

Jefferson County Circuit Court
Case File - Civil
April 1858, No. 23

Box #

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Folder #

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O'Fallon, John Jr
vs
St. Louis & Iron Mountain
Railroad Company

Debt

Debt \$1,250 assessed for right of
way, \$4,643.75 for cross ties; judgment
for plaintiff \$4,245.28; bill of
exceptions; Book 4, p. 267

John O'Fallon, Plaintiff
against

St. Louis and Iron Mountain
Rail Road Company
Defendant.

In the Circuit
Court of Jefferson
County Missouri

The plaintiff states that heretofore
the St. Louis and Iron Mountain Rail Road Com-
pany located their road through Jefferson
County aforesaid and in order to obtain the
right of way over certain real estate belo-
nging to the plaintiff lying at the Sulphur
Springs in said County, defendants applied
to this Court for commissioners to enclose
the right of way over said land of plain-
tiff. This Court appointed Parham H. Burren
Charles & Rankin and George M. McKitt
commissioners for that purpose who after
viewing said real estate of plaintiff
made their report to this Court. In
this report said commissioners assessed
in favor of plaintiff against defendant
the sum of twelve hundred dollars damages
for the right of way and use of the
land of plaintiff aforesaid. This report
was filed and approved & confirmed by
this Court at its May Term 1857. from
which no appeal was taken and
is now in full force. By reason of
which plaintiff is entitled to the sum
of twelve hundred dollars which is
yet due and unpaid and for which
plaintiff asks judgment and per cent
awest from the May Term 1857

J. A. Real Atty
for plaintiff

State of Missouri
County of Jefferson

} ss J A Deal Atty for
plaintiff for plaintiff States
on oath that the foregoing petition and the
matter as therein stated he believes to
be true J A Deal

Sworn to and Subscribed
before me Mar 30th 1858
Elias J Honey Clerk }

Filed. Mar 30th 1858

Elias J Honey Clerk

John O'Fallon Plaintiff

vs

The St Louis & Iron Mountain

Rail Road Company Defendant

In the Circuit Court of Jefferson
County Missouri

The plaintiff states that defendant owes him two thousand, eight hundred and forty three dollars and seventy five cents for cross ties sold and delivered by the plaintiff to the defendant for the construction of their road also that the defendant owes said plaintiff eighteen hundred dollars as a bonus and compensation that plaintiff would deliver a certain number of ties to defendant on the line of their road in a specified time, that plaintiff undertook to deliver said ties in that time and did deliver about twenty thousand or perhaps more ties but failed to deliver the complement of ties in the specified time in consequence of the neglect on the part of the defendant to furnish the necessary money they promised plaintiff to furnish as the ties were delivered. All of which will appear by an account of the items herewith filed. Plaintiff asks judgment for four thousand ^{six hundred} and forty three dollars and seventy five cents on the above items.

Real & Noell

John O'Fallon being sworn says that the foregoing petition & the matters as therein stated he believes to be true.

Sworn to and Subscribed

before me Mar. 29th 1858

John O'Fallon Jr.
Elias O'Keefe Clerk

1536

John O'Fallon Jr

at 1 Section

Ad. from Mt. Reid Road Co

Chd

Ad. Mar. 30th 1858

Ohio D. H. Cooney
Chd.

2 Copies Oct. 1. 25	
2 Cuts Huts	100
mail H. etc.	130
3 Cuts	25
pub.	9
	44. 29

1857	The Lewis and Iron Mountain Company	
	To John O'Fallon	
	To 1000 cross ties 45	\$450.00
	" balance due on contract for cross ties	
	Separate from the 1000 ties	1100.00
	" amt promised to pay for fulfilling	
	contract in a stipulated time	1800.00
	1275 cross ties 450	573.75
1858	1600 " " "	720.00
	100 for double stables -	100.00

State of Missouri }
 County of Jefferson }

John O'Fallon being sworn
 Says that the foregoing Account is correct & true
 to the best of his knowledge & belief

John O'Fallon Jr.

Sworn to and subscribed
 before me Mar. 29th 1858 }
 Chas D Honey clk }

Spellen

as

St. Louis 1844

Dict of Particulars

Jul 24 1844

John O'Fallon Plaintiff
against
St. Louis and Iron Mountain
Rail Road Company Defendant.

In the Circuit Court of
Jefferson County Missouri
The plaintiff States, that heretofore the
St. Louis and Iron Mountain Rail Road Com-
pany, located their road through Jefferson
County aforesaid, and in order to obtain the
right of way over certain real estate, belonging
to the plaintiff, lying at the Sulphur Springs
in said County, defendants applied to this
Court for commissioners to condemn the right
of way over said Land, of Plaintiff. This Court
appointed Paschal H. Buren, Charles S. Rankin
and George M. McVitt, commissioners for that
purpose, who after viewing said real estate of
plaintiff made their report, to this Court. For
this report, said commissioners assessed in fa-
vor of plaintiff against defendant, the sum of
Twelve Hundred dollars damages, for the
right of way and use of the land of plaintiff
aforesaid. This report was filed and approved
and confirmed by this Court, at its May Term
1857, from which no appeal was taken
and is now in full force. By reason of
which plaintiff is entitled to the sum of
Twelve Hundred dollars which is yet due
and unpaid, and for which plaintiff asks

Judgment, and for interest from the May
Term 1857 J A Beal Atty for Plff.

State of Missouri

County of Jefferson } ss. J. A Beal Atty for.
Plaintiff States on oath that the foregoing peti-
tion and the matters therein stated he be-
lieves to be true.

Sworn to and Subscribed } J. A Beal.
before me Mar. 30th 1858
Elias J Honey Clerk }

Endorsed

Filed March 30th 1858.

Elias J Honey Clerk

John O Fallon Plaintiff
against
The St Louis Iron Mountain
Rail Road Company Defendant }

In the Circuit Court

of Jefferson County Missouri

The plaintiff States that defendant owes him
two thousand eight hundred and forty three
dollars and seventy five cents. for crop ties
sold and delivered by the plaintiff to the de-
fendant, for the construction of their road
Also that the defendant owes said plaintiff
eighteen hundred dollars as a bonus and
compensation that plaintiff would deliver a
certain number of ties to defendant, on the
line of their road in a specified time, that

plaintiff undertook to deliver said ties in that time and did deliver about Twenty thousand or perhaps more ties but failed to deliver the complement of ties in the specified time in consequence of the neglect on the part of the defendant. to furnish the necessary money they promised plaintiff to furnish as the ties were delivered. All of which will appear by an account of the items here-
with filed. Plaintiff asks Judgment for four thousand Six hundred and forty three dollars and Seventy five cents on the above items.

Beal & Noell

John O'Fallon, being sworn says that the foregoing petition and the matters as therein stated he believes to be true
Sworn to and subscribed } John O'Fallon Jr.
Before me Mar. 29 '1858 }
Elias D. Honey Clerk }

Endorsed.

Filed Mar. 30th 1858

Elias D. Honey Clerk

A true copy of the original petitions on file in my office with the affidavits thereto attached

Witness my hand and the Seal of said Court at office

March 30th AD 1858
Elias D. Honey Clerk

John O'Fallon Plaintiff

Against

St Louis and Iron Mountain

Rail Road Company. Defendants

In the Circuit Court of

Jefferson County Missouri

The Plaintiff states, that, heretofore the St Louis and Iron Mountain Rail Road Company, located their road through Jefferson County aforesaid and in order to obtain the right of way over certain real estate belonging to the plaintiff, lying at the Sulphur Springs in said County, defendants, applied to this Court, for commissioners to, condemn the right of way over said land, of Plaintiff. This Court, appointed Paschal. H. Burren. Charles S. Rankin, and George. Mc Nett, commissioners for that purpose, who after viewing said real estate, of plaintiff, made their report, to this Court, in this report, said Commissioners agreed in favor of Plaintiff against Defendant, the sum of Twelve Hundred dollars, damages for the right of way and use of the land of plaintiff aforesaid. This report was filed and approved, & confirmed by this Court at its May Term 1857. From which no appeal was taken and is now in full force. By reason of which plaintiff is entitled to the sum of Twelve Hundred dollars, which is yet due and unpaid, and for which plaintiff asks Judgment, and, for In-

terest from the May Term 1857.

J. A. Beal Atty for. Plff.

State of Missouri }
County of Jefferson } ss. J. A. Beal, Atty for
plaintiff states on oath, that the foregoing pe-
tition and the matters as therein stated he
believes to be true.

Sworn to and Subscribed } J. A. Beal
before me March 30th 1858 }
Elias J. Honey Clerk.

Endorsed, Filed March 30th 1858

Elias J. Honey Clerk.

John O'Fallon Plaintiff

Against

The St. Louis & Iron Mountain
Rail Road Company Defendant }

In the Circuit Court
of Jefferson County Missouri

The plaintiff states that defendant owes him
two thousand eight hundred and forty three
dollars and seventy five cents, for crop ties
sold and delivered by the plaintiff to the de-
fendant, for the construction of their road
also, that the defendant owes said plaintiff
Eighteen hundred dollars as a bonus, and
compensation that plaintiff would deliver
a certain number of ties to defendant on the
line of their road, in a specified time, that

plaintiff undertook to deliver said ties in that time, and did deliver about, twenty thousand or perhaps more, ties, but failed to deliver the compliment of ties, in the Specified time in consequence of the neglect, on the part of the defendant to furnish the necessary money they promised plaintiff to furnish as the ties were delivered. All of which will appear by an account, of the items herewith filed.

Plaintiff asks judgment for Four thousand Six hundred and forty three dollars and Seventy five cents. on the above items

Boal & Noell,

John O'Galloway, being sworn says that the foregoing petition and the Matters as therein stated he believes to be true

Sworn to and subscribed } John O'Galloway Jr.
before me Mar. 29th 1858 }
Elias D'Hooney Clerk

Endorsed

"Filed Mar. 30th 1858

Elias D'Hooney Clerk

A true copy of the original petitions and affidavits on file in my office

Witness my hand and the Seal of said Court at office Mar. 30th 1858
Elias D'Hooney Clerk

COUNTY OF JEFFERSON, SS.

The State of Missouri.

Saint Louis

To the Sheriff of the County of ~~Jefferson~~—Greeting:

We command you, that you summon *The St. Louis*
and Iron Mountain Rail Road Company

----- if they be
found in your County, that they be and appear before the Hon.
Judge of our Circuit Court, on the first day of the next term thereof,
to be begun and held at the town of Hillsboro, within and for the
County of Jefferson, on the fourth Monday of *April*
next, then and there to answer unto *John O. Fallon*

upon *his* original petition, a copy whereof is herunto annexed and
accompanies this writ—and have you then there this writ.

Elias J. Honey

Witness, ~~THO. C. FLETCHER~~, Clerk of our said Circuit
Court, with the seal thereof hereto affixed, at
office, in Hillsboro, this *thirtieth*
day of *March* A. D. 1858

Elias J. Honey

CLERK CIRCUIT COURT.

✓ No 23

To Jefferson Circuit Court

April Term 1858

John O'Fallon

vs. Summons

The St. Louis and

Iron Mountain Rail Road

Company

Filed April 10th 1858

E. F. Mooney clerk

Executed this writ in the County of St. Louis on the 2^d day of April
1858, by delivering a copy of the within writ and petition
as furnished by the Clerk to Mr. Madison Miller
President of the St. Louis & Iron Mountain Rail
Road Company.

Fee \$ 1.00

James Cortelle Esq
by Nicholas Borg Esq

COUNTY OF JEFFERSON, SS.

The State of Missouri.

Saint Louis
To the Sheriff of the County of ~~Jefferson~~—Greeting:

We command you, that you summon *The St. Louis*
and Iron Mountain Rail Road Company
if they be
found in your County, that they be and appear before the Hon.
Judge of our Circuit Court, on the first day of the next term thereof,
to be begun and held at the town of Hillsboro, within and for the
County of Jefferson, on the fourth Monday of *April*
next, then and there to answer unto *John O'Fallon*

upon *his* original petition, a copy whereof is herunto annexed and
accompanies this writ—and have you then there this writ.



Elias J. Honey
Witness, ~~THO. C. FLETCHER~~, Clerk of our said Circuit
Court, with the seal thereof hereto affixed, at
office, in Hillsboro, this *thirteenth*
day of *March* A. D. 1858

Elias J. Honey

CLERK CIRCUIT COURT.

Send on Partly
Apr 2. 1858

John O'Fallon

-N-

The St Louis and
Mountain Rail Road
Company

Copy Pet mrd for defendt

A true copy of the writ

Attest. } Elias J Honey

clh

intelligibly distinguished.

3^d Because No Contract for the delivery of ties, or the payment of any bonus, is specifically stated with the breach thereof in such a manner as to show any liability on the part of the Defendant.

4th Because said petition does not allege any Contract or agreement on the part of Defendant to pay plaintiffs any bonus for the delivery of ties.

5th Because said petition does not allege any performance on the part of plaintiffs or any readiness or willingness ^{sup} to perform any Contract, or to deliver any ties.

6th Because it appears from the face of said petition that no ties were delivered by them, ^{plaintiffs} and it is not stated that the non-delivery was without his fault.

Green & Carter
Attys. for deft

John C. Stearns
as
The Attorney & Clerk
for the R.R. Co
Memorandum.

Dated April 27th 1858
Charles H. Stearns, Clerk
over and over 1200 ft. x
duplicates as to the records

John A. Fallon Jr

vs
St Louis & Iron Mountain
Rail Road Company

In the Circuit Court
of Jefferson County
} action for ties

Amendment to petition filed by leave of
Court

Plaintiff further states that the Defendant made an agreement with him on the 14th day of July, 1886 whereby plaintiff was to deliver to Defendant sixty thousand cross ties as is particularly set forth in a written Contract ~~made~~ a copy of which is herewith filed in substance the original being in possession of Defendant to be delivered at the times and places therein specified that by said agreement which was accepted ^{& the signed by plaintiff} by Defendant, the said Defendant in addition to the prices to be paid as therein set forth ~~was~~ to pay the plaintiff on the completion of said Contract a bonus ^{or premium} of eighteen hundred Dollars for the faithful fulfillment of said contract by the plaintiff. That in pursuance of said agreement the plaintiff did commence to carry out his contract and did deliver to the Defendant about twenty thousand cross ties under said contract which were accepted by Defendant, ^{worth eleven thousand dollars for which he asks judgment} that said ties were to be paid for by Defendant monthly upon the estimates of the number delivered to be made that the Defendant failed to pay said monthly estimates and in consequence thereof the plaintiff was unable to complete his contract and was thereby prevented from delivering the whole of said ties according to his agreement Plaintiff says that having been in this way prevented by the Defendant from the completion of his said contract he is entitled to the said sum of eighteen hundred Dollars the premium aforesaid that an action hath accrued to him to have and recover of and from the Defendant the said sum of eighteen hundred Dollars and

for which and the interest he asks judgment
But & shall for plaintiff

John O'Fallon for master, oath and says he
believes the above amendment to his petition
and the matters therein as stated are true

John O'Fallon Jr.

Sworn to and

Subscribed before me May 4th 1858

Elias J Honey Clerk

Plaintiff further states that defendant
tore down and destroyed a stable belonging
to plaintiff which was reasonably worth
one hundred dollar, for which
he asks judgment in addition
to the above sum of eleven thousand
dollar, making in all including
the amount due plaintiff claimed
in his original petition of damages of
\$1200, the sum of twelve thousand
three hundred dollar for which he asks
judgment

John O'Fallon

John O'Fallon on oath states that
the above amended petition and
the matters therein as stated he
believes to be true.
Sworn to & subscribed
before me Oct. 30th 1855

John Dalton

Edw^d John M. R. M.

Amended. Petition

Filed May 4th 1858

Chas. H. Mearns
Clerk

COUNTY OF JEFFERSON.

The State of Missouri,

To Richard Green, Esquire, Doan Bro & Co. v. Wm Sanford

Greeting:

There are hereby commanded, that setting aside all manner of

service and delay, you appear before our Council Court for the

purpose aforesaid, on the 29th day of October next

at St. Louis, then and there to testify, and the truth to say in a

return under of controversy, now pending in our said Court, wherein

John D. Allen Jr. is

plaintiff and

Thos. Green Plaintiff vs. Doan Bro & Co. Defendants on the part

of Plaintiff

and hereby you are in no wise to fail.

Given 26th day

Witness, THOMAS C. FLETCHER, Clerk of our said Court

with the seal thereof hereto affixed, at office this

31st day of October A. D. 1858

Wm D. Honey

Clerk.

To Circuit Court.

Oct. Term 1858

John C. Fallon Jr.

vs
H. Davis & Son Mt. R.R. Co.

for \$1000 =

Michael Green

Andrew Geas

Geo E. Cowan

Wm R. Danforth

vs
Geo Jewkesberry

Shen Vt Feb 25 1858

I Executed the within writ at the
County of Jefferson on 22nd day of
October 1858 By Reading the same in
the presence and hearing of Michael
Green & Geo E. Cowan
Wm R. Danforth also on John
Jewkesberry 25th day of October
by Reading near Saver Shrop
by J. C. Parker
Ref.

COUNTY OF JEFFERSON.

The State of Missouri,
To Mrs E. Blake E. N. Hancock, Wm Parker & Burgess &c

Greeting:

You are hereby commanded, that acting under all manner of
excuse and delay, you appear before our Council Court for the
County aforesaid, on the 29th day of October next,
at St. Albans, then and there to testify, and the truth to say in a
certain matter of controversy, now pending in our said Court, between
Ditta O. Patton &c and Plaintiff and
The Kansas & Iowa Southern Railroad Co. Defendants on the part
of Plaintiff and hereby you are in no wise to fail.

WITNESS, THOMAS C. FLETCHER,

Clerk of our said Court.

with the Clerk aforesaid, at office this

3th day of October A. D. 1858

Oliver H. Carey

Clerk.

I executed the within writ at the County
 of Efferson on 22nd day of 1858 by Reading
 the same in the Presence and Hearing
 of E B Heinsah & James Burges
 also on W E Clark on 26 day by
 Reading the same in his Presence
 and hearing also on 26th M Parker
 on 28th day of Oct 1858
 by Reading near Danvers
 by J B Parker Dep^y Sheriff

So Circuit Court

Oct. Term 1858

John. O Dalton Jr

vs

A Lewis & Son M R R Co

for Debt

Wm. E Clark

E B Heinsah

W. M. Parker

Geo Burges Jr

Sheriff \$200

John O'Fallon Jr,
 vs,
 The St. Louis & Iron
 Mountain Rail Road
 Company.

In the Circuit
 Court Jefferson
 County.

The Defendant by its Attorney
 comes and demurs to the amended
 petition of plaintiff, and states the
 following as causes for such de-
 mures:

- 1 - Said amended petition does
 not state facts sufficient to consti-
 tute a cause of action.
- 2 - It is not alleged therein, that plain-
 tiff performed or offered to perform
 (and was discharged (as defendant,) the
 contract, so as to entitle him to the
 bonus claimed.
- 3 - It does not appear from said petition
 that the payment for the ties, was a
 condition precedent to the fulfillment
 of said contract by plaintiff.
- 4 - The reason assigned why plaintiff
 did not complete the contract is not
 such as to excuse him from the per-
 formance of it.
- 5 - It is not alleged that Defendant
 hindered or prevented plaintiff
 from the performance of said contract.
- 6 - The face of the petition shows that the
 Defendant did not undertake & promise
 to perform the contract alleged, as it was
 not signed by the Company.
- 7 - The terms of the contract are not definitely stated.

Attest Green & Fletcher
 Attys for deft.

John O'Halloran

20

H. Louis & Co. N. R. R. Co.

Benjamin

Filed Oct. 26th 1885

Oliver & Honey
Clerk

See Samuel

John O'Fallon
vs
St Louis & Iron Mountain
Rail Road

The Plaintiff moves
the Court for judgment in this
Cause for these reasons
1st Because there is no answer
filed in this Cause in vacation

2^d Because the Defendant has
not answered the cause of action

Bealk Hall per fil

Galton

as

Miss ~~to~~ Mullins

Notion for my name

dated Oct 2nd 1858

Geo & Honey cut

overruled

John Ofallon

vs

St Louis & Iron Mountain
Rail Road Company

} In the Circuit
Court of Jefferson
County Mo

Amended Petition by leave of Court

The plaintiff states that defendant owes him two thousand eight hundred and forty three dollars and seventy five cents for cross ties sold and delivered to the defendant for the construction of their road as will appear by an account of the items herewith filed for which sum of \$2843.75 plaintiff asks judgment

Plaintiff also states that defendant is indebted to plaintiff one hundred dollars for a double table which was standing on the road before the right of way was enclosed by said road in 1857 and which table said defendant tore down & destroyed for which plaintiff claims \$100 and asks judgment

Plaintiff further wants judgment for the sum of \$7200 and damages as set forth in his original petition & which petition as to the charge of \$7200 was first aimed on demurrer

Real & Pipkin Atty's

John Ofallon states on oath that

the foregoing petitions & the matters
as therein stated he believes to be
true

John O'Halloran

Sworn to and Subscribed

before me Oct 30 th 1858

Elus J Hooney CLK

John. D. Ballou Jr.

"

Wm. Spooner M. R. R. Co

Amended. put their
file by leave of the Court

Filed Oct 30th 1858
Edw. J. Honeywell

St Louis & Iron M Rail
road Company

To John O'Fallon Dr.

1857.	To 1000 Crop Qu'a @ 45c.	\$450.00
"	Bal on crop this separate from the above item	1100.00
"	1275 Crop this @ 45c	573.75
"	1600 " " " @ 45c	720.00
<u>Withdrawn</u>	Double Stable W	100.00
		<u>\$2943.75</u>

John O'Fallon on oath states that the above
account and the matters therein as stated he
believes to be true
Sworn to & subscribed John O'Fallon Jr.
before Oct 30th 1838
Elias J. Honey Clerk

John Bullen
per } accd

Adieu & fare you well R. R. R. R. R.

Adel Oct 30th 1888
Elmo Anthony

John O. Hallon Jr

^{vs}
The St Louis & Iron Mountain Railroad Company

In the Circuit Court
Jefferson County.

The defendant for answer to the amended petition of plaintiff, states that they do not owe the plaintiff the sum of two thousand eight hundred and forty three dollars and seventy five cents for crop ties sold and delivered to the defendant for the construction of their road, they deny that said plaintiff delivered to them one thousand crop ties as stated in the first item of the account filed by plaintiff and deny that they owe him the sum of four hundred and fifty dollars on account of said item,

They deny that at any settlement had by them with the ~~defendant~~ plaintiff or at any payment made by them they owed the plaintiff a balance of eleven hundred dollars for crop ties, as a separate item of account,

They therefore deny that they owe the plaintiff the sum of eleven hundred dollars for said item,

They deny that plaintiff delivered to them 1275 crop ties, amounting to five hundred and seventy three dollars and seventy five cents, and deny that they owe said sum on that account

They deny that plaintiff delivered to them at any one time sixteen hundred ties as stated in the account of plaintiff amounting seven hundred and twenty dollars, and do not owe said plaintiff said item of seven hundred and twenty dollars as stated in his account,

They deny that they owe plaintiff the sum of one hundred dollars or any other sum on account of a double stable, which was standing on the road ^{before} when the right of way ^{was} condemned to defendants use, because they say, ^{that they did not nor did any person} ~~the damages assessed~~ ^{by their direction, tear down & destroy said stable} ~~by said Commissioners included the said stable, and the compensation to plaintiff for the same is included in his claim of twelve hundred dollars for damages for right of way on his said land, if that~~

as to the claim in plaintiffs petition for twelve hundred dollars for damages assessed to him by certain Commissioners, defendants cannot deny that said allowance for damages was made to plaintiff, and defendant has not the means of information at hand to enable them to form a belief as to whether the same has been paid the plaintiff, and requires proof thereof

Hitcher & Green
for Defts.

This C Hitcher attorney for said defendants on oath states that the above answer and the matters therein he believes to be true as therein stated.

Signed & sworn to before me OCT 30th 1858,
Elias J. Hooney Clerk

This C Hitcher

John Wallenfr
Jas^m R R Co

Answer

Paid Oct 30th 1858
Geo. J Honey cuts

Jas^m R R Co

We the undersigned have the pleasure the
sum of Forty two hundred and forty five
Dollars and 28 cts only and Subscribes up to date

J. P. Smith

Forman

Judgment for Plaintiff Dtd 30th 1858
Book 80 4 page 207

John C. Hallou, Jr.
vs.
The St. Louis & Iron Mountain
Rail Road Company

In the Circuit
Court, Jefferson
County,

The Defendant by its Attorney, moves the Court to set aside the verdict & judgment in the above cause, and grant a new trial for the following reasons:

- 1st Because the Court erred in overruling Defendant's motion ^{for} a continuance.
- 2 The verdict is against the law and evidence in the case.
- 3 - Defendant was taken by surprise, in having to file Answer instantly to plaintiff's amended petition (setting up ~~new~~ matter) and to go to trial thereon without any witnesses to establish its defence.
- 4 - The instructions given by the Court, allowing interest on an unsettled account, are erroneous.
- 5 - The Court erred in requiring Defendant to answer instantly the amended petition ^{of plaintiff} filed on the 30th of October 1858, and in ruling that Defendant go to trial thereon instantly.

Green & Fletcher
Attys for Defendant

In Circuit Court
Jefferson County

John C. Halcough,

vs,

H. Louis Hargrove
Mountain R. R. Co,

Motion for
New Trial

Filed Nov 24 1888

Geo Hargrove clk

Recorded Nov 29 1888

Book No 4, p. 216

John C. Fallon Jr. }
 vs. } In the Circuit Court
 The St. Louis & Iron Mountain } Jefferson County
 Rail Road Company, } October Term 1858,

Be it remembered that on the 30th day of October 1858, the Defendant by its Attorney, filed a Demurrer to the Amended petition of plaintiff which demurrer is in words & figures, as follows, (here copy) filed May 4th 1858, and on the 30th day of October 1858, said demurrer coming on to be heard, the Court sustained the demurrer, as to all that part of said amended petition that sets up a claim for a bonus, and overruled the demurrer as to the residue and re-
~~quired Defendant to file Answer instantly and go to trial, and thereupon plaintiff at the same time,~~
 obtained leave to amend said petition, on the same day, the plaintiff having filed amended petition, the Defendant thereupon moved for a continuance, alleging as a reason therefor, that the amended petition so filed, set up new and additional matter not claimed in the amended petition of May 4th 1858, and that therefore the Defendant was not prepared to go to trial on the amended petition just filed on said 30th of October 1858. The plaintiff then withdrew the
~~claim of \$100,00 for a stable, and thereupon, the~~
 Court ordered the Defendant's Answer to be filed instantly, and overruled Defendant's motion for a continuance, to which decision of the Court in overruling Defendant's motion for a continuance, Defendant excepted. - Afterwards, on the said 30th day of October 1858, said cause coming on to be heard, the plaintiff to sustain his cause offered the following testimony, to wit, -
 E. B. Harmon, who says he knows plaintiff

provided cross-ties for Defendant as follows,
a lot of 1500 or 1600, at ^{38 cts in monthly payments of 17 cts at future times} ~~contracted~~ at 38 cts per
tie, with 17 cts additional for all furnished
above the mouth of the Merimac - \$753, at
the quarantine, at the Engineer's office above said
Merimac 1500, or 1600, - below the Merimac at one
place, \$800, at 40 cts, - between Sulphur Springs
and Mrs. Waters \$300, - thinks this lot at 43 cts,
but is not positive, - Above Sulphur Springs,
landing, 1500, at 45 cts, - A lot at Sulphur Springs
landing, but know how many, perhaps, 1000
at 45 cts, - This was in the Spring of 1857, Mr.
Sill was Agent for Company, & he received
some others not estimated; the ties above

Affiant was Agent for O'Fallon, & counted
these ties & delivered the most of them to
George McBlain, Agent for the company in
getting ties.

The Defendant then, in support of his
defense, having no witnesses in attendance
called upon John O'Fallon Jr. the Plaintiff,
who says he received money from the
Defendant at various times, in payment
for ties delivered by him to the Defendant,
but does not recollect the amounts, at one
time \$1300, at another 300, and various
other amounts at other times, not now re-
collected, - He made a contract with the
company by which they were to give 45 cts
for ties delivered above the mouth of the
Merimac, & 40 cts, for those below, - He does

not claim pay for all the trips proved by Mr. Hanna, - as part of them have been paid for, - only claims for what are stated in his Bill of particulars, - These he says he has never been paid for, & the amount claimed in his bill is correct. He says he has never been paid any thing on the \$1200 allowance. The 1275 - ts ~~are~~ before stated, have not been received by the company, nor the 4000, yet at Newkay's.

This being all the testimony offered in the cause the Court of ~~its own motion~~ ^{its own motion} ~~gave the following instruction~~ ^{gave the following instruction} ~~to the jury~~ ^{to the jury} ~~and of its own accord, instruction No. 12, which in-~~ ^{struction is as follows, (here copy the in-} ^{struction.)} To the giving of ^{said} instruction (which tells the jury to allow interest on the open Account for the ts,) The Defendant objected, ~~and the Court accepted,~~

The jury having returned a verdict for \$4243, 28 cts, for plaintiff, the Defendant filed a ^{motion} to set aside the verdict & judgment & grant a new trial, for the reasons stated in said motion, which is in words following, as follows, (here copy motion for new trial,) But the ^{Court} refused to grant Defendant a new trial, and overruled the motion to which decision of the Court, in overruling Defendant's motion for a new trial, Defendant

excepted; and prays that this Bill of exceptions, and the various exceptions herein contained, may be signed, sealed, and made a part of the record in said cause, which is accordingly done.

John H. Stone Seal

In Circuit Court
Jefferson County
John O'Fallon Jr,
vs,
St. Louis & Shaw Mountain
Rail Road Co,
Bill of exceptions

Filed Nov 2nd 1858
Elias J. McCreary Clerk

They will calculate the interest on the \$1000.00
on condemnations of the right of way from the sta-
ble felons and prisoners the report are also on a
report of the Bureau found to be true from
the 30th March 1835, all at 20 per cent. If
they find that plaintiffs is entitled to recover these
dividend sums,

111

Left Bank
of River

1624

30

22

Left Bank

Left Bank

30

22

Left Bank

30

22

30

22

Jefferson Co. Mo. Dec. 15th 1858

King & wife and Herring

To W. B. Brown Dr

To Drurying

\$6.00

Pay to E. J. Herring

Re. Drurying

M. Brown

600
230
370

recd 410
600

King & wife & Higgings

To

Dever

\$6.00