

No. 11983

Supreme Court of Illinois

^L
Saxtonstall.

vs.

Canal Commrs.

71641  7

Cor. R. ~~78~~ No 3
William W. Saxtonstall vs
Canal Commissioners

95

1852

11983

1852

William W. Sallinstate
 assignee of John H. Boyer
 17
 The Board of Commissioners
 of the Illinois & Michigan Canal

Under an act entitled an
 act for the Relief of John
 H. Boyer
 Approved March 1. 1847
 Before Joseph Waper, H P
 Woodworth & John B. Turner Arbitrators under the
 direction of Hugh T. Dickley

"It was agreed this should be
 considered as done in Court
 Name No June"

Record
 when?

Be it remembered that on the seventeenth day of
 January 1848 at the canal office in the City of Chicago
 the above named Joseph Waper, H P Woodruff & John B
 Turner being duly appointed by Hugh T. Dickley Judge of
 the Cook County Court & being by him duly sworn to arbitrate & determine the above entitled suit according
 to the provisions of said act proceeded to hear & determine
 said cause under the direction of the Cook County
 Court.

The Plaintiff then introduced the Record of a suit pendi-
 ng in the Cook County Court wherein William W
 Sallinstate assignee of John H Boyer was Plaintiff and
 the Board of Commissioners of the Illinois & Michigan
 Canal was defendant by which Record it appeared
 that the Plaintiff was prosecuting said suit to recover
 a balance alleged to be due for work performed under the
 contract a copy of which is hereto annexed marked
 (B) The identity of the contract declared upon in
 said suit and the one introduced as evidence in this mat-
 ter as before stated being admitted before the arbitrators by
 the counsel for the defendant & it being also admitted that
 the said suit was the same referred to in said act a
 copy of which is hereto annexed marked A as before stated,
 The Plaintiff produced and read a copy of said act

under the Seal of the State of Illinois certified by
H. C. Cook, Secretary of State, which is hereto attached
marked (A) & made part of this bill of exceptions.
The Deft offered the journal, to show no such law had
ever been passed, *Objected to & excluded & Exceptions taken.*
The Plaintiff then introduced & read in evidence a contract,
between the defendants on the one part & John H. Boyer
on the other part in relation to the construction of Section
Number (58) fifty eight of the Illinois & Michigan Canal
a copy of which is hereto annexed marked (B) & made
a part of this Bill of exceptions - dated July 12, 1836.
The Plaintiff then introduced Hart L. Stewart as a Wit-
ness who being sworn as a witness testified that he was
a contractor - that he worked as a contractor on the
 Erie Canal at Lockport New York in the year
eighteen hundred and twenty three - that he knows
the work on Section 58 of the Illinois & Michigan Canal
that he had frequently been upon said work, that on
said work there was first from two to six inches of
Earth or muck - then from four to six inches of
Shell rock which might be quarried without blasting -
that the rest of the rock was solid - that top strata
was from four to six inches thick & grew thicker as you
went down until the strata was from six inches to
two feet thick & the through cut through the section
was from fourteen to fifteen feet deep - That it was
solid rock. Witness further testified that the engineers
did not estimate it as quarried rock, or solid rock
but as excavation & that the test to distinguish solid
rock from quarried was by ascertaining whether
it could be excavated without blasting. Witness fur-
ther testified that there were vertical seams in the

rock occasionally, but not often & that the same or Stratification could not be discovered until after it was blasted, that the seams were not open. Witness further testified that such was generally understood to be solid rock - that there was no clay or other substance between the strata - that he was not acquainted with the technical meaning of the term quarried, that the terms used in New York were detached rock & quarried rock, & that this rock could not be quarried without powder except with difficulty, but all rock could be quarried. The Plaintiff then introduced John Rogers ^(Plaintiff) as a witness who being duly sworn as a witness testified that he was a contractor & formerly had a job on the Illinois & Michigan Canal of the same character as Section 58. that the rock in Section 58 was solid & could not be quarried in the ordinary mode of quarrying it required powder, that upon his job he had raised a single stone twenty two feet square, that he conversed with contractors from the New York Canal in relation to the character of the rock, & never conversed with any man that doubted its being solid rock, that the stratification of the rock could not be discovered by the eye & that he never discovered any fissure that would even admit water. On cross examination Charles Taylor was then introduced as a witness & being sworn as a witness testified that he was a contractor on Section 49, 50, 51, & 52 of the Illinois & Michigan Canal that he knew Section 58 of said Canal, that it was solid rock six inches below the surface & could not be quarried in the ordinary way without powder & that there was upon said Section from 15 to 20,000 yards of excavation - ^{This is conjecture} no position of such work was done by Boyer & Payne to bottom - Taylor then said Boyer stated he had sold out his interest in this Contract Boyer died in 1838 or 1839

On cross examination he said this was estimated as quarried rock. It was estimated at Duane's Rock prices, as stated in contract. I have a similar claim to that, New York which I intend to prosecute.

He stated that there was horizontal stratifications and vertical seams running through the rocks from top to bottom one foot wide.

Defendants Council then propounded to witness the following question "Do you know whether before the work was done Boyer sold his interest in the Contract to Peter Grayne or any other person" To which question the Council for the Plaintiff objected and the objection was sustained by the court. Plaintiff then introduced George Snow as a witness who being duly sworn as a witness testified that he was acquainted with the Rock in Section 58 of the Illinois & Michigan Canal that he should call it solid rock & could not be quarried except as granite is quarried in answer to questions propounded by Defendants Council Witness testified that the rock in Section 58 might by possibility be quarried that he had no particular knowledge of this Section but spoke generally of the rock in that region & that quarried rock as he understood applied to slate rock & that class of rock there were vertical & horizontal seams in this rock & never knew the term "Rock that could be quarried" used before. Cannot tell the technical meaning of quarried rock. George Steel was then introduced as a witness for the Plaintiff & being sworn testified that he was some acquainted with the rock in Section 58 of the Illinois & Michigan Canal, that the top could be quarried for a few inches & that the balance was solid rock & that he had been acquainted with that kind of rock for twenty years. In answer to questions propounded by Defendants Council, Witness testified that it was called quarrying when blocks are got out for locks, but that it was distinguished from quarrying for the purpose of Excavation alone & in the latter case quarried rock is

Such as can be excavated without blasting. The term used in my contract between New Rock & Detaché Rock never heard the term quarried Rock before, when Rock is taken out by blasting it is properly called quarried Rock the strata in this Rock was an advantage. Solid Rock more difficult than stratified, this was testified.

The Plaintiff then introduced Mass J. Clark as a witness who being duly sworn as a witness testified that he had been a contractor in Canals in other States for 20 years, that quarried rock is such as can be taken out with pick & crow bar, that he had known the word quarried used in contracts that rocks that can be quarried is such as such as can be taken out without blasting, that the term was well known as indicating rock of that character, that Quarry is a term used to indicate rock that is loose, that the term was well understood & that there was no difference of opinion in relation to it.

Plaintiff then introduced John Robert, as a witness who being sworn as a witness testified that he was acquainted with Section 58 of the Illinois & Michigan Canal, that it could be quarried a few inches, but could not be quarried two feet — that the balance could not be quarried with ordinary tools, that the strata were thick if there were any & that it requires blasting.

The Plaintiff then introduced John Black as a witness who being duly sworn as such testified that he was acquainted with rock work & that the rock in Section 58. of the Illinois & Michigan Canal could not be excavated without blasting, and that the rock did separate at the stratifications.

Plaintiff then introduced Thomas Lurgan as a witness who being duly sworn as such witness testified that he had been acquainted with canal work for forty-two years that the rock in Section 58 of the Illinois & Michigan Canal was solid rock, that he excavated a section in the line & that most of it was solid rock, that the rock could not be quarried without blasting, Plaintiff then introduced J. A. Postana as a witness who being sworn as such testified that he was acquainted with Section 58 of the Illinois & Michigan Canal, that the rock in the said Section cannot be quarried without drilling, excepting a small portion on the top, say six inches to one foot, & that he had a contract in that cutting.

Plaintiff then introduced George W. Clark as a witness, who being sworn as such testified that he was an engineer, that he knew different classes of Rocks, that he had seen the rocks on the deep cut & in Section 58 of the Illinois & Michigan Canal & believed the rocks to be solid that solid rock is such as requires blasting, quarried rocks such as can be removed by Shovel pick & Crow bar, that he had been twenty years more or less engineer on public works. On answers to questions propounded by Defendants Council witness testified that he did not recollect of ever estimating quarried rock, that he could not specify what kind he had estimated, that he did not think solid rock could be quarried, that he obtained the distinction between quarried & solid rock from books & talk with contractors but could not specify the Books where he found the distinction, that he had always understood the distinction that they quarried

rocks in ancient times among the Egyptians & that the blocks were removed.

The Plaintiff then introduced William L. Pierce as a witness, who being sworn as a witness testified that he had been ^{with public works twenty years} acquainted with the rocks in Section 58 of the Illinois & Michigan Canal, that the rock in that section was solid rock as he understood it, that he had worked upon the Delaware & Hudson Canal & Upper Canal in New Jersey & other States, that the term quarried rock was used upon the Erie Canal & also solid rocks - that he had seen both terms used, had a contract on the Erie Canal in which both terms were used & that he was allowed for that he was compelled to blast as solid rock, & that 3 Chains of Section 58 were nearly bottomed.

^{these were seams & strata in the rock from six to sixteen inches apart}
The Plaintiff then introduced James Morgan as a witness who being sworn as such testified that he had been an Engineer eighteen years chiefly on Rail Roads that solid rock is such as requires powder for excavation, that such was the understanding among engineers & contractors that he did not know of any technical meaning to quarried rock in Engineering.

Plaintiff then introduced R. P. Neacock as a witness who being sworn as a witness testified that he was an Engineer, that he was acquainted with Section 58 of the Illinois & Michigan Canal that the top of the Rock in the Section could be quarried that the ballance would be generally termed solid rock - that solid rock was such as could not be quarried with bars.

Plaintiff then introduced William B. Snowhook as a witness who being sworn as a witness testified that he was a contractor, was acquainted with Section 58 of the Illinois & Michigan Canal, that the rock was

Solid that powder was necessary to excavate it, that
Solid rock as understood by contractors is such as
requires powder, in order to excavate it, that he had
been a contractor on the Delaware and Christian Canal
& in other Counties that the term quarried applies to
Such rocks as can be taken up by picks hoes &c I
have seen the term quarried used in contract in this
& other Counties,

Plaintiff then introduced Robert
Mugger as a witness who being sworn as a witness
testified that he had been acquainted with canaling
for twenty years, that quarried rock is Stratified rock
that has something between the strata in common con-
versation quarried rock means loose rock,

Plaintiff then introduced Robert Mugger
as a witness who being sworn as a witness testified
that he was a contractor, that he knew the section
58 of the Illinois & Michigan Canal that the top
could be quarried for a few inches the balance is
Solid that rock which requires blasting is solid

The Plaintiff then introduced Matthew
Laplin as a witness & being sworn as a witness tes-
tified that he had been acquainted with public works
for twenty years, that he was acquainted with section
58 of the Illinois & Michigan Canal that he has un-
derstood from contractors Quarried Rock means such
as can be removed from the quarry with picks & bars
Saw the man ~~supply~~ ^{supply} powder to the contractors for blasting

The Plaintiff & the Defendants
introduced William W. Saltmire as a witness
who being sworn as a witness testified that he was
the assignee in Bankruptcy, the County of Cook
& the assignee of the late John H. Boyer, Defendants

then offered a copy of the Schedule of John H Boyer
in evidence & then put this question to witness
Did you see the claim of Boyer against the com-
missioners of the Illinois & Michigan Canal - if so to
whom & for what sum. To which question the plain-
tiff's counsel objected - and the objection was sus-
tained by the Court. The Defendants Counsel pro-
pounded to witness this question. "Are you plaintiff
in interest in this suit?" and also this question. "Do
you know know, if so state who are the plaintiffs
in interest in this suit?" to both of which questions
the plaintiff objected severally, and the Court sus-
tained the objections. Witness further testified that
from receipts in his possession John H Boyer had
received for work done on section 58 of the Illinois
& Michigan Canal to the amount of \$18,859.20 -
Copy of which said several receipts are hereto att-
ached & marked do & c & made part of this Bill.

The Defendants then introduced Edward B Talcott
as a witness who being sworn as a witness testified
that he was an Engineer and was employed as
the principal assistant Engineer on the Illinois &
Michigan Canal, before section 58 of said Canal
was let to John H Boyer, that before said work
was let to said Boyer he Boyer a man by the name
of Wilcox came to the Canal office at
& inquired the Character of the work. I told them
we considered it quarried rock, we had come to
that conclusion; examined the bluffs near Lutic
& Lockport & at other points, & also the bed of the river
& that the rock was stratified rock - that I had
ascertained it by an examination of the Bluffs &
river - that found holes in the bed of the bed of

the River from 10 to 15 feet deep that he told them that we (referring to the Chief engineer & himself) considered it quarried rock inasmuch as it was stratified as indicated by their examination, that he stated to them that it was to be distinctly understood that all rock that was stratified would be deemed & estimated as quarried - that the stratification of the rock determined its character or classification and that such as was stratified would be estimated as quarried - That the subject of using powder was discussed & that Wilcox said he anticipated more difficulty on account of the rock being loose and cavernous than on account of its solidity, Witness further testified that he told them that their meaning of solid rock was rock without seams either vertical or horizontal, that this explanation was given to Boyer & that the distinction was that if the stratification existed it was to be estimated ^{as} quarried, Witness further testified that in making up the estimate for quarried rock vertical & horizontal seams existed & that it came under the class of rock that could be quarried, It was stated to Boyer that the ^{distinction} ~~classification~~ would be if the strata existed it would be estimated as quarried.

In answer to questions propounded by plaintiffs counsel Witness testified that the rock in said Section 54 could be quarried without the use of powder but not in a reasonable time, that Boyer was one of the first who insisted that the rock should be estimated as solid rock, that the Bluff to which he referred Wilcox & Boyer and other contractors were loose stratified rock, that all rock was stratified

that solid rock was such as had no stratification
which would facilitate the excavation & that the
term "quarried rock" used in the contracts for the
construction of Section in Section 58 was arbitrary,
Witness boarded ^{at Boyer} house at about the time of the above
conversations Boyer conversed with him frequently,
in regard to the matter, Witness further testifies
that in making ~~in making~~ up the estimates
for work done ~~on~~ this Section the vertical & horizon-
tal seams existed it came under the class of rock
which could be quarried as the term was explained
to Boyer & Wiley by witness before contract was taken,
Defendants then introduced William Gooding as a
Witness who being sworn testified that he was Chief
Engineer of the Illinois & Michigan Canal before
& since the work was first let in said Canal, that
there was a difference of opinion in relation to
the terms quarried rock, that some understood it
one way & some another that he fully explained his
understanding of the term "quarried solid rock" to
the contractors generally before they took their contracts,
that he explained quarried rock to be such as an ad-
vantage could be attained in excavating, his words
to them were "all rock stratified in such a manner
as will be in advantage in working will be estimated
as quarried rock, that was the sense in which the
term was used in the contracts as he explained to
all the contractors, that he cannot state positively,
whether he gave this explanation to Boyer or not,
but that his best recollection is that he did, that in
making estimates he was grounded by that rule that
he estimated the rock in said Section 58 as quarried
rock and decided that it was quarried rock

I decided this rock was such which could be quarried & estimated it accordingly. I examined it, it could be quarried much easier in account of its being stratified.

In answer to questions propounded by plaintiffs Counsel. Witness further stated that the rock in said section quarried much easier than unstratified rock, that at the time of the letting he informed the contractors that in his opinion the water would not come through the strata that it was expressly understood at the time of the letting by contractors from me that powder was to be in excavating the quarried rock.

The Defendants then introduced John L. Marchette as a witness who being sworn as a witness testified that he was an assistant engineer on the Illinois & Michigan Canal, that he understood from the engineers & contractors generally before at time of the lettings that rock of which an advantage could be gained by the stratification was quarried rock, that this was the meaning of the phrase as used in the contracts as understood by the parties at that time that the strata became more close as they went down, that the strata was so close that he never saw any smoke pass through them when the rock was blasted, that it was understood that powder would be used in working the quarried rock, that the rock in this section was stratified, so as to make the excavation easier and come within the class of stratified rock as explained at the time & was so estimated by the Chief Engineer.

The Defendants then recalled William W Salthus
Stall who further testified that John H Boyer
never pretended to him that he had any claim
against the Canal Commissioners or the State of
Illinois except a small one which I presented
at the Canal office & received pay in full
for it. that he never was requested by said Boyer
to prosecute this claim. And in answer to a ques-
tion propounded by plaintiffs deputed further
testified that he was applied to for the use of his
name to prosecute this claim for the benefit of
those pretending ~~to~~ ^{permitted} the claim
to be prosecuted in his name as the apigee of
John H Boyer.

The Defendants then called C L Gher-
man as a witness who being sworn as a witness
testified that he was acquainted with John H
Boyer that he knew that said Boyer was a
partner with one Peter Pougne in the work on
said Canal That the firm of Pougne, Nequa & Rogers
went onto the work and used the same tools that
Boyer had used but that he did not know any
thing in relation to any arrangement in relation
to the work between said Boyer & Pougne except
from said Pougne.

The Defendants then offered record
of Books of Defendants for the purpose of showing
that defendants had abandoned the contract be-
tween them & Boyer for said Section 58 to which
the plaintiffs objected & the objections was sustained
by the Court. The certificate of abandonment of Genl
Troy and record are herewith attached and marked No
is hereto attached & made a part of this bill.

Rec'd
witness
Thompson

The Defendants then called Jacob Fry, a witness who being sworn as a witness was asked by Defendants counsel the following question "Did Conger take possession of the machinery on the canal immediately after Boyer abandoned it?" To which question plaintiffs counsel objected & the objection was sustained by the Court. The Defendants having rested in their defence the plaintiff recalled George Steel as a witness who further testified that he was acquainted with the character of the rock in the Bluffs of DesPlain River near Lockport that he had excavated from 20 to 30,000 yards of Stone out of the Bluffs near that place with picks & bars that it was all loose, easily quarried with picks & bars & that he should think by the look of the rocks in the bottom of the river that it might be quarried with picks & bars, that the rocks along the line of the Canal from an examination of the surfaces may be easily quarried with picks & bars that rock in Bluffs was excavated very easily & the rock in Canal very hard & tough

The plaintiffs then recalled Hart L. Stewart who further testified that he was at the Canal office in Lockport at the time the commissioners of said Canal were preparing to let contracts on said Canal that he was informed by those connected with the office that the rock was similar in character to the Quarry near Bridgeport when rock was excavated easily by picks & bars W^m Gooding at that time told him that the rock on the line of the Canal could be quarried with

picks & bars, ^{as} he understood him and that powder would not be used that such was his impression & that he bid for work under that impression that he is confident he obtained the information from some one authorized to give information & that he knew that this matter in relation to solid & quarried rocks, had been in dispute ever since the commencement of the work. In answer to question propounded by the Defendants Counsel he testified that he was positive he derived his impressions from the ~~conversations~~ ^{conversations} that it was with one of the officers of the Canal & that he could not state who or whether it was with Mr Gooding.

The Plaintiff then called William H Adams as a witness who being sworn as a witness testified that he was at the canal bidding in 1836 that he put in a bid with General Stewart that in a conversation with Mr Gooding at the Canal office. I think General Stewart asked Mr Gooding what the character of the work was Mr Gooding informed him that the rock could be quarried with a bar. In answer to questions propounded by defendants Counsel Witness testified that he could not say he had used the language of Mr Gooding - but that Mr Gooding said it could be quarried without the use of powder that Mr Gooding did not refer to any particular work & that he had not thought of the matter since that time.

Plaintiff then called W. of Greenwood as a witness who being sworn testified that in 1836 he was employed in the Treasurers office at the Canal office in Lockport that he heard frequent conversations, W. P. Thornton W. B. Archer then Commissioners of the Illinois & Michigan Canal in relation to the character of the rock on the Canal.

line that he heard Mr Archer say that the rock was all stratified & could be quarried with bars & that ~~more~~ or ~~less~~ powder would be used & there were the representations made by all the commissioners to contractors & others when the contractors called into the office. They refused to the rock at Bridgeport that it had always been his impression from the conversation of the commissioners that the rock could be excavated with ^{much} powder that this conversation took place about the time of the first letting - that Archer said it would be a gain in the contracts & that solid rock would be paid for as such.

The Plaintiff then recalled Robert Nugent who further testified that he had a conversation with the commissioners of the Illinois & Michigan Canal at the first letting of Jobs on said Canal - that he made a proposition for work on said Canal with an item for rock that could be excavated without powder & the commissioners stated that it was substantially the same as the item in their contract & that the rock under the contract would be estimated the same as under his proposition. In answer to questions propounded by defendants counsel he testified that he was interested in a contract in 1834 made at the same letting with Alexander R. Groves - that commissioners stated that no powder was necessary to excavate the rock & that it could be excavated with picks & bars that he does not know whether Mr Boyer was present at the conversation above alluded to in relation to the contracts & propositions varying.

The Defendants then recalled William Gooding as a witness who further testified that he

never did state that powder would not be used that he stated that the rock could be worked without powder but not with economy, that less powder would be used on this rock than on unstratified rock that powder would be uniformly used when cutting was deep - I stated uniformly that when an advantage could be obtained by the stratification it would be considered quarried rock that the term quarried rock in the contracts a schedule which ^{put} up & contained in the advertisements for the letting was pointed out to him & his opinion asked by contractor what in your opinion is rock which can be quarried, that he answered as before stated that his opinion was very generally sought & that he thinks Boyer asked it & he answered as before stated that the meaning of the phrase ^{rock} the stratification of which would facilitate excavation, that some contractors suggested powder as best but he told them no powder would be used in all cases of deep excavation

Defendants then introduced Guardian of Hubbard as a witness who being sworn stated that he was Treasurer of the Board Commissioners of the Illinois & Michigan Canal in 1836 that it was supposed by Commissioners that it would be necessary to use powder & they concluded there was no solid rock because it was stratified that that opinion was generally given to contractors that it was the understanding of Commissioners, Engineers & contractors that stratified rock should not be estimated as solid rock, that powder was not the test that he supposed no strata was more than two feet & could be lifted with powder In answer to questions propounded by Plaintiff Counsel Witness testified that the strata were not loose but generally solid that it was supposed that the excavation could be done

Much cheaper with powder than in any other way, & that it would be universally used.

Plaintiff then introduced Robert Milnes as a witness who being sworn testified that he was acquainted with rocks ~~rock~~ that he knew Section 58 of the Illinois & Michigan Canal that the rock in that Section was solid rock & not quarried rock - until it was excavated that all rock after it was excavated was by some called quarried rock - that it was stratified.

The Defendants then introduced John C. Dodge as a witness who being sworn testified that he was acquainted with John H. Boyer in his lifetime that said Boyer told him that he did not consider his contract on the Canal good for much - that he had sold out his interest in it - that he had been a partner with Prugne.

The Plaintiff then called Giles Spring as a witness who being sworn as a witness testified that he was instructed by ^{Peters} Prugne and John H. Boyer to draw up an agreement for the settlement of their copartnership, that they stated that they had settled and that Prugne was to have the tools & personal property, belonging to said Section and that Prugne was to pay the debts and that Boyer reserved all rights under the contract and retained all of the rights and interest under the same. That he drew an agreement containing in substance the above stipulations between the parties & gave it to Prugne who said that it was correct but that he did not want them to sign it. The agreement was never signed to the knowledge of the witness and he believes it never was signed he had heard both Prugne and

* The Defts then introduced a letter of the
H Boyer abandoning the work a copy of which
is hereto annexed and marked No. 10
and
made part of this bill.

Agmt &
letter of fact

Esti
mats

Boyer State frequently afterwards that such was
the agreement. Mitrop. further produced the agree-
ment hereto annexed marked and the letters of
attorney hereto annexed and proved their execution
and testified that they had ever since their execution
and that he had the control of them for the purpose
of the prosecution the claim on said sections - all
of which was objected to by Defts. & altogether overruled
& exceptions entered + (margin)

The Defendants Counsel then introduced
all the estimates made for work done on said section
copy of which marked No. 11 &c are hereto attached
& made part of this bill, together with receipts of the
same signed by said Boyer & the receipts of Salton-
Stall as a figure a copy of which is hereto attached
& marked No. 12 & made part of this Bill & then re-
called William Gooding who testified that said
estimates were made by him as Chief Engineer &
that the work done on said section was ~~rock~~^{rock} which
in his opinion could be quarried & that he had es-
timated & certified the same accordingly

Thereupon the plaintiffs ^{Counsel} asked the Court to give
the arbitrator the following instructions

That they were to allow to the plaintiffs the
amount of the solid rock and ground rock excava-
ted under said contract at the prices specified in
the contract after deducting the amount paid for
the same and the character & quantity of each
kind of excavation was to be determined by them
as questions of fact from the evidence given before
them

That they are to decide the amount and character
of the excavation from the evidence and the price to

to be estimated according to the contract.

Which the Court gave subject to the instructions given by him at the request of the defendants Counsel as hereinafter set forth.

And the Defendants Counsel also asked the Court to give to the arbitrators the following instructions which the Court gave

- 1st That there is no question before them as to the existence of the law, under which they are acting that that question was for the Court to determine and has been decided so far as respects the present action of the arbitrators upon competent proof.
- 2^d That the arbitrators are to be governed by the law of the last session, as to their duties and the matters to be arbitrated and determined that there is no construction that can be given to that law, either by its letter or equity, by which it is to be inferred that the State meant to deprive the Board of Commissioners of any substantial, legal or equitable right or defence against the claim, about which they are to arbitrate, and consequently, in determining the quantity of each kind of work and whether anything is due, both parties stand upon their legal rights unimpaired by the law, except so far it has effected the remedy, or mode of proceeding.
- 3^d That in determining the quantity of each kind of work reference must be had to the quantity and kind performed under the contract, and in determining the kind of work reference must be had to the classification given in the contract, and where the contract has in any

particular Classification, itself fixed and declared
the kind of work, the arbitrators are not at liberty
to go out of the contract, to determine the kind
The Court therefore instructs the arbitrators that when
the contract classifies rock which in the opinion of
the Chief Engineer can be quarried" the contract clas-
sification itself defines the kind and it is to be so es-
timated. And the Court also instructs the arbitrators
that if they shall believe from the evidence that any
of the rock was at or about the time of the excavation
estimated by the Chief Engineer with the honest and
sincere opinion that it was rock that could be quarried
and that the Chief Engineer was competent to form
a correct opinion they should be guided by that esti-
mate under such opinion. But if the arbitrators shall
believe from the evidence that no estimate of any
rock which in the opinion of the Chief Engineer
could be quarried was in fact made at any par-
ticular time or times or that the Chief Engineer did
not at the particular time or times of making any
estimate entertain an honest and sincere opinion
that it was rock that could be quarried or that the
Chief Engineer was incompetent then the arbitrators
are to arrive at the kind of excavation by all the
evidence in the case.

The Court construes the following words in the contract
viz "rock which in the opinion of the Chief Engineer can
be quarried" as a fixed classification by itself
defined by the act of the parties, and intended to be
conclusive by preventing disputes between the
contracting parties on a point on which an honest
difference of opinion might be presumed or supposed
to arise in the course of the excavation.

4th That admitting that the arbitrators are now sitting, as an equitable, as well as a legal tribunal, and can in equity go behind the contract for the purpose of inquiring whether there was any fraud or misrepresentation on the part of the commission or their agents as to the kind or quality of the work, yet in considering that fact the arbitrators must take into consideration the nature & character of the subject matter about which the representation was made, whether the contractor could or could not by the exercise of ordinary skill or attention as a contractor for that kind of work have at the time found an accurate or approximate estimate of the character of the subsequent developments from the representations and information given, whether there was an intent to mislead, whether the subsequent excavation was susceptible of accurate or approximate estimate at the time the contract was made, whether the character of the subsequent developments was or not as susceptible of being ascertained by the contractor or by the commission, and whether the commission meant or not and were so understood by Boyer by the representations and information given by themselves and agents to warrant the kind of work.

5th That as to the question of back percentage, if there was an abandonment of the contract, and that abandonment was in consequence of default on the part of Boyer it cannot be recovered - if it was not in consequence of the default of Boyer it may be recovered, unless it has been subsequently paid by the commission to some other party who was legally authorized to receive it, or who

received it by the authority, or consent of Bayer, all of which facts are left with the arbitrators to determine from the evidence.

6th That an abandonment of the contract by the claimant without any claim for such abandonment by the default or neglect on the part of Bayer, would not operate so as to deprive the claimant in this suit of the full amount due for work previously done under the contract including back percentage unless subsequently paid as stated in the last instruction.

7th That as to the question of intent it is left to the discretion of the arbitrators, depending upon the facts whether any money is now due to the claimant, which has been unreasonably or vexatiously withheld from him or any person under whom he claims.

8th That if the arbitrators shall believe from the evidence that any of the rock excavation was not estimated by the Chief Engineer as rock which in his opinion could be quarried, or that such was not his honest and sincere opinion at the time of the estimate or that he was incompetent then they are to determine the kind of rock by the known acceptation in which the terms used in the contract designating the description of rock were known at the time, or by the conversations of the contracting parties at the time as to the particular meaning in which the words were used in the contract, according to the evidence, the object in such ^{case} being to arrive at the intention of the contracting parties by the best and most satisfactory evidence given on the trial.

9th That if the arbitrators shall believe from the evidence that estimates ^{were} from time to time made by the Chief Engineer of rocks according to a particular classification, that payments were received by Bayer

upon such estimates & work subsequently done by him under the contract that these facts would be strong Evidence to shew an acquiescence on his part in the correctness of the Estimate or which he had been previously paid and a settlement of it

Whereupon the Counsel for the plaintiff excepted to the instructions given by the Court at the request of the defendants Counsel

And afterwards to wit on the twenty second day of January in the year one thousand eight hundred and forty eight in the Term of November the said Arbitrators made their award in the premises in the words and figures following.

The undersigned having been appointed by the Judge of the Cook County Court, under an act of the Legislature of the State of Illinois entitled "An act for the relief of John H. Boyer" approved March 1. 1847 to arbitrate and determine the matters and things and perform the duties as arbitrators mentioned and specified in said act and having ^{been} first duly sworn according to law and having heard the evidence adduced on both sides, the arguments of the respective Counsel and the instructions of the Court do make the following award in the premises that the quantity of each kind of work performed under the contract and the amount due to be as follows

To 2290.36 Cubic yds Earth Exc	@	33cts per yd	\$775.80
" 13010.05 " " Rock " "	"	150 " "	<u>19515.07½</u>
			\$ 20.270.87½

By Has been paid by the State 18,859.20
 Balance due \$ 1411.67½
 Interest from Oct 1st 1847 873.12½
 Total now due \$ 2,284.80

Chicago January 22^d 1848 We award to the Claimant the above amount of \$ 2,284.80

J. H. Waper
 John B. Turner
 H. P. Woodworth

And afterwards to wit at the February term of the Cook County Court the plaintiff by his attorneys filed their motion herein in the words and figures following

State of Illinois, Cook County, Court of the Cook County, 3rd February Term 1848

William W. Gattinshall
 of and for John H. Boyer

or
 The Board of Commissioners
 of the Illinois & Michigan Canal.

Now comes the said plaintiff & moves the court by his attys Spring & Wilson to set aside the award made by the arbitrators in this case

Because the arbitrators have not executed the powers conferred upon them by the act under which they assumed to act & (Margin)

Because the arbitrators have not arbitrated & determined the quantity of any kind of work

* Because the arbitrators have neglected to award in relation to the matters expressly submitted to them to determine and decide.

performed under the contract, referred to in the preamble to the act, entitled, an act for the relief of John H. Boyer, approved March 1. 1847, as required by said act.

^{The arbitrators in relation to the case governing the case}
Because the Court ^{because the Court permitted} directed, in competent testimony, to be given before the arbitrators, the objected to by the counsel for the plaintiff

Because the court would not permit competent evidence to be given before the arbitrators when offered by the plaintiff but refused the same

Giles Spring

Atty for Plaintiff

And thereupon the Court overruled said motion

And the counsel for the plaintiff excepted to the decision of the Court in overruling said motion and also the instructions given by the Court to said arbitrators at the request of the Defendants Counsel & pray that this Bill of Exceptions be signed and sealed which is accordingly done

Hugh F. Wickley, LS

(A.)

An act for the relief of John H. Boyer

Whereas a contract was heretofore entered into between the late Board of Commissioners of the Illinois and Michigan Canal on the one part, and the late John H. Boyer dec'd on the other part for work on the said Canal upon which contract the legal representatives and assigns of said Boyer claim that a balance is due from said Board for work actually performed under said contract

And whereas the said claim has been assigned
to said W. W. Sattonsall who is now presenting
a suit against the Acting Commissioner of said
canal or against the State Treasurer in the Cook County
or Circuit Court to recover a balance alleged
to be due for work performed under said contract,
and whereas the said Sattonsall for the purpose
of saving costs and bringing said suit to a speedy
conclusion, is desirous that the said claim may
be referred to arbitration. Therefore

Section 1. Be it enacted by the people of the
State of Illinois represented in the General
Assembly, That the Judge of the Cook County
Court is hereby authorized and required to
appoint three practical engineers or persons
acquainted with canal work, not having been
engaged on the Illinois and Michigan Canal,
whose duty it shall be after being duly sworn to
arbitrate and determine the quantity of each
kind of work performed under said contract,
and the amount which may be due for work
performed at the price stipulated in said
contract, according to law and in the direction
of the said Cook County Court and their award
or the award of any two of them, being returned
into Court, it shall be the duty of the said Court
to enter a judgment thereon as upon a verdict
of jury which shall be final and conclusive betw-
een the said parties, and upon such judgment being
rendered the Governor shall issue certificates of
canal indebtedness bearing interest for the amount
of said judgment.

Approved March 1st 1847

Department of State

J. H. G. Cooley, Secretary of State, do hereby certify the foregoing to be a true copy from the enrolled law deposited in my office



Witness my hand and the great Seal of the State at Springfield,

this 1st day of March A. D. 1847,

J. H. G. Cooley

Sec. of State

(B)

Articles of agreement made and concluded the thirteenth day of July in the year Eighteen Hundred and thirty Six Between John H Boyer of the one part and the Canal Commissioners of the State of Illinois of the other part, whereby it is covenanted and agreed as follows, to wit: The Said John H Boyer covenants and agrees to construct in a good substantial and workmanlike manner all that part of the Summit division of the Illinois & Michigan Canal which is included in Section Fifth, eight of the line of Said Canal; reference being had to the location and map of Said Canal made by William Gooding Chief Engineer in the employment of Said Commissioners. The Grubbing of timber to be one hundred feet wide, and laid out as shall be directed by the Chief Engineer for the timbering from which width all trees, saplings, bushes and roots, shall be cut and grubbed up; and together with logs, Brush and wood of every description, shall be burned up or removed from the ground to be occupied in constructing Said Canal, and

two Strips, one on each side, and adjoining the above mentioned grubbing, making together fifty feet in width, shall have all its trees, Saplings, bushes and Stumps cut within one foot of the ground, and together with wood of every kind shall be burned up or removed from the ground to be occupied by said Canal, and no part thereof nor any other substance shall be laid, piled or left on either of the sections adjoining this contract, all large trees not embraced in the clearing and grubbing aforesaid, which stand within ninety feet of the centre line of said Canal, and which by falling after the canal is completed, might break the bank, or obstruct the navigation, shall be cut down and removed as may be directed; for a space of suitable width under each bank, all rocks, staves or perishable matter, and all loose earth shall be excavated and wholly removed into the outside of the bank this work shall be in all cases two chains in advance of the embankment of which it is to form the base, The Canal to be so constructed that the water shall be at least thirty six feet wide on the bottom, sixty feet wide on the top water line, and six feet deep, the banks shall be at least three feet vertical measured above the top water line, and such a slope preserved in earth excavations, both above and below the top water line, as that one foot vertical rise shall give a horizontal base of two feet; the surface of the towing path shall be at least ten feet wide, and the surface of the bank opposite the towing path shall be seven feet wide, The banks of the Canal shall be constructed of the mat

pure, solid and water tight earth that can be obtained from the adjoining excavation: and can shall be taken to place all coarse materials, or such as are perishable, or permeable to water, entirely in the outer extremities of the Banks and to form the inside of the Banks of the most solid and water tight earth that can be obtained as aforesaid, and when necessary to use the surface earth within the prism of the canal, to line the bottom of canal, and face of banks, the work shall be prepared to receive the lining within one hundred feet of the place from whence it may be taken as aforesaid, and the surface earth, in such case shall not be removed until it may be carried directly to the place where it may be required for lining. When the prism of the canal does not afford materials sufficiently impervious to form the banks or bottom of canal, it may be procured at such other places as the Chief Engineer for the time being shall direct. The materials for the bank and lining shall be laid on in an even manner so as to prevent the courses parts from running together: whenever it may be required the materials on the face of bank, and on bottom of canal shall be puddled, so as to render the same solid and more impervious to water. All earth necessary, excavated for the prism of canal, or to make room for lining, or under the banks, shall be estimated as excavation (except steep sides hills) where the bank shall be estimated as embankment, and no estimate in such case to be made for excavating the prism of canal, unless it be rock, cemented clay

and gravel, or cemented sand and gravel or quick sand, which in all cases are to be estimated as excavation, and their contents deducted from the embankment when occurring in side hills) and in all cases where the earth necessarily excavated is not removed more than one hundred feet to form the adjoining bank or banks, no estimate for embankment shall be made, and whenever the prism of the canal does not require any excavations or fall short of being sufficient to form and complete the adjoining bank or banks, then the materials necessary to complete such embankment shall be taken from the main surplus excavation, or such other place as the Chief Engineer for the time being may direct. The spoil banks or surplus earth shall be laid in an even, regular manner the inside face shall have such slope as the acting commissioner or Chief Engineer may direct, and the top finished in a uniform plane, having sufficient declivity to readily carry the fallen water of the back side. All trees, logs, stumps and bushes shall be burnt up or otherwise disposed of, so as to do no unnecessary injury to the adjoining lands through which the canal passes. No public or private road which crosses the line of canal shall be obstructed by excavation or otherwise until directions shall be given by the said Engineer. No complete the canal across such road or highway. And it is further agreed that if at any time any overseer or workman employed by said contractor shall be found unfaithful or incompetent or be deemed to be so by the acting commissioner or Chief Engineer for the time being.

The contractor in the direction of said Commissioner or Engineer shall forthwith dismiss any such person and no longer employ him on any part of the work.

And the said John H. Boyer further agrees that every part of the earth work comprised in this contract shall be done according to the plan and directions of the acting Commissioner or the Chief Engineer and be subject to such alterations from time to time as they or either of them may direct, and that any deviation from the present line that shall not materially change its location, and that shall be adopted to give greater regularity, ease or symmetry to the said line shall not be considered as giving any claim for extra compensation; and it is mutually agreed, that the said works during their progress shall be subject to the examination and inspection of the said Commissioner or Chief Engineer for the time being, and to prevent all disputes and misunderstandings, it is mutually agreed, that the said Engineer shall determine the amount or quantity of the several kinds of work herein contracted to be done, and decide every question which can or may arise relating to the execution of this contract on the part of said contractor and his estimate and decision shall be final and conclusive.

And the said Commissioners covenant and agree to pay to the said John H. Boyer for completing this contract as aforesaid the following rates to wit,

- For grubbing and clearing, and felling and clearing } Dollars
 trees without the bounds of Canal
- For grubbing and clearing ~~extra~~ width, at the rate of dollars per acre
- For chopping and cleaning ~~extra~~ width, at the rate of dollars per acre
- For excavation, excepting Stone that measure over one } thirty, three
 cubic foot each, rock cemented clay and gravel or } cents per cubic
 cemented sand and gravel or quicksand, at the rate of } yard
- For excavation of solid rock, at the rate of Two hundred & seventy,
 five cents per cubic yard
- For excavation of State rock, at the rate of Two hundred cents per
 cubic yard
- For excavation of rock, which in the opinion of the Chief Engineer
 can be quarried, at the rate of one hundred & fifty cents per cubic yard
- For excavation of cemented clay and gravel, or cemented sand & gravel
 at the rate of Seventy five cents per cubic yard
- For excavation of quick sand, at the rate of cents per cubic yard
- For embankment Fifty cents per cubic yard
- For lining from surface earth obtained in the prism
 of canal, not more than ten chain distance from
 lining, the same not paid for as excavation or em-
 bankment, at the rate of cents per cubic yard
- For lining not procured from prism of canal within
 ten chains, at the rate of cents per cubic yard:
- For spading earth after the same has been deposited, at the rate of
 Fifty ^{six} cents per cubic yard
- For slope wall, at the rate of Fifty cents per cubic yard
- For excavation of detached rock at the rate of one Dollar per
 cubic yard
- For excavation of side ditches at the rate of forty cents per
 cubic yard
- For

And it is further agreed, that whenever this contract in the opinion of the Chief Engineer for the time being shall be completely performed on the part of the said contractor, the said Engineer shall certify the same in writing under his hand, together with his estimate as aforesaid; and the said Commissioners shall within sixty days after notice of such certificate pay to the said John H. Beyer the sum which according to this contract shall be due him provided, however and it is expressly covenanted & agreed on the part of the said contractor that this contract shall be fully performed and completed on his part by the fifth day of June in the year one thousand eight hundred and thirty nine.

And it is further agreed that if in the opinion of the acting Commissioner or Chief Engineer for the time being the contractor shall refuse or unreasonably neglect to prosecute this contract as shall be required by said Commissioner, in order that its uniform progress shall give reasonable assurance of its completion as herein provided, or shall violate any of the provisions of the contract or shall in the opinion of the Chief Engineer for the time being perform the work imperfectly, and refuse to remedy such imperfection the acting Commissioner or said Engineer shall have power to certify such neglect, refusal or imperfect performance, in writing, to the Board of Canal Commissioners and it shall be in the power of said Commissioners upon receiving such certificate to declare and pronounce this contract abandoned on the part of said contractor, and the said Commissioners may proceed to contract for the work

with any other person or persons.

And the said Contractor further promises and agrees that he will not of or by his agents or agents give or sell any ardent Spirits to his workmen or any other person on or near the line of the said Canal, or allow any to be brought on, or near the works by the labourers or any other person; And he hereby further promises and agrees to perform the several stipulations of this contract by himself and workmen under his immediate superintendance and not by a sub-contract or sub-contract-
or.

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

Signed Sealed and delivered

In the presence of

Given under the private seal of the { John H. Boyer (Seal)
Secretary, no official seal being pro- { W. P. Phenton
vided at Chicago this 13th day of July { Acting Com. pro tem (Seal)
A. D. 1836. }
(Seal) J. Manning Secretary }

There being no official seal of the Board of Commissioners of the Michigan and Illinois Canal provided, therefore the parties to the within contract hereby agree to substitute therefore the private seal of the Secretary and covenant to waive all objections to the want of such public seal and take no advantage thereof
Given under ^{our} ~~our~~ hundred seal, at Chicago
this 13th day of July A. D. 1836.

Witness
J Manning }

John K. Boyer Seal

State of Illinois
Cook County }
} So.

I Walter Kimball Clerk of the Cook
County Court of Common Pleas within and
for the County of Cook and State of Illinois
do hereby certify that the foregoing is a true and
correct copy of a Bill of Exceptions in the
Case of William W. Manswell against John
K. Boyer as Complainant of the Illinois and
Michigan Canal, filed in the Office of the Clerk
of said Court on the Twenty eighth day of August
A.D. 1849. and now remaining on file therein.

In Testimony Whereof I have hereunto
set my hand and affixed the Seal of
said Court at Chicago this 17th day of
June A.D. 1850

Walter Kimball Clerk
W

United States of America }
State of Illinois }
County of Cook } J.

Shas before the Honorable Hugh
J. Wickes Judge of the Cook County Court, within
and for the County of Cook and State of Illinois
at a Regular Term thereof begun and holden at
the Court House in the City of Chicago in said County
and State on the first Monday being the second
day of October in the year of Our Lord One thou-
sand eight hundred and forty eight and of the
Independence of the United States the Seventy
third.

Present the Honorable Hugh J. Wickes Judge
Patrick Ballingall Prosecuting Attorney
Isaac Cook Sheriff
Alfred James Crosby Clerk.

Be it Remembered that on the twenty
eighth day of October A.D. 1848, the said day
being one of the days of the said October Term
A.D. 1848 of said Court, the following proceeding
was had and entered of Record to wit,

William W. Dalton & Co
assigns of John H. Boyer }
vs } Covenant
Commissioners of the Illinois
and Michigan Canal }

And now comes
the parties by their Attorneys, and the Court being

Now fully advised on the Motion to set aside the
Award made and returned to the Court, and on file
herein. After mature Deliberation, had the Court
and deny the said Motion. And do satisfy and
confirm the said Award, to which Opinion and
Decision of the Court the said Defendant excepts,
And thereupon by Consent of Parties leave is granted
to file a bill of exceptions in Vacation with the same
effect as if filed in Term.

It is therefore Considered that the said plain-
tiff do recover against the said Defendant the said
Sum of Two thousand two hundred and eighty
four dollars and eighty Cents, the Amount re-
ported due said Plaintiff, on the twenty second
day of January One thousand eight hundred and
eighty eight, by the said Arbitrators, as appears by their
Award entered of Record herein, and the Costs of
this Suit by him in this behalf expended, and the
Costs of said Award, and have execution there-
for. And that a Copy of the record in this cause
be made and Certified under the Seal of this
Court to the Governor of the State of Illinois.

Hall of Illinois
Cook County

J. Waller Humball Clerk of the
Cook County Court of Common Pleas within
and for the County and State aforesaid do
hereby Certify that the foregoing is a true Copy

And Transcript from the Records of said Court
now remaining in my office.

In Witness Whereof I have hereunto
set my hand and affixed the Seal of
said Court this 17th day of June A.D.

1850.

Walter Kimball
Clerk

Cook's Ct of Com Plus

William W Sultanhall
Assignee of Geo H Boyer

Commissioners Illinois
& Michigan Canal.

Filed June 21. 1850.
C. Seland Clk.



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Dated Chicago July 15 1854

To John C Champlin

Arrangement in relation to
bill was made with Giles Spring
I understand the bill of exceptions
was filed according to agreement
cannot contradict Arnold's
affidavit
Jno M Wilson

217-21

J C Champlin
Ottawa

Supreme Court

William W. Satterthwaite

vs. Off. in error } Over to Court

vs

Carroll Overmaturity } Left in error

State of Illinois, p. J. W. Arnold being
Sworn dep. that he
was the attorney for, & pursuant in error,
having the management of the same,
that the endorsement on the record
(first page) "It was agreed this should
be ^{considered as} done in court more pro tunc." has
reference to the hearing before the Board
of Arbitrators which by agreement was
had in vacation. ^{a had no reference to the Bill of exceptions - according to best of his recollection} This case was
disposed of in ^{October} August A. D. 1848. The
Bill of exceptions was not signed or
filed until August 1849 - as appears
by the record, &c. & this document states that
the agreement that the Bill of
exceptions might be filed in vacation
with same effect as though filed
in term, expired as he supposed & believes
on the expiration of the vacation
next following the said order -
That the Bill was not signed
or filed until several terms thereafter,
- that no current was given

to its being signed & filed
at the time when the same
was filed - but this objection
on behalf of the defendant
objection to the same -
before the same was filed.

Subscribed & sworn to
before me this 15th day
of July A.D. 1852.

L. Island Ck. Sup Court
By P. W. Island Jy.

J. W. Arnold

Salton Stait asygn
vs.
Canal Comrs

Filed July 15th 1852
L. Deland Clk.
By P. W. Deland

Supreme Court

William W. Sattersted
opinion of Mr. R. Boyer

Commissioners of the
I. M. & Mich. Canal

The defendants in error by J. N. Arnold their attorney Counsel & Messrs the Court, to whom the writ of error in this case - & to strike the Bill of Exemption from the files - on the following grounds -

1. No writ of error lies to the Award made in the matter -

a writ was pending in Cook's Circuit Court to remove ~~the~~ an alleged balance, against Acting Comm^r an act was passed by the Legislature March 1. 1837 - referring the matter to arbitration - & providing that the award "shall be final & conclusive."

2. The Bill of Exemption, was to have been filed - in the vacation of October Term 1848 - was signed & filed until 28th of Aug - 1849 - after several terms & vacations had

gone by -

3. The Bill of Exceptions was not filed in time it is signed & filed without authority or consent of parties -
4. It appears on the face of it that, but a very small part of the evidence is embraced in the Bill of Exceptions, no proper parties upon the same, & for other reasons -

J. R. Arnold
Atty for Lupton & Co

The Pff. in Error has not complied with rule to file same taken at last term -
Arnold

Supreme Court

Mr. Mr. Satterstade
Opinion &c

Board of Commrs.

Ills. & Pa. Canal

Mo. to Shinnip wit
of run & strikes
Bill of exceptions
from files -

Filed June 29, 1852
L. Leland Clk.

State of Illinois }
County of Cook }

Cook County Court
of Common Pleas

William W. Salthinstall
Assignee of John W. Boyer

vs
The Board of Commissioners
of the Illinois Michigan Canal

Covenant

Be it Remembered
that heretofore, to wit, On the twenty Eighth day of
August in the year of Our Lord One thousand Eight Hun-
dred and Forty Nine, there was filed in the above entit-
led Cause, a Bill of Exceptions, which has an endor-
ment on the back thereof, in words and figures, as
follows, to wit:

" Cook County Court
William W. Salthinstall
Assignee &c

vs
Board of Commissioners

Bill of Exceptions
Signed, "

" Filed August 28th 1849

Walker Kimball, Clerk,

In testimony whereof I have hereunto set
my hand and affixed the Seal of Said Court
at the City of Chicago in Said County this 24th
day of June A D 1852

Walker Kimball, Clerk

fees 50c paid by depts.
W Kimball clerk

Supreme Court

W. W. Satterthall
vs
et al

~

Board of Circuit Judges,
& Middle. Circuit

Receipt

Filed June 29th 1852.
L. Leland Clerk.