

And whereas also the said Defendants afterwards to wit, on the same day and year and at the place aforesaid accounted together with the said Plff of and concerning divers other Sums of Money before that time due and owing from the said Defendants to the said Plffs and then and there being in arrears and upon such accounting the said Defendants were then and there found to be in arrears and indebted to the said Plffs in the further Sum of ten thousand Shillings of like lawful Money as aforesaid. And being so found in arrears and indebted to the said Plffs the said Defendants in Consideration thereof afterwards, to wit, on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said Plffs well and truly to pay unto the said Plffs the said Sum of Money last above mentioned when they the said Defendants should be thereunto

afterward requested.

Nevertheless the said Defendants although after requested so to do have not as yet paid the said sum or at sums of money above mentioned or any or either of them or any part thereof to the said plaintiffs but to pay the same or any part thereof to the said plaintiffs, the said defendants have hitherto altogether refused & still do refuse. To the damage of the said plaintiff of ten thousand Dollars & therefore they bring suit &c

Arnold & Gay
Atty for Plffs

Attached to which Declaration is the following Agreements and Specifications, to wit:

Copy Contracts
Memorandum of Agreement, made and concluded this Twenty Third day of February A. D. 1848 by and between E. S. Reed & Isaac H. Cagg of the County of Cook in the State of Illinois, of the first part, and Galena and Chicago Union Rail Road Company by their acting Director of the second part, in which it is covenanted and agreed as follows to wit:

Said party of the first part for the consideration hereinafter set forth, hereby covenants and agrees with said party of the second part, To furnish and deliver on some convenient dock in the City of Chicago to be designated by said Company an amount of Rail Road ties not less than fifteen Thousand

27.

or more than Twenty Thousand in number in all respects according to the Specifications herunto annexed which are to be considered as part of this Contract. Said party of the first part further agrees to furnish and complete the delivery of said Ties on or before the first day of October A.D. 1848 and that he will prosecute the said work with all due diligence to completion.

Said party of the second part, for the consideration hereinabove set forth hereby covenants and agrees with said party of the first part, to pay him when the whole of said Ties have been delivered as above agreed, at the rate of Twenty Two Cents for each tie. Said price to be in full compensation for all the materials and labor, required to be performed in the fulfillment of this Contract. And it is further Mutually agreed between the parties to this Contract, that Monthly Estimates shall be made by the Chief Engineer of said Company of the Number of ties delivered, and accepted as coming within the provisions of this Contract and the Specifications heretofore referred to and upon the presentation of such Estimates certified to by the aforesaid Chief Engineer, to the before mentioned Acting Director payment shall be made by the said Company at the rate of Eighty per Cent upon such Estimates until the whole of this Contract shall have been fulfilled; and when in the opinion of the said Chief Engineer, the terms of this Contract shall be fully completed, on the part of the said ^{party} of the

first part payment shall be made in full, as hereinbefore stipulated by the party of the second part.

And it is further mutually agreed, by the parties to this Contract, that if the party of the first part shall refuse, or in the opinion of the said Chief Engineer, neglect to prosecute the work, as specified in the terms of this Contract, with due diligence or shall perform the work in an improper manner, the said Chief Engineer may certify the same in writing to the Directors of said Company, and the Directors shall have power to declare the terms of this Contract to have been violated, or abandoned by the party of the first part, and upon such declaration being made by the Board of Directors, and notice duly given to said party of the first part, said Contract shall be declared abandoned, and the said Company may proceed to contract for the work or materials with any other person; and all moneys which may have been retained in the Monthly Estimates, herein before provided for, shall be forever forfeited to said Company.

And it is further agreed by the parties to this Contract, that in case of the absence or inability to act of the said Chief Engineer then and in that case, the Assistant Engineer having charge of the work embraced in this Contract, shall have, and is hereby vested with, all the powers hereinbefore given to the said Chief Engineer in the promises

Signed Sealed and delivered
in presence of
Henry A. Clarke

T. L. Caggs
John B. Turner, Secretary
Director G. O. W. Rail Road Co.

Specifications

Each of the said Rail Road Ties is to be nine feet long; six inches thick and hewed or sawed or otherwise flattened on two parallel sides, the bearings of face on the two flat sides to be not less than six inches wide and to contain at least as much timber as if they were six inches by seven inches square. Said Ties are to be of Swamp Oak, White oak, Burr Oak, Red Elm, Red Beach, Tamarack, Chestnut, Or Red or White Cedar and to be of good sound Merchantable timber.

2 Contin.

10,000

Rails

Memorandum of Agreement Made and Concluded this second day of February of February A. D. 1848, by and between John S. Reed and Isaac W. Cagg of the County of Cook in the State of Illinois of the first part, and the Galena and Chicago Union Rail Road Company by their Acting Director of the second part, in which it is Covenanted and agreed as follows to wit: Said party of the first part for the Consideration hereinafter set forth hereby Covenants and agrees with said party of the second part To furnish and deliver on some convenient dock, in the City of Chicago to be designated by said Company Five Hundred Thousand Feet, Board Measure of Rails in all respects according to the specifications hereunto annexed, which are to be considered a part of this Contract. Said party of the first part further agrees to furnish and complete the delivery of said Rails on or before

the first day of September A.D. 1848, and that he will prosecute the said work with all due diligence to completion.

Said party of the second part for the consideration herein above set forth, hereby covenants and agrees with said party of the first, to pay him when the whole of said Rails shall have been delivered as above agreed, at the rate of Ten Dollars for Thousand Feet board Measure. Said price to be in full compensation for all of the Materials and labor, required to be performed in the fulfillment of this Contract and it is further mutually agreed between the parties to this Contract, that Monthly Estimate shall be made by the Chief Engineer of said Company of the number and quality of Rails delivered and accepted as complying within the provisions of this Contract and the Specifications heretofore referred to; and upon the presentation of such Estimates, Certified to by the aforesaid Chief Engineer to the before mentioned Acting Director payment shall be made by the said Company at the rate of Eighty per Cent. upon such Estimates until the whole of this Contract shall have been fulfilled, and when in the Opinion of the said Chief Engineer, the terms of this Contract shall have been fully completed, on the part of the said party of the first part, payment shall be made in full as hereinbefore stipulated by the party of the second part.

And it is further agreed by the parties to this Contract that if the party of the first part shall refuse or, or in the opinion of

the said Chief Engineer, neglect to prosecute the work as specified in the terms of this Contract, with due diligence or shall perform the work in an improper manner, the said Chief Engineer may certify the same in writing to the directors of said Company, and the said Directors shall have power to declare the terms of this Contract to have been violated, or abandoned by the party of the first part, and upon such declaration being made by the Board of Directors and notice duly given to said party of the first part said Contract shall be declared abandoned, and the said Company may proceed to contract for the work or Materials with any other person; and all moneys which may have been retained in the monthly Estimates hereinbefore provided for shall be forever forfeited to the Company. And it is further agreed by the parties to this contract, that in case of the absence, or inability to act of the said Chief Engineer, then and in that case, the Assistant Engineer having charge of the work embraced in this Contract, shall have, and is hereby vested with all the powers hereinbefore given to the said Chief Engineer in the premises.

Signed, sealed and delivered

in the presence of
Rich^d F. Morgan

J. M. Cagg of said Co.

John D. Turner
 Acting Director for the
 G. H. & R. Road Comp.

Specification.

Each of the said Rails is to be 4 inches square and in lengths of 15.17 1/2 feet, to average 17 1/2 feet in length and to be of sound, fair and square edged good Merchantable Norway Pine Timber No Stick having more than one inch of Sap in the deepest place, or loose black knots or shakes will be received. The said Rails to be true and evenly sawed.

(Copy to be seen on)

Galena Chicago W.R. Roundtrip in '90 with Isaac McCarty & John Reed

of -
Lumber

Date	Moft Rails	no pieces trees	other Lumber		\$	¢
1898 Jan						
19	85741			1000	857	41
"			6810 ft Scantling 4-5	9-	61	29
"			5421 " 3-4	9-	53	34
July 11	8682			10-	86	82
"			1000 Scantling	9-	54	25
"		525		22°	115	50
April 6	8291			10-	82	91
"			807 ft Scantling	9-	7	26
"	4057			10	40	57
Oct 6			4600 ft Boards	7-	32	20
"			500 2nd Clear 1 1/4 inch	15	7	50
"			300 Boards	15	4	50
"			200 Clear Boards	20	4	00
"			804 Scantling 4 joints	9-	7	24
"			1242 Joists	9-	11	18
"			303 Lumber	9°	27	27
"			180 "	10-	18	00
"			Cedar Rafts		4	00

33.

17		151 ft	Clear Lumber	\$20	3 02
"		41	Exchange Limit		66
			For Ex & Collecting 559 ft		1 50
25		8440 ft	Shipping	11.50	97 06
"		2000	Board	10	20 00
"		153	Clear Lumber	.20	3 06
Nov 1	552			22	121 44
2	180			22	34 60
8	25	2500	Board	10	25 00
11		373	Cull Lumber	16	54 68
20		3313 ft	Board	10	33 13
Dec 1		138	"	10	1 38
1849		1372	Plank	10	18 12
May 1		580 ft	Plank	9	5 22
2		432	"	9	3 89
7	10422			10	104 22
11		140		27	37 80
12		117		27	164 54
13	4488			10	44 88
15	3099			10	30 99
18		886 ft	Plank	9	7 91
19	1973			10	19 73
21		511 ft	"	9	4 60
29	597			27	161 19
June 8	18278			10	182 78
9	936			27	252 72
11	1933			10	19 33
"		50	Caddy Pails	10	5 00
18	16735			10	167 35
"	50			27	13 50
21		540 ft	Plank	9	5 31
"		1352		9	12 17
"		4048	Boards	9	36 43
23		818	Plank	8	6 54
26		1988	"	8	15 90

341

"		1056		8	8 45
"		546		27°	145 80
27		1013	Bowels	9	9 12
30	754			27°	204 34
"	5915	8		10	54 15
July 3	60			27°	16 20
"		100	Cedar Posts		8 00
6	960			10	9 60
"		77	Cull Liss	16°	12 32
"	905			10	9 05
7	859			10	8 59
~	1777			10	17 77
"	3593			10	35 93
9		2881	Plank	8	28 05
10		5889		8	48 11
11		2789		8	22 40
12		932		8	7 46
13		2625		8	21 00
14	2445			10	24 45
"		987		27	266 44
"		777		27	207 74
"		943	Plank 21 June	9	8 49
17	645			10	6 45
"		1600		27°	432 00
21		1712	Bowels	9	15 41
24		184		27°	49 68
27		76767		8	59 74
31		477		27	128 79
"	3311			10	33 11
Aug 4	3734			10	37 34
"		3036	Plank	8	24 28
10	4724			10	47 24
~		2723	Plank	8	21 68
13		2015		8	16 12
15		1			27

		41	Cedar Posts	80	4 88
35,	17	800		89	9 20
	21		1578 Plank	8	11 02
	22		1567 "	8	12 54
	29		239 Clear Board	20	4 78
	"		131 2 nd Plank	14	1 84
Apr 1			763 Timber for M. Hall		111 51
	3		944 3 by 4 16 ft Long	9 10	9 44
	"		1200 2 by 4 12 "	10	12 00
	"		1000 Lath Boards	7	7 00
	14		314 Timber		26 23
	"	7450		10	96 50
	"	1138		27	306 45
	"		133 Clear Lvs	7	16 63
	7		536 ft Board 18 ft long	10	5 36
	"		1118 Lath "	7	8 26
	"		1628 Scumming "	7	14 65
	"		318 Timber	1	24 90
	"		300 Siding	10	3 00
	12		213 Timber		20 22
	17		96 Clear Lumber	18	1 73
	"		815 Plank	8	6 52
	18		3742 "	8	29 94
	"		1960	8	15 61
	21		648 Joists	9	5 83
	"		350 " 24 ft long	11	8 87
	"		2672 Plank	8	21 38
	"	9622		10	96 22
	"	489		27	118 53
	"		136 Clear Lvs	16	21 76
	22		86 ft Timber for M. Hall	12	43
	29	27345		10	278 45
Oct 3			8337 ft Plank	8	26 70
	6	1987		27	536 49
	9		3454 Plank selected	9	31 09
	19		1404 Boards	9	12 64

36,	20		480ft Scumblay	-9	4 32
	23		126 Timber		11 97
	25		1737 Louis & Scumblay		19 60
	26		665 2x6 19ft long	710	6 65
	"		600 2x4 18 - -	10	6 00
	27		280 3x4 14 - -	9	2 50
	"		192 4x4 - 12 -	9	173
	"	50		27	14 58
	27	15		27	4 05
	"		406 2 ^m beams	14	5 68
	29	11338		10	113 35
	30		588 Plank	9	5 29
	31	1564		27 ^c	422 25
	"		53 Cur ties	16 ^c	1 48
	54052			10	570 52
Nov 3	1758			10	17 58
"		1421		27 ^c	383 67
"			187 Cur ties	16 ^c	29 72
"			326ft Timber		28 77
"			384 4x4-12ft long	9	3 66
"			168 3x4 14	9	1 51
"			400 2.4 14	9	3 60
"			1040 2 6 16	9	9 56
5	11142			10	111 42
12	10782			10	107 82
16	17082			10	170 82
17			395ft Timber		37 14
19			456 3-8	10	4 56
"			48 2-8	9	4 3
"			54 2x9	9	4 8
"		419		27	113 13
27	86309			10	863 09
"			62 Cur ties	16	9 92
28	528			10	5 28

* And afterwards to wit on the 11th day of Decem-
ber in the year last aforesaid it being one of
the days of the December term of said Court
the following among the proceedings, were
had, to wit.

Isaac M. Gagg & Son Pls }
vs } Assumpsit
Galena & Chicago W. W. R. Co }

And now at
this day comes the said parties by their
Attorneys & on the suggestion of the defendants
that the Judge of this Court was a Stock
holder in said Company. It is ordered
by the Court that this Cause be transferred
to the Cook County Court of Common Pleas.

37.

12651
Dec 4 16105
6 3808
Mar 5

396

10 126 51
27^c 106 92
+ 10 161 05
10 38 05
Bill of Lading 69 92
Mr J. Reed Expenses to }
Memorandum of Rent of land } 25 00
\$10.682... 14

Galena Chicago Union Rail Road Company
To Isaac M. Cagg & John Reed Dr
March 1
To Goods, Wares & Merchandise
Lumber Scantling, Rail Road ties
Timber & Materials sold } \$10,000 =
& delivered to said Defs
To Money lent & advanced 10,000 =
" " paid out & expended 10,000 =
" " had & received 10,000 =
" " due upon account stated. 10,000 =

And afterwards on the 4th day of February
Eighteen Hundred & fifty one the said Defs. by
their Attorney James M. Collins and filed their
Plen. which is in words and figures as follows
to wit:

Cook Circuit Court
Galena Chicago Union
Rail Road Company

ads.
Isaac M. Cagg &
John Reed

And the said Defendants
by James M. Collins their
Attorney comes and defends the
wrong and injury when so and says that they did
not undertake and promise in manner and form
as the said Plaintiffs have above therein complain-
ed against them, and of this they put themselves

Gen. (per)

upon the Country &c

James H. Collins

Left City

And the plaintiff such the like as

J. H. Collins
for Eff.

To the above named Plaintiffs,

Gents., Please take notice that on the trial of this cause the said defendants will give in evidence that before and at the time of the commencement of this suit the said Plaintiffs were and still are indebted to the said defendants in a large sum of money, to wit: the sum of ten thousand dollars for money by the said defendants before that time and advanced to and paid out and expended for the said Plaintiffs, and at their special instance and request, and also in the further sum of Ten thousand dollars for other money by the said Plaintiffs before that time had and received to and for the use of the said Defendants; which said several sums of money the said Defendants will set off and allow against any amount which may be legally proved against these Defendants, by the said Plaintiffs, and claim the balance to be certified in favour of the said Defendants, pursuant to the statute in such case made and provided.

And the Defendants will further give in Evidence that after the said Contracts mentioned in the said Plaintiffs declaration were made and entered into, the said Plaintiffs entered upon the execution thereof. But the said plaintiff did not prosecute the said work on said Contracts, respect

and afterwards on 1st day of December 1851 the following
Record was filed with the Clerk of this Court.

*

United States of America
State of Illinois
County of Cook

} ss. I, *James H. Skinner*, Judge of the Cook
County Court of Common Pleas within and
for the County of Cook and State of Illinois
at a Special Term of the Cook County Court
of Common Pleas begun and holden at
the Court House in the City of Chicago in said
County and State, on the fourth Monday being
the twenty seventh day of October in the year of
our Lord one thousand eight hundred and
fifty one, and of the Independence of the United
States the seventy sixth,

Present the Hon. *Mark Skinner*, Judge
Hammill W. & Co. Prosecuting Attys.
William L. Church Sheriff
Attys. *Walter Kimball* Clerk.

It is remembered that on the seventh
day of November A. D. 1851 the said day being
one of the days of the October Special Term of said
Court for the year last aforesaid, the following
among other proceedings were had and entered
Record to wit.

Isaac C. Cagg John D. Reed

vs.
Indiana & Chicago Union
Rail Road Company

} Cpt.

} And now came
the said parties by their Attorneys, and the
Judge of this Court being interested, on the result

of this suit. It is ordered that the venue in
this cause be changed to the Cook County
Circuit Court.

State of Illinois }
Cook County } S. J. Walter Clerk
of the Cook County Court of Common Pleas, do
hereby certify that the above and foregoing is
a true copy of the order for Change of venue in
the above entitled cause, entered in said court
on the day and year last aforesaid.

[L.S.] Certified under my hand and the
Seal of said Court at Chicago this
1st day of December A.D. 1851.
Walter Clerk.

And afterwards, to-wit on the 13th day of
December Eighteen Hundred and fifty one, it
being one of the days of the December term of
the Cook County Circuit Court the following
among other proceedings were had, to-wit.

Isaac M. Cagg & John F. Reed
vs

The Galena & Chicago Union
Road Road Company } Attorneys.

This day came
the said plaintiffs by Arnold their attorney
and suggests to the Court the death of Isaac
M. Cagg one of the said plaintiffs.

timely mentioned with all due diligence to a completion within the time specified in the said contracts or within the time agreed upon for an extension of the performance of said contracts respectively, although the said Plaintiffs were often requested to hasten the delivery, and the said Defendants were ready to receive the said Rail Road ties, rails, Scantling, lumber and Materials specified in said contracts and make monthly estimates and payments therefor, and fully perform said contracts on their part and behalf, but the said Plaintiffs wholly failed and refused to perform the said contracts on their part and behalf, by reason whereof the said Defendants were greatly damaged, hindered and prevented from prosecuting and constructing their said Rail Road and sustained damage to a large amount, to wit, to the sum of Ten Thousand Dollars, and were forced and obliged to pay out and expend large sums of money to supply themselves with Rail Road ties, rails, Scantling and lumber over and above the prices agreed to be paid by the said Defendants to the said Plaintiffs, and said Defendants were afterwards greatly injured, which said damages the said Defendants will set off and allow in said Action as aforesaid.

And the said Defendants will further show that said Rail Road ties, rails, Scantling, and Materials which the said Plaintiffs proffered to deliver were not of the size, quality and description or value mentioned in said contracts and agreements but were of an inferior quality and value.

James H. Collins
Sept. 21st.

And the said defendants will further give in evidence that heretofore to wit: on the 27th. day of January in the year of our Lord Eighteen Hundred and forty Eight at Chicago aforesaid the said plaintiff entered into a certain other Contract or agreement with the said defendants, for the delivery of Ten thousand Rail Road ties which said agreement was reduced to writing and hereto annexed & made part of this notice, And these defendants will further show that after said agreement was so entered into as aforesaid, the said plaintiffs entered upon the execution & performance of said contract, and afterward, to wit, on the fifteenth day of June in the year last aforesaid. it was mutually agreed by and between the said party that the time for the execution & full performance of said agreement should be extended to the first day of September 1849, within which to perform and fulfill the said contract; And that afterwards to wit on the 4th day of November 1848 by Mutual agreement between the said parties, it was agreed that the dimensions of said ties embraced in the said contract were changed & the price thereof increased, which said agreement or a memorandum thereof was endorsed to John Dean Muckwick at the foot of said Contract as will more fully & at large appear by reference to the said Contract by said endorsement thereon. Yet the said plaintiff did not prosecute the said work with all due diligence to completion within the time specified & limited in said Contract, nor within the time so agreed upon for an extension of the performance & completion of said contract, although the said plaintiff were often & repeatedly requested to hasten the delivery of the said ties in said Contract mentioned

41. And the said defendants were at all times ready
 & willing to receive the said ties and make Monthly
 estimates & payments therefor, and fully perform
 & fulfill the said Contract on their part according
 to the tenor & effect thereof, but the said plaintiff
 wholly failed & neglected and refused to perform
 the said Contract so extended and Modified on
 their part & behalf, according to the tenor & effect thereof
 of Reason whereof the said defendants were greatly
 damaged, hindered & prevented from proceeding
 constructing their Rail Road, and sustained
 damage to a large amount, to wit: the sum
 of ten Thousand Dollars and were forced and
 obliged to pay out and expend large sums of
 money to supply themselves with rail road ties
 over & above the prices so agreed to be paid by the
 said Defs to the said Plffs, & said defendants
 were otherwise greatly injured which said damages
 the said Defs will set off and allow in said action
 as aforesaid, And the said Defs will further prove
 that the ties delivered under said Contract were
 a inferior quality and size to those agreed to be
 delivered.

J. H. Collins

Defts atty

Statement of Payments made by said and
 McFar, to J. Howe Treasurer Galena and
 Chicago Union Rail Road Company, on acct of
 Lumber Ties Rails &c delivered to said Company.

Date	Description	No.	Amount
Feb. 2 nd	Cash as per Note	No. 1	\$800.00
" 23	" " "	" 2	1200.00
June 15 th	" as per receipt dated	No. 3	500.00
1849 "	" as per bill accepted	" 4	400.00
" 27	" as per receipt	" 5	600.00
Aug 17	" as per Receipt	" 6	657.99

421

1849

4187 99

Oct 18	Cash as per receipted bill cut by	No 7	49. 00
"	" " " receipted Estimate	No 8	819. 22
" 17	" " " " bill	No 9	648. 99
Nov. 13	" " " " " " " "	No 10	1200 00
Dec 4	" " " " " " " "	"	1000. 00
1850	" " " " " " " "	"	
Mar 5	" " " " " " " "	12	270 85
Jan 7	Paid for loss charged by School Gate for giving up contract for delivery of lumber in 1848	No 13	100 00
Total Payments			\$ 8276 15

To Damage Sustained by Dept by reason of the Non performance of said contract \$ 1000. 00
 Debent as per Petis first at one mentioned

* And afterwards on the 18th day of December Eighteen Hundred and fifty one it being one of the days of the December Term of the Cook County Circuit Court the following among other proceedings were had to wit;

* John Reed Attorney of Peoria
 vs
 On Case of John A. Reed

vs
 The Galena & Chicago Union
 Rail Road Company } Assumpsit.

And now on this day came the said parties by their attorneys, and issue being joined, it is ordered that a Jury come. Thereupon come the jurors of a Jury of good and lawful men to wit;

S. Moore Moses Shaker John Linn
 Reuben Taylor Wm. Wayman Danice Walker
 Horace Lamb A. R. Phillips H. W. Holcomb
 A. R. Reizer Joel Wood L. N. Houser.

who being duly elected tried and sworn well and truly to try the issue according to Law and the evidence, and they having heard a portion of the testimony it was by the agreement of parties ordered that the jury have leave to separate and that the further hearing of this cause be postponed till the coming in of the Court on tomorrow Morning.

Friday December 17, 1850
Court met pursuant to adjournment
Present as on Tuesday

John S. Paul Attorney of
Isaac H. Cagg John S. Paul
vs
Galena Chicago & Union
Rail Road Company } Assumpsit

This day again came the said parties by their attorneys and the Jurors aforesaid also came and they having heard further testimony it was by agreement of Parties ordered that the jury have leave to separate, and that this cause be postponed till the coming in of the Court on tomorrow.

Saturday December 20, 1851
Court met pursuant to adjournment
Present the same as on Tuesday

John S. Paul Attorney of
Isaac H. Cagg John S. Paul
vs
Galena Chicago & Union
Rail Road Company } Assumpsit

This day again came the said parties by their attorneys, and the Jurors aforesaid also came, and they having heard further testimony it was by agreement of parties ordered that the jury have leave to separate and that this cause

be postponed till the coming in of the Court on Monday morning.

And afterwards on the 22^d day of Dec at the same term of Court the following among other proceedings, were had,

John Reed Attorney of
Isaac M. Cagg &
John A. Reed

vs

The Galena & Chicago
Union Rail Road Co.

Adversus

This day again came the said parties by their attorneys, and the Jurors aforesaid also came, and they having heard further testimony it was by agreement of parties ordered that the jury have leave to separate and that the cause be postponed till the coming in of the Court on tomorrow morning.

Tuesday December 23^d 1851

Court met pursuant to adjournment

Present the same as on yesterday

John A. Reed Attorney of
Isaac M. Cagg & John
A. Reed

vs
Galena & Chicago Union
Rail Road Company

Adversus

This day again came the said parties by their attorneys, and the Jurors aforesaid also came, and they hearing further testimony and arguments of Counsel by agreement of Parties, It was ordered that they be discharged and that this Cause be postponed till the coming in of the Court on to Morrow morning

45:

And after words on the 24th day of Dec at the same term of Court the following among other proceedings were had

John S. Reed Survivor of
John S. Reed &
Darius H. Tagg

vs
Galena & Chicago Union
Rail Road Company

Attempt

This day came again the said parties by their attorneys and the jurors aforesaid also come, and they hearing further arguments of Counsel and instructions from the Court, retire under charge of a Officer of the Court to consider of their verdict, and afterwards come into Court and say we of the Jury find for the Plaintiffs and assess their damages at the sum of Two Thousand Seven Hundred and eighty eight dollars and thirty four cents. Whereupon the said defendants by their Attorney move the Court for a new trial herein.

Bill of
Exceptions

And afterward on the 19th day of Jan^y in the year Eighteen Hundred and fifty two the Defts by their Att^y J. B. Collins files his Bill of Exceptions which is in words and and figures as follows that is to say.

Look Circuit Court
The Galena and Chicago
Union Rail Road Company
advs.

Filed,
18th
Dec,
1851

John S. Reed Survivor &c

It is remembered that on this Eighteenth day of December in the year of our Lord One thousand Eight hundred and

fifty one before the Honorable Hugh T. Lacey
Judge of said Court and a Jury, this cause
came on to be tried, and the Plaintiff to sustain
the issue on his part called as a witness.

Amos H. Kerfoot, who being duly sworn testified as
follows:

I was bookkeeper for M'Cagg & Reed
Kerfoot, in 1849. I was present at the Rail Road Office in
Spring of 1850 a short time before the first suit was
commenced. I was there at the request of M'Cagg,
one of the defendants. There was present Messrs M'Cagg,
John P. Turner, John Van Northwick, Francis Stone,
Turner was acting director, Van Northwick was Chief
Engineer, Stone, Secretary and Treasurer of the
Rail Road Company. I do not recollect any
one person else present. The books were then
produced by Mr Stone. Mr M'Cagg read his
account against Rail Road at the time.
The papers marked "A. & B" were here shown
to the witness who stated. These were the accounts
of M'Cagg & Reed, and were there used at the
Meeting. I understood from both parties that
their object was to adjust the amount due M'Cagg
& Reed at that time. Their object was to adjust
their accounts, that is the amount of lumber and
Materials delivered and money paid so that the
only matter to be determined in the suit then approach-
ing (which had either been commenced or was about
to be) was the question of Damages claimed
by the defendants. They said they had had
a Meeting in the morning. There were two
or three items I was asked to explain, to satisfy
as to the points of dispute. Statements were
made by Van Northwick of amounts of
payments to, and receipts from M'Cagg & Reed.
The balance as agreed upon in favor of M'.

47.
\$2480

Caz. Reed was about Twenty four hundred and Eighty dollars. This was on Reits and ties. The Miscellaneous account having been paid. These statements were for Reits & ties. I understood that they had looked over these papers in the morning, and found that they agreed except as to certain items. They differed about two items, the ties charged on 26 & 27th October. The account of Reits was compared with the books of the Rail Road Company. There were check marks made by me on these statements. There is only one charge in the Rail account which has not the check mark behind it, so far Culls shown in Miscellaneous account by Rail Road Company, all the rest were checked by me agreeing with the Rail Road Books Van Neshwick called off the amounts from the Rail Road books and I checked as I found the amounts to correspond. The checks now on the papers are those made by me at that time. We went through the same process with the tie account, that is Van Neshwick called off the amounts from the Rail Road books and I checked them on the papers as far as they corresponded. Finding them all to agree except two items. I think I know of the delivery of the two disputed items. After deducting the amount of payments made by the Rail Road Company, the balance found due was Twenty four hundred and Eighty dollars for materials furnished to defendants.

On Cross Examination Witness stated that the account looked over was not settled or paid that witness did not know why it was not, when the balance was ascertained Van

Northwick said Twenty four hundred & eighty Dollars less the damages - Van Northwick said the Defendants had sustained large damages by the Non performance of the Contracts & the non delivery of the rails & ties, he did not state how much, they went into the whole merits, Van Northwick stated that the defendants had not performed their contracts, I cant recollect all that was said, The defendants expressly declined to pay the balance, because of the damages sustained by them - Defendants that the rails & ties were delivered under the written contracts I think no sum of damage was mentioned - I went there about two O'clock in the afternoon but Mr Sumner on the Rail Road Office stairs, I dont remember that any thing was said about delay - The merits were discussed -

No Computation of damages was made - I referred the papers, I knew the prices charged in the Books were the amount - He referred to the rail contract for the prices - I saw a Contract in regard to ties, Van Northwick said the Defs had to pay more for tie than the Contract prices in consequence of the Plaintiffs not delivering the Number that the Contract called for.

It was stated there that the Defendants had to buy a large Number of ties at an extra price in consequence of the failure to deliver as contracted. Van Northwick said that the Defs hands lay idle on account of the plaintiffs failure, Van Northwick spoke of the General delay of the wood on the Rail Road for want of Rails and ties, I delivered a large part of the ties, I think there was no dispute in regard to the size of the ties, I referred to the Contracts for the size.

Re examined by Pff.

McLeary said in reply to the defendants claim of Damages that ~~the~~ ^{he} could not allow anything of the kind. The Conversation was shortly before the first suit was brought, He said of course we are not going to allow any damages he claimed that the plaintiffs had sustained damages themselves. I think it was stated they were under contracts, He said McLeary & Reed should claim damages for the postponement of the Contracts.

Papers Marked 'A' & 'B' offered in evidence under Count on account stated, objected to and objection sustained

A.

Galena Chicago W.R.R. Co.

On deposit McLeary
Paul & Co. R.R. Rails

1888							
June	19	85741	ft		\$10.	85741	
July	11	8682	"		\$10	8682	
Sept	16	5291	"		10	5291	
1889		4057	"		10	4057	
May	17	10422	"			10422	
	B	4488	"			4488	
"	15	3099	"			3099	
"	19	1973	"			1973	
June	18	18278	"			18278	
	9	1933	"			1933	
	18	16735	"			16735	
	30	5915	"			5915	
July	6	960	"			960	
"	7	905	"			905	
"	"	859	"			859	

50

"	"	177 ft	10	1777
"	"	3593 "	"	3593
"	14	2445 "	"	2445
"	17	645 "	"	645
"	31	3311 "	"	3311
Aug	9	3734 "	"	3734
"	10	4724 "	"	4724
"	17	800 Culls	\$9	720
Sep	4	7650 Good	10	7650
"	21	9622 "	"	9622
"	29	27345 "	"	27345
Oct	29	11.338 "	"	11338
"	31	37.052 "	"	37052
Nov	3	1758 "	"	1758
"	5	11.142	"	11142
"	12	10782	"	10782
"	16	17082	"	17082
"	27	86309	"	86309
"	28	528	"	528
"	"	12651	"	12651
Dec	4	16105	"	16185
"	6	3.805	"	3800
		471.506		

Salena Chicago W. R. R. Co.
In Jc with M. C. Bagg & Co.
for Rail Road Sals.

B.

1848

July	11	525	22	11550
Nov	11	373 Culls	16	
"	1	552 Good	22	12144
"	2	180	22	3960
1849			27	
May	11	146	"	20439
"	12	617	"	
"	29	597	27	16119

51	June	9	936 ft	27	252	75
		18	50		13	50
		26	540		145	80
		30	757		204	39
July		3	60		16	20
"		6	77 Culls	16		
"		14	987 Good	27	266	49
"		"	777 "	"	209	71
"		17	1600 "	"	452	00
"		26	184 "	"	49	68
"		31	477 "	"	128	79
Aug		15	"	"		27
Sept		4	1135 "	"	306	45
"		"	133 Culls	16		
"		21	439	27	117	53
"		"	136 Culls	16		
Oct		6	1987 Good	27	536	49
		26	54 "	27	14	58
		27	15 "	"	4	05
"		31	1564 "	"	422	28
"		"	53 Culls	16		
Nov		3	1421 Good	27	583	67
		"	187	16		
"		19	419 Good	27	113	13
"		24	62 Culls	16		
"		28	396 Ties	27	106	42
			17451		4526	56

Hamilton's offer and read is evidence
 Contract (Marked "C" for 125,000 feet of Vant.
 long (the execution of same) was admitted)
 without objection.

Plaintiff offered and read in evidence Contract for 12,000 ties Marked "I" the execution of which was admitted.

Plaintiff offered and read in evidence the two Contracts attached to the declaration, the execution of ~~xxx~~ of which was admitted.

Plaintiff again offered and read in evidence without objection the two papers Marked "A" & "B" above set forth.

William B. Ogden, was then called and being sworn as a witness testified as follows, I was a stockholder in the Galena & Chicago Union Rail Road in 1847 & 1848. I was also President of the Board and one of the Directors, I know of the Contract for Scantling. After the Contract was made I requested plaintiffs not to deliver under it, there had been a few delivered under the Contract. They consented to give it up at my request. The Rail Road Company paid them \$100 in June 1848 for the giving of extinction or abandonment of Contracts in regard to ties & Rails, the Rail Road Company did not desire them to be delivered in 1848 within the time specified in the Contracts. As a consideration to the plaintiffs for giving up the Contracts the Company paid them \$100. I understood the obligation of Contract were waived, but if they wanted ties and Rails, McEgg & Reed would deliver them at some future time.

The Contract for 500,000 feet Rails shown to witness and he was asked to look at specifications.

Scantling
Contract,

of witness

This was the Contract with them for rails,
 I have been engaged in the Manufacture
 Sale of Lumber more or less all my life,
 I know how the Rails offered by Mc Cagg
 that were inspected, I went to examine rails
 at place of delivery, by request of Mc Cagg,
 I saw those inspected and those rejected. Beyond
 and those inspected tendered and refused, The
 Chief Engineer was not there, John Sullivan was
 there, I saw them offer rails. He was there with
 his teams, I saw a pile of ten or
 fifteen thousand and rails said to have been re-
 jected this was in Summer of 1849. I examined
 rails that had been rejected that did not have
 an inch in depth of sap. At one time I saw Mr.
 Black there, I examined ^{those} that had been rejec-
 ted and found that they came within the spec-
 ifications of Contract, they had an inch in
 width of sap but not an inch in depth of sap.
 A stick seven inches square covered with sap
 to where an inch deep, would not be con-
 sidered although the sap should cover the whole
 surface on one side, I examined rails cut
 into several. Black had been inspecting and
 others John Soller had thrown out some, Black
 was Assistant engineer, don't know how many
 rejected by him.

Plaintiff again called
 Mr. Herfoot, who testified I was in the employ of
 Mc Cagg & Reed in 1849. I know of application
 to Mr. Van Northwick to inspect ties, I applied
 to Mr. Van Northwick two or three times myself,
 he has told me to go on and deliver and that
 he would come. He did not come to my
 knowledge, He did not inspect or assume
 himself, I do not recollect of his ever being

54 on the docks or on the vessel at the time of delivery,
Mr. Alan Nashwick never inspected when I was
there, Mr. Black, Mr. Donaghlan a teamster, and
Fitzgerald a laborer inspected very often, don't
know whether they are engineers or not, I know
of their rejecting Rails which were offered to be
delivered to a large extent, They rejected them
on the ground that there was more than an inch
in depth of sap, a very large amount was re-
jected, Certainly 100 000 feet during the Summer
of 1849. I know of their rejecting some because
they had more than an inch in width of sap,
but which had less than an inch of sap in depth,
They rejected a very large quantity an inch in
width only, and less than an inch in depth of sap,
In measuring the angle They measured
diagonally and not directly, measuring from
the surface to the centre of the stick they professing
it to be one inch in depth, One hundred thousand
feet were rejected which would come
within the specifications to the Contract

Crap Examined. Alan Nashwick came to inspect,
I never saw him inspect, The rails came by vessels
were not always inspected when taken away,
I did not attend to the landing but I attended
to the delivery of $\frac{3}{4}$ of the rails - Mail was some
time at the block of the Plffs & received them there
Can't say how many rails were delivered,
think more than 100 000 feet - Fitzgerald loaded
the teams - Blacker was often there with
Fitzgerald - Sullivan was there getting rails
very often Cargoes were delivered without
any person to receive them, No full Cargo of
Rails was brought - After Sullivan & Fitzgerald
rails the plffs, called on the Engineer then & they

neglected to do it - As the rails were rejected they
 were taken back on the dock & landed at Piff's dock.
 I saw the piles rejected. I have no doubt
 but what Sullivan & Fitzgerald passed upon
 rails which Van Norshwick came & examined.
 Black & East came & examined rails - A
 great many 100,000 or more which were never
 examined. I should think 150,000 were rejected -
 Ward & Black examined. What they rejected
 were put back & the depts took them afterwards -
 Mr. Prouty was in the employ of the Piff. and
 attended to the delivery of a part - The
 way the logs was tested was by measuring
 by a foot rule - some were rejected for knots -
 Can't say how many - some on account of
 length - some on account of size and bad saw-
 ing - Considerable quantity some because
 they were shaky & dry, and because they were
 not sound - I judge of the number of feet
 by the piles in the yard - we made distinc-
 tion between what was merchantable and
 what was not - I handled the lumber to
 a great extent - The Engineers no doubt
 went & examined what the kamsters threw
 out afterwards. I called on Van Norshwick
 often between the 25th of May 1849, and the
 Close of Navigation of that year. I do not
 know of Van Norshwick ever looking
 at or inspecting ties carried by vessels.
 They were never carried by McEag &
 Reed in any other way. They were some-
 times delivered at the Rail Road dock, and
 more times at the dock of McEag & Reed.
 Mr. Wheaton was sometimes at the dock of
 McEag & Reed. I attended to the landing of
 at least three quarters of them. The dock

was often overloaded with ties. Fitzgerald would inspect while Mr. Black was absent. Vorrachan was there very often. He had three or four teams drawing ties from the dock to the Rail Road. He was very often there, when a cargo was discharging when Black & Wheaton were not there. The vessels regularly in the trade carried from 90,000 to 125,000 feet board measure. No full cargo of Rails ever came. Sam Northwick would agree to come or send but neglected to do so very often. Black & Wheaton sometimes re-inspected what the teamsters rejected. But McCagg & Reed drew large quantities into their yard which had been rejected, which were never re-inspected. Master, Black & Sam Northwick refused or neglected to come to reject rails. I say that they did not come & re-inspect rails that had been rejected by teamsters, when we requested, when the inspections were made at McCagg & Reed's wharf.

Sam Northwick & Turner stopped once at the office of McCagg & Reed & looked over some rails that had been inspected by these men. I can say that there was a much larger number than 100,000 feet never inspected by Engineers. I am confident that 150,000 feet were rejected that would have come within the specification and therefore and safe in saying 100,000 feet. They passed upon some of it. They often took what had before been rejected, in running the Culls with Merchantable. Mr. Powell delivered some in this way which had previously been rejected by the teamsters in the employ of the Rail Road Co. I tested depth of baps with a foot rule measuring the surface. Have seen them

57,

rejected for knots, a fair quantity for knots and shakes, the balance for sap. The rejection for sap was a constant occurrence. Some of them were laid aside and not passed upon on acct of length. Rail Road Company afterwards received them. In piling in the yard the better portions of the rails were placed in piles distinct from the Culls. Those that were Merchantable, according to specifications were put into a pile. do not know if they were rejected on account of knots. Knots are sometimes in Merchantable timber. I handled them to a great extent, gave directions in regard to piling. I have an impression that the engineers come over, they sometimes come but not very often. I have no doubt we sold to other parties many which had not been reinspected. One half an inch in depth, and three inches in width among lumber men does not mean an inch in depth.

William H. Lyden, recalled.

I examined a pile of Rails that had been rejected. I got an axe and cut into a few that had been drawn into the yard. a Majority of those that I saw Complied with the specifications, the whole Surface might be Rappy & still come within the specifications, an inch in depth of sap is different from an inch in width. Some of these that were rejected had an inch in width, but they had not a inch in depth of Sap and they were therefore within the specifications. I examined some 10 or 15000 or more that had been rejected, and were thrown down and on the Wharfe

at the same time. Mr. Flack is not an engineer upon the road. I don't know whether he is an engineer or not.

⁴⁹
 Craps Examined - The rails were made at the White Sulph. Mills in the summer of 1849 before September of probably before July. I owned $\frac{1}{2}$ of the Mills. I bought the interest in the Mills in the fall of 1848. I went to examine the rejected rails of the Chesapeake of Plaintiffs. I did not overhaul them or any considerable portion of them only a few of them I could not see them all. Could see the ends of the sticks. I did not measure the lengths to see if they came within the specifications except with the eye. I could not tell whether they lacked an inch or two in length or not. I could not see the whole length of the sticks. I only judge from what I saw of the rails in the yard & on the docks that a Majority would answer the specifications. I was a partner with the plffs, Tillablen L. Ogden, Mr E Jones & Mr Sheldon my brother in law in the rails & timbers, but was not interested in the contracts. The timber & Rails belonged to the firm of McCagg Reed & Co of which I was a member. The rails were sawed at the Mills. & McCagg Reed Co received the same compensation for the rails that Reed & McCagg were to receive of the defts. I don't know that there was any difference made between the entry of this transaction in the books of McCagg Reed & Co and other similar transactions of that firm. I am not aware of any distinction between this and other transactions of McCagg Reed & Co in their books. My interest has been released by a release, and

59.

annexed to my deposition in this cause on file.
 All transactions between McCagg Reed & Co &
 Reed & McCagg have been settled and the partnership
 of McCagg Reed & Co dissolved. I have
 no interest and never had any in the contracts
 with defendants and no interest in this suit.
 I examined the pile in yard. I examined
 the surface of pile of 10000. I examined 50
 or 100. I cut into several. I turned over some
 that were regularly piled. I could have gone
 50 or 100. Fifteen or twenty thousand in pile.
 Perhaps a quarter could be personally seen
 by me. I examined 2000 or 3000 feet. I could
 see at the top ends & sides. Very uncommon
 to have had sap in the middle. I examined
 the heart side. I have no doubt that there
 were 15 1/2 and I think some 20 feet in length.
 The Company afterwards agreed to take those
 14 & 16 feet in length, and ordered them to deliver
 such. I mean that they were of the length required
 by the specifications. I know what the specifications
 are, they were written by myself. They
 did correspond with the specifications in the
 Contract. I examined 4 or 5000 ties. They
 laid as they were tumbled on the ground. I
 looked at them all. The larger part examined.
 I cut into more that fine. I could
 not tell how many. Probably some of
 them shaky. Some lappy. I examined
 them in every respect as to their particular
 character in reference to specifications.
 There were something like 5000. I measured
 them with my eye. My Opinion is that
 that they were 15 1/2 & 20 feet in length.
 I don't know how many on the wharfe. Prob-
 ably 3 to 5000. None laid in order on the wharfe.

60 they were put as they were, thrown off. I examined them all as far as I could. I didn't cut into any on the wharfe, not many of them, I should judge the Majority would bear inspection. To be positively correct you must examine each stick. I was one of the Committee of directors for furnishing Materials.

Direct Examination returned

McGagg & Reed
Contracts were made in January 1848,
McGagg Reed & Co. Contract of partnerships in
January 1849. No provision was made as
to supplies for Rail Road. They used com-
panies, Shipp Mills & McGagg, Reed, Co.
Charging them precisely what they
McGagg & Reed received from the Rail Road
Company. We had nothing to do with Rail
Road Company. McGagg & Reed were to pay
McGagg Reed & Co and have paid them.
The release spoken of by the witness was
here introduced & read in evidence all that she
to a deposition and is in the words and figures
following to wit:

Whereas the firm of McGagg Reed & Co.
did furnish to Isaac McGagg, John Reed
a certain quantity of Rail Road ties or
sleepers & Norway Pine Rails which said
McGagg & Reed delivered to the Galena
Chicago Union Rail Road Company
and whereas there is a certain suit pending
in the Cook County Court of Common Pleas
in relation to said ties and rails so delivered
said Rail Road Company by said McGagg
& Reed in which the latter are plaintiffs

The former Defendants - the said Mc Cagg & Reed claiming that there is a balance due to them from said Rail Road Company which said Company have hitherto refused to pay. Now this may Certify that said firm of Mc Cagg & Reed & Co are not in any way interested in or affected by this matter or difference between the said Isaac Mc Cagg & John S Reed & the said Galena and Chicago Union Rail Road Company the said Mc Cagg and Reed being alone responsible to said Mc Cagg & Reed & Co for any and all ties & Rails had of said Mc Cagg & Reed Company to said Mc Cagg & Reed delivered to said Rail Road Company. And the undersigned Mc Cagg & Reed are and hereby acknowledge themselves to be personally and alone responsible to & liable for any damages if any claimed from them by said Rail Road Company for non delivery of ties or Rails to said Company on other wise. And the said Isaac Mc Cagg and John S Reed do hereby release and forever discharge William B Ogden, William C Jones, Mahlon S Ogden, and Edwin C Sheldon, Members of said firm of Mc Cagg & Reed & Co from any and all claims, demands or suits & from any matter liability or thing connected with or growing out of said Mc Cagg & Reed's dealings or transactions with the said Galena & Chicago Union Rail Road Company.

The said Mc Cagg & Reed hereby in consideration of one dollar to them paid guaranteeing to said William B Ogden, W. C. Jones, M. S. Ogden & Edwin C Sheldon harmless from all liability to them the

said McCagg & Reed as to the said Rail Road Company in any way became or on account of said ties and Rails had by said McCagg & Reed of said McCagg & Reed Co. & delivered by said McCagg & Reed to said Rail Road Company and agree in like manner to pay the said Ogden Jones & Sheldon harmless from any & all damages claimed by said Rail Road Company from said McCagg & Reed for failure to deliver Rail Road ties and Norway pine rails as said Company claim or may claim that they the said McCagg & Reed were bound to do.

Witness our hands and seals
this 22nd day of February 1851

Witness
Henry C. Rauly.

C. M. Cagg
John S. Reed

E. L. B.
E. L. B.

Henry C. Rauly was then called as a witness on the part of plff & being duly sworn testified as follows.

I was in the employ of McCagg & Reed in 1849. Commenced Middle of September 1849. I know of the delivery of Rail Road ties to Rail Road Company after that time. Mr. Pratt & Mr. Wheeler & teamsters inspected ties they inspected in regard to whether the ties were within the specifications of the Contract as to sap, they rejected if there was an inch or width of sap and not an inch in depth. Have been with McCagg & Reed since that time. I know of ties rejected by them on account of not having an inch in depth of sap. After I came there, there was 40 or 50000 feet rejected. Two third perhaps three quarters

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of them would answer Specifications. I can
 speak with certainty as to 30,000 feet
 I should say that 30,000 feet were rejected that
 would answer specifications. In Sept 1849
 there was a large quantity on hand that would
 answer description. I have sold some 20,000
 feet of the Culls that fall that were rejected, two
 thirds and perhaps three quarters answered spec-
 ifications in contract. I had conversation with
 the inspectors as to mode of inspection. I spoke to
 them about the sap not being one inch in depth
 and they said if there was an inch of sap in
 width & not in depth they would reject them.
 At the time they were inspecting Wheaton said
 if the sap extended across the whole surface
 one quarter of an inch thick he would reject
 them. ^{and that a sappy piece would injure the rail} Yes said he wasn't going to inspect them
 according to specifications, but according to
 his directions. Those that I saw rejected were
 mostly rejected on account of the sap, a very
 small portion rejected on account of shape
 not more than one rail in twenty. I know
 of sending and going for Van Hookville. I
 went up to the Rail Road office to get an inspec-
 tor to come down, never saw him when they
 were inspecting. None of these persons were en-
 gineers. Wheaton was employed to inspect. I
 don't know that he was an engineer. Some
 of them were inspectors. I know that they were
 sent down with teams to get rails.

Crop Examined. Might have been 20,000 rejected
 before I came there, in the Neighborhood of
 20,000 I don't know these had been rejected
 only by report. Now might have been for
 5 Cargoes received. may be know. I think

64- One Cargo was \$5,000 received by Rail Road Company. I think it was in October Cant say how many there was in other Cargoes. I went over to Rail Road office to get Van Norwick to inspect. I was sent there in September. I went several times and he did not come. I think not. They were inspected as they were drawing them away. Mr Wheeler was there the latter part of October.

The two regular inspectors were Mr Pratt and Mr Wheeler. a portion of the time they were there. I don't recollect Mr Van Norwick ever coming there I did inspect with Mr Wheeler. Asked him if he knew what specifications were he told me. I don't know how many cars received after I went there. A G Hall was his name.

Mr B Ogden recalled by plaintiff

The Company Claimed in 1849 that the \$100 was paid for an extension for one year. I heard this from the Board of Directors while in session Cross Examined They claimed an extension to the end of one year

Mr Rufous recalled In September 1849 Mr Turner Acting Director stopped at the office of M Cagg & Reed. Asked them to deliver No more ties. He said they were coming in from other quarters. It was just after the 20th of September, about or just before that time M Cagg & Reed had completed the Belletts Constellation and were going to send to him ties Capt Staker of Constellation. Reed was at Mill at that time, September,

Left on 20th August for the purpose of sending out both Rafts and Ties. Mr Turner said he wished Mr Cagg & Reed to abstain from delivering ties he said he was receiving from other quarters.

Cross Examination.

It was soon after the 20th of September within a day or two after Mr Cagg returned from East India that I was not so late as 27th of September. I can't repeat the whole conversation, not a third of what was said. I don't recollect whether they had any ties. Mr Turner used the word "desist" the word "ties". My impression is that he didn't say that he was compelled to buy from other quarters. No one else but Mr Cagg, myself & Turner there. Can Northwich & Turner came for ties before that. They called two or three times that summer for ties. I don't know how many on hand when they called. I think they didn't call as early as I think. I think their calls were made in August. Mr Reed went to Green Bay in August in consequence of calls made for Rafts & Ties. The vessel Mr Reed went upon returned with ties. Vessels take 5, 6, 7, 8, days to go from Chicago and return with cargoes average time from 8 to 10 days. I don't recollect how many ties received. From the 20th of August I delivered ties myself till Mr Cagg returned. I don't recollect whether there were any ties. I recollect two or three times they asked for ties. They wanted a specific number. We were short for only a short time during latter part of July and first

part of August.
 Direct Examination Returned.

There were sufficient Rails in hand that had been rejected by the Company which it received according to the Specifications would have filled the Contracts. Mills are eight days from leaving port until returning. It has been done in five days but that is not the average & very rarely done.

The deposition of Capt Staker was here read in evidence which is in word and figure following to wit:

Cook County Circuit Court,

John S. Reed and

Isaac M. Cagg

vs
 The Galena and Chicago
 Union Rail Road Compy.

To James A. Collins Esq
 Atty for Def.

You will please to take notice that on the 13th day of December instant, at 10 O'clock A.M. of that day, we shall take the deposition of Joseph Cagg as witness on the part of the plaintiff in the above entitled suit, before Walter Kimball Clerk of the Cook County Court of Common Pleas, at his office in Chicago, said deposition to be taken in pursuance of the statute relative among other things to witnesses about to depart from this State. And of an affidavit on file in this cause, and to be used on the trial thereof.

State of Chicago Dec 3rd 1851

Arnold & Lee

Plffs Attys.

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I admit service of a Copy of the above
notice Dec 3rd 1851

James H Collins
for E. S. Williams.

Court Circuit Court
John Reed answering
Isaac M Cagg
vs
Gal. & W. R. Co.

It is agreed that the
time of taking deposition of Capt Stoker
shall be postponed until 2 O'clock this day
Dec. 4. 1851

J. M. Arnold. for Plff.

J. H. Collins for Defs.

State of Illinois
County of Cook J. S.

The Deposition of
Joseph Stoker a Witness produced and
sworn before Walter Kimball Clerk of the
Cook County Court of Common Pleas, taken
pursuant to the notice and agreement her-
into attached, and to be used in a cause
now pending in the Cook County Circuit
Court between John Reed, answerer of
M Cagg & Reed Plaintiffs and The Galena &
Chicago Union Rail Road Company
defendants, on the part of the said plaintiffs,
Isaac M Arnold & Co being present on the
part of the said plaintiff and E. S. Williams
& Co being present at the commencement but taking
no part thereafter.

Int 4 About what time in September was you employed as before stated.
69
Ans. It was the last of the Month.

Int 5 How many ties would you have brought, and did you find at said Mills any ties ready for shipment, and if so how many.

Ans I could have brought on the vessel Eight Thousand. I sailed for the Mills of Messrs McCagg & Reed soon after I was employed by them. There was then at the Mills twenty five or thirty thousand ties or more.

Int 6 State whether on your return you brought any ties from the Mill, and how many and why you brought them, and what you did with them.

Ans I brought about Eighteen hundred. I brought them because they were afloat and in danger of being carried into the Lake and lost. I brought them to Chicago and unloaded on the the Northern Branch.

Int 7 State whether you were assisted in unloading the ties by persons in the employ of the Rail Road Company.

Ans I was.

Int 8 Had you any difficulty in unloading the lumber brought by you at that time, and if so what caused the difficulty.

Ans I had difficulty. McCagg & Reed dock

was so filled with Rail Road ties that
I had great difficulty in getting the lumber off
Subscribed & sworn to. Joseph Stoker.

before me this 13th
day of December A.D. 1851

Walter Kimball Clerk

State of Illinois }
Cook County } ss I, Walter Kimball
Clerk of the Cook County Court of Common
Pleas do hereby Certify that the foregoing
deposition was taken and subscribed be-
fore me this thirteenth day of December
A.D. 1851

Witness my hand and the seal
of said Court at Chicago in
said County this 13th day of Dec
1851. Walter Kimball
Clerk.

Capt Egan Levern on part of plaintiff, testified
as follows I was master Hoosier in
1849. Engaged in carrying lumber ties
from Green Bay to Chicago, & as in the
& as I was in Chicago about the first
of September about the 21st day of September
Hoosier would bring about 4000 ties
I made a voyage left here about 25th or
26th of September, 1849. I know of plaintiffs
having ties out at Green Bay, large
piles and rafts of them. I would take a
day or a day and a half or two days to
load them with ties, I could make the
trip in 6 or 7 days, made several in
7 or 8 days, but 1000 ties delivered them
at Rail Road Dock and at dock of Mr
Egg Reed & Co on the 11th August.

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went up North Branch went to the
 Officers of Rail Road Company. I never
 said he could not let up on there, they were
 full and they concluded to get another
 dock. He said if I would get a tug he
 would pay expenses. Last time that
 time by not having a dock. I was delay-
 ed there that time, and at other times. I
 could have had ties at any time during the
 season there were ties on McCall's Rail
 Road Dock so that they bothered us about
 unloading.

Crap Examined.

I know of two trips that
 I came without ties. I brought pine
 square timber. I left here some time in
 May. I could have had ties every time.
 The Schooner Wanoake ran for plaintiffs
 at the season of 1849 I brought timber at
 the times I came without ties. I commenced
 running in May to the plaintiffs Mills.
 There was always a abundance of ties at
 the Mills to load on and I did not want to
 bring them.

Capt White Examined on part of plff.
 testified as follows.

I sailed Wanoake
 in 1849. brought ties from Radnor, I
 never brought but one load of ties I had
 1900 some odd on board. The last load
 I brought was from 20. to 22 September.
 Cant say how many ties I had on board.
 McCall came to me and told me I need
 not bring any more. This after middle of

721

September. It takes sometimes five or six days to make a trip. I saw ties on the Rail Road dock about 21. or 22 of September. I couldn't tell how many. I was delayed there in July or August 1849. I went up to the office and wanted to unload. I laid there some little time and hauled away back again, stayed whole day, and other days, on the 20th September there were ties on Reed & McCagg's dock, quite a number, I don't know how many. I brought that time but from 500 to 1000 I could load my vessel with ties in a day.

Capt. Examined. I brought Noanoake belonged to Reed & McCagg. The most I brought at one time was 1900 odd. I never brought a full cargo of ties. Can't recollect exact time. I brought nothing else but ties at other times. I brought at other time parts ties, lumber, brought parts every time. I saw ties & lumber, brought parts every time. I saw ties on Reed & McCagg's dock. I think it was a Canal Boat. They were discharging some for them. I could make a trip in less than six days. I had a quicker vessel than Capt. Egan. I told him that we went up to Rail Road dock sometime in August full of ties.

Prouty recalled.

I went to McCagg & Reed 15th September there were then 30400 ties on McCagg & Reed's dock. Soon after I

73- went there went up to Rail Road office, two
or three times in Month of September and
requested them to take away ties, they took
them away. Dock was crowded, Street
was filled with ties, and so I stated to them,
they said they would get them away as soon
as they could,

Crop Examined

Reed, Rowaker, Harker, and
McIntire came in from 10 to 25 ft
but don't recollect what either brought.
x I saw ties there most of the time. I think
there were some brought. I am certain that
ties were on the docks most of the time. I
continued there until the present time from
15th September 1849. I know some of
those on the docks were secured I think
they were not Culls. I know that they
were taken away. My impression is that
there were Culls lying near the office, none
were Culls lying near the docks.

Just returned

Mr. Mr. Cagg had returned the
fifteenth of September. I know this because
I began work for them on that day.

Eliza Dranger. Sworn

I was alderman
in 1849 in the 7th Ward, in the months
of July & August 1849, Street and side
walk opposite Reed & Mc Cagg's yard
was encumbered a long distance leaving
only a narrow place, filled up with
R. R. ties & rails, such timber as is used on

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Rail Road. Spoke to Reed several times about removing them. I spoke to M^r Cagg. He got angry. Spoke to both of them. My recollection is that half the width of the block street was filled up, both sides of the street, so as to narrow track, filled up pretty high. I should think there could not have been less than 50,000 feet in the street and on the dock. I saw teams drawing stuff about it was some weeks before it was removed.

Cross examined

I think it was 2 or 3 years ago that I saw my impression it was in 1849. M^r Cagg & M^r Reed's lumber yard was on Block 2, situated nearest to the river, they had the lumber yard fenced on Block 2. My impression is that it was encumbered with R. R. ties at this time and all kinds of lumber. My impression it was latter part of summer. I saw sawed timber their ^{then} by 7, 7, 8 & some indeed from 8 to 10 inches. I supposed them to be ties, and I was informed they were ties. I know it was some weeks before they were cleared of. I should think it was latter part of summer. My friends in on Block above, they were engaged in a large lumber business. I recollect the kind of lumber by travelling over it I saw them, landing on dock. I was in their yard and in their dock, they had all kinds of pine lumber. I am not certain what constituted the encumbrance.

The plaintiffs here rested their case.

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The Defendants have in evidence the receipts and vouchers of which ^{the following} are copies, to wit;

No 1 \$800. or Real Voucher No. one.
Chicago February 2nd 1848
On or before the first day of September next, for value received, we severally promise to pay to John R. Turner acting Director of the Galena and Chicago Union Rail Road Company or order Eight hundred Dollars with interest. J. M. Cagg.
John L. Reed,

Chicago Feb 2. nd 1848.
Whereas we have this day entered into several contracts with the Galena & Chicago Union Rail Road Company, to furnish and deliver to said Company, on or before the first day of September next, Five hundred thousand feet Board Measure of Rails, and one hundred and seventy five thousand feet of Scott Lumber, Therefore it is understood and agreed hereby that the Rate for Eight hundred Dollars and interest, here attached, is to apply as part payment on said Lumber, Rails, & Lumber, as Contracted for in the aforesaid Contracts, and is considered as an advance on said Contracts.

J. M. Cagg.
John L. Reed,

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No 2. \$12,000.00

Chicago February 23. 1848

On or before the first day of September next for Value received, we severally promise to pay to John K. Turner acting director of the Galena and Chicago Union Rail Road Company on order,

Twelve Thousand Dollars, with interest

J. M. Cagg
John S. Reed.

Chicago February 23. 1848

Whereas upon the second day of February 1848 entered into several Contracts with the Galena and Chicago Union Rail Road Company and deliver to said Company, on or before the first day of September next Ten thousand Rail Road ties, some hundred thousand feet board measure of Rails and One hundred and twenty five thousand feet of Scantling, Therefore it is understood and agreed thereby, that the Note for twelve hundred Dollars, and interest, herewith attached, is to apply in part payment on said ties, Rails & Scantling as contracted for in the aforesaid Contracts, and is considered as an advance on said contracts

J. M. Cagg
John S. Reed.

No 3.

Recd of J. M. Cagg Treasurer Galena & Chicago Union Rail Road Company.
Five hundred Dollars

June 10th 1848

J. M. Cagg
J. S. Reed by J. M. Cagg.

No 4 Galena & Chicago W. R. R. Co

Wheeler & Cagg Reed & Co

77	Oct 6. To	4600 ft Boards	\$ 750	\$ 3.20
		300 " 1/4 Clear do	15	4.50
		300 " Boards	15	4.50
		200 " Clear	20	4.00
		800 " Scantling Joist	9	4.24
		1242 " Siding	9	11.18
	19	303 " Timber	9	27.27
		180 " do	10	1.00
		32 " Cedar Butts	4	4.00
	" 17	151 " Clear	4 20	3.02
		41 " Exchange		2.16
	25	2000 " Siding	11 1/2	24.50
		2000 " Boards	10	20.00
		183 " 2 Clear		3.06
		5440 " Siding		62.56
	Nov 8.	2500 " Clear Boards		25.00
	" 14	3311 " " "		33.13
		638 " Boards		6.38
		171 " Plank		1.12
	May 1	280 " Timber	90	5.22
		432 " Plank		3.99
	17	886 " " "	9	7.97
		511 " " "		4.60
	June 11.	50 " Nails		5.00
	" 21	5400 Board & Plank		1.00
				\$ 99.10
	June 23	3862 ft Plank & S	50 90	
				\$ 430.00

Red Payment

Wheeler & Cagg Reed & Co

I Have Received

Thereby Certify to the preceding amount, June 27, 1849 Allen Washburn
C. June 27, 1849 Engineer

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No 73 Chicago June 27, 1849

George Smith & Co

Pay Reed & Mc Cagg
 or Order Four Hundred & thirty dollars
 and Charge the same to account of
 \$430.00 P. Howe Treasurer

No 5 Recd of P. Howe Treasurer of the Galena
 Chicago Union Rail Road Company of
 hundred dollars on 1/2 of Dec. timber de-
 livered on Contract
 Date 27, 1849. M Cagg & Reed
 Entered July 27, 1849.

Note Recd of the Treasurer G. C. W. R. R. Company
 of hundred and fifty seven \$900 dollars
 & 1/2
 \$657.99 Aug 17, 1849 M Cagg & Reed
 Entered Aug. 17, 1849.

No 7 The Galena Chicago Union Rail Road Compa
 1849 To M Cagg & Reed Dr
 To 203, Curr Liss del 16 2 12.48
 " 133 " " " 12 1/2 16 62
 \$ 49.10
 Ent Oct 17, 49

P. Howe Treas. I certify that the above
 account is correct
 Oct 18, 1849. Samuel Ward Northwick

Recd of the Galena Chicago Union Rail Road
 Company by the hands of P. Howe Treasurer
 Forty Nine \$900 in full of the above all other
 accounts in part

+ Oct 18, 1849

M Cagg Reed & Co

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The Galena & Chicago
Union Rail Road Company

McCagg & Reed Esq.

For Labor done and Materials furnished
under the Contracts for ^{furnishing} Rails, Ties & Scantling
as follows viz

To 213,693 ft B. M. Rails del	@ \$10-	2136.93.
" 1254 Ties delivered in 1841	22¢	276.54
11,107 " " " 1844	27¢	2998.89
19 ds ft B. M. Scantling	49	171.45
		\$ 3585.91
Do not retained	\$ 1117.34	
Previous Payments	3647.35	4764.69
		\$ 819.22

I Certify that there is due McCagg & Reed under their
Contract for furnishing Rails Ties and Scantling
of the Galena and Chicago Union Rail Road Com-
pany Eight Hundred Nineteen & 2/100 Dollars,
Dated Oct. 18. 1844
John Van Renswiler
Chief Engineer

Recd of the Galena & Chicago Union Rail Road Compa-
ny by the hand of P. Howe Treas Eight Hundred
& Nineteen 2/100 Dollars on account of work done
& Materials furnished under our Contract
for furnishing Rails, Ties & Scantling
Dated Oct 18. 1844
McCagg & Reed Esq
Oct 18. 1844

No 9 Galena & Chicago Union Rail Road
Company with
McCagg & Reed Esq

80

1848

June 19	85741	6000	ft Scantling 4x5	900	867	41	61.29
"	"	5927	" " 3x9	90			5334
July 11	8682			410	86	82	
" "	"	6028		9			5425
" "	525			22		115.50	
" 16	5291			10	52	91	
" "	"	807		9			7.26
"	4057		del'd Sept 13.	10	40.57		
Oct 6		4600	" 1 Board	7			3220
" 9		500	1/4 " 2 nd Clear	15			750
" "		300	" Boards	15			450
" "		200	" Clear	20			400
" "		2046	" Four Scantling	9			17.22
" "		303	" Timber	9			27.27
" "		100	" "	10			10.00
" "		32	Pasties & Buttes				400
" 17		151	ft Clear	20			302
" "		40	" Exchange				66
" "			Exchange & selecting 558 ft				1.50
28		3000	ft Siding	11 1/2			3450
26		2000	" Corn Boards	10			20.00
" "		153	" Clear	20			306
" "		5440	" Siding	11 1/2			6256
Nov 1	552			22			1244 121.44
" 2	180			"			3960 3960
8		2500	" Seasoned Boards	10			25.00
Nov 11	10377	1257	Outfitted		1051	774.164	10257
" "		573	Cure ties	16			5768
26		3313	ft Boards	10			33.13
Dec 1		2450	" "				24.50
1849							
May 1		580	" "	9			5.22
2		482	" Plank	"			389
7	10422			10	104	22	
11		757	in two Lots 140 - 617	27			204.84
13	4488			10	44	88	

81,

"	15.	5099			16	30	29		
	17		580	" Plank	9				2.97
	19	1973			10	19	73		1973
	21		511	"	9				460
June 1		597		Delivered May 27	27			15633	
	8	18278			10	182	78		
	9	1983	986		10	19	33	252.72	
	11		50	Selected Cedar Posts	10				5.00
	18	14735	80		10	187	55	1850	
	21		2578	" Birch Plank	9				2571
			4048	" Boards	"				1643
	25		878	" Plank	8				1624
	26		3044	"	8				2435
"	"	540		from Roanoke	27			14500	
	27		1081	for 16 ft Boards	9				9.12
	30	5915	757	from Roanoke \$100	25	59	15	20489	
July 3		60.47	100	Yellow Cedar posts	8			1620	800
	6		77	Cullies	16			1232	
		960							
		5404		Cost		960			
	7	7.134			10	71.37			
	9		2851	for Plank	8				2805
	10	2287	5889	"	8				4311
	11	2287	2789	"					2240
	12	2287	932	"					746
	13		2635	"					21.00
	14	2445			10	2445			
"		987		Sch. Roanoke	27			26649	
		777		King Hammer	"			20777	
	17	1600		Sch Roberts				432	
		1645		"	10		645		
	21		1712	for B. Breckend	9				15.11
	26		1824	Sch Robt	27			4968	
	27		7407	for Plank	8				5974
	31		471	Sch. Roanoke	27			12879	
"		33.11			10		33.11		
Aug 9		3734	3086	Com Plank for \$100			37.34		2428

82

10	47.24	2725	"	"	10	47.24	21.78
15		2015					16.12
15	1	115	Cedar posts		8		27 488
						\$1895.67	107.32
			Errors in double changes 10 page				16.04
			Summary			1895.67	Sum 896.28
						2428.59	
						896.28	

Amount of the within amount for Lumber denominated Vindries \$ 896. 28

Deduct the Amount of the four first items, (scantling) which has been embraced in

Contract, and equal \$ 176.44

Deduct out of the receipt

Sum 27.114 being a part of the within bill contra to

430.00 Col. 14

Leaving a Balance in full \$ 290.14

of the within acct.

Wm. Washburn

Chicago Oct. 16, 1849

J. A. R. R. Co.

J. J. Smith & Co. St. Louis

1849							
Aug 21	1378	ft	Plank	\$2			11 02
" 22	1067	"	"	8			12 54
" 29	239	"	Black Bels	20	4 75		
" "	87	"	2nd Clear	14	1 25		
" "	42	"	"		52		6 62
Sep. 1	763	"	Timber for House				61 51
" 3	944	"	3x4 16 ft	10	9 44		
" "	1200	"	2x4 12 "	10	12 00		
" "	1000	"	Lath Boards	7	7 50	28 44	
" 4	814	"	Timber for House			26 25	
" 7	536	"	for Boards	10	5 36		
" "		"	Lath	7			

83

"	"	560	"	3x4	14 ft Long	9	5 04		
"	"	855	"	4x4	"	9	7 69		
"	"	213	"	4x4	16	"	1 92	20	01
"	"	313	"	Timber				21	07
"	"	300	"	Com siding		10		3	00
"	"	213	"	Timber				20	22
17		96		Clear			1 93		
"	"	815		Plank		8	6 52	8	25
18		5702	"	"		8		45	62
21		648	"	Joist 2x10	16 ft	89	5 83		
"		552	"	"	24	"	3 87		
"	"	2672		Plank		8	21 38	30	00
22		36		ft		12			43
Oct 3		3337	"	Plank		8		27	70
9		3454	"	Joist		9		31	09
								\$	358 85

Galena Chicago Union Rail Road Company
To.

1849
Reed & McCagg, Sec.
To Account of Unexpd bill of Lumber,
under head of Lumber "Not embraced in
Contracts, and not embraced in bill of
Lumber of Jan 27, 1849, said bill com-
mencing Jan 19, 1849 and ending Aug 15, 1849 Cost \$91. 14
To Acmt of Unexpd bill of Lumber
dated Oct 16 1849 Am Aug 21st and
ending Aug 9, 1849 Cost \$58 85
P. N. Treas. I hereby Certify to the above \$649. 99
Oct 17, 1849 J. Van Antwerp

Chf Engineer,
Pres of the Galena and Chicago Union Rail
Road Company, by the hands of P. N. Treas.
Viz paid forty eight \$91.00 Dollars in full
of the above and all other accounts (Goods in part)
dated Oct 17, 1849 McCagg Reed & Co

841 No 11 Received of R. H. Hume Treasurer of the Saline
and Chicago Union Rail Road Company
Twenty thousand Dollars on 7th of December
delivered
Nov 13/49 M Cagg & Reed.

No 11 Received Chicago Dec 4, 1849 from the
G & C W R Co One thousand dollars
on 7th &
C. Dec. 4, 1849. M Cagg & Reed.

No 12 1849 G & C W R Co
M Cagg & Reed Co

Oct. 19.	To 1404 ft Boards	29	1.14
20	420 1/4 Scantling	10	4.22
23	126 3/4 timber	9 1/2	11.97
24	665 ft 1/2 19 Long	4 10	6.65
"	600 " 1/4 18 "	10	6.00
"	280 " 3/4	9	25.2
"	192 " 1/4	9	17.3
26	1737. Sours & Scantling white		16.90
29	" 406 2x4s	14	5.68
29	" 588 Planks	9	5.29
Nov 3	" 104 8x9 timber	8 1/2 25	9.61
"	" 169 8x10 "	9	11.21
"	" 443 9x9 "	9	8.87
"	" 384 4x4 Scantling	9	3.46
"	" 168 3x4	9	15.1
"	" 400 2x4	9	3.60
"	" 1040 " 2x6 Sours	9	9.36
17	112 10x10 timber	10	11.20
"	119 9x10	9 1/2	11.31
	112 9x9	9	10.08
	26 8x10	9	2.34
	26 8x9	8 1/2	2.21

85

Nov 19.	456	3x8	Sacks	\$10.	45.60
"	"	48	2x8	"	23
"	"	54	2x9	"	48
				\$	165.01

Ward Road Company

1848	M Cagg & Reed of Dr			
Jan. 19.	In receiving & storage of			
	Cargos by S. F. Hale 85.75, Rais 85.75			
	12	737	Weighting	3.18
Sept. 29	do Cargos of Cloanake			
	27	345	Rails	6.84
Jan. 14	17	64	Road Road ties	17.64
"	"	Spaul for towing vessel		1.00
Oct 31	"	15	64 Ties	15.64
Nov 19.	419	do		41.90
				\$69.92

The Galena and Chicago Union RR Co.

Nov	To M Cagg & Reed & Co Dr			
	To D. J. Cull	Ties Del'd in Oct and		
	Nov 16	for ties	\$37.92	
	To Am't of Unreseed bill of lumber			
	Amounting to		165.01	
	To Amount of Unreseed bill of Lumber			
	on Materialy delivered at the Dock		1.75	
				\$576.15

Copy to the above acct

John Van Nostrand R
Chief Engineer

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Received of the Galena Chicago Union Union
Rail Road Co. by the hands of S. Howe Treas
Two hundred & twenty ⁸⁵ four Dollars in full
of the above account.

Dated March 5th 1850. M. C. Gay, Road Sto

The words "all other accounts" are printed in the
printed form of the first receipt dated March 5, 1850
but are erased with a pen.

John
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The Defendant Called
John Alan Northwick R. who being duly sworn
testified in reply to preliminary questions of
Plaintiff as to his interest. I am Chief
Engineer of Dept. for several years. I
am not a stock holder, I do not receive
payment of my salary in stock now,
I receive it in money. I ceased to be a
stock holder nearly two years since.
I have not been a stock holder since
the day before the trial, on the former suit
between the parties. I sold and assigned
my stock the day before I was first called
as a witness in that suit. I received
no money for it then nor since, but I
took the obligation of the purchaser to pay
for it which I now hold. I transferred
my stock for the purpose of being a witness
in that suit as I was requested to be a witness.
I assigned my stock to Mervell
Mallory who lives in Batavia. He is
my father in law, the object in transfer-
ring it was to enable me to be a witness.
Nothing was paid at the time of transfer
considered. It was a bona fide sale then,
and I have no interest now of any kind in the
stock, and I hold now his obligation to pay
for it which I drew myself. I presume
if he lives he will transfer it back to me.
If I should want it again but I have no
claim of any kind for it. Plffs objected
to witness as interested. Court overruled
objection, to which decessen Plaintiffs
then excepted. The witness
John Alan Northwick then testified as
follows, I was Chief Engineer of the

Dependents in 1849 I have been since Feb-
 ruary 1848. The Contracts between the
 parties was made a few days before I
 was appointed Chief Engineer. - I was
 knowing to the deliver of ties & rails by
 plff. This was delivered under my inspection
 to this end principally received at the Dep't
 dock in Chicago, some of them were used
 at the plaintiffs dock. In some cases the
 Dependents dock was occupied, and in
 some cases they came mixed with lumber,
 and it was more convenient to unload at
 plff. dock. There were persons specially appointed
 by me to receive & inspect the ties and they re-
 ported to me from time to time. I know the
 Contracts were extended from both parties,
 I called on the plffs from time to time to
 deliver ties & rails. The first time I called
 was in June 1848, a few days after the Con-
 tract were extended. A Committee was appoi-
 nted to procure an extension of the contract,
 I was one of that Committee - I was out of town
 when it was done. Immediately after my return
 I went to the plffs office I told them that
 at least one half of the Materials Contract
 for would be wanted that year, and the
 balance the next spring. They stated that
 they had had arrangements with the (Big Lake)
 to deliver ties & rails, that they had bought her
 off. And did not know that they could deli-
 ver that amount that season - One half
 was not delivered that season - The Dep't
 received about 20,000 ties from other sources
 that season - Means of knowing was from
 Settlement I made by me & some persons em-
 ployed to count. The plff claimed 125,7 ties in

1848 295000 feet of Rails. I told plaintiff that I should want about half of each, (rails & ties) in 1848. In the latter part of 1848 I called on plff. for the purpose of seeing what amount they would deliver under the contract for the delivery of fifteen or twenty thousand ties, whether the larger or smaller number. Mr Reed was there, and stated that he could not tell until he got information from the Mills. I called afterward and he said he would furnish the larger number. It was stated that they would furnish them early in the season of 1849. I again called them in May 1849 and told them that we should want at least 1000 ties a week. the reply was that they could get that or more if needed. In June I called again, about the middle of June, they had not furnished the amount requested, I then told the plffs that we should want 2000 per week. I called again when they were expecting the vessels. The vessels came & brought but a few ties. Mr McCagg said he was sure indeed that the vessels had brought materials that they did not want. I told him that our work was being delayed for the want of ties. This conversation was the latter part of July. I called at other times afterwards but cannot specify the times. to get the material, and I told them that our work was being delayed in consequence of the non delivery of the ties. I called upon them two or three times between July & October to deliver. They did not deliver as requested. They delivered ties, less than 500 a week between May and the first day of October. Of rails they delivered up to 1 day of September 73,628 feet. To 1st of October 9120. They were short

of ties on the Contracts 19, 623 on the 1st day of
 Oct. 1849, a portion of the deficiency of the
 quantities was obtained in Chicago, and a
 portion in the country. The Market Value of
 ties in Chicago was thirty five Cents ^{price} per tie.
 The Depts could not buy them for any less than
 35 cts per tie. They could not obtain as many
 as they wanted in Chicago, and got the balance
 in the country - we paid them 40 Cents per tie.
 There was no other rail road in the Market
 for ties, none other was being constructed here.
 Perhaps half of the ties got to supply the defi-
 ciency were obtained in the Country. The supply
 of Rails was obtained in the Country. They
 could not be got in Chicago & could not get
 Pine at all, used Oak, we supplied ourselves
 as soon after September as we could - and
 were not able to supply ourselves with buck
 rails as are specified in the Contract. We
 paid fourteen dollars per thousand feet. These
 Rails were not as good - The difference in
 value between those obtained and those agree-
 for in the Contract was two dollars per thousand.
 The reason for this difference was that we had
 to take different lengths, and the quality was
 bad. It was more to lay this description of
 rail than such as mentioned in the Contract.
 About \$1.00 per thousand feet more. All the
 evidence in regard to delay of work, extra
 cost of lumber & damages was objected
 to & objection overruled. The work was
 delayed in consequence of the want of
 those ties and rails. The progress of the
 work was retarded in consequence of the
 non-delivery of the ties and rails from six
 weeks to two months - We had from 75 to 100

men engaged in laying the superstructure, and they were delayed at various times. The rails & ties were delivered in small quantities. The S. & W. always gave assurances that the ties should be delivered soon, except one in July I think when they saw that the fairs were so thick in the woods that they could not get them out - The S. & W. kept their work men together on the assurance that the rails & ties were coming shortly. The hands were paid different prices from seven to ten shillings per day - A small portion were paid ten shillings. Say half a dozen the balance different prices from 7. 8. 6. 9 shillings. The average price paid would be about one dollar per day. As we were delayed and obliged to saw about 12 miles of rails & ties in the winter - the amount of rails for 12 miles would be four hundred thousand feet. - The cost of laying each tie in the winter would be five cents more than if laid in the fall in warm weather & for laying rails one dollar and a half more per thousand. The distribution would cost an additional sum of \$500 per mile - A portion of the ties were laid before cold weather & about ten thousand laid down in cold weather, the portion of track laid down in the winter season could not be done as well. The road would settle. There was an additional expense in engineering of about \$400. All the above evidence in relation to delay by plaintiffs and damages sustained by defendants was objected to by plaintiffs Counsel & objection overruled by the Court.

I met Mr Reed at a meeting of the board of Directors in July or August 1849

He came there in reference to the non delivery of the Materials - It was mentioned by one of the Board. I think Mr Brown, that the plf. might furnish the materials or pay damages. Mr Reed said in reply that it was time to talk of damages when the Contract expired - He said they could furnish the rails & ties in time. I asked him if he could furnish the largest number specified in the Contract - he said it might take to the 15th of October to furnish the largest amount - Reed said the Contracts were extended for a year from their first expiration.

The conversation with Mr Cagg was in September soon after his return from the East - At this time two vessels came in & I think that both had not more than 400 ties on board - Mr Turner was with me, We were expecting rails and ties by three vessels - Turner & I went down to plf. to see what we might expect - I never refused to inspect rail when asked - The inspection was done by several persons under my direction - Amongst the piles delivered, I was present and gave the men directions as to how to inspect - Mr. Black and Wheeler, did most of the inspection from Spring, to about the first of October - I know rails are sometimes rejected because not properly sawed - some are knotty - some for sap - & some for not being of the proper length. I have frequently examined the piles of those rejected - I did so at the request of the plf. I sometimes ordered rails to be taken that would not bear inspection probably from one half to two thirds of all taken would not bear inspection under the

In order to get some of the rails at all we in the latter part of the season of 1849
Contracts. I was at the Yard soon after Og-
den & saw the rails mentioned and there were
102 + some few rails that would bear inspection. I
afterwards directed Mr. Wheaton to take all
that would do to lay without reference
to specifications and ten or twelve thousand
were taken. Puffs refused to deliver
rails after first October unless we would
take ties. Wheaton and Black were deputed
+ by me to inspect & reported to me & I made my
estimates upon their reports as to quantity.
As to quality I know that their inspection
was according to my directions, so far as
my attention was called to it and examined
when called upon.

The puffs were short of their
Contract in rails about 57,760 feet and
about 13,836 ties short of the largest number
specified in the Contract - a great many of
the ties used by the puffs did not come within
the specifications.

Exp. Examined by Puff.

The lesson which the contracts
were desired to be extended was that the
puffs were afraid that they should
not get money to go on with - Puffs said they
had Contracts for Materials & Chartered
Vessels & made arrangements to fulfill the
Contract by the fall - I am not aware
that the Contracts were extended until the
Close of Navigation in 1849. The Meeting of
the Board of Directors was I think the latter
part of July - Raymond - Collins - Turner
& I think Walker were there - The Conversation
was carried on by all present, substance

was unless materials were delivered would
 be damages, some of the rails and ties were
 drawn from pliffs. Wharf, quite a quantity, on
 which dockage was paid by the Defts. This
 was because the Defts dock was incumbered
 with materials. I can't state when or the
 particular times. I don't know that I think
 I examined the same pile that G. L. did think
 it was in July or August - On the pile below
 the yard there might have been fifteen or twenty
 thousand feet of rails, more or less - There might
 have been some rejected ties that had not an
 inch depth of set on them - I did not inspect
 the rails received as closely as the specification,
 called for - nor not aware that anyone
 rejected that had less than an inch of set,
 I do not reject them that measure an inch in
 width of surface - I don't know that I
 understood that the pliffs mode of inspection was,
 as far as I can judge there was not thirty
 thousand feet of rails rejected. I did not
 personally inspect more than ten thousand
 This was ^{when} my attention was immediately cal-
 led to the inspection. I always went when
 requested as far as I recollect - I think I
 did go to inspect whenever called upon, I can't
 give the date. I have gone up to inspect several
 times. I think Black was present. Reed
 & McTagg. I could not state whether the
 Cure was present or not - I went to examine
 at the plantiffs yard I know the aggregate
 of rails delivered by the Rooks. The whole
 number of ties delivered of all sorts are
 nineteen thousand four. I cannot say
 that the hands were Idled a day all the
 time - They were kept at work at something,

but not to much advantage. I had not
 the immediate charge of the hands. I don't
 know that Goanzen's statement is not true,
 The ties delivered in May 1849 were
 between one and two thousand. I never
 understood contracts were extended until
 close of navigation for 1849. never so stated
 in my report. never so stated to Mr. Ogden.
 The Report will speak for it self, did not
 state to Mr. Ogden that Contracts were
 to be extended until close of navigation,
 1849. Meeting of Board of Directors was
 in latter part of July. Raymond, Collins,
 Turner and I think Brown present, first
 thing was said about damages, substance
 was unless materials delivered there would
 be damages, I think Brown, one of the directors
 said they must furnish the materials or pay
 damages. Reed replied it would be time
 enough to talk about damages when
 Contracts expired. Reed contended he had
 until 1st or 15th of October to complete con-
 tracts. He could deliver by 1st October,
 I asked if he meant largest or smallest
 quantity, he said the larger quantity would
 take till 15th of October. I was mistaken on
 Saturday in fixing conversation in July 1849
 with McCagg - it was Mr. Reed, don't rec-
 lect how I stated on former trial, a large
 quantity of Rails & ties were drawn from
 McCagg & Reed's wharf by team, the reason
 was that Rail Road wharf was encumbered
 by materials during that time. We paid Mc-
 Cagg & Reed for their dock, can't state the
 time when paid there might have been other
 times when encumbered. I don't know whether

Examined the same pile as Ogden. Ogden
 examined in Middle of Summer. Don't recollect
 the month, from hearing his testimony should
 think, in July or August. About the time he
 examined, I examined. My impression is that
 I examined in August. I think in August or
 July. I have no certainty in relation to it. There
 might have been 15,000 to 20,000 rails in the
 pile there might have been less than an
 inch in depth of sap. Not so closely according
 to specifications - don't know that any were
 rejected. That had an inch of sap in width,
 didn't instruct Wheeler to reject such or
 black. Centre of the stick and didn't measure
 on surface. There was a little difference in the way
 of delivery in regard to inspection, don't
 know the difference in regard to inspection.
 The other Contracts of R. Road with individuals
 were different from these, these had one inch
 of sap in depth the other in width a very little
 difference in Mode of inspection under both
 sets of Contracts. Differences in favour of
 McEaggs & Reed not very Material different
 in the inspection. There was not 30,000 feet
 rejected that would come up to what Reed
 & McEaggs claimed ought to have been
 received. Inspected very small quantities
 not over 10,000 feet altogether. So far as I now
 recollect I went when called for. I couldn't
 state that I went when called for always,
 but think I did. I should think I went in
 May - Can't state distinctly. I went previous
 to 1st of July and inspected. Black was
 present and I think also McEaggs & Reed.
 I should think in the month of May on
 the Rail Road black. I think I never went

to their hand, except to examine the rails
 before spoken of - dont recollect who was
 present - cant recollect the time - My state-
 ment of the number of rails received from
 McCagg & Reed is from the book of the boat
 return made to me. I have seen the state-
 ment of Reed & McCagg of what were
 received - dont think it correct dont know
 that they delivered 471,056 feet dont know
 how many ties were delivered. I should
 think they delivered 17,331. I dont state
 exactly that the men were idle from 6 weeks
 to 2 months. It was not true that they were
 idle all that time. I couldnt state that
 they were idle they ^{were} kept at work, cant
 state the name of any man that was
 idle dont know that any was idle, general-
 ly kept them at work at something. I heard
 Grangers testimony, I dont know whether
 it is true or not - there might have been
 ties on the dock. I passed there frequently
 & saw some few ties there. My recollections
 is that I directed him to deliver 1000 a week.
 They expected to deliver that amount or
 more. I could not state the number
 delivered in June. I think there was not
 2900 delivered in that month about 4000
 were delivered in July. about the middle
 of June I gave directions to increase to 2000
 a week. The directions were that we
 should require 2000 a week. I am very
 positive it was before the 20th of June. It
 was given to Mr Reed at his office. dont
 know that any one was present. At the
 time of looking over the accounts I had
 a conversation with reference to damages

I stated to M Cagg that the Company had suffered damage. dont recollect his reply. He might have stated that he also suffered damage. The Cull ties were not accounted under Contract. The RR Road docks was covered with vessels unloading. There were Materials, ties & rails on the dock. Sometimes ties were taken off by the Co. I dont mean that there were large quantities on the dock of the R Road, the ties were generally taken away immediately. The Ties & Rails were taken soon after arrival. As far as ties were concerned during the first part of the season, the whole of the season except fall. Some vessels were unloading. I dont think it was during that season. I was in the City about a quarter of the time, in June, probably less than a quarter, in August about the same. That Statement is in my handwriting. A portion of the Cull included in these bills. I think there was not another bill of Miscellaneous Lumber exhibited at that time. My impression is that every thing was settled previously. I dont recollect those marks, now no such balance of \$2480 was made out by me. I made one figuring producing \$2450 I dont think I stated the amount on the former trial. This is the only figuring I made. I think M Cagg stated they had sustained damage. I think it is possible that he so stated. He didnt state that they could have fulfilled the Contract. He didnt allow any claim for damage. This was the only claim for damage I made out & presented to him.

He Examined by Deft.

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I was at the office at the time spoken of by Herfoot, the papers were produced by Mr. Clegg to look over the amounts, We had examined amounts & they differed, Herfoot came over to make explanations. I had an account kept by Deft. and as Herfoot made his explanation I noted them on the account. The amount for Call ties and call rails did not agree & I said to Mr. Clegg that I would investigate further. In the absence of further evidence I was disposed to allow the their accounts. After this the amount was taken as stated, and the amount of ties was carried out varying in number about three hundred, at contract prices, then a statement was made showing what the cost of these lacking, at what was paid, and then deducted from the other. This meeting came about in this way, there had been a reference of the matter to a Committee of the Board, and action had been had by the Committee upon the application of the plff. for a settlement & compromise of the matter. This statement was made up at the time. (Here the witness produced a statement of which the following is a copy which was read to the Jury & was

Nails	462.46	@	22	\$462.46
Ties	1976	@	22	434.72
"	14188	@	27	3830.76
Scantling	19.06	@	29	171.55
				9065.49
Amount paid				6717.53
				\$2347.82

Plants Not delivered 37154. \$ 4148.61
 Liss do 8.856 210 883.60 1032.21
 Ball. \$ 1315.65

Mr McCagg refused to settle. I stated that the Defts had suffered large damages, besides those charged - I don't recollect what he said in reply. He might have said that he had also suffered damage. The amount of damage was not stated. He examined by Plaintiff.

I was in the game by considerable of the time, not in town more than one fourth of the time - McCagg did not say that they would have performed the Contracts if Defts had not told them not to deliver any more ties. He refused to take the balance - The balance was offered as a compromise & no otherwise. McCagg insisted that 2480 was the balance due by defendants.

Alexander I Black sworn.

I was in the employ of the Defts in 1848 & 1849. I commenced in the fall of 1849 & continued until September 1849. I was employed to inspect ties & rails under Van Northwick & Turner. I commenced inspecting in May. I was instructed how to inspect by Van Northwick, Turner & Lake. Lake was first assistant Engineer. I had the Contracts, and inspected according to the Specifications - Difficulties arose between me and plff & Harfoot as to the inspection - The first difficulty was the last of May 1849 or first of June.

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The difficulty was settled by reference to the Contracts, and then I went on as usual. When difficulties arose it was referred to Lake Turner or Ben Mathewick. The difficulty was about rails, principally, about sap, bad sawing, knots length, and shakes. I attended to the whole inspection up to September 1849 under the direction of Ben Mathewick we received some rails that would not answer the specifications, the reason was because they wanted all the rails they could get.

I kept a Memorandum book of the ties & rails inspected & received by me, entries were made by me at the time I saw all in my hand writing (the witnesses produced the book & read to the Jury as follows:

May 11. to the 17 Taken from the dock

McCoy & Reed

2840 ft B. B. Pine Rails

3198 "

1549 "

7587

757 Cedar ties

May 17. Taken from dock 1965 ft B. B. Pine Rails

9554

May 29 Rec'd at Rail Road by Brig. Roarvake

509 Cedar & Laminated ties

June 8 Taken from the dock

2021 ft Pine R. R. Rails

" 9 Rec'd by Brig. Roarvake at R.R. Dock

951 Cedar ties

" 18 Taken from the dock

14826 ft B. B. Pine Rail

50 ties by Count

" 26 Rec'd by Brig. Roarvake

511 Cedar ties by Count

29 Rec'd by Schooner Roarvake at R.R. Dock

757 Cedar & Laminated ties by Count

Witness further testified - I received all the stuff that was received while I was there. Some times we had three places where we rec^d Materials - I had a turnster & a foreman under me - they received when I could not, and Salways examined what the men threw out as well as what they received, the ties & rails a living, some mixed up with other Cargo except two loads, Some times in consequence of the mixture we were delayed - The lifts did not get ties as fast as they wanted - I called several times on the lifts. Several times but could not get there - I don't think that more than two entire loads came - We got once twenty thousand feet of rails at one time - we got them off as fast as we could as we were in want of them. I rejected some perhaps one thousand out of 10, or 12,000

Cross Examined. I don't recollect that I ever called for rails & could not get them. The fore part of July I called for ties and could not get them - I think it was a week before I got them. In August I think we were delayed two weeks at one time, were delayed frequently, I can't name the times. I had a written Memorandum from Lake of the specifications when I came to work. I received several rails that did not agree with the specifications, I did not reject any that had not worn much in depth of sap - At plain lifts about one tenth or twelfth were rejected, for various causes I inspected about 150,000 feet. I rejected about one tenth

part. I know from ^{my} own statements how much my men drew away - There might have been some small lots of the rejected rails that I did not examine - I recollect that pliffs dock was considerably filled up in July or August. The difference in inspection was about 2500 ^{W.D.} in width of rails, was there when Ogden examined pile of rejected rails.

William J. Wheaton. I was in the employ of the Dept. in fall of 1849 my employment was inspecting ties and rails. I inspect rails & ties from front pliffs. I had a book which I kept an account of the ties & rails which I received - The entries are in my hand writing and were made at the time. (See the list below produced the book and therefrom as follows)

149 Reed & McCagg Co.

Oct 29 Rec'd off Roanoke 134719 Cedar ties small

" 29 off Brig. Hauser " 845 ties good Cedar & Tamarack

Rec'd by Brig. Hauser at their dock 11,338 feet of Rails ^{agreed} long then

Oct 31 By 50 Cedar ties

Nov 1 Rec'd by Constellation 54052 feet of Rails. at RR Dock

2 1066 ties " (many small Tamarack & R.R. Dock

147 of the above Cull ties

" 3 Rec'd by Whaling at R.R. Dock 502 ties

440 Cull ties 1758 feet Rails R.R. Dock

Nov 12 Rec'd by Roanoke at their dock 11,082 feet of R.R. Rails.

19 Rec'd by Roanoke at their ^(while from 4 sailing) dock 419 ties

27 Rec'd by Brig. Hauser 85931 feet rails 378 Culls By 396 ^{ties}

28 By 528 feet Rails at R.R. Dock from Brig. Hauser not before Counted

By 1255 feet at their yard selected from the Culls

Dec 4 By 3805 feet Rails at their dock. Bal of Cargo from Roanoke ^{Rail}

113,

Witness further testified. I received directions from Turner first, and then from Ben Mathew. After a while I received instructions to take anything that could be used, and I afterward was examined and told some that I had rejected - we were so anxious to get rails, that I was instructed to take any thing we could put down on - and I then took what would not bear inspection, according to the specifications - I was again instructed to get any thing that could be possibly used of any length - Offs. said I could not have rails unless I took ties also. Granger complained to me after the timber in the streets I wished it taken away, this was in the fall after I went to work for depts. I had no difficulty with Off about the inspection - they always expressed themselves satisfied with my inspection.

Crops Examined by Off.

County never objected to my manner of inspection; I never told him I did not care for specifications & that I went according to orders. W. T. Reed did not object to my inspection, nor did McCagg.

John Clark Lovern.

I was in the employ of the depts in 1849, was foreman on the track, we were unable to lay track for want of material - In July we were short of ties and rails, we were short twice in August & once in September. In July we were delayed about a week & some times from three to five days. In the fore part of August.

we were delayed some days, and in September about a week, and the last of August perhaps, set of September about two weeks, and in October about 8 days, we got Oak rails at the junction to supply deficiency, because we could not get pine, at other times we had not as much as we wanted to use.

Cross Examined

I swear by my Mem Book & not from memory. It has been in my possession some time ago it is now in Rail Road office. Cant name men who were doing ditching some of the time & some were engaged in other work not so profitable.

Doctor Whitney Turn. I was Superintendent of the repairing department in 1849 & in the employ of the defendants. I called on the Plffs. to hasten the delivery of materials in June & July. I told them the Defts were in want of timber, rails & ties, that were out of them - The Plffs. generally said in answer that vessels were gone to get them - The materials were generally sent out as soon as they came. I purchased ties for 700 of a Man at Calumet at 33 Cents. They were brought the latter part of June or early in July.

Cross Exam. I recollect about time I was sent to Mr. Reed, by Mr. Turner about middle of June, Mr. Reed said vessel ought to be at then.

George R. Waite I was assistant Engineer in the employ of the Defts in 1849, was.

115 employed a part of the time in laying
track in 1849. I was on the west end of the
line - I was back and forward over the line
and know that the men were delayed in the month
of July, August, September & October for want
of rails and ties, so that they were compelled
to lay about 8 miles in winter. I purchased
ties, about 45000 and paid 40 cts per tie.
I got more than was wanted - I had in
structions to buy as many as I could -
The difference in cost in laying the road in
winter as I estimate it, laying track in sum-
mer is \$576 - per mile in winter of 865 difference
is \$289. per mile more in winter than summer.
Rails were purchased to supply the deficiency
at Calaveras. These Oak rails, were worth
at least \$150 less per thousand than pine they
cost \$14 - per thousand. Estimate in laying
Pine is \$250 and Oak \$400 = Oak rails
are not so good by 10 per cent. Track laid in
winter requires more tamping than if laid in
the summer, should think it would cost \$100.
per mile more to finish up the work in winter.
Nineteen thousand ties would lay about 9 miles
13806 ties would lay 6 $\frac{1}{4}$ miles
Cross examined by Plffs.

I left the employ of Deft.
in August last, sold my stock and share
to Turner, because I expected to be a witness,
My son Nathaniel the first examined made,
he saw saw the first estimate I made of damages
which I think is at Elgin - here is not here
I purchased ties from Sept to November. I
would not deny that they were delivered before
1st of October. I think there was a contract
made with Charles Gary, before the 20th of

September, the Contract with Garry was for One thousand ties

copy by Sept. The ties were not as good as the ties furnished by Plffs, by four or five cents per tie. Crop Exp. Don Northwick has all my estimates of damage. No ties I purchased were delivered until after 20th of September. we paid I thought a round price for them - too much. we wintered over 7000 or 8000.

John Don Northwick again called by Sept. I made monthly estimates of Materials used of the Plffs - The estimates were based upon returns of Black, Wheaton, Nelson & Lake - Nelsons principally.

1848

Copy 6x we wintered over 8000 ties in the winter of 1849 & 1850. I have not hunted up witnesses for Defendants, I have conversed with Mr Collins a good deal about case. I did subscribe for stock of Second Division of Rail Road in 1849, abt \$1000 - have been released from my subscription by RR Road previous to trial I have been told by Mr Turner my name was erased, I have not paid and am not liable to pay on the subscription. I have received dividends for my father in law on stock I assigned to him had no power of attorney I paid the dividends to him which he received I never charged him a commission for it. Wintered over 8000 ties that year. Contracted for more than we wanted. Had Contract for rails with Richmond in 1848. He did not deliver them, with T. C. Hall for ties. He did not deliver full amount. Had contracts with Butler & Norton for ties, got about 4000 of them. we had Contracts with

117 Large number of individuals, some fulfilled
Some did not.
John Prinderville - I am a sailor - Master of a vessel.
The Average length of time for a trip from here
to Radnor & back is about 12 days. I have
been in the trade off & on for 9 years, have
made Trip in 8 days.

Crop & Co. I sailed the Brig Minnesota 12 days
is considered a good trip. I have made
trips in 8 days, other time 14 days. my brother
in employ of W. R. Company.

William Cohen I am a sailor. I have been of the
Lakes for 8 years - Think the average time
of trip from here to Radnor is not less than
12 days.

The Defendants then rested their case

The plaintiff then recalled

Reifort I stated that M. Cagg returned on the 20th
of Sept. There is an entry in the books of Plff.
on the 13th in his hand writing between two
entries of Mine from which I know that
he was at home on 13th of Sept. the Notice
by Mr Turner was a day or two after his
return - The only time I recollect of Van
Northwick being at the office was once
when he & Mr Turner came from dinner

Crop & Co. The Plff. had in their employ, the Schooner
Whirlwind, Roberts, Constellation, Manitowish
& Hoosier - The Whirlwind made more than
two trips. One before the 20th of August, the
Constellation went one trip just after M^r
Cagg returned, the Roberts made one

118 trip and brought a full Cargo - The Raincoat
and Hoosier runs all the season. The Defen-
dants - Contracted with me for fifteen Hundred
ties at 35 Cents. I got them at my Mill &
was got out before I made the Contract to
deliver them - The damages claimed by
McCagg was for not delivering the rails &
ties in 1848

When resumed M^c Cagg said they had sustained
damage, by Contracts being put off. I could say
how many rails were rejected in all, but
think at least 100 000 feet rails rejected
that would have passed inspection under
Contracts. Witness explained by diagram
modes of inspection

2
routly was recalled by Plff. I think I objected
every time Wheaton inspected to his inspection
- Wheaton said he had not seen the specifications
but that he inspected according to orders
of Officers - Wheaton rejected about fifty
thousand feet while I was there - Most of
the ties rejected were by him, while I was
there - A large pile had been rejected
before I went there, I think some twenty or
thirty or fifty thousand, and some fifty thou-
sand afterwards. McCagg expressed dis-
satisfaction and said he did not inspect
according to the specifications - a large
quantity were rejected by Wheaton $\frac{2}{3}$ or
 $\frac{3}{4}$ were rejected after I went there I think
some of those rejected by Wheaton would
have answered the specifications of Contract

Crop Expd. No business at Plaintiffs was selling
stalling lumber a Memorandum a Memorandum

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dunn was made when the rails were accepted. The 378 feet of rails were delivered as Culls - I don't mean to say that Wheaton lied - It was on the dock & not in the yard that the Culls were taken - I am positive - The Defts. did not receive rails that did not fall within the specifications. I thought Deft. was not anxious to get rails - I think I did not keep a Memorandum of the amount of rails inspected - Wheaton received some Cull rails 12651 feet, he took them from the Cull pile - The account of the inspection might have been kept by both - I can't tell I trusted to Wheatons account when it was correct - We generally piled up all the rails that were of the same length together & counted the ends and set it down The amount was generally taken from Wheatons book.

Ogden again Called by Hffs - The Defts had large
 + Contracts with Hale & Spades for Nine Hundred
 thousand feet of rails & two thousand ties -
 they never delivered any ties - They were
 released from the Contract by Rail Road Com-
 pany The rails were delivered about one
 half in 1848 - Defts had a Contract for rails
 and ties with Thomas Richardson - a portion
 were delivered in 1849. He never delivered
 + what he Contracted for - When I came home
 in May 1850 the Defts had \$7000. worth of
 materials on hand continued over from 1849. Mc
 Cagg returned from the east in Sept. I left here
 the 10 of Sept and met him at Detroit on
 his way to Chicago.

This being all the evidence given in the case the pliffs prayed the following instructions from the Court, to wit.

1. By the terms of the Contract the Chief Engineer had no right to determine whether the Contracts, the Contracts were being, or had been performed or not, except for the purpose of reporting the same to the board of Directors, to authorize the Board if they had seen fit, to declare said Contracts forfeited or abandoned - or for the purpose of determining the amount of Monthly estimates
2. If the Jury believe from the Evidence that the Chief Engineer made Monthly estimates or from time to time on said Contracts, which the Company paid, such estimates and payments are evidence from which the Jury may infer a waiver, a waiver of any default in the performance of said Contracts previous to such estimates or payments.
3. If the Jury believe from the evidence that the Chief Engineer unreasonably refused to make Monthly estimates for articles delivered and accepted by the Company, the plaintiffs are not thereby precluded from the right to recover for such articles delivered and accepted under said Contracts
4. If the Jury believe from the evidence that the plaintiffs were ready to deliver and

121 that they were able to deliver all the ^{ties} contracted for according to the specifications of the contract with due diligence within the time mentioned in the Contract, and did not deliver in consequence of the Defendants giving notice that they did not want any more ties than for those ties delivered, if any, after the contracts had expired and not accepted by defendants under the contracts the plaintiffs are entitled to recover the value;

5' If the Jury believe from the evidence that the plaintiffs were ready and willing and offered to deliver all the rails called for and according to the specifications in the Rail Contract with due diligence within the time limited for their delivery, and the defendants refused to receive them, and if they further believe from the evidence that that the plaintiffs prosecuted the delivery of such rails, with such diligence as would have enabled them to deliver all the rails according to the specifications of the Contract and within the time limited by the Contract, and that they would have been all delivered within such time had defendants not wrongfully refused to receive rails under the Contract and if the jury shall further believe that defendants did wrongfully refuse to receive the rails, then the Plff are entitled to recover all without deduction for damages.

6 If the Jury believe from the evidence that the plaintiffs were ready to deliver, and that they were able to deliver all the ties Contracted for according to the specifications

of the Contracts and with due diligence within the time mentioned in the contract, and did not deliver in consequence of the defendants giving Notice that they did not want any more ties, then the plaintiffs are entitled to recover for all the ties that were delivered.

7 If the Jury believe from the evidence that the plaintiffs were ready and willing and offered to deliver all the rails called for with due diligence, and according to the specifications in the rail contract within the time limited for their delivery, and that the defendants refused to receive them, then Plff are entitled to recover for all that were delivered -

8 If the Jury believe from the evidence that the Contracts for extension was a contract not to be performed within one year from the time it was made although partly performed within the year, and the contract for extension was not in writing, then such Contract is void and the Defs cannot set up a failure to deliver the rails and lies within the time to prevent or lessen the plaintiffs recovery, but if the Jury shall believe that the plaintiffs had the right to perform the contracts within a year, even if they had a right to perform it after the year the contract is not void.

10 If the Jury shall believe from the Contracts that the parties constituted the Chief Engineer, and in his absence the Assistant Engineer the person to inspect the Materials delivered under said Contracts

the trust was personal to them and such Engineer nor his assistants had any right to appoint any agents under them to make such inspection - And an inspection made by Agents appointed by the Engineer or his assistants were not binding or conclusive upon the plaintiffs any further than they appear to have inspected the materials according to the specifications of the Contracts

11 If the Jury believe from the evidence that the Contract for extension was a Contract which although performance was to begin, and ^{did} in fact commence with the year yet if they believe that the agreement or Contract for extension was not to be completely performed within that period, then such Contract for extension is void and the defendants cannot set up a failure to deliver the rails and ties within the time to prevent or lessen the plaintiffs recovery.

12 If the Jury believe from the evidence, that the plaintiffs were in readiness and that they were able to deliver all the ties contracted for within the time mentioned, and was prevented from such delivery by the Defendants giving notice that they did not want any more ties, and if they further believe from the evidence that the plaintiffs prosecuted the delivery of such ties with such diligence as would have enabled them to deliver all the ties within the time limited by the Contract and that they would have all been delivered within such time but for such Notice, then P. Plffs. are entitled to recover for all without deduction for damages.

13. If the Jury believe from the evidence that plaintiffs was ready and willing and offered to deliver all the rails called for in the rail road Contract within the time limited for their delivery, and that defendants refused to receive them then for those rails delivered if any after the Contracts had expired, and not accepted by defendants under the Contracts the plaintiffs are entitled to recover their value.

14. If the Jury shall believe from the evidence that the plaintiffs prosecuted the Contracts the Contracts with such diligence as that, without a legal & proper prevention or or waiver on the part of the defendants, they could have finished & performed the same within the time limited, it would be all the diligence required by the terms of the Contract.

The Defendants asked the following instructions

1. If the Jury believe from the evidence that the Contract was not performed by the plaintiffs with due diligence, and that in consequence of such failure to perform the Contracts, the defendants have sustained damages they are entitled to be allowed such damages in this action.

2. If the Jury believe from the evidence that the balance struck by Dan Nashwick at the time of the Meeting alluded to in the testimony was done and made as a

125, compromise and that such demand was refused by McCagg Reed in such case the Defendants are not bound by the offer, and are entitled to be allowed the damages sustained by them through that amount exceed the amount named in such offer of compromise.

3 That ^{by} the Contracts given in evidence the Plaintiffs are only entitled to recover for such materials as have been estimated and accepted by the Chief Engineer, and that the decision of the Chief Engineer is conclusive upon the parties as to the fact whether the materials offered came within the specifications of the Contracts, unless there has been some fraud in his action in the matter, or he has unreasonably refused to make a decision in the matter which he is bound to decide under the Contracts.

4 That by the terms of the Contracts the Chief Engineer was to make monthly estimates of the Quantity delivered and accepted as coming within the specifications of the Contracts, and that for the purpose of inspection he had a right to appoint other competent persons to make such inspection and the report of such persons and the Engineers estimate based thereon is conclusive upon the parties, as to whether the materials offered came within the specifications of the Contract, and such decision cannot be questioned unless there is some in the matter of inspection or there has been an unreasonable refusal to inspect.

5 That by the terms of the Contracts given in evidence the Chief Engineer was to make Monthly estimates of the Number of ties and rails delivered and accepted as coming within the provisions of said Contract & of the Specifications thereof. If the Jury believe that such Monthly Estimates were made by said Engineer in good faith, then said estimates are binding and conclusive upon the parties and cannot be contradicted.

6 If the Jury believe from the evidence that Defendants have received Materials and not paid for them in such case Defendants are bound to account for such Materials at Contract prices; and if the jury further believe that there has been a breach of the Contract on the part of the plaintiffs by which Defendants have sustained Damages, in such case the Defendants are entitled to be allowed such Damages to be deducted from the amount of the plaintiffs Claim, and if such Damages exceed the amount the jury must find such balance in favor of the Defts. and certify the same to the Court.

7 That the Contracts given in Evidence are not within the Statute of Frauds.

The Court gave the First, Second, third, fourth, fifth, sixth, seventh, eighth, instructions asked for by the said plaintiffs.

and refused to give remainder;

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The Court also gave the first, second, third, fourth, fifth and sixth instructions asked for by the said defendants and refused to give the seventh instruction, but modified & gave the same as follows,

"That the written or printed contracts given in evidence are not within the statute of frauds." Which decision of the Court refusing to give the said instruction as asked by the said defendants and also to the giving of said instructions as modified by the Court the said defendants by their Counsel accepted.

The Jury returned a verdict for the sum of ^{One} \$1000 and seven hundred and eighty eight dollars and thirty four cents and therefore the said defendants moved the Court to set aside the verdict & for a New trial, which is in words and figure as follows to wit.

Cook Circuit Court

The Lake and Chicago

Union R Road Company

vs

John J Reed Attorney

Isaac M Wagg

The defendants move for a New trial in the cause of the following grounds.

First That the Verdict is against evidence,

Second. That the Verdict is against Law.

Third. That the Court erred in giving the instructions asked for by the plaintiffs.

Fourth. That the Court erred in refusing to give the several instructions asked for by the Defts.

Judd & Collins

Defts Attys

On the facts of which was endorsed, filed
2nd. January 1852, L. A. Hoar & Clerk.

Which said Motion the Court overruled,
And therefore the said defendants excepted
to the opinion of the Court overruling said
Motion for a New trial & prayed the
Court to sign & seal this bill of exceptions
which is done.

Hugh T. Hickey 
Judge &c

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A Memorandum of Agreement Made and
 Concluded this second day of February
 A. D. 1848 by and between John H. Root and
 Isaac M. Cagg of the County of Cook in
 the State of Illinois, of the first part, and
 the Galena and Chicago Union Rail Road
 Company by their acting director of the
 second part in which it is covenanted
 and agreed as follows, to wit:

129,000
 50 50 Cans

Said party of
 the first part, for the Consideration herein
 set forth, hereby covenants and agrees,
 with the said party of the second part, to
 furnish and deliver on or before convenient
 dock in the City of Chicago to be designated
 by said Company, One hundred and twenty
 five thousand and five hundred Board Measure of
 Scantling, in all respects according to
 the specifications hereunto annexed, which
 are to be considered as part of this Contract.
 Said party of the first part further agrees
 to furnish and complete the delivery of
 said Scantling, on or before the first day
 of September A. D. 1848, - and that he
 will prosecute the said work with all
 due diligence to completion. Said party of
 the second part for the Consideration herein
 above set forth hereby covenants and agrees
 with the said party of the first part, to pay
 him when the whole of said Scantling shall
 have been delivered, as above agreed, at the
 rate of Nine dollars per thousand and five
 hundred Measure, said price to be in full
 Compensation for all of the Materials, and
 Labor, required to be performed in the full
 fulfillment of this Contract - and it is fur-

their mutually agreed between the parties
 to this Contract, that Monthly Estimates shall
 be made by the Chief Engineer of said Com-
 pany of the Amount and quantity of
 Scantling delivered, and accepted as
 coming within the provisions of this con-
 tract, and the specifications heretofore refer-
 red to, and upon the presentation of
 such estimates, Certified to by the aforesaid
 Chief Engineer to the above mentioned pay-
 ment shall be made by the said Company
 at the rate of Eighty per Cent upon such
 estimates, until the whole of this Contract
 shall have been fulfilled. And when in
 the Opinion of the Chief Engineer, the terms of
 this Contract shall be fully Completed, on the
 part of the said party of the first part pay-
 ment shall be made in full as hereinbefore
 stipulated by the party of the second part.
 And it is further agreed by the parties
 to this Contract that if the party of the first
 part shall refuse, or in the opinion of the
 said Chief Engineer neglect to prosecute
 the work as specified in the terms of this
 Contract with due diligence, or shall
 perform the work in an improper manner
 the said Chief Engineer may certify the
 same in writing to the directors of said Com-
 pany, and the said ~~Company~~ Directors shall
 have power to declare the terms of this
 Contract to have been violated or aban-
 doned by the party of the first part, and
 upon such declaration being made by the
 Board of Directors, and notice duly
 given to said party of the first part, said
 Contract shall be declared abandoned,

And the said Company may proceed to Contract for the work or Materials with any other person. And all moneys which may have been retained in the Monthlies & Annals, heretofore provided for shall be forever forfeited to said Company.

And it is further agreed by the parties to this Contract, that in case of the absence, or inability to act of the said Chief Engineer, then and in that case the assistant Engineer having charge of the work embraced in this Contract, shall have and is hereby vested with all of the powers herein before given to the said Chief Engineer.

Vignel Read	}	J. M. Caggle	Deal
and Delamont		John D. Turner	act.
In presence of		Director for the Calumet	
Richard Morgan	}	Chicago Union R.R. Co.	

Specifications.

One hundred thousand feet (board measure) of said Scantling, to be three by four inches square and twenty five thousand feet (board measure) thereof to be four by five inches square, to be sawed full and square edged, and to be of good sound merchantable Norway pine Timber, No knots having more than one inch of Vap in the cut first place, or loose black knots, or shakes will be accepted. Said Scantling to be true and evenly sawed.

D.

A Memorandum of Agreement. Made

132 and, Concluded this twenty ninth day
of January A.D. 1848 by Helven John
McReed and Isaac McCagg, of the County
of Cook in the State of Illinois; of the
first part, and the Galena and Chicago
Union Rail Road Company, by their acting
agent of the second part, in which it is
enjoined and agreed as follows to
wit.

Said party of the first part, for the
Consideration hereinafter set forth hereby
Covenants and agrees, with said party
of the second part, to furnish & deliver on
some convenient dock in the City of Chicago,
to be designated by said Company, ten
thousand Rail Road ties, in all respects
according to the Specifications hereunto
attached, which are to be considered a part of
this Contract; Said Party of the first part
further agrees to furnish and complete
the delivery of said Rail Road ties, on
or before the first day of September A.D.
1848 and that he will prosecute the said
work with all due diligence to comple-
tion. Said party of the second part for the
Consideration hereinafter set forth hereby Co-
venants and agrees with said party of the
first part, to pay him when the whole of
said ties shall have been delivered as
above agreed at the rate of twenty two cents
for each Tie. said price to be in full compen-
sation for all of the materials and labor re-
quired to be performed in the fulfillment
of this Contract, and it is further mutually
agreed, between the parties to this Contract,
that monthly Estimates shall be made by

10,000
Ties,

the Chief Engineer of said Company of the number of Rail Road ties delivered and accepted as coming within the provisions of this Contract, and the specifications heretofore referred to, and upon the presentation of such Estimates, Certified to by the aforesaid Chief Engineer, to the before mentioned acting Director payment shall be made, by the said Company at the rate of eighty percent upon such Estimates until the whole of this Contract shall have been fulfilled, And when in the opinion of the said Chief Engineer the terms of this Contract shall have been fully completed, on the part of said party of the first part, payment shall be made in full, as herein before stipulated by the said party of the second part, And it is further agreed by the parties to this Contract, that if the party of the first part shall refuse, or in the opinion of the said Chief Engineer neglect to prosecute the work as specified in the terms of this Contract, with due diligence or shall perform the work in an improper manner, the said Chief Engineer may Certify the same in writing to the Directors of said Company, and the said Directors shall have power, to declare the terms of this Contract to have been violated, as abandoned by the party of the first part and upon such declaration being made by the Board of Directors and Notice duly given to said party of the first part, said Contracts shall be declared abandoned, and the said Company may proceed to Contract for the work or materials, with any other person; And all Moneys

which may have been retained in the Monthly Estimates herein before provided for, shall be forever forfeited to said Company. And it is further agreed by the parties to this Contract, that in case of the absence or inability to act of the said Chief Engineer, then and in that case the Assistant Engineer having Charge of the Work Embraeed in this Contract shall have, and is hereby vested with, all of the power herein before given to the said Chief Engineer in the premises.

Witness sealed

and delivered in

presence of

Richd. Wagon

J. M. Cagg & Co. Secy
 Robert B. Sumner Act
 Direct. for the G. O. RR Road Comy

Specifications

Each of the said Rail Road Ties is to be nine feet long, six inches thick & squared or fluted or otherwise flattened in two parallel sides. The bearings or face on the two flat sides, to be not less than six inches wide, and to contain as much timber as if they were six inches by seven square. Said ties are to be of Swamp Oak, White Oak, Pur Oak, Red Elm, Red Birch, Tamarac, Chestnut, or Red or White Cedar, and to be of good sound Merchantable Timber.

Oct. 11, 1848. By Mutual agreement the dimensions of the ties Embraeed in the Contracts of Reed & M. Cagg, are to be similar to a lot delivered about the 1st of November 1848 flattened, no tie less than

135 6 m. and to average on smaller side full
 sine. The following are the dimensions of a
 Set of Sail Ties & measured - and the said
 Company agree to pay an additional sum
 of five Cents per tie making Twenty seven
 Cents per tie.

Sin. 7-9-9-10-8-8-6
 9 7 11 7 8 8 9 8
 10 11 9 7 7 7 7 9
 9 7 10 6 8 11 10 9
 10 7 8 7 9 8 7 7
 9 6 7 9 8 8 10
 7 11 8 8 6 10 7
 5 11 8 10 8 8 11
 8 7 8 8 6 10 9
 7 7 7 7

J. Man Northwick
 Engineer.

And afterwards on the fifth day of Jan-
 uary in the Year Eighteen Hundred and
 fifty two being one of the days of the
 December Term the following among
 other proceedings were had:

John W. Livingston
 Isaac M. Gage & Sol. Reed }
 vs. } Apt.
 The Calumet and Chicago
 Union Rail Road Co }

This day again
 came the said parties by their Attorneys
 and the Court having ^{heard} the arguments of Counsel
 on the motion for a New trial overrules the
 same. yf

Therefore it is considered by the Court
 that the said Plaintiff, do have and recover
 of the said Defendants their damages

of Two Thousand and Seven hundred and eighty eight dollars and thirty four cents assessed as aforesaid, together with their Costs and Charges by them about their suit in this behalf expended and have executed therefor.

Whereupon the said defendants by their attorneys excepts and pray and appeal, which is allowed by the Court on the said defendants filing a bond within twenty days from this date in the sum of thirty five Hundred dollars with Thomas Ayer as Security. It is further ordered that the bill of Exceptions herein be settled signed by the 19th day of January instant.

And afterwards on the 19th day of January 1853 the said Defendants filed their Bond which is as in Word and and figures as follows to wit:

I know all men by these presents, that we, the Galena and Chicago Union Railroad Company as principals and Thomas Ayer as surety, are held and firmly bound unto John V Reed Minor of Isaac M Cagg in the penal sum of Three Thousand Five Hundred dollars lawful money of the United States to be paid to the said John V Reed Minor of the said Isaac M Cagg or his certain attorney, executor, administrator or assigns, for which payment well and truly to be made we do bind ourselves our successors, executors and administrators and

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each and every of them jointly, severally
firmly by these presents. Sealed with the seal
of the said Galena and Chicago Union Rail
Road Company acting by their President and
Secretary and with the seal of the said Thomas
Dyer this seventeenth day of January A.D. 1852.

Whereas at the December Term of the
Cook County Circuit Court A.D. 1851 Judgment
was rendered by said Court in favor of the above
named John D Reed Supervisor of Isaac Mc
Cagg against the said Galena & Chicago
Union Rail Road Company for the sum of Twenty
seven Hundred Eighty Eight Dollars & thirty four
Cents damages, besides costs of suit.

And whereas
the said Galena and Chicago Union Rail
Road Company have prayed an appeal from
the the said Judgment to the Supreme Court of
the State of Illinois.

Now Therefore the Condition
of the above obligation is such that if the above
said Galena and Chicago Union Rail
Road Company shall prosecute the said appeal
with effect, and shall and will pay or cause
to be paid the said judgment, costs, interest
and damages, in case the said shall be affirmed,
then the said obligation to be void, otherwise to
be and remain in full force and virtue.

{
D. G.
L. L.
}

John B Turner

President

Thomas Dyer (Seal)

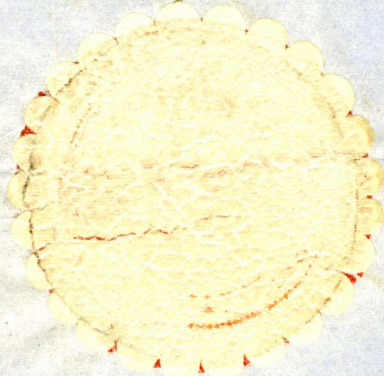
Wm M Larrabee

Secy

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State of Illinois
Cook County, ss.

I Louis A. Heard Clerk of the Court of the County of Cook in the State of Illinois do hereby certify that I have compared the foregoing pages with the original files and records remaining in my office in the above entitled cause, and that the same is a full true and perfect transcript of said records and files and of the whole thereof.



In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Chicago in said County this seventh day of June A.D. 1852.

Louis A. Heard Clerk

Fees for this Record 482 folio 48.20

Cert Seal $\frac{55}{48.55}$

The Galena and Chicago Union
Rail Road Co.

^{vs}
John S Reed survivor of

The Bill of Exceptions in this case is altered in this, that after the following words, "The Court gave the first, second, third, fourth, fifth, sixth, seventh, eighth instructions asked for by the plaintiffs and refused to give the remainder", the following words were to be added viz: "To which decision of the said Court giving the said instructions respectively, asked for by the said plaintiffs the defendants, by their Counsel Excepted" These words, (contained in this alteration) were inserted in the above bill of Exceptions when it was signed and filed on the 19th January A.D. 1882. They were subsequently, stricken out, under a stipulation given by the defendants, Counsel to the effect that the Judge of this Court might allow the bill of exceptions as he thought proper, (a copy of which stipulation is hereto annexed) and the aforesaid words (as contained in the aforesaid alteration) are now again, on this 28th day of June A.D. 1882, inserted in the bill of Exceptions.

Hugh J Nickay Esq
Judge

(Copy of Stipulation referred to above)

Cook Circuit Court,
The Galena & Chicago Union
Rail Road Company

^{vs}
John S Reed survivor
of Isaac McCagg

I do hereby stipulate and agree that the bill of exceptions signed in this cause,

may be amended and Corrected in case it shall
be deemed incorrect, in such manner as Judge
Nichols may think proper,
Jan 19. 1852,

J. A. Hallin

Atty. Atty,

State of Illinois
Cook County } ss

I Louis N Hoard Clerk of the Circuit
Court of Cook County do hereby certify that the
aforegoing are true Copies of the amendments to the
Bill of exceptions in the above Case, and the stipu-
lation therein referred to, filed in my office & attached
to the original Bill of Exceptions this 28th day of
July, A.D. 1852

In testimony whereof I have hereunto
set my hand and affixed the seal
of said Court at Chicago the day
& year last above written

L. N. Hoard Clerk

Supreme Court

The Galena & Chicago

Union Rail Road Company

v.

John S. Reid Currier &

Isaac McCagg

State of Illinois

La Salle County, James H. Collins
being duly sworn deposes and says that the Bill of exceptions
taken in this cause in the Court below was signed by the
Judge who tried the same on the nineteenth day of January
last and filed on that day; that at the time of the signing
of the same Mr. Arnold the attorney of the plaintiff in the Court
below was not present, and at the suggestion of the ^{said} Judge
(as this deponent believes) deponent gave a stipulation
in substance to the effect that said Bill of exceptions
might be amended and corrected in case it should be deemed
incorrect in such manner as said Judge might deem
proper.

And this deponent further saith that said Bill of Exceptions
was taken by said Judge for the purpose of further exam-
ination and correction if necessary and this deponent never
saw the same ^{again} until last week, although deponent enquired
for it of the clerk ^{of the Circuit Court} ~~there~~ several times during the month
of May last; and at the time deponent gave directions
to the clerk to make up a transcript of the record then filed
in this Court, which was after the middle of May last, the
said Bill of exceptions was, at the said clerk informed this
deponent ^{there} in its name after said Judge.

And this deponent further saith that on examining said Bill
of exceptions he discovered that the ~~word~~ "To which decision
of the Court" exception taken by this deponent as counsel
for the defendant in the Court below to the decision of the
said Court giving the 1st 2nd 3rd 4th 5th 6th 7th & 8th instruc-
tions ^{asked for by the plaintiff below} had been stricken out: And on enquiring ~~of~~ by this de-

posed - after said Judge in regard to the matter, the said Judge informed this deponent that on examining the bill of exceptions after it had been signed & filed he struck out the words "To which decision of the said Court giving the said instructions, respectively, asked for by the said plaintiffs, the defendants by their Counsel excepted" - under the impression that no exceptions were taken to the giving of said instructions :-

Another deponent further said that he applied to said Judge to have said bill of exceptions returned to its original state by striking the words he struck out as aforesaid, immediately on discovering that said words had been struck out, but this deponent did not succeed in getting the correction made until the 28th ^{some date} after the transcript of the record in this case was filed :- Another deponent further said that said Judge informed this deponent that he had corrected the ^{said} bill of exceptions by restoring the words above set forth to their proper place in the said Bill of exceptions :-

Another deponent further said that said Judge filed in the Circuit Court Clerk's office a certificate of said correction, a Certified Copy whereof is hereto annexed

Another deponent further said that said deponent alleged discrimination & error in the above entitled cause in this sense, that the words "~~to which~~ following words to wit, "To which decision of the said Court giving the said instructions, respectively, asked ^{for} by the said plaintiffs the defendants by their Counsel excepted" are omitted - And deponent says that he verily believes that the Court below erred in giving said instructions & that the ~~plaintiffs~~ in this case cannot safely proceed in this cause unless said exceptions thereto be made a part of the record in this cause.

Witness my hand & seal to

Before me this 3rd day

of July 1832

L. Seland Clerk.

By P. H. Seland Esq.,

C. W. H. Adams

Supreme Court

The Galena & Chicago
Union Rail Road Company

vs.

John S. Reed, Plaintiff
vs.
Hiram McLaughlin

Attor.

J. H. C. Muns

Plff. Atty.

Filed July 3^d 1852.
J. L. Land Clk.
By P. H. Land Esq.

Supreme Court
The Laurens & Chicago
Union Rail Road Company

In error
Term 1852

vs
John T. Reed, Survivor of
Seane McLaugh

And now at this
day comes the said Laurens & Chicago
Union Rail Road Company Plaintiffs
in error by Jas. H. Collins their Attorney &
say that in the record & Proceedings of said
and in giving the ^{the} Judgment of said
there is manifest error, in this to wit;
First, That the said Court erred in
error in giving the instructions which
were asked for by the Defendant in error

Second, That the said Court erred in refus-
-ing the ^{seventh} instructions asked for
by the said Plaintiffs in error and in
giving the said instructions as modified

Third, That the Court erred in overruling
the motion to set aside the verdict in
said cause & for a new trial

Wherefore the said Plaintiffs in error Pray
that the said Judgment may be reversed
set aside, and wholly for nothing estab-
-lished

Jas H Collins
Atty for Plffs in error

Cook

Galen & Chicago
Union Rail Road Co.

vs

John S. Reed Survivore

Record & apt. of errors

Filed June 26th 1852.
L. A. Cland O.R.

The appellee by J. N. Arnold his atty. comes
& says that there can be such errors,
nor any errors in said U.C.D. & says that
the judgment may be affirmed. & he
also says that no legal or proper
exceptions were taken by appellant at time
& therefore he says that said judgment
may be affirmed - June 28th 1852 -
J. N. Arnold Atty
for Appellee -

Sup. Court -
In. S. R. R.
Lumber &
²
Galena & Ch. R. R. Co. by

The Clerk of Sup. Court will
please issue execution for
costs in Sup. Court, send
me certified copy, order
for freight &c - as returned.
July 27. 1852 -

J. W. Arnold
Atty for R.R. -

Has care of Jennings & Lathrop
& others been checked & tried.
Please send me copy
order for freight in Galena
Road can be returned by
Mail. It being entered by
agreement, you need not
wait agreement -

L. Leeland Esq. Mr. July 27. 1852
Clerk Sup. Ct. J. W. Arnold

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Cook* — GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which
was in the Circuit Court of *Cook* — county, before the Judge thereof, between

Isaac Mc Cagg & John I Reed

plaintiff *I* and —

*Galena and Chicago Union Rail Road
Company* —

defendant *S* it is said manifest error hath intervened, to the injury of the aforesaid *John I Reed*
Survivor of said Mc Cagg deceased —
as we are informed by *this* complaint, and we being willing that error, if any there be, should be
corrected in due form and manner, and that justice be done to the parties aforesaid, command you that
if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the
Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same,
under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county
of La Salle, on the *2^d Monday in June A.D. 1853* next, that the record and proceedings,
being inspected, we may cause to be done therein, to correct the error, what of right ought to be done
according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said
Court, and the seal thereof, at Ottawa, this *twenty sixth*
day of *June* in the year of our Lord one thousand eight
hundred and fifty *two*.

S. Seland Clerk of the Supreme Court.
By P. H. Seland Depy. Clk.

Cook -

Galena & Chicago
Union R. R. Co.

John S. Reed Junior^{2d}

Writ of error.

Filed June 26th 1852.
L. Leland Clk.
By P. H. Leland Dep.

Clerk of Supreme Court,

Dear Sir,

You will please file

the enclosed record before the 28th instant;

On the 28th will be too late.

Enclosed please find \$5.00.

June 25, 1832,

J. H. Collins

Cook.

Galena & Ch. R.R. Co.

vs.
John S. Reid Survivore.

Recipe.

Filed June 26th 1852.

L. Seland Clk.

By P. H. Seland Depy.

Court Supreme Court.

Illinois