

No. 13352

Supreme Court of Illinois

Butler et al

vs.

Dunham et al

¹⁸²
STATE OF ILLINOIS;

SUPREME COURT,

Third Grand Division.

No. 35.

1861

Butler

vs

Shaw

1861.

13352

Oliver M. Butler, Supervisor, and Richard N. Botsford, Town Clerk of the town of St. Charles, plaintiffs in Error, *versus* Solomon Durham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelley, Charles K. Parks, Lucien N. B. Burr, Spaulding Eddy, Napoleon Joy, John Campbell, Enward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albro, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Gartron, Asahel Bundy, Charles Hale, Spencer B. Huls, Garrett Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Danforth, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles Gray, Brundridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunham, Edward Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffat, Daniel Stearns, Abraham Kershaw, Eli Teft, Mosses D. Bliss, Samuel Sterling, Nathan Ladd, John Freeland, Roland Lee, Michael Lincolnfeller, Harrison McGowan, Philander Mann, Horace Perry, John Delancy, William Draman, John B. Blanchard, Zenas Blackman, Michael Ponsonby, C. J. Balch and Lyman German, defendants in Error.

United States of America. }
State of Illinois - Kane County. }

Pleas before, the Honorable Isaac G. Wilson. Judge of the Thirteenth Judicial Circuit, and Presiding Judge of the Circuit Court of Kane County, in the State of Illinois, at a Term of said Court, begun and held at the Court House, in Geneva, in said County, on the Third Monday of November, in the year of our Lord, one thousand, eight hundred and fifty nine, and of the Independence of the United States of America, the Eighty fourth.

Present: -

The Hon. Isaac G. Wilson.

Judge.

Edward S. Joslyn,

State Attorney.

Ethan J. Allen,

Sheriff.

Attest:

Paul R. Wright.

Clerk.

Be it Remembered, that
heretofore, to wit: on the 19th day of
May, A.D. 1859, the same being one of
the days of the May Term of said
Court, 1859, a Bill for Injunction and
relief, was filed in said Court, on the
Chancery side thereof, which is in the
words and figures following, to wit:

State of Illinois }
Kane County, ss. }

To, the Honorable
Isaac C. Wilson, Judge of the Kane
County Circuit Court, in Chancery
Sitting: -

Humbly complaining, your
orators Solomon Durham, Mark H.
Fletcher, Wesley Hall, Patrick Catron, Mar-
tin Switzer, James Burr, Richard Kelley,
Charles H. Parks, Lucien N. B. Burr, Spal-
ding Eddy, Napoleon Joy, John Campbell,
Edward Catron, Daniel Wheeler, William
Marshall, Joseph B. Disbro, John Pierce,
Ira Albro, Peter Pratt, George Pierce, James
Hurst, John M. Laughlin, John D. Garton,
Usabel Bundy, Charles Hale, Spencer
B. Kuls, Garret Norton, James Hoag.

Charles B. Ducker, John D. Easter,
Robert Danforth, John C. Wilson, Thomas
L. Morgan, Russel Humphrey, Edward
Baker, Charles Gray, Brundridge S.
Haviland, Jonathan Matteson, Orren Hall,
Daniel Hutchins, Jesse B. Alcott, Daniel
Dunham, Edward Bartlett, Nathaniel
Ballard, William Hammond, Sylvanus
Moffat, Daniel Stearns, Abraham
Kershaw, Eli Jefft, Moses B. Bliss,
Samuel Sterling, Nathan Ladd, John
Ireland, Roland Lee, Michael Lincoln-
feller, Harrison McGowan, Philander
Man, Horace Perry, John Delaney,
William Druman, John B. Blanchard,
Jenus Blackman, Michael Ponsouby,
C. J. Balch, Lyman German, would
most respectfully show unto your Honor,
that they and each of them, are the
owners of real estate, and Tax payers
within the limits of the Township of
St. Charles, in the County of Kane, in
the State of Illinois, which is compo-
sed of Township 40, Range 8 East of the
principal meridian, according to the
surveys and maps of the United
States, and that the total amount of
the property assessed to your Orators

is about one hundred thousand dollars, and about one fourth of the taxable property of the said Township, upon which sum they are paying taxes in said Township, that the joint property of your Orators, within the Township of St. Charles aforesaid, will be liable to an assessment for taxes for the year 1859, for about the said sum of one hundred thousand dollars as aforesaid, for State, County, and Township taxes to be assessed and collected according to law, and your Orators further show unto your Honor that on Sections 27 & 34 in said Township, and about one half mile north of the South line, and about two miles west of the East line of said Township is situate the village of St. Charles, containing between two and three thousand inhabitants, and that the voters in said village are the majority of the voters of said Township of St. Charles, and that the inhabitants of said village, by some influence unknown to your Orators and against their wishes and remonstrances procured at the last session of the Legislature, of the State of Illinois, the passage of

an Act entitled "An Act to incorporate the St. Charles Rail Road Company, which act was approved Feb. 18th 1859, which act is attached hereto and made a part of this your Orators Bill of Complaint, and marked A. as an exhibit.

And your Orators show unto your Honor that Oliver M. Butler, is now the acting Supervisor of the said Township of St. Charles, duly elected and qualified whom your Orators pray may be made a party defendant to this your Orators Bill of Complaint.

And your Orators further show unto your Honor, that one Richard N. Botsford is the acting Town Clerk of the said Township of St. Charles, duly elected, and qualified, whom your Orators pray may be made also a party defendant to this your Orators Bill of Complaint.

Your Orators further show unto your Honor that the said Defendants by pretence of authority vested in them, as they say, by the act aforesaid, attached to your Orators Bill of

Complaint, and marked A. as aforesaid have issued, and caused to be issued a certain notice, which is herewith attached, and marked Exhibit B. and made a part of this your Orators Bill of Complaint.

And your Orators further show unto your honor, that the said defendants under pretence of authority to be obtained in pursuance of an election to be held at a time and place in said notice mentioned, are about to issue Bonds to a large amount of the said Township of St. Charles, and making the same a charge upon the said Township of St. Charles, and upon the property of your Orators, and each of them. The principal and interest on the same to be paid by Taxing all the Real and Personal property in the Township of St. Charles, and as a necessary consequence, the property of your Orators.

And your Orators would further shew unto your Honor upon information and belief, & so charge that it is not designed or intended,

to have any stock taken in said Rail road Company, except such part as shall be taken by the said Township of St. Charles, but on the contrary thereof, it is the design and intention, and your Orators so charge to make the Township of St. Charles a Rail Road Corporation for the purposes mentioned in said act.

And your Orators would further shew unto your Honor as they are advised by counsel, and so charge the fact to be, that the said Township of St. Charles is a municipal corporation for the Government of the People of said Township, and not a private corporation for pecuniary purposes, and that it is contrary to the Constitution of this State, to make such a private corporation for the purpose of speculation and compelling the inhabitants and property owners of said Township to invest their property without their consent, and against their wishes in the speculations of said municipal corporation, which is changed from the legitimate constitutional and lawful objects thereof.

And your Orators would present to your Honor a map of the said Township of St. Charles, and a true representation thereof, which is attached to your Orators Bill of Complaint and marked as exhibit C. and made a part of this your Orators Bill of Complaint, from which it appears, and your Orators charge the facts to be, that the Dixon Air Line Rail Road Company at Geneva, one mile south of nearly the centre of the south line of said Township, have a Depot on said Road, that the Galena & Chicago Union Rail Road, at Wayne, a little north, and one half mile East of the centre of the East line of said Township, and at Clintonville, one half mile north of said Township, have Depots on their Road, at some one of which Depots, & on those Roads, nearly all of your Orators, and the other inhabitants of more than half of said Township will ever do their business, in preference to doing it at the Depot in the village of St. Charles, on said contemplated Branch, for the reason that they are nearer, and will be better accommodated, at some one

of said Depots, than at the Depot in said village of St. Charles, and with much less expense, the distance being much shorter to the head of market, to wit, at Chicago, in the County of Cook, in the State of Illinois.

And your Orators would further show unto your Honor, that the farming community of said Township of St. Charles, and particularly your Orators, have ample Rail Road facilities, and all they need as before stated and shown, and that no benefit of any name or kind can possibly accrue to your Orators, or their property, by the building of any such Branch as aforesaid, that it will not increase the value of their property, and can be of no earthly benefit to your Orators.

And your Orators further show unto your Honor that the said Defendants, and those acting with them sometimes hold out and declare that it is the intention to issue the said Bonds by authority of said Act men-

tioned in Schedule A. hereto attached according to the determination of said election, to be held in pursuance of said notice, marked B. and to use and apply the proceeds of said Bonds when issued in repairing an old rail road track belonging to the Galena & Chicago Union Rail Road Company, connecting said village of St. Charles with the said Galena & Chicago Union Rail Road with a pretence that that would be using said Bonds & the proceeds of the same in according with said act in Exhibit marked A.

And your Orators further shew unto your Honor that the Rail Road track last mentioned is not used and has not been used by said Galena & Chicago Union Rail Road Company, for a long time past, for the reason that it would not pay running expenses & repairs, for that reason, the said Company have freely given the use of said old track to the citizens of St. Charles, and also the use of the running equipage, conditioned that the said citizens should run the same, and keep it in repair.

And your Orators will further shew unto your Honor that nineteen of your Orators, to-wit, Alcott, Bartlett, Ballard, Hammond, Moffat, Stearns, Kershaw, Sterling, Ladd, Frieland, German, L. N. B. Burr, Wheeler, Pierce, Albro, Pratt, Laughlin, Norton and Morgan, have lands in said Township mostly timbered, of about the assessed value of fifteen thousand Dollars, all of which lands lie nearer to some one of the Depots at Geneva, Wayne, or Clintonville, than to the Depot at the village of St. Charles, so that the said contemplated Branch Rail Road will be of no benefit to the said property of your Orators, but on the contrary thereof, a great detriment, and that each and all of your said nineteen Orators live without the said Township of St. Charles, and can have no vote at the elections mentioned in said act, and if said Bonds shall be issued as aforesaid, the said property of these of your Orators will be encumbered, and injured, and they will have no voice in the matter.

And your Orators would further shew unto your Honor, that a Branch Rail Road is now existing, connecting said village of St. Charles with the Galena & Chicago Union Rail Road as advantageously, in the opinion of your Orators as the contemplated Branch would, which has long since been abandoned, for the reason that it would not pay running expenses and repairs.

And your Orators would further show unto your Honor that should said contemplated Branch Rail Road be built, it can never pay running expenses and repairs, and that all monies raised by the issuing of said Bonds as aforesaid, and invested in said Road will be entirely lost and wasted.

And your Orators would further shew unto your Honor, that said village of St. Charles has been for many years provided with a Branch Rail Road, and all the equipments necessary for running said Rail Road free of expense, but the same has been

abandoned because it could not pay running expenses, and repairs, and was utterly worthless as an investment, and that your Orators have all the Rail Road facilities to carry their produce to market and to travel upon now; and that too without any tax upon their property, and they obtain it by simply paying the usual Rail Road fare, and would further show unto your Honor that they are under no obligation by the laws and Constitution of this State to provide ways of travel and transportation to the village of St. Charles, and have their property taxed to pay the same,

And your Orators would further show unto your Honor, that no benefit of any name or kind, can possibly accrue to your Orators or their property, either public or private, commercial, or legal, moral or religious, by the building of the Rail Road in Schedule "A" mentioned, that it is in no sense a Rail Road, but what is generally known among Rail Road men, a Plug Branch Road, in no sense can it be called a Public Road, but a

matter of near accommodation, exclusively local in its character to the village of St. Charles. That said road will not increase, in any respect whatever, the value of the property of your Orators, but on the contrary thereof will diminish the value of their property, by encumbering it with heavy taxes and assessments.

And your Orators would further show, That all moneys invested in said Rail Road will be absolutely sunk and lost, and a continued tax and assessment to be put upon the property owners of the Township of St. Charles, to keep the same running and in repair.

Your orators would further show unto your Honor, that they became property owners in the Township of St. Charles, under the pledge and laws of the Constitution of this State that their property then located, should only be burdened with the taxes, legitimate and necessary, for the support of the government, and that it should,

not be taken for private use against their will, and not be taken for public use without just compensation.

And your Orators directly charge, that the issuing of said bonds, and encumbering of your Orators property by taxes, hereafter to be raised, to pay the principal and interest on the same, is a direct violation of the Constitution of the State of Illinois.

And your Orators would further show upon information and belief, and so charge, that Oliver M. Butler, acting Supervisor of said Town, and Richard N. Botsford, acting Town Clerk of said Town of St. Charles, are about to issue the bonds of the Town of St. Charles, to the amount of several Thousands of Dollars, under said law in Schedule "A." mentioned, bearing a high rate of interest, pledging all the property in said Township for the payment thereof. And your Orators had well hoped, that the said defendants would have regarded their duty in the premises.

and would have refrained from issuing, or attempting to issue said Bonds, but now so it is, may it please your Honor, said defendants not regarding their duty in the premises, but combining and confederating to and with divers persons to your Orators unknown, whose names when known, your orators pray may be inserted in this their Bill of Complaint, with apt and proper words how to charge them, to injure and oppress your Orators, have called an election at the village of St. Charles, on the 20th day of May, A.D. 1859, to get an excuse for issuing said Bonds, and intend to issue the same. Sometimes pretending that the proceeds shall be applied to the building a plug Rail Road to connect with the air line Rail Road at Geneva, Sometimes pretending the same to be applied to the building a plug Branch Rail Road connecting with the Galena Rail Road near Clinton, and sometimes pretending that the proceeds of said Bonds are to be applied to the repairing the abandoned plug Branch Rail Road running from the junction

in DuPage County, to the village of St. Charles. all of which actings and doings and pretences. are contrary to equity and good conscience, and tend to the great, excessive, and irreparable injury of your Orators.

In tender consideration thereof, and for as much as your Orators are remediless in the premises, and can only have relief in this Honorable Court where matters of this and like nature, are properly cognizable and relievable. Therefore your Orators ask that the said defendants may be summoned to answer this your Orators Bill of Complaint without oath. their answer upon oath being hereby expressly waived and your orators ask that a writ of Injunction may issue out of, and under the seal of this Honorable Court, restraining and enjoining the said defendants, their agents, attorneys or successors in office, from issuing, signing, selling, or disposing of any bonds, pledging the Township of St. Charles for the redemption of the same pursuant to the act of the legislature

in Schedule "A" mentioned, or from doing any act or thing by which the Township of St. Charles may be made liable for any Rail Road Company and upon a final hearing, this Inflection to be made perpetual, and for such other relief and such further relief, as shall be agreeable to equity and good conscience.

May it please your Honor to grant unto your Orators an Inflection pursuant to the prayer of the foregoing Bill of Complaint, and also a Summons according to the usual course of practice of this Court.

Mark W. Fletcher.

State of Illinois

Stane County

Mark W. Fletcher, who signs it as well, for himself and for the other Compts. being first duly sworn on oath does depose and say that he is one of the Complainants to the foregoing Bill of Complaint, has read the said Bill of Complaint, and knows the contents thereof, that the same is true of his own knowledge, ^{to those matters stated upon information or belief, and as} except as to those matters he verily believes the same to be true.

M. W. Fletcher.

Sworn & Subscribed
before me this 19th
day of May, 1859

J. R. Wright
Clerk

Exhibit A.

An Act to Incorporate the St.
Charles Rail Road Company.

Sec. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That Oliver M. Butler, Henry Stevens, Peter J. Burchell, James S. Van Patten, D. L. Eastman, of the town of St. Charles, County of Kane, and State of Illinois, and their associates, successors, and assigns, are hereby created a body politic and corporate, under the name and style of the St. Charles Rail Road Company, and by that name, and style shall have perpetual succession and said company are hereby made capable of suing and being sued, of pleading and being impleaded, of defending, and being defended, in all courts in law, and equity and other places, of contracting and being contracted with, and said Company shall have authority to make, use, and have a common seal, and the same to renew and alter at pleasure. And

said Company are hereby vested with all the powers, privileges and immunities, which are or may be necessary to carry into effect the object and purposes of this act hereinafter mentioned, set forth or referred to, and to exercise or enjoy for the purpose of said Company the right and privileges of natural persons.

Sec. 2. - Said Company are hereby authorized and empowered to locate, construct, establish, and finally complete and hereinafter use a Rail Road, commencing at any convenient point within the corporate limits of the town of St. Charles, and running from thence Northerly, Easterly, or Southerly, on the most eligible, beneficial, expeditious, and practicable route to connect with the Galena and Chicago Union Rail Road Company's Road, as it now is, or may hereafter be located, either with the main line, or what is usually known as the Dixon Air Line of said Company's Road. And the said Company are hereby informed in the construction of said Rail Road, to lay out said Rail Road, wide enough for a single,

or double Track, throughout the whole length, and for the purpose of constructing the same, and for materials, stone, earth and gravel, may take and use as much more land on the sides of the same as may be necessary for the proper construction and security of said road.

Sec. 3. - The Capital Stock of said Company shall be fifteen thousand dollars, but may be increased to fifty thousand Dollars, but ~~may be~~ increased to fifty thousand Dollars; to be divided into shares of one hundred dollars each share. The immediate government, control and direction of the affairs and organization of said Company and company franchises shall be vested in the persons named in the first section of this act, and a majority of these shall form a quorum, with power and authority to adopt such rules and by laws, and other things to do and perform necessary to the complete organization of said company, and the conducting the same; and to provide for opening Book, and obtaining sub-

scriptions to the Capital stock of said Company, and when fifty shares of the Capital stock shall be taken and subscribed for, the Company may fully organize, and go into operation in the construction and completion of said Rail Road.

Sec. 4. - When fifty shares shall be subscribed as aforesaid, the persons named in the first section of this act, may call a meeting of stockholders of said Company, on giving at least ten days public notice, of the time and place of meeting, which shall be held at some convenient place in the town of St. Charles, in this State, and shall fully organize said Company by the election of five Directors for said Company, who shall hold their offices for one year, and until their successors shall be elected and qualified - said Directors shall have the same powers and authority, and perform the same duties, and be governed by the same rules confirmed, upon and required of the Directors of the Galena and Chicago Union Rail Road Company,

and now in force, said Directors so elected, shall elect from their number one President, who shall hold his office one year, and until his successor is elected and qualified, who shall have the same powers, and be governed by the same rules, as are conferred upon, and required of the President of the said Galena and Chicago Union Rail Road Company, by law. A majority of said Directors, including the President, shall constitute a quorum, provided, nevertheless, that if the inhabitants of the Township of St. Charles shall lawfully subscribe or cause to be taken or subscribed, the stock mentioned in Section three of this act, in that case the persons named in the first section of this act, or a majority of these may call a meeting of the legal voters of said Township on giving ten days public notice of the time and place by either written or printed, or partly written and partly printed notices, to be posted in at least three of the most public places in said Township, which

notices shall specify the purposes for which said meeting shall be called; which meeting shall be held at the same place that other meetings for town purposes are held in said Township, which meeting shall be organized as prescribed by law, for town purposes, and shall be conducted in like manner, at which time and place the legal voters of said Township shall ballot for five persons as Directors for said company, and the five persons having the highest number of votes, respectively, shall be declared duly elected as Directors for said company, who shall hold their office one year, and until their successors are elected and qualified. The said Directors shall have the same powers and authority, perform the same duties, and be governed by the same rules, conferred upon and required of the Directors mentioned in the first clause of this Section. The said directors, when so elected, shall elect from their number one President, who shall hold his office for one year, and until his successor is elected and qualified.

and who shall have the same powers and be governed by the same rules as are conferred upon and required of the President referred to in the first clause of this Section. A majority of said Directors, including the President, shall constitute a quorum, provided, further, nevertheless, that if the inhabitants of the incorporation of the Town of St. Charles, shall lawfully subscribe, or cause to be taken or subscribed, the stock mentioned in section three of this act: in that case the persons named in Section one of this act, or a majority of these, may call a meeting of the legal voters of the said incorporation, on giving ten days public notice of the time and place by either written or printed, or partly written and partly printed notices, to be posted in at least three of the most public places in said corporation, which notices shall specify the purpose for which said meeting shall be called, which meeting shall be held at the same place that other meetings for corporation purposes, are held in said Corporation, which meeting shall

be organized as prescribed by law, for corporation purposes, and shall be conducted in like manner, at which time and place, the legal voters of said corporation shall ballot for five persons as Directors for said Company, and the five persons having the highest number of votes respectively shall be declared, duly elected as Directors for said Company, who shall hold their offices for one year, and until their successors are elected and qualified. The said Directors shall have the same powers and authority, perform the same duties, and be governed by the same rules conferred upon, and required, of the Directors, referred to in the first clause of this section. The said Directors, when so elected, shall elect from their number one President, who shall hold his office for one year, and until his successor is elected, and qualified, and who shall have the same powers and be governed by the same rules as ^{are} conferred upon and required of the President referred to in the first clause of this section. A majority of said Directors, including the President, shall constitute a quorum.

Sec. 5. The said company are hereby authorized by their Engineers and agents, to enter upon any land, and make all necessary examinations and surveys for the location of said Rail Road, and shall be responsible only for the actual damages done to any such land or premises in so doing.

Sec. 6. In all cases when said company shall not be able to acquire the right of way through any land or premises they may wish to occupy for the purposes of said Rail Road, or its appendages, by purchase or voluntary cession, the same may be obtained in a mode provided by the ninety second chapter of the revised Statute of this State, entitled, Right of way; or said company may proceed to obtain such right of way by the provisions of the twenty second section of an act entitled "An act to provide for a general system of Railroad incorporations", passed Nov 5th AD 1849, and said company shall be entitled to all the beneficial provisions of said act, and the amendments to the same; or said

company may proceed to obtain such right of way by the provisions of an act entitled "An act to amend the law condemning right of way for the purposes of Internal improvement," in force Jan. 22^d AD 1852, and said company shall be entitled to all the beneficial provisions of that act.

Sec. 7. - The said company are authorized and empowered to borrow from times such sum or sums of money not exceeding the capital stock of the company as they may deem necessary to aid in the construction of said road, and to pay any rate of interest therefor, not exceeding ten per cent. per annum, and to pledge or mortgage the said Rail Road and its appurtenances, or any part thereof, or any other property, or effects, rights, credits, or franchises of said company, as security for any loan of money, and interest thereon, and to dispose of the bonds issued for such loan at such rates, or on such terms as the board of directors may determine.

Sec. 8. It shall be lawful for the Directors of said company

to make calls for the payment of
sums subscribed to the capital stock
of said Company. at such time or
times, and in such amount, as they
shall deem fit, not inconsistent
with the term of the subscription, giv-
ing at least not less than thirty days
notice of each of said calls in a
newspaper published in the Town of
St. Charles, or in Kane County, and
in case of failure on the part of any
stockholder to make payment of any
call made by said Directors for sixty
days after the same shall have been
due, and unpaid, the said Board of
Directors are hereby authorized to de-
clare said stock so in arrear, and all
sums previously paid thereon forfeited
to said Company.

Sec. 9. The Township of
St. Charles is hereby authorized to
subscribe for shares of stock in the
said Rail Road Company, in any
sum not exceeding fifteen thousand
dollars, and which stock so subscribed
for, shall be under the control of
the Supervisors of said Township, or
of any other agent or agents that

said township may duly appoint in all respect, as stock subscribed by individuals, provided that when any stock is subscribed to said Rail Road company, under this act, the time of the payment of the same shall be so fixed, that not exceeding the sum of four thousand dollars principal and interest shall fall due in any one year.

Sec. 10. - That for the payment of the stock so subscribed, the Township of St. Charles is hereby authorized to issue to said company the bonds of said Township, at par, bearing interest not exceeding ten per cent. per annum, payable annually with interest, coupons annexed. Said bonds to be payable on the first Monday of April in whatever year they may be made payable, and executed by the Supervisor of said town, and countersigned by the town clerk to an amount equal to the par value of the shares of stock subscribed, and to pledge the faith of said Township for the annual payment of the interest, and ultimate redemption of the principal, which bonds may run any period

not exceeding ten years, that the said Town, or its Supervisor or Agents for that purpose may determine.

Sec. 11. - That before the stock aforesaid shall be subscribed, an election shall be held to ascertain whether the citizens of said township are desirous that such subscription be made, which said election shall be called by the town clerk whenever so requested by the Supervisor of said Township, and held and conducted, and the returns thereof made in like manner as at the annual town meeting for the election of township officers for said township.

Sec. 12. - The vote shall be taken by ballot, upon which shall be printed, or written, or partly printed and partly written "For a Railroad," (\$ ---) specifying how much, or "Against a Railroad." If it shall be found that a majority of the legal voters, and tax payers of said township, voting upon the question have voted "For a Rail Road." the amount to be subscribed to such Rail Road Company, shall be the

greatest sum for which there shall
of the greatest plurality of votes, in the
ballot so taken, and in case there shall
be no affirmative majority vote "For
a Rail Road," at the first election
called for such purpose, other meetings
may be called for a like purpose, which,
whenever called, shall be conducted in
a like manner, whenever the Super-
visor of such Township shall be
petitioned so to do, by at least fifty of
the legal voters and tax payers of
said township, not exceeding three
times in each year, until an affirma-
tive vote may be had "For a Rail Road,"
by a majority as aforesaid. In case
a majority of the tax payers voting
at such election be "For a Rail Road,"
the amount to be subscribed shall be
ascertained as aforesaid, and such sum
shall be the true amount authorized
by said Township to be subscribed to
said Rail Road Company, which sub-
scription when thus ascertained, the
Supervisor of said township or such
agents as said township for that pur-
pose may duly authorize, shall duly
subscribe for such stock in said

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Rail Road Company, and when so made such subscription shall be binding upon said township forever. The bond which shall be issued under the provisions of this act shall be issued for any sum not less than one hundred dollars each, and in the aggregate not to exceed the amount of stock subscribed to said Rail Road company, under this act, provided the said Supervisor or the said Agents of said Township may at any time issue to said Company the full amount of Bonds to be issued in payment of such subscription, whenever in his or their discretion they may deem it advisable so to do.

Sec. 13. - Whenever called upon so to do by at least fifty taxpayers, of said township, the supervisors shall cause to be called a meeting of the said tax payers of such township aforesaid to be called and conducted in like manner as aforesaid to ascertain of such township will subscribe other, and further stock, to said Rail Road Company, until the full sum of fifteen thousand

dollars if such stock may be so taken as aforesaid, and no more. it being the intent and meaning of this act. to enable said township from time to time as it may determine to subscribe stock to said Rail Road Company, in the aggregate not to exceed fifteen thousand dollars. the amount to be ascertained and subscribed, and paid as mentioned in this act.

Sec. 14. - The said township of St. Charles is hereby authorized and required to levy and collect a special tax upon all the taxable property in said township sufficient to pay the occurring interest annually. or any sum or sums they may subscribe. or cause to be subscribed under the authority of this act to said Rail Road Company, and to pay said subscription, as it may become due at a rate of not exceeding four thousand dollars principal and interest in any one year. Said tax to be levied and collected at the same time, and in the same manner that other taxes of said township are levied and collected.

and when collected, shall be applied to the payment of the annual interest and principal of any bonds to be hereafter issued by said township of St. Charles, so fast as they shall fall due, as provided for by this act, and to no other purposes whatever until the whole of the bonds so issued with the interest thereon are paid in full, and the said township shall have the same rights, powers and remedies to enforce the collection of such tax, by the sale of property or otherwise, as is provided for the collection of other taxes for revenue and other purposes.

Sec. 15. - This act to be in force from and after its passage.

Wm R. Morrison.
Speaker of the House of
Representatives.

John Wood.
Speaker of the Senate

Approved, Feb. 18th 1859.

Wm H. Bissell.

Exhibit "B."

Town Meeting.

Whereas, I have been requested by the Supervisor of the township of St. Charles, in the County of Kane, and State of Illinois, to call an Election or Meeting of the citizens (legal voters) of said township, pursuant to an Act of the General Assembly of the State of Illinois, entitled "An Act to incorporate the St. Charles Rail Road company," approved Feb. 18th AD 1859.

Therefore, pursuant to such request, and in obedience to the law in such cases made and provided, Notice is hereby given to the inhabitants of the Township of St. Charles, in the County of Kane, and State of Illinois, that a Town Meeting will be held for said Township, at the stone building in the village of St. Charles, on the East side of Fox River, 'where the last annual town meeting was held for said township,' on Friday, the 20th day of May, AD 1859, to ascertain whether or not the citizens of said Township, in accordance with law,

are desirous that said township shall subscribe for, or cause to be subscribed for any, and if any, how much of the capital stock of the said St. Charles Rail Road Company, in pursuance of law, and the act above referred to. Said meeting or election to be conducted, and the vote then and there to be taken, in the manner referred to and pointed out in Sections 11 & 12 of said act above herein referred to, and in accordance with law. Which said Sections 11 & part of 12 read as follows:

Sec. 11. - That before the stock aforesaid shall be subscribed, an election shall be held to ascertain whether the citizens of said township are desirous that such subscription be made, which said election shall be called by the Town Clerk, whenever so requested by the Supervisor of said Township, and held and conducted and the returns thereof made in like manner as at the annual town meeting for the election of Township officers for said Township.

Sec. 12. The vote shall be taken.

by Ballot, which shall be printed
or written, or partly printed, & partly
written, For a Railroad, (\$ ---)
specifying how much, or Against a
Rail Road.

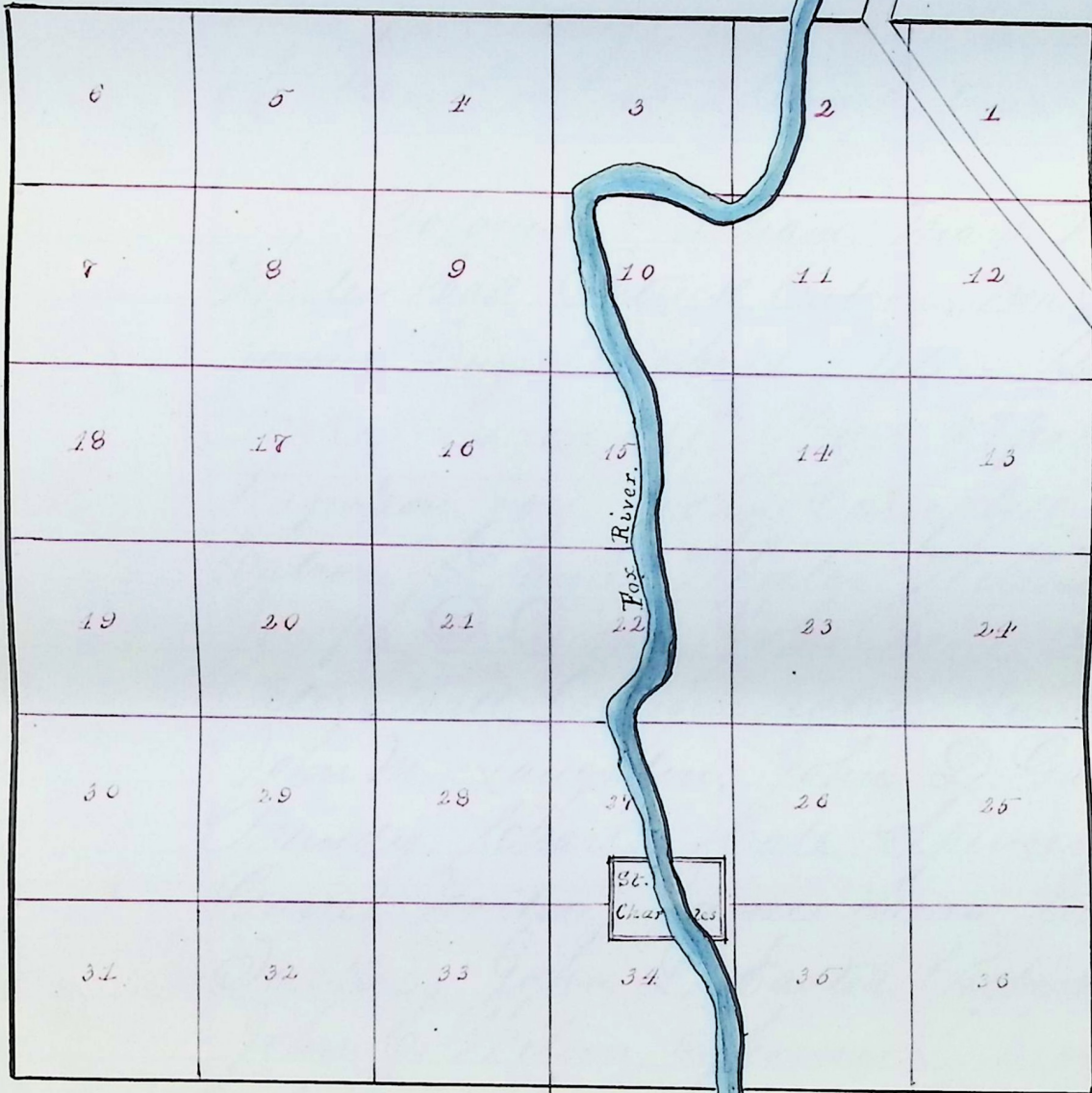
Given under my hand this ninth
day of May, A.D. 1859.

R. N. Botsford.
Town Clerk.

Exhibit "C."

St. Charles Township.

North.



Dixon Air Line

South

Galena & Chicago Union Rail

Dixon

Ladd, John Greeland, Roland Lee, Michael Lincolnfelter, Harrison McGowan, Philander Munn, Horace Perry, John Delaney, William Draman, John B. Blanchard, Genas Blackman, Michael Pousorby, C. J. Balch, and Lyman German.

vs.

Oliver M. Butler, Supervisor, and Richard N. Botsford, Town Clerk of the Town of St. Charles. — Bill for Injunction.

This day come the complainants by Fridley, their Solicitor, and having filed their Bill of Complaint, move the Court for an Injunction, which motion is sustained by the Court. It is therefore ordered by the Court that the said Defendants be enjoined from issuing, signing, selling, or disposing of any bonds, pledging, the Township of St. Charles in said Kane County, for the redemption of the same pursuant to the act of the Legislature of the State of Illinois, entitled "An act to Incorporate the St. Charles Rail Road Company," approved February 18th 1859, and from

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are desirous that said township shall subscribe for, or cause to be subscribed for any, and if any, how much of the capital stock of the said St. Charles Rail Road Company, in pursuance of law, and the act above referred to. Said meeting or election to be conducted, and the vote then and there to be taken, in the manner referred to and pointed out in Sections 11 & 12 of said act above herein referred to, and in accordance with law. Which said Sections 11 & part of 12 read as follows:

Sec. 11. - That before the stock aforesaid shall be subscribed, an election shall be held to ascertain whether the citizens of said township are desirous that such subscription be made, which said election shall be called by the Town Clerk, whenever so requested by the Supervisor of said Township, and held and conducted and the returns thereof made in like manner as at the annual town meeting for the election of Township officers for said Township.

Sec. 12. The vote shall be taken.

by Ballot, which shall be printed
or written, or partly printed, & partly
written, For a Railroad, (\$)
specifying how much, or Against a
Rail Road.

Given under my hand this ninth
day of May, A.D. 1859.

R. N. Botsford.
Town Clerk.

doing any act or thing by which the said Township of St. Charles may be made liable for any Rail Road Company until the further order of this Court, and that a writ of Injunction issue herein, in accordance with this order. Subsequently come the Defendants by Barry their Solicitor, and move to dissolve said Injunction.

And afterwards, to wit, on the day and year last aforesaid, there was issued from the office of the Clerk of said Court, a writ of Injunction, which was in the words and figures following, to wit:—

State of Illinois }
Kane County. }^{vs} The People of the State of Illinois, to
Oliver M. Butter, Supervisor, and
Richard W. Botsford, Town Clerk of
the Town of St. Charles, their, and
each of their agents, attorneys, and
successors in office.

Meeting:—

Whereas, Solomon Durham, Mark W. Fletcher, Wesley Hall, Patrick Catron,

Martin Switzer, James Burr, Richard
Kelley, Charles K. Parks, Lucien N. B.
Burr, Spalding Eddy, Napoleon Jay,
John Campbell, Edward Catron, Daniel
Wheeler, William Marshall, Joseph B.
Disbro, John Pierce, Ira Albro, Peter
Pratt, George Pierce, James Hurst, John
M. Laughlin, John D. Garton, Asahel
Bundy, Charles Hale, Spencer B. Huls,
Garret Norton, James Hoag, Charles B.
Ducker, John D. Easter, Robert Danforth,
John C. Wilson, Thomas L. Morgan, Rus-
sell Humphrey, Edward Baker, Charles
Gray, Brundage S. Haveland, Jonathan
Matteson, Orrin Hall, Daniel Houtchins,
Jesse B. Alcott, Daniel Dunham, Ed-
mund Bartlett, Nathaniel Ballard,
William Hammons, Sylvanus Moffatt,
Daniel Stearns, Abraham Kershaw, Eli
Jefft, Moses B. Bliss, Samuel Sterling,
Nathan Ladd, John Ireland, Roland Lee,
Michael Sincoufeller, Harrison M. Gowan,
Philander Mann, Horace Perry, John
Delancy, William Draman, John B.
Blanchard, Zenas Blackman, Michael
Ponsonby, C. J. Balch, Lyman German
Complainants have lately filed their
certain Bill of Complaint in our Name

County Circuit Court on the Chancery side thereof, against you the said Oliver M. Butler and Richard N. Botsford, defendants, praying to be relieved touching the matters therein complained of, and which Bill is still there pending.

We therefore, in consideration of the premises, and of the particular matters and things in the said Bill set forth, do strictly enjoin, and command you the said Oliver M. Butler, Supervisor, & Richard N. Botsford, Town Clerk of the Town of St. Charles, and the persons aforesaid, and each and every of you, under the penalty of the law thence ensuing, that you and each of you, do absolutely desist and refrain from issuing, signing, selling, or disposing of any bonds pledging the Township of St. Charles in said Kane County for the redemption of the same pursuant to the act of the Legislature of the said State of Illinois, entitled "an act to Incorporate the St. Charles Rail Road Company," approved February 18th 1859. or from doing any act or thing by

which the said Township of St. Charles may be made liable for any Rail Road Company, until the further order of our said Court of Chancery herein.



Witness, Paul R. Wright, Clerk
of our said Court, and the
Seal thereof, at Geneva,
in said Kane County,
this 20th day of May, A.
D. 1859. P. R. Wright,
Clerk.

And afterwards, to wit, on the
20th day of May, A.D. 1859, the writ of
Injunction aforesaid was filed in the
office of the Clerk of said Court, upon
which there appears an endorsement
which is in the words and figures
following, to wit: —

Executed this writ May 20th 1859
by delivering to Oliver M. Butler, Super-
visor and Richard N. Botsford, Town
Clerk of the Town of St. Charles, true copies
of this writ.

E. J. Allen, Sheriff
of Kane County.

And afterwards, to-wit, on the
20th day of May, A.D. 1859, a Summons
issued from the office of the Clerk
of said Court, directed to the Sheriff
of Kane County to execute, which is
in the words and figures following to-wit,

State of Illinois }
Kane County, }^{ss} The People of the
State of Illinois to
the Sheriff, of said County, Greeting:
We command you, that you
summon Oliver M. Butler, Supervisor and
Richard H. Botsford, Town Clerk of the
Town of St. Charles, if they shall be
found in your County, personally to be
and appear before the Circuit Court
of said County, on the first day of the
next Term thereof, to be holden at the
Court House in Geneva, in said County,
on the third Monday of November next,
to answer unto the bill of Complaint of
Solomon Dunham, Mark W. Fletcher, Wesley
Hall, Patrick Catron, Martin Switzer,
James Burr, Richard Kelly, Charles B.
Parks, Lucien N. B. Burr, Spalding Eddy,
Napoleon Joy, John Campbell, Edward
Catron, Daniel Wheeler, William Marshall.

Joseph B. Disbro, John Pierce, Ira
Albro, Peter Pratt, George Pierce, James
Hurst, John M. Laughlin, John D. Carlton,
Asahel Bundy, Charles Hale, Spencer
B. Huls, Garrett Norton, James Hoag,
Charles B. Ducker, John D. Easter, Robert
Danforth, John C. Wilson, Thomas L.
Morgan, Russell Humphrey, Edward
Baker, Charles Gray, Brundage S. Harvi-
land, Jonathan Matteson, Orrin Hall,
Daniel Hutchins, Jesse B. Alcott, Daniel
Durham, Edmund Bartlett, Nathaniel
Ballard, William Hammons, Sylvanus
Moffatt, Daniel Stearns, Abraham Kershaw,
Eli Jeffs, Moses B. Bliss, Samuel Sterling,
Nathan Ludd, John Ireland, Roland Lee,
Michael Lincolnfeller, Harrison McGowan,
Philander Mann, Horace Perry, John
Delaney, William Draman, John B.
Blanchard, Genas Blackman, Michael
Consonby, C. J. Balch, & Lyman German,
filed against said Butler & Botsford
Supervisor & Town Clerk, as aforesaid,
on the Chancery side of our said Court,
for Injunction, & Relief, and have you
then and there this writ, with an en-
dorsment thereon, in what manner
you shall have executed the same.



Witness, Paul R Wright, Clerk
of our said Court, and the
Seal thereof, at Geneva, in
said County, this 20th day
of May, A.D. 1859.

P. R. Wright,
Clerk

And afterwards, to wit, on the
18th day of June, A.D. 1859, the Sum-
mons aforesaid was filed in the office
of the Clerk of said Court, upon which
there appears an endorsement, which is
in the words and figures following, to wit.

Executed this writ June 17th
A.D. 1859, by reading the same to the
within named Oliver M. Butler, Super-
visor, and Rich^d. N. Botsford, Town
Clerk of the Town of St. Charles, and
at the same time I delivered to the
said Butler & Botsford a true & exact
copy of this writ. E. J. Allen, Shff.
by A. E. Lewis, Dep.

And afterwards, to-wit, on the 28th day of May, A.D. 1859, the same being one of the days of the May Term of said Court, A.D. 1859, the following among other proceedings, were had and entered of Record in said Court, to-wit:—

Solomon Dunham, et al.	} Bill for Injunction
v	
Oliver M. Butler, et al	

This day on motion of the Complainants, by Fridley their Solicitor, it is ordered by the Court that the Complainants have leave to file a Supplemental Bill herein.

And afterwards, to-wit, on the 28th day of May aforesaid, A.D. 1859, there was filed in the office of the Clerk of said Court, a Supplemental Bill, which is in the words and figures following, to-wit:

13
State of Illinois }
Kane County. } Kane County Circuit
Court.

Is the Hon. Isaac C. Wilson.
Judge of the Kane County Circuit
Court, in Chancery setting:-

Your Orators, Solomon Dunham,
Mark W. Fletcher, Wesley Hall, Patrick
Catron, Martin Switzer, James Burr,
Richard Kelley, Charles K. Parks, Lucien
N. B. Burr, Spalding Eddy, Napoleon
Joy, John Campbell, Edward Catron,
Daniel Wheeler, William Marshall, Joseph
B. Distro, John Pierce, Ira Albro, Peter
Pratt, George Pierce, James Kurst, John
M. Laughlin, John D. Garton, Asahel
Brundy, Charles Hale, Spencer B. Hall,
Garret Norton, James Houg, Charles B.
Ducker, John D. Easter, Robert Danforth,
John C. Wilson, Thomas L. Morgan, Rus-
sell Humphrey, Edward Baker, Charles
Gray, Brimbridge S. Haviland, Jonathan
Matteon, Oren Hall, Daniel Hutchins,
Jesse B. Alcott, Daniel Dunham, Ed-
mund Bartlett, Nathaniel Ballard,
William Hammond, Sylvanus Moffat
Daniel Stearns, Abraham Hershaw,
Oli Defft, Moses B. Bliss, Samuel Sterling.

Nathan Ladd, John Philand, Roland
Lee, Michael Lincolnfeller, Harrison
McGowan, Philander Mann, Horace
Perry, John Delaney, William Druman,
John B. Blanchard, C. J. Batch, Zenas
Blackman, Michael Ponsonby, & Lyman
German, by way of Supplemental bill
to the original bill of complaint filed
in said cause, would further state and
show unto your Honor that since the
filing of said original bill, and since the
commencement of this suit, to-wit on
the 20th day of May instant, a Town
meeting of the Inhabitants of the Town-
ship of St. Charles was held under and
in pursuance of the notice attached to
said bill of complaint & marked Exhibit
B. and that a vote was then & there
taken by such of the inhabitants of said
Township as attended at said meeting,
for the purpose as alledged in said no-
tice of ascertaining whether the citizens
of said Township were desirous that said
Township should subscribe for, or
cause to be subscribed for any, and if
any, how much of the capital stock
of said St. Charles Rail Road Company,
and that at such meeting, one hundred

and nineteen votes were cast against a Rail Road, and that two hundred and fifty eight votes were cast at said meeting for a Rail Road, two hundred and fifty the of said votes being for \$6000, Capital Stock, and five of said votes being for \$15,000 Capital stock, and your Orators would further show unto your Honor, that nearly or quite all of said one hundred and nineteen votes were composed of the votes of your orators and of the other and remaining farmers of said Township of St. Charles and that nearly or quite all of said two hundred and fifty eight votes, which were given for a Rail Road, were composed and made up of the votes of persons residing in said village of St. Charles, and your Orators do not know and have not heard of a single farmer in said Township, who voted at such meeting in favor of a Rail Road, or of subscribing for a single dollar of the stock of said Rail Road.

And your Orator would further shew that the said Defendants, Oliver M. Butler and Richard W. Botsford in said bill of Complaint, now propose

and threaten to issue bonds of said
Township of St. Charles, amounting in
all to the sum of six thousand dollars,
as charged and alledged in said Bill
of Complaint as soon as the injunction
issued in this cause shall be dissolved,
and your pray as in the Original Bill.
Mark W Fletcher

State of Illinois }
Kane County. } Mark W. Fletcher,
who signs for himself,
as well as the other complainants, being
first duly sworn, on oath does depose
and say that he has read the fore-
going Supplemental Bill by him sign-
ed, and knows the contents thereof;
that the same is true of his own
knowledge, except as to those matters
stated upon information and belief,
and as to those matters he verily
believes the same to be true.
M. W. Fletcher

Sworn & Subscribed }
before me this 28th }
day of May, AD 1859. }
O. R. Wright }
Clerk. }

And afterwards, to wit, on the 15th day of June, AD 1859, the same being one of the days of the May Term of said Court, the following, among other proceedings were had and entered of Record in said Court, to wit:—

Solomon Dunham, et al }
v } Bill for Injunction
Oliver M. Butter, et al }

This day come the parties in this cause by their respective Solicitors, and the Court being now fully advised as to the defendants motion to dissolve the Injunction herein, heretofore entered in this cause, overrules said motion; to which ruling of the Court the defendants by their counsel except.

And afterwards, to wit, on the 14th day of December, AD 1859, there was filed in the office of the Clerk of said Court, a Demurer, which is in the words and figures following to wit:—

State of Illinois } Pending in the
Kane County, ss. } Kane County Circuit
Court. November Term, A.D. 1859.

Oliver M. Butler, et al }
ads } Bill for Infraction.
Solomon Durham et al }

And now comes the said de-
fendants, Oliver M. Butler and Richard
N. Botsford, by D. L. Eastman, their
attorney, by protestation, not confessing
all or any of the matters & things
in the said complainants original
or Supplemental bills contained, to
be true in such manner and form
as the same are therein set forth. &
alleged do, demur to said bills &
each of them, and for cause of demur
shew that the said complainants
have not by their said bills or either
of them, made such a case, as entit-
les them in a Court of equity to the
relief sought in said bills or any
part thereof. Therefore, and for divers
other good causes of demurer appear-
ing in the said bills and each of

them, these defendants do demur thereto
and they pray Judgment of this Hon-
orable Court, whether they shall be
Compelled to make any further answer
to said bills or either of them, and they
humbly pray to be dismissed from
sence with their reasonable costs in
this behalf sustained &c.

D. L. Eastman
Soll for Defts

And afterwards, to wit, on the
16th day of December, AD 1859, the
same being one of the days of the
November Term, of said Court, 1859,
the following among other Proceedings
were had and entered of Record in
said Court, to wit: —

Solomon Dunham, et al	} Bill for Injunction
v	
Oliver M. Butter and Richard W. Botsford,	

This day come the defendants,
by Eastman their Solicitor and hav-
ing filed their Demurer to the Com-
plainants Bill, the Court being fully

advised overrules said Demurer, to which ruling of the Court in overruling said Demurer, the Defendants by their Council except.

And afterwards, to wit, on the 17th day of December, A.D. 1859, the same being one of the days of the November Term of said Court, 1859, the following among other proceedings were had and entered of Record in said Court, to wit: -

Solomon Dunham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelley, Charles H. Parks, Lucien W. B. Burr, Spalding Eddy, Napoleon Joy, John Campbell, Edward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albro, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Garton, Asahel Bundy, Charles Hale, Spencer B. Huls, Garret Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Dauphath, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles

15
Gray, Brimbridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunham, Edmund Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffat, Daniel Stearns, Abraham Kershaw, Eli Jefft, Moses B. Bliss, Samuel Sterling, Nathan Ladd, John Greenland, Roland Lee, Michael Lincolnfeller, Harrison McGowan, Philander Mann, Horace Perry, John Delancy, William Draman, John B. Blanchard, Zenas Blackman, Michael Pousonby, C. J. Balch, Lyman German.

vs.

Oliver M. Butter, Supervisor, and Richard N. Batsford, Town Clerk of the Town of St. Charles. — Bill for Injunction.

This day come the complainants by Herrington & Fletcher their Solicitors, and on their motion it is ordered by the Court that the defendants be ruled to file their answer to the complainants bill instanter, and the defendants having failed to answer said Bill, it is ordered by the Court that their default for

want of an answer herein be entered of Record, and that the Complainants Bill of Complaint be taken as confessed against the defendants and that the Injunction heretofore ordered herein be made perpetual. It is therefore ordered adjudged, and decreed by the Court that the said Defendants, their agents, attorneys, and Successors in office, be, and they are perpetually enjoined from issuing, signing, selling or disposing of any bonds pledging the Township of St. Charles, in the County of Kane, & State of Illinois, for the redemption of the same, pursuant to the act of the Legislature of the State of Illinois, entitled, "An act to Incorporate the St. Charles Rail Road Company" and from doing any act or thing by which the Township of St. Charles may be made liable for any Rail Road Company. And it is further considered by the Court that the Complainants have and recover of the defendants their costs in this cause expended, and have execution therefor.

State of Illinois

Geneva County

I Paul R Wright Clerk of
the Circuit Court of said County
in the State aforesaid do hereby Certify that the
foregoing is a true, correct and complete Transcript
of the Records of said Court and all the papers
filed in a certain Cause wherein Solomon
Runham et al. are Complainants and Oliver
W. Butler et al. are defendants, as appears from
the Records & files of said Court in my office



Witness my name and the Seal
of said Court at Geneva in said
County this Eighth day of March
A.D. 1860.

P. R. Wright
Clerk

109
Kane Co. Wis. Cant
Solomon. Durham
1848

2.

Oliver W. Butler
et al

Drains crypt

Filed March 20. 1880,
Leland
Clark

Chas. Dees and Grant \$12.00

In Supreme Court
April Term 1860.

Oliver M. Butler et al
Plaintiffs in Error

vs
Solomon Dunham et al
defendants in error

Error To Kane Co.

Assignment of Errors.

1st The Court erred in granting a temporary
Injunction - as the bill has not sufficient
equity on its face.

2^d The Court erred in not dissolving the
Injunction, on motion of defendants in
Court below.

3^d The Court erred in over-ruling the demur
rer to the bill,

4th The Court erred in making the Injunction
perpetual.

Chas B. Hall,

H. S. Eastman & Boston

J. S. Beveridge

for Pltffs in error.

44 85
Supreme Court
Oliver M. Butler et al
vs
Solomon Dunham et al

Errors.

Filed April 17, 1860
A. Leonard
Clerk

W. L. Eastman
J. L. Burroughs
for Reffs & error

STATE OF ILLINOIS, }

LA SALLE COUNTY.

STATE OF ILLINOIS, Supreme Court within and for the Third Grand Division of said State, ss. Oliver M. Butler, supervisor, and Richard N. Botsford, town clerk of the town of St. Charles, plaintiffs in error, versus Solomon Durham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelley, Charles K. Parks, Lucien N. B. Burr, Spaulding Eddy, Napoleon Joy, John Campbell, Edward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albrow, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Gartron, Asahel Bundy, Charles Hale, Spencer B. Huls, Garrett Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Danforth, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles Gray, Brundridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunham, Edward Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffat, Daniel Stearns, Abraham Kershaw, Eli Teft, Moses D. Bliss, Samuel Sterling, Nathan Ladd, John Freeland, Roland Lee, Michael Lincoln, Harrison McGowan, Philander Mann, Horace Perry, John Delaney, William Draman, John B. Blanchard, Zenas Blackman, Michael Ponsonby, C. J. Balch and Lyman German, defendants in error—Error to Kane.

It appearing by affidavit on file in the Clerk's Office of said Supreme Court, in the above entitled cause, that due inquiry has been made for John Pierce, George Pierce, James Hurst, Robert S. Danforth, Patrick Catron, Edward Catron, Philander Mann, and Nathan Ladd, part of said defendants in error, and that on due and diligent inquiry the said John Pierce, George Pierce, James Hurst, Robert S. Danforth, Patrick Catron, Edward Catron, Philander Mann, and Nathan Ladd, or any of them cannot be found; and whereas, the said plaintiffs in error have duly sued out of said Supreme Court a writ of error, to reverse a decree obtained by the said defendants in error, against the said plaintiffs in error, in the Circuit Court of Kane county, which writ of error is now pending in said Supreme Court, and a writ of *scire facias* having been issued herein, returnable on the first day of the next term of said Supreme Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April, A. D. 1861, according to law.

Now you, the said John Pierce, George Pierce, James Hurst, Robert S. Danforth, Patrick Catron, Edward Catron, Philander Mann, and Nathan Ladd, and each of you, are hereby notified to be and appear before the Justices of said Supreme Court, at the next term of said Supreme Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April, A. D. 1861, to hear the record and proceedings of said Circuit Court brought into said Supreme Court, on return of said writ of error, and the errors assigned, if you shall see fit; and further, to do and receive what said Supreme Court shall order in this behalf.

Attest:

L. LELAND, Clerk.

JOHN L. BEVERIDGE, Att'y for Plffs. in error. feb9-4w

This Certifies, That the annexed Notice in *Butter & Co. vs. Durham, &c* was inserted *four* weeks successively in the OTTAWA FREE TRADER, a weekly newspaper published at Ottawa, La Salle County, Illinois, commencing with the number of said paper dated *February 9th* A. D. 1861, and ending with the number dated *March 2d* A. D. 1861

PRINTER'S FEE \$ *7.00* *by R.A. Botsford*
McGowan Publisher.

35
O. M. Butter

V

Solemn Durham

et al

Publication Nov

Frid April 18. 17 1831

L. Leland
Clerk

FIRST CLASS FAMILY GROCERY STORE.—
Such is eminently that of W. B. CAMPBELL,
in Cavaryl's Row, Main st., west of the
Bank of Ottawa. His stock has been im-
mensely enlarged of late, by the addition
of all kinds of green, dried and preserved
fruits, and new crop sugars, at unprece-
dentedly low prices. Any and everything
good to eat or needed about the kitchen,
can be had at Campbell's at the same low
scale of prices. Read his advertisement.

STATE OF ILLINOIS,
SUPREME COURT,

The People of the State of Illinois,

Greeting:

To the Sheriff of the County of

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Kane County, before the Judge thereof, between

~~plaintiffs in Error, versus~~ Solomon Durham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelley, Charles K. Parks, Lucien N. B. Burr, Spaulding Eddy, Napoleon Joy, John Campbell, Enward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albro, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Gartron, Asahel Bundy, Charles Hale, Spencer B. Huls, Garrett Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Danforth, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles Gray, Brundridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunham, Edward Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffat, Daniel Stearns, Abraham Kershaw, Eli Teft, Mosses D. Bliss, Samuel Sterling, Nathan Ladd, John Freeland, Roland Lee, Michael Lincolnfeller, Harrison McGowan, Philander Mann, Horace Perry, John Delancy, William Draman, John B. Blanchard, Zenas Blackman, Michael Ponsonby, C. J. Balch and Lyman German, ~~defendants in Error~~

plaintiffs and

Oliver M. Butler, Supervisor, and Richard N. Botsford, Town Clerk of the town of St. Charles,

defendants, it is said that manifest error hath intervened, to the injury of the said defendants

as we are informed by their complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

~~plaintiffs in Error, versus~~ Solomon Durham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelley, Charles K. Parks, Lucien N. B. Burr, Spaulding Eddy, Napoleon Joy, John Campbell, Enward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albro, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Gartron, Asahel Bundy, Charles Hale, Spencer B. Huls, Garrett Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Danforth, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles Gray, Brundridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunham, Edward Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffat, Daniel Stearns, Abraham Kershaw, Eli Teft, Mosses D. Bliss, Samuel Sterling, Nathan Ladd, John Freeland, Roland Lee, Michael Lincolnfeller, Harrison McGowan, Philander Mann, Horace Perry, John Delancy, William Draman, John B. Blanchard, Zenas Blackman, Michael Ponsonby, C. J. Balch and Lyman German, ~~defendants in Error~~

that they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

~~plaintiffs in Error, versus~~ Solomon Durham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelley, Charles K. Parks, Lucien N. B. Burr, Spaulding Eddy, Napoleon Joy, John Campbell, Enward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albro, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Gartron, Asahel Bundy, Charles Hale, Spencer B. Huls, Garrett Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Danforth, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles Gray, Brundridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunham, Edward Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffat, Daniel Stearns, Abraham Kershaw, Eli Teft, Mosses D. Bliss, Samuel Sterling, Nathan Ladd, John Freeland, Roland Lee, Michael Lincolnfeller, Harrison McGowan, Philander Mann, Horace Perry, John Delancy, William Draman, John B. Blanchard, Zenas Blackman, Michael Ponsonby, C. J. Balch and Lyman German, ~~defendants in Error~~

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 2nd day of February in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.

J. D. Rice Deputy

Oliver M. Butler

No. 88-

vs.

Solomon D. Conhuen

SCIRE FIAS.

Filed April 17th A. D. 186

J. Adams
By *[Signature]* Clerk.
[Signature] Deft.

Shave duly served the within by seeing the same
the within named Daniel Huntington April 8th 1861
by Sir Woodbury Deft. Sheriff
decreed by
4th March 1861 & C. C.

And to see said by W. A. B. B. B.

STATE OF ILLINOIS,
SUPREME COURT,

The People of the State of Illinois,

To the Sheriff of the County of

Kane

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Kane County, before the Judge thereof, between Solomon Dimham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelly, Charles K. Parks, Lucien

U. B. Burr, Spaulding Eddy, Napoleon Joy, John ~~Catron~~ Campbell, Edward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albro, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Garton, Asahel Bundy, Charles Hale, Spencer B. Huls, Garrett Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Danforth, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles Gray, Brundridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunkham, Edmund Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffatt, Daniel Stearns, Abraham Kershaw, Eli Tefft, Moses B. Bliss, Samuel Sterling, Nathan Ladd, John Ireland, Roland Lee, Michael Lincolnfeller, Harrison McGowan, Philander Mann, Horrace Perry, John Delancy, William Drannen, John B. Blanchard, Jenas Blackman, Michael Pousonby, C. J. Balch & Lyman German,

plaintiffs and Oliver M. Butler Supervisor and Richard N. Batford Town Clerk of the Town of St. Charles

defendants, it is said that manifest error hath intervened, to the injury of the said defendants

man, Michael Pousouby, C. J. Bader
Lyman German,

plaintiffs and Oliver M. Butler Supervisor and
Richard N. Batford Town Clerk of the Town of
St. Charles

defendants, it is said that manifest error hath intervened, to the injury of
the said defendants

as we are informed by their
complaints the record and proceedings of
which said judgments we have caused to be brought into our Supreme
Court of the State of Illinois, at Ottawa, before the Justices thereof,
to correct the errors in the same, in due form and manner, according to law:
Therefore, We Command You, That by good and lawful men of
your County, you give notice to the said Solomon Dunham,
Mark W. Fletcher, Wesley Hall, Patrick Catron,
Martin Switzer, James Burr, Richard Kelly

Charles K. Park, Lucien A. D. Burr, Spaulding
Eddy, Napoleon Joy, John Campbell, Edward
Catron, Daniel Wheeler, William Marshall,
Joseph B. Disbro, John Pierce, Ira Albro,
Peter Pratt, George Pierce, James Hurst, John
M. Laughlin, John D. Garton, Asahel Bundy,
Charles Hale, Spencer B. Huls, Garrett
Norton, James Hoag, Charles D. Tucker
John D. Easter, Robert Danforth, John C.
Wilson, Thomas L. Morgan, Russell Humphrey,
Edward Baker, Charles Gray, Brundridge S.
Haverland, Jonathan Matteson, Orrin Hall,
Daniel Hutchins, Jesse B. Alcott, Daniel
Dunham, Edmund Bartlett, Nathaniel
Ballard, William Hammond, Sylvanus
Moffat, Daniel Stearns, Abraham Kershaw,
Eli Teft, Moses B. Bliss, Samuel Sterling,
Nathan Ladd, John Ireland, Roland Lee,
Michael Lincoln Jetter, Harrison McGowan,
Philander Mann, Horace Perry, John
Delaney, William Draman, John B.
Blanchard, Jemas Blackman, Michael
Pousouby, C. J. Bader, Lyman German,

that they be and appear before the Justices of our said
Supreme Court, at the next term of said Court, to be holden at Ottawa,
in said State the first Tuesday after the third Monday in April
next, to hear the record and proceedings aforesaid, and the errors assigned, if
they shall see fit; and further to do and receive what said Court
shall order in this behalf; and have you there the names of these by
whom you shall give the said Solomon Dunham & others
plaintiffs as aforesaid.

notice, together

Witness, Me Hon. John D. Caton, Chief
said Court, and the Seal thereof, at Ottawa
day of March in the Year of
Thousand Eight Hundred and Sixty.

L. Leland

Clerk of the Supre
C. J. B. Burr De

of the within named John Campbell - John Jones. Henry
Perry James Stunt - Asaiah Bandy Anne Stedman and
Arthur & Allen Sherry Adams
by A. E. Lewis Deputy
of Kane County

Executed this writ March 27th AD. 1860 by Reading
the same to the within named Rufell Humphrey.
Solomon Mannham. Mark W. Ditcher. Daniel
Whalen J. B. Hispro Sna Albro. Peter Pratt. Charles
Hale. Charles Gray. B. S. Heverland. Jonathan
Matterow. Orrin Hall. Edward Bonlett.
William Hammond. Sylvester Moffatt. Daniel
Stennis Abraham Kershaw. Moses B. Reif.
and Samuel Sterling. Ethan J. Allen

Sheriff of Kane County
by A. E. Lewis Deputy

I further Executed this writ March 28th 1860
by Reading the same to the within named Wesley
Hall. Martin Switzer. Richard Keller
John M. Laughlin. James Hoag. Charles B.
Ducker Nathaniel Ballard and Thomas L.
Morgan Ethan J. Allen

Sheriff of Kane County

by A. E. Lewis Deputy

I further Executed this writ ^{March 29th 1860} by Reading the
same to the within named Eli "Left and

John Ireland Ethan J. Allen. Sheriff

of Kane County

I further Executed this writ March 30th
1860 by Reading the same to the within named
James Burr. Spaulding Eddy William

Same to the within named Eli Jeff and
John Ireland Ethan J. Allen, Sheriff
of Kane County Ill

I further Executed this writ March 30th
1860 by Reading the Same to the within named
James Burr. Spaulding Eddy William

Marshall, Roland Lee, Michael Lincoln =
Jeller, Philander Munn Horace Perry
John B. Blanchard, Michael Ponsowby, Garret
Morton, J. H. Easter John C. Wilson, Harrison
McGowan John Delancy William Dorman
Igen as Blackman and C. Balch

Ethan J. Allen Sheriff
of Kane County Ill
by A. E. Lewis Deputy

I further Executed this writ March 31st
1860 by Reading the Same to the
within named L. N. B. Burr Napoleon
Joy, Lyman Sherman, and Edward Baker

Ethan J. Allen Sheriff
of Kane County Ill
by A. E. Lewis Deputy

I further Executed this writ April 2nd
1860 by Reading the Same to the within
named Charles K. Porges, Spencer B.
Hills and Jesse B. Alcott

Ethan J. Allen
Sheriff of Kane County Ill
by A. E. Lewis Deputy

I further Executed this writ April 5th 1860 by Reading
the same to the within named Daniel Dunham Robert
Donforth, Patrick Catron and Edward Catron

Ethan J. Allen Sheriff of
Kane County Ill
by A. E. Lewis Deputy

I further Executed this writ April 7th 1860 by Reading the same to
the within named John W. Stanton - Ethan J. Allen Sheriff of
Kane County Ill
by A. E. Lewis Deputy

Solomon Dunham
40th 3rd
Oliver M. Burtis
et al
Seize facies

Filed April 17, 1860

of Ireland
Clerk
Sherriffs Fees
57 services -- \$28.50
471 miles 28.50
Returns 1.00
\$52.15

Ethan J. Allen
Sheriff
Received of Plaintiff on
the above \$22.05
Ethan J. Allen
Sheriff

The following persons were not permitted
to serve the writ on the within named
persons, but of Chicago - do not
know, Mrs. Allen, John Grant
Hammock, Stephen Mackate, 10 on
Abraham Lincoln and North
E. J. Allen the
by A. E. Lewis

STATE OF ILLINOIS,
SUPREME COURT,

The People of the State of Illinois,

To the Sheriff of the County of

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Kane County, before the Judge thereof, between

~~plaintiffs in Error, versus~~ Solomon Durham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelley, Charles K. Parks, Lucien N. B. Burr, Spaulding Eddy, Napoleon Joy, John Campbell, Enward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albro, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Gartron, Asahel Bundy, Charles Hale, Spencer B. Huls, Garrett Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Danforth, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles Gray, Brundridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunham, Edward Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffat, Daniel Stearns, Abraham Kershaw, Eli Teft, Mosses D. Bliss, Samuel Sterling, Nathan Ladd, John Freeland, Roland Lee, Michael Lincolnfeller, Harrison McGowan, Philander Mann, Horace Perry, John Delancy, William Draman, John B. Blanchard, Zenas Blackman, Michael Ponsonby, C. J. Balch and Lyman German, ~~defendants in Error.~~

plaintiffs and

Oliver M. Butler, Supervisor, and Richard N. Botsford, Town Clerk of the town of St. Charles,

defendants, it is said that manifest error hath intervened, to the injury of the said defendants

as we are informed by their complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

~~plaintiffs in Error, versus~~ Solomon Durham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelley, Charles K. Parks, Lucien N. B. Burr, Spaulding Eddy, Napoleon Joy, John Campbell, Enward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albro, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Gartron, Asahel Bundy, Charles Hale, Spencer B. Huls, Garrett Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Danforth, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles Gray, Brundridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunham, Edward Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffat, Daniel Stearns, Abraham Kershaw, Eli Teft, Mosses D. Bliss, Samuel Sterling, Nathan Ladd, John Freeland, Roland Lee, Michael Lincolnfeller, Harrison McGowan, Philander Mann, Horace Perry, John Delancy, William Draman, John B. Blanchard, Zenas Blackman, Michael Ponsonby, C. J. Balch and Lyman German, ~~defendants in Error.~~

that ~~that they~~ be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if ~~they~~ shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

~~plaintiffs in Error, versus~~ Solomon Durham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelley, Charles K. Parks, Lucien N. B. Burr, Spaulding Eddy, Napoleon Joy, John Campbell, Enward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albro, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Gartron, Asahel Bundy, Charles Hale, Spencer B. Huls, Garrett Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Danforth, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles Gray, Brundridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunham, Edward Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffat, Daniel Stearns, Abraham Kershaw, Eli Teft, Mosses D. Bliss, Samuel Sterling, Nathan Ladd, John Freeland, Roland Lee, Michael Lincolnfeller, Harrison McGowan, Philander Mann, Horace Perry, John Delancy, William Draman, John B. Blanchard, Zenas Blackman, Michael Ponsonby, C. J. Balch and Lyman German, ~~defendants in Error.~~

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 2nd day of February in the Year of Our Lord One Thousand Eight Hundred and Sixty-one

Leland

Clerk of the Supreme Court.

by J. B. B. B. B.

I have served this writ by handing to the
 within named John Campbell Adahel Kennedy
 Solomon Durham, Detur Cratt Valhail
 Bacherel this 5th day of April 1861

Deceased Estate
 Sheriff of Hone County, &c
 By H. M. Clark Deputy

35
 Oliver M. Butler
 vs.

No. 85
 Solomon Durham
 vs. the

SCIRE FACIAS.

FILED Apr 17. 1861 A. D. 1861

D. Delmar
 By J. H. Sullivan Clerk.
 Sheriff fees of Hone County
 5 sermis 250
 Postage 300
 Return 10
 560

& Execut does and on this writ that
 5th day of April 1861
 Nathaniel Ballance

Execut does
 on this 5th day of April 1861

BRIEF OF PLAINTIFFS IN ERROR.

SUPREME COURT,

APRIL TERM, 1860.

Oliver M. Butler, et al., }
vs. } ERROR TO KANE CO.
Solomon Dunham, et al. }

ERRORS ASSIGNED.

1st—Court erred in granting a *temporary* injunction, as the bill has not sufficient equity on its face.

2d—Court erred in not dissolving the injunction, *on motion* of defendants.

3d—Court erred in *over ruling* the demurrer to the bill.

4th—Court erred in making the injunction *perpetual*.

POINTS AND AUTHORITIES.

1st—The action of Plaintiffs in error, complained of in Bill, is pursuant to law.

Session Laws, 1859, p. 506, ¶ 4. "An Act to incorporate the St. Charles Railroad Company."

2d—Said Act, and the powers therein conferred upon said plaintiffs, are in pursuance of the Constitution.

19 Ill. 406.

21 " 451.

City of Bridgeport vs. Housatonic Railroad Co.

2 Am. Railway Cases. 39.

And numerous cases referred to in note following.

✓ 24 Dec 75 + 208
Charles B. Kelly

EASTMAN & BOTSFORD,

J. E. BEVERIDGE,

For Plaintiffs.

102 35-182

Boulton to Darbman.

his opinion to

be

Plffs Briefs

Filed Apr 20, 1860

L. L. L. L.

Alah

In The Supreme Court of the State of
Illinois, of the third Grand Division.
April Term 1860.

Charles M. Butler et al }
vs } Error to Have Co.
Solomon Dunham et al }

State of Illinois }

Hane County ss }

Richard A. Bottford

being duly sworn deposes

and says. That he is one of the plaintiffs in
error, in the above entitled cause, - That
he does not know John Pierce, George
Pierce, James Hurst, Robert S. Comfort, and
Patrick Catron, & Edward Catron, & Philander
Man

defendants

named in the above entitled suit, and
upon due and diligent inquiry. He has
been unable to find or learn anything of
said persons, or any of them - and he
therefore prays publication of this writ.
pursuant to the rule of said Court, - and
further affiant says not.

Subscribed and sworn to before me
This 21st day of April A.D. 1860

R. A. Bottford

Jos. W. Wells

Notary Public



77 35
Supreme Court
Oliver M. Butler et al
vs
Solomon Dunham
Plas

Appellant for
Publication

Filed April 25, 1860
L. Leland
clerk



Solomon Dunham & Co.
vs
Oliver M Butler & Son
& Richard A. Botzford & Co.

Supreme Court
State of Illinois

Error from Bench

State of Illinois
Rand County vs

Richard A. Botzford on
his oath deposes and says that he is one of
the Plaintiffs in Error in the above entitled
Cause, and that he has made due and
diligent enquiry for Nathan Ladd of the
Defendants in Error in this Cause & that
upon due Enquiry the said Nathan Ladd
cannot be found & that his place of residence
is unknown to this affiant

Subscribed & sworn to before
me this 4th day of July, 1861

R. A. Botzford

J. C. Moore

Clerk of said Court.

35
D. H. C. D. H. C. D.

2.

Q. W. Butler et al

Affidavit of non-
residence Defendant

SUPREME COURT
OF THE
STATE OF ILLINOIS.
APRIL TERM, 1860.

STATE OF ILLINOIS, }
KANE COUNTY. } ss.

KANE COUNTY CIRCUIT COURT,
November Term, A. D. 1859.

Solomon Dunham & Mark W. Fletcher et al }
vs }
Oliver M. Butler et al. } BILL FOR INJUNCTION.

PAGE OF RECORD.

2 On the 19th of May A. D. 1859, it being one of the days of the May term of said Court, a bill for Injunction and relief was filed in said Court, by said Solomon Dunham, Mark W. Fletcher, & 64 others as complainants against Oliver M. Butler, Supervisor of the town of St. Charles, and Richard N. Botsford, Clerk of said town—defendants.

3 The bill alleges that each of the complainants are owners of Real Estate and tax-payers in the limits of said town of St. Charles, which is town 40, R. 8 E. &c., and that the total amount of property assessed to your orators is about \$100,000, and is about one-fourth of the taxable property of said township. That the joint property of complainants in said township, will be liable to an assessment for taxes for the year 1859, for about the said sum of \$100,000, for State, County, and Township taxes.

4 That Section 27 & 34, in said township, and about one half mile North of the South line, and about two miles West of the East line of said township, is the village of St. Charles, containing between 2000 and 3000 inhabitants. That the voters in said village are the majority of voters of said township of St. Charles. That the inhabitants of said village, against the wishes of complainants, procured at the last session of the Legislature, the passage of an Act entitled "an Act to incorporate the St. Charles Railroad Company," which was approved February 18th, 1859, which Act is attached hereto and made a part of complaints, and marked "A" as on Exhibit.

5 That O. M. Butler is now acting Supervisor of the town of St. Charles, duly elected. That R. N. Botsford is the acting town Clerk for said town, duly elected, &c. and both said Butler & Botsford are made defendants. Bill alleges that said defendants by pretence of authority vested in them by said Act, ("Exhibit A") have issued a certain notice, attached hereto and marked ("Exhibit B") &c.

6 That in pursuance of authority to be obtained in pursuance of an election to be held at a time and place, in said notice mentioned, said defendants are about to issue bonds to a large amount, of the said township, making the same a charge on said township, and on the property of its inhabitants, the principal and interest to be paid by tax on all the real and personal property in said township.

7 That on information and belief, it is not designed to have any Stock taken in said Railroad Company, except such part as shall be taken by the said township; but it is designed to make the said township a R. R. Corporation for the purpose mentioned in said Act.

6 That as they are advised by counsel, the complainants charge that said township is a municipal Corporation for the government of its people; not a private corporation for pecuniary purposes, and that it is contrary to the constitution of this State to make such a private Corporation for the purposes of speculation; compelling the inhabitants and property owners of said town to invest their property without their consent, and against their wishes &c., which municipal Corporation is changed from the legitimate constitutional and legal objects thereof.

That the Dixon Air-Line R. R. Co., have a depot at Geneva, one mile South of said township. That the G. & C. U. R. R. Co. have a depot at Wayne, a little North and half a mile East of the center of the East line of said township; at some one of said depots nearly all of Complainants, and more than half of said township will do their business in preference to doing it at St. Charles, for the reason they can be better accommodated.

That the farming community of said town, and especially complainants, have ample Railroad facilities. That no benefit would accrue to complainants by building said Branch Railroad, but the same would be an injury.

7 That said defendants and those acting with them, sometimes declare it is the intention to issue said bonds by authority of said Act, according to the determination of said election, to be held in pursuance of said notice marked "B" and to use and apply the proceeds, when issued in repairing an old R. R. belonging to the G. & C. U. R. R. Co. connecting said village with the said
8 G. & C. U. R. R., with the pretence that that would be using said Bonds, in accordance with said Act.

That the R. R. track last mentioned, is not used by said G. & C. U. R. R. Co., and has not been for a long time, for the reason that it would not pay running expenses and repairs. They have freely given the use of the said old track to the citizens of St. Charles, also running equipage, conditional they would run the same and keep it in repair.

That nineteen of complainants, have lands in said township, mostly timbered, of about the assessed value of \$15,000; all of which lands lie nearer some one of said depots, than to the depot at St. Charles, so that said Railroad will be of no advantage to said property of said 19 complainants, and that each
9 and all of said 19 complainants live without the town of St. Charles, have no vote at elections mentioned in said Act, and if said Bonds are issued they will be injured and have no voice in the matter.

That a Branch R. R. is now existing, connecting said village with the G. & C. U. R. R., as advantageously, in the opinion of complainants, as the contemplated branch road, which has long since been abandoned, as it would not pay expenses and repairs.

That should said contemplated road be built, it can never pay running expenses; that all monies invested in said road will be lost.

10 That said village has for many years been provided with a Railroad, and all equipments necessary for running it, free of expense; that the same has been abandoned, as it would not pay running expenses and repairs, and was worthless as a monied investment. That your orators have all the Railroad facilities to carry their produce to market and to travel upon. That they are not obligated by the constitution or law to provide ways of travel &c., to the people of St. Charles, &c. That no benefit of any money can accrue to complainants or their property, private, public, legal, commercial, moral or religious, by the building of said Railroad. It is in no sense a Railroad. It cannot be called a public road, but a matter of accommodation, local in its character to the village of St. Charles; said road will not increase the value of the property of complainants, but will decrease its value by taxes, &c. That money invested in said road will be sunk and lost, and it will be a continued tax upon the property owners of said town to keep it in repair.

11 That complainants became property owners in said town under the pledge
of the law of the Constitution of this State. That their property should be bur-
dened only with taxes legitimate and necessary for the support of the govern-
ment, and that it should not be taken for private use against their will, and not
for public use without just compensation. That the using said bonds and en-
cumbering complainant's property by taxes, hereafter to be raised to pay prin-
cipal and interest of the same, is a direct violation of the constitution &c. Com-
plainants show, on information and belief, that O. M. Butler, acting Supervisor
of said town, and R. N. Botsford, acting Clerk, are about to issue the bonds
of said town to the amount of several thousand dollars under said law in (sche-
dule "A") mentioned, bearing a high rate of interest, pledging all the property
in said township for the payment thereof. Complainants had well hoped that
12 said defendants would have regarded their duty &c., but they not regarding
their duty &c., but combining and confederating &c., whose names, &c., have
called an election at the village of St. Charles, on the 20th day of May 1859,
to get an excuse for issuing said bonds, and intend to issue the same; sometimes
pretending that the proceeds shall be applied to building a plug R. R. to con-
nect with the Air-Line R. R. at Geneva, sometimes pretending the same to be
7 applied to building a plug R. R. to connect with the G. & C. U. R. R., near
Clintonville, sometimes they are to be applied to repairing the plug branch R.
R. running from St. Charles to the Junction, all of which acting and doings
are contrary to equity, &c. Here follows usual prayer for Summons, &c., that
defendants answer without oath.

13 And also that a writ of Injunction may issue, restraining defendants' agents,
attorneys, and successors from issuing, signing, selling or disposing of any
bonds, pledging the township of St. Charles for their redemption, in pursuance
of the Act of the Legislature in schedule "A" mentioned, or from doing any
other act or thing by which the township of St. Charles may be made liable for
any R. R., and that the injunction is final, having been made perpetual.

(Signed)

MARK W. FLETCHER.

Here follows usual affidavit of Mark W. }
Fletcher, who proposes to sign for himself }
and the others, Dated May 19th, 1859. }

14 Here follows Exhibit "A" which is a literal copy of "An Act entitled An
to Act to incorporate the St. Charles Railroad Company" found on pages 506, 507,
26 508, 509, 510 and 511, of the laws of Illinois for the year 1859, which is here
referred to, and respectfully asked to be taken as a part of this abstract.
(Exhibit "B").

27 TOWN MEETING.—Whereas I have been requested by the Supervisor of the
township of St. Charles, in the County of Kane and State of Illinois, to call
an election or meeting of the citizens, (legal voters) of said township, pursuant
to an Act of the general assembly of the State of Illinois, entitled "An Act to
incorporate the St. Charles Railroad Company," approved February 18, 1859.

Therefore, pursuant to such request, and in obedience to the law in such
cases made and provided. Notice is hereby given to the inhabitants of the
township of St. Charles in the County of Kane and State of Illinois, that a
town meeting will be held for said township, at the stone building in the village
of St. Charles, on the East side of Fox River, where the last annual town meet-
ing was held for said township, on Friday the 20th day of May, A. D. 1859, to
ascertain whether or not the citizens of said township, in accordance with law,
are desirous that said township shall subscribe for, or cause to be subscribed for
any, and if any, how much of the capital Stock of the said St. Charles Railroad
Company, in pursuance of law and the Act above referred to; said meeting or
election to be conducted and the vote then and there to be taken, in the manner
referred to, and pointed out in Sections 11 & 12 of said Act above herein refer-
red to, and in accordance with law, which said section 11 and part of 12, reads
as follows :

28 SECT. 11.—That before the Stock aforesaid shall be subscribed, an election be had to ascertain whether the citizens of said township are desirous that such subscription be made; which said election shall be called by the town clerk, whenever so requested by the Supervisor of said township, and held and conducted, and the returns thereof made, in like manner, as at the annual town meeting for the election of township officers for said township.

SECT. 12.—The vote shall be taken by ballot, which shall be printed or written, or partly written and partly printed, "For a Railroad (\$ ") specifying how much, or "against a Railroad."

Given under my hand this ninth day of May A. D. 1859.

R. N. BOTSFORD.

Town Clerk.

30 And afterwards, May 20, 1859, it being one of the days of the May term of said Court, "The complainants, by Fridley, their Solicitor, having their said Bill of Complaint move the Court for an Injunction, which motion is sustained

31 by the Court. It is therefore ordered by the Court that the said defendants be enjoined from issuing, signing, selling, or disposing of any Bonds pledging the township of St. Charles, for the redemption of the same, pursuant to the Act of the Legislature, entitled an Act to incorporate the St. Charles Railroad Co., approved February 18, 1859, &c., and that a writ of Injunction issue &c. Subsequently come the defendants, by Barry their Solicitor, and move the Court to dissolve said Injunction. Writ of Injunction issued in said case on the said 20th day of May 1859, from the proper office, in accordance with the prayer of said bill.

33 On the same day (May 20, 1859,) the said Writ of Injunction was filed in the proper Clerk's office, endorsed as follows:

Executed this Writ May 20, 1859, by delivering to Oliver M. Butler, Supervisor, and Richard N. Botsford, Town Clerk of the town of St. Charles, true copies of this Writ.

E. J. ALLEN,

Sheriff of Kane County.

On same day usual Writ of Summons was issued in said cause, from the proper office and returned and duly filed in the proper Clerk's office, duly served by the proper officer, June 17, 1859, on all the said defendants.

36 On the 28th day of May, 1859, it being one of the days of said May term, on motion of complainants, they have leave to file a supplementary bill in this case.

37 Supplemental Bill.

38 Complainants allege that since filing the original bill, to wit: May 20, 1859, a Town Meeting of the inhabitants of said township was held under and pursuant to the notice marked (Exhibit B") and that a vote was then and there taken by such of the inhabitants of said township as attended said meeting for the purpose as alledged in said notice of ascertaining whether the citizens &c., were desirous that said township should subscribe for, or cause to be subscribed for any, and if any, how much of the capital Stock of said R. R. Co. That at such meeting 119 votes were cast against a Railroad, and that 258 votes were cast for a Railroad, 250 of said votes being for \$6000 capital Stock, and a few of said votes being for \$15,000 capital Stock. That nearly or quite all of said 119 votes were composed of complainants and of the remaining farmers of said township. That nearly or quite all of said 258 votes for a Railroad were given by persons residing in said village. Complainants don't know of a single farmer who voted in favor of a Railroad.

That defendants aforesaid now propose and threaten to issue bonds of said township, in all the sum of \$6000, as soon as the Injunction in this case shall be dissolved.

(Signed)

MARK W. FLETCHER.

PAGE OF RECORD.

40

On the 15th day of June 1859, it being one of the days of the May term of said Court, the following proceedings were had in said cause.

The respective parties come by their solicitors, &c., the Court being fully advised of the defendants' motion to dissolve the injunction herein heretofore entered in this cause, overrules said motion, to which ruling of the Court the defendants by their counsel, except.

On the 14th day of December 1859, there was filed in the office of the Circuit Clerk of said Court, a demurrer by the defendants in the usual form, was filed to said original and supplemental bills.

On the 16th day of December, the Court being fully advised in the premises, overrules said demurrer, to which ruling of the Court in overruling said demurrer the defendants duly excepted.

43 On the 17th day of December 1859, the following proceedings were had; the complainants by Herrington & Fletcher, their Solicitors come, and on their motion it is ordered by the Court that the defendants be ruled to file their answer instant, the defendants failed to answer. It is ordered that their default be taken for want of an answer, &c., that complainants' bill be taken as confessed against defendants, and that the Injunction heretofore ordered be made perpetual &c.

Here follows the usual order and the Clerk's certificate of record, &c.

ABSTRACT BY EASTMAN & BORSFORD, }
Solicitors for Defendants. }

Charles B. Borsford

109 35
Butter Sts.

D
Durham Sts.

Abteto,

Filed April 26. 1860
L. Deland
Clerk.

Eastman atty.

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Kane Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Kane County, before the Judge thereof, between Solomon Dunham & others

plaintiffs and Oliver M. Butler & al.

defendants, it is said manifest error hath intervened, to the injury of the aforesaid defendant

as we are informed by them complainants and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the pleas aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 20th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty.....

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

179 35

Solomon Dunham

vs.

No.

vs.

Oliver M. Butler

Ad.

WRIT OF ERROR.

~~This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.~~

Gleck.

FILED

March 20

A. D. 1860

L. Leland

Gleck.

In Supreme Court of State of
Illinois. Third Division

Oliver M. Butler et al
vs
Solomon Dunham et al } error to Kane Co

The Clerk will issue in the above entitled
cause, an Alias Sub-Pa.

To Kane Co.

As to John Campbell
Asahel Bundy
Solomon Dunham

To DuPage Co

As to Ira Albro
Peter Pratt
William Hammond
Daniel Stearns
Abraham Kershaw
Nathaniel Ballard

To DeKalb Co

As to Daniel Hutchins
To Whiteside Co.

As to Nathan Seader,

And publish notice as per affidavit filed
herewith

To John Peice
George Peice
James Hunt
Robert C. Danforth
Patrick Cotton
Edward Cotton
Philander Mann

Eastman & Beveridge
attys for Pettr in error

47 35-
Supreme Court
Oliver M. Bullock

no

Notemur Veneremur

21.28

Preceptus
Sci. La

Filed April 20 1830
L. Leland
Clerk

STATE OF ILLINOIS,
SUPREME COURT,

The People of the State of Illinois,

To the Sheriff of the County of *San Diego*

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of *Kan* County, before the Judge thereof, between

plaintiffs in Error, ~~versus~~ Solomon Durham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelley, Charles K. Parks, Lucien N. B. Burr, Spaulding Eddy, Napoleon Joy, John Campbell, Enward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albro, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Gartron, Asahel Bundy, Charles Hale, Spencer B. Huls, Garrett Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Danforth, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles Gray, Brundridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunham, Edward Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffat, Daniel Stearns, Abraham Kershaw, Eli Teft, Mosses D. Bliss, Samuel Sterling, Nathan Ladd, John Freeland, Roland Lee, Michael Lincolnfeller, Harrison McGowan, Philander Mann, Horace Perry, John Delancy, William Draman, John B. Blanchard, Zenas Blackman, Michael Ponsonby, C. J. Balch and Lyman German, defendants in Error

plaintiffs, and

Oliver M. Butler, Supervisor, and Richard N. Botsford, Town Clerk of the town of St. Charles,

defendants, it is said that manifest error hath intervened, to the injury of the said defendants

as we are informed by *the* the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

plaintiffs in Error, ~~versus~~ Solomon Durham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelley, Charles K. Parks, Lucien N. B. Burr, Spaulding Eddy, Napoleon Joy, John Campbell, Enward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albro, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Gartron, Asahel Bundy, Charles Hale, Spencer B. Huls, Garrett Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Danforth, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles Gray, Brundridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunham, Edward Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffat, Daniel Stearns, Abraham Kershaw, Eli Teft, Mosses D. Bliss, Samuel Sterling, Nathan Ladd, John Freeland, Roland Lee, Michael Lincolnfeller, Harrison McGowan, Philander Mann, Horace Perry, John Delancy, William Draman, John B. Blanchard, Zenas Blackman, Michael Ponsonby, C. J. Balch and Lyman German, defendants in Error.

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

plaintiffs in Error, ~~versus~~ Solomon Durham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelley, Charles K. Parks, Lucien N. B. Burr, Spaulding Eddy, Napoleon Joy, John Campbell, Enward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albro, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Gartron, Asahel Bundy, Charles Hale, Spencer B. Huls, Garrett Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Danforth, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles Gray, Brundridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunham, Edward Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffat, Daniel Stearns, Abraham Kershaw, Eli Teft, Mosses D. Bliss, Samuel Sterling, Nathan Ladd, John Freeland, Roland Lee, Michael Lincolnfeller, Harrison McGowan, Philander Mann, Horace Perry, John Delancy, William Draman, John B. Blanchard, Zenas Blackman, Michael Ponsonby, C. J. Balch and Lyman German, defendants in Error.

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *2nd* day of *February* in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.
G. D. Rice Deputy

Olin M. Butler

No. *vs.*
Solomon Durheim

SCIRE FACIAS.

Filed *April 17, 1881* A. D. 1881

A. Sellen

By A. Sellen, Sheriff, writ
I have duly served the following persons
The same to the following persons
Zra Albro *William Hammond*
Daniel Stearns S. Ylvenus *W. H. Coffatt*
Edward Barlett *his 4th day of Apr*
1881. J. S. Rogers Sheriff
Dufay & Co
This service \$2.50
 mileage 250
 return 1.00
 \$4.00

SUPREME COURT

OF THE

STATE OF ILLINOIS.

APRIL TERM, 1860.

STATE OF ILLINOIS, }
KANE COUNTY. } ss.

KANE COUNTY CIRCUIT COURT,
November Term, A. D. 1859.

Solomon Dunham & Mark W. Fletcher et al }
vs
Oliver M. Butler et al. }

BILL FOR INJUNCTION.

PAGE OF RECORD.

2 On the 19th of May A. D. 1859, it being one of the days of the May term of said Court, a bill for Injunction and relief was filed in said Court, by said Solomon Dunham, Mark W. Fletcher, & 64 others as complainants against Oliver M. Butler, Supervisor of the town of St. Charles, and Richard N. Botsford, Clerk of said town—defendants.

3 The bill alleges that each of the complainants are owners of Real Estate and tax-payers in the limits of said town of St. Charles, which is town 40, R. 8 E. &c., and that the total amount of property assessed to your orators is about \$100,000, and is about one-fourth of the taxable property of said township. That the joint property of complainants in said township, will be liable to an assessment for taxes for the year 1859, for about the said sum of \$100,000, for State, County, and Township taxes.

That Sections 27 & 34, in said township, and about one half mile North of the South line, and about two miles West of the East line of said township, is the village of St. Charles, containing between 2000 and 3000 inhabitants. That the voters in said village are the majority of voters of said township of St. Charles. That the inhabitants of said village, against the wishes of complainants, procured at the last session of the Legislature, the passage of an Act entitled "an Act to incorporate the St. Charles Railroad Company," which was approved February 18th, 1859, which Act is attached hereto and made a part of complaints, and marked "A" as on Exhibit.

4 That O. M. Butler is now acting Supervisor of the town of St. Charles, duly elected. That R. N. Botsford is the acting town Clerk for said town, duly elected, &c. and both said Butler & Botsford are made defendants. Bill alleges that said defendants by pretence of authority vested in them by said Act, ("Exhibit A") have issued a certain notice, attached hereto and marked ("Exhibit B") &c.

5 That in pursuance of authority to be obtained in pursuance of an election to be held at a time and place, in said notice mentioned, said defendants are about to issue bonds to a large amount, of the said township, making the same a charge on said township, and on the property of its inhabitants, the principal and interest to be paid by tax on all the real and personal property in said township.

That on information and belief, it is not designed to have any Stock taken in said Railroad Company, except such part as shall be taken by the said township; but it is designed to make the said township a R. R. Corporation for the purpose mentioned in said Act.

11 That complainants became property owners in said town under the pledge
of the law of the Constitution of this State. That their property should be bur-
dened only with taxes legitimate and necessary for the support of the govern-
ment, and that it should not be taken for private use against their will, and not
for public use without just compensation. That the using said bonds and en-
cumbering complainant's property by taxes, hereafter to be raised to pay prin-
cipal and interest of the same, is a direct violation of the constitution &c. Com-
plainants show, on information and belief, that O. M. Butler, acting Supervisor
of said town, and R. N. Botsford, acting Clerk, are about to issue the bonds
of said town to the amount of several thousand dollars under said law in (sche-
dule "A") mentioned, bearing a high rate of interest, pledging all the property
in said township for the payment thereof. Complainants had well hoped that
12 said defendants would have regarded their duty &c., but they not regarding
their duty &c., but combining and confederating &c., whose names, &c., have
called an election at the village of St. Charles, on the 20th day of May 1859,
to get an excuse for issuing said bonds, and intend to issue the same; sometimes
pretending that the proceeds shall be applied to building a plug R. R. to con-
nect with the Air-Line R. R. at Geneva, sometimes pretending the same to be
7 applied to building a plug R. R. to connect with the G. & C. U. R. R., near
Clintonville, sometimes they are to be applied to repairing the plug branch R.
R. running from St. Charles to the Junction, all of which acting and doings
are contrary to equity, &c. Here follows usual prayer for Summons, &c., that
defendants answer without oath.

13 And also that a writ of Injunction may issue, restraining defendants' agents,
attorneys, and successors from issuing, signing, selling or disposing of any
bonds, pledging the township of St. Charles for their redemption, in pursuance
of the Act of the Legislature in schedule "A" mentioned, or from doing any
other act or thing by which the township of St. Charles may be made liable for
any R. R., and that the injunction is final, having been made perpetual.

(Signed)

MARK W. FLETCHER.

Here follows usual affidavit of Mark W. }
Fletcher, who proposes to sign for himself }
and the others, Dated May 19th, 1859. }

14 Here follows Exhibit "A" which is a literal copy of "An Act entitled An
to Act to incorporate the St. Charles Railroad Company" found on pages 506, 507,
26 508, 509, 510 and 511, of the laws of Illinois for the year 1859, which is here
referred to, and respectfully asked to be taken as a part of this abstract.
(Exhibit "B").

27 TOWN MEETING.—Whereas I have been requested by the Supervisor of the
township of St. Charles, in the County of Kane and State of Illinois, to call
an election or meeting of the citizens, (legal voters) of said township, pursuant
to an Act of the general assembly of the State of Illinois, entitled "An Act to
incorporate the St. Charles Railroad Company," approved February 18, 1859.

Therefore, pursuant to such request, and in obedience to the law in such
cases made and provided. Notice is hereby given to the inhabitants of the
township of St. Charles in the County of Kane and State of Illinois, that a
town meeting will be held for said township, at the stone building in the village
of St. Charles, on the East side of Fox River, where the last annual town meet-
ing was held for said township, on Friday the 20th day of May, A. D. 1859, to
ascertain whether or not the citizens of said township, in accordance with law,
are desirous that said township shall subscribe for, or cause to be subscribed for
any, and if any, how much of the capital Stock of the said St. Charles Railroad
Company, in pursuance of law and the Act above referred to; said meeting or
election to be conducted and the vote then and there to be taken, in the manner
referred to, and pointed out in Sections 11 & 12 of said Act above herein refer-
red to, and in accordance with law, which said section 11 and part of 12, reads
as follows:

28 SECT. 11.—That before the Stock aforesaid shall be subscribed, an election be had to ascertain whether the citizens of said township are desirous that such subscription be made; which said election shall be called by the town clerk, whenever so requested by the Supervisor of said township, and held and conducted, and the returns thereof made, in like manner, as at the annual town meeting for the election of township officers for said township.

SECT. 12.—The vote shall be taken by ballot, which shall be printed or written, or partly written and partly printed, "For a Railroad (\$ ") specifying how much, or "against a Railroad."

Given under my hand this ninth day of May A. D. 1859.

R. N. BOTSFORD.

Town Clerk.

30 And afterwards, May 20, 1859, it being one of the days of the May term of said Court, "The complainants, by Fridley, their Solicitor, having their said Bill of Complaint move the Court for an Injunction, which motion is sustained
31 by the Court. It is therefore ordered by the Court that the said defendants be enjoined from issuing, signing, selling, or disposing of any Bonds pledging the township of St. Charles, for the redemption of the same, pursuant to the Act of the Legislature, entitled an Act to incorporate the St. Charles Railroad Co., approved February 18, 1859, &c., and that a writ of Injunction issue &c. Subsequently come the defendants, by Barry their Solicitor, and move the Court to dissolve said Injunction. Writ of Injunction issued in said case on the said 20th day of May 1859, from the proper office, in accordance with the prayer of said bill.

33 On the same day (May 20, 1859,) the said Writ of Injunction was filed in the proper Clerk's office, endorsed as follows:

Executed this Writ May 20, 1859, by delivering to Oliver M. Butler, Supervisor, and Richard N. Botsford, Town Clerk of the town of St. Charles, true copies of this Writ.

E. J. ALLEN,

Sheriff of Kane County.

On same day usual Writ of Summons was issued in said cause, from the proper office and returned and duly filed in the proper Clerk's office, duly served by the proper officer, June 17, 1859, on all the said defendants.

36 On the 28th day of May, 1859, it being one of the days of said May term, on motion of complainants, they have leave to file a supplementary bill in this case.

Supplemental Bill.

37 Complainants allege that since filing the original bill, to wit: May 20,
38 1859, a Town Meeting of the inhabitants of said township was held under and pursuant to the notice marked (Exhibit B") and that a vote was then and there taken by such of the inhabitants of said township as attended said meeting for the purpose as alleged in said notice of ascertaining whether the citizens &c., were desirous that said township should subscribe for, or cause to be subscribed for any, and if any, how much of the capital Stock of said R. R. Co. That at such meeting 119 votes were cast against a Railroad, and that 258 votes were cast for a Railroad, 250 of said votes being for \$6000 capital Stock, and a few of said votes being for \$15,000 capital Stock. That nearly or quite all of said 119 votes were composed of complainants' and of the remaining farmers of said township. That nearly or quite all of said 258 votes for a Railroad were given by persons residing in said village. Complainants don't know of a single farmer who voted in favor of a Railroad.

That defendants aforesaid now propose and threaten to issue bonds of said township, in all the sum of \$6000, as soon as the Injunction in this case shall be dissolved.

(Signed)

MARK W. FLETCHER.

PAGE OF RECORD.

40 On the 15th day of June 1859, it being one of the days of the May term of said Court, the following proceedings were had in said cause.

The respective parties come by their solicitors, &c., the Court being fully advised of the defendants' motion to dissolve the injunction herein heretofore entered in this cause, overrules said motion, to which ruling of the Court the defendants by their counsel, except.

On the 14th day of December 1859, there was filed in the office of the Circuit Clerk of said Court, a demurrer by the defendants in the usual form, was filed to said original and supplemental bills.

On the 16th day of December, the Court being fully advised in the premises, overrules said demurrer, to which ruling of the Court in overruling said demurrer the defendants duly excepted.

43 On the 17th day of December 1859, the following proceedings were had; the complainants by Herrington & Fletcher, their Solicitors come, and on their motion it is ordered by the Court that the defendants be ruled to file their answer instant, the defendants failed to answer. It is ordered that their default be taken for want of an answer, &c., that complainants' bill be taken as confessed against defendants, and that the Injunction heretofore ordered be made perpetual &c.

Here follows the usual order and the Clerk's certificate of record, &c.

ABSTRACT BY EASTMAN & BOTSFORD, }
Solicitors for Defendants. }

Charles B. Wells

42 35

Better cases

vs

Danham vs

Abstract

Filed Apr 23. 1860

L. Deland
Clerk

BRIEF OF PLAINTIFFS IN ERROR.

SUPREME COURT,

APRIL TERM, 1860.

Oliver M. Butler, et al., }
vs. } ERROR TO KANE CO.
Solomon Dunham, et al. }

ERRORS ASSIGNED.

1st—Court erred in granting a *temporary* injunction, as the bill has not sufficient equity on its face.

2d—Court erred in not dissolving the injunction, *on motion* of defendants.

3d—Court erred in *over ruling* the demurrer to the bill.

4th—Court erred in making the injunction *perpetual*.

POINTS AND AUTHORITIES.

1st—The action of Plaintiffs in error, complained of in Bill, is pursuant to law.

Session Laws, 1859, p. 506, ¶ 4. "An Act to incorporate the St. Charles Railroad Company."

2d—Said Act, and the powers therein conferred upon said plaintiffs, are in pursuance of the Constitution.

19 Ill. 406.

21 " 451.

City of Bridgeport vs. Housatonic Railroad Co.

2 Am. Railway Cases. 39.

And numerous cases referred to in note following.

7, 24 Ill 75+208
Charles B. Webb,
EASTMAN & BOTSFORD,

J. B. BEVERIDGE,

For Plaintiffs.

Butler vs Durham

Plffs. Brief

Filed Apr. 20, 1860

L. DeMunn
Clerk

State of Illinois - Supreme Court within &
for the third cause division of said St. Ch.
April Term 1861

Oliver M. Butler, Supervisor, and Richard N. Botsford, Town Clerk of the town of St. Charles, plaintiffs in Error, *versus* Solomon Durham, Mark W. Fletcher, Wesley Hall, Patrick Catron, Martin Switzer, James Burr, Richard Kelley, Charles K. Parks, Lucien N. B. Burr, Spaulding Eddy, Napoleon Joy, John Campbell, Edward Catron, Daniel Wheeler, William Marshall, Joseph B. Disbro, John Pierce, Ira Albro, Peter Pratt, George Pierce, James Hurst, John M. Laughlin, John D. Gartron, Asahel Bundy, Charles Hale, Spencer B. Huls, Garrett Norton, James Hoag, Charles B. Tucker, John D. Easter, Robert Danforth, John C. Wilson, Thomas L. Morgan, Russell Humphrey, Edward Baker, Charles Gray, Brundridge S. Haverland, Jonathan Matteson, Orrin Hall, Daniel Hutchins, Jesse B. Alcott, Daniel Dunham, Edward Bartlett, Nathaniel Ballard, William Hammond, Sylvanus Moffat, Daniel Stearns, Abraham Kershaw, Eli Teft, Mosses D. Bliss, Samuel Sterling, Nathan Ladd, John Freeland, Roland Lee, Michael Lincolnfeller, Harrison McGowan, Philander Mann, Horace Perry, John Delancy, William Draman, John B. Blanchard, Zenas Blackman, Michael Ponsonby, C. J. Balch and Lyman German, defendants in Error.

State of Illinois }
La Salle County } John L. Beveridge, being
duly sworn, says, that he
is attorney for the plaintiffs in error in
the above entitled cause. - That notice by
publication for 4 weeks successively in the
"Ottawa Free Press", a weekly newspaper
published at Ottawa, La Salle Co. Illinois,
commencing July 9. 1861. & ending March 2^d
1861. ~~as per~~, as to the above named John
Pierce, George Pierce, James Hurst, Robert
L. Seafort, Patrick Catron, Edward Catron
Phileas Allen & Nathan Sodd, part of
said defendants in error - that diligent
inquiry has been made by this office and
by R. N. Botsford ~~another of the~~ ^{one of said plaintiffs} in this
said cause, to learn the residences, and last
office addresses of each of the above named

deponents John Price, George Price, James
 Hunt, Robert S. Kempforth, Patrick Crotter
 Edward Crotter, Phileas Manner & Mother
 Todd. - and that upon such diligent inquiry
 being made neither the residences nor Post
 Office of the said named parties last named,
 has been nor could be ascertained, - and
 for this reason no notice of such publica-
 cation has been thought to send parties
 a copy of them, in pursuance to the 30th
 Rule of this Court, - and further this
 Court says not.

Subscribed & sworn to - James B. Beveridge
 before me this 18. of April
 1861. - A. Deland Clerk Supreme Ct
 of Delaware & Del.

38th St
 Union W. Brotherhood
 22
 Solomon Verelstam

off of L. Del.

Tested April 18. 1861
 L. Deland
 Clerk.

BRIEF OF PLAINTIFFS IN ERROR.

SUPREME COURT,

APRIL TERM, 1860.

Oliver M. Butler, et al., }
vs. } ERROR TO KANE CO.
Solomon Dunham, et al. }

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24 Dec 75 + 208

21 " 451.

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And numerous cases referred to in note following.

R. N.

EASTMAN & BOTSFORD,

J. E. BEVERIDGE,

For Plaintiffs.

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Olivier Mr Ruttensta

as

Solomon Leukersta

SUPREME COURT
OF THE
STATE OF ILLINOIS.
APRIL TERM, 1860.

STATE OF ILLINOIS, }
KANE COUNTY. } ss.

KANE COUNTY CIRCUIT COURT,
November Term, A. D. 1859.

Solomon Dunham & Mark W. Fletcher et al }
vs
Oliver M. Butler et al. }

BILL FOR INJUNCTION.

PAGE OF RECORD.

2 On the 19th of May A. D. 1859, it being one of the days of the May term of said Court, a bill for Injunction and relief was filed in said Court, by said Solomon Dunham, Mark W. Fletcher, & 64 others as complainants against Oliver M. Butler, Supervisor of the town of St. Charles, and Richard N. Botsford, Clerk of said town—defendants.

3 The bill alleges that each of the complainants are owners of Real Estate and tax-payers in the limits of said town of St. Charles, which is town 40. R. 8 E. &c., and that the total amount of property assessed to your orators is about \$100,000, and is about one-fourth of the taxable property of said township. That the joint property of complainants in said township, will be liable to an assessment for taxes for the year 1859, for about the said sum of \$100,000, for State, County, and Township taxes.

That Sections 27 & 34, in said township, and about one half mile North of the South line, and about two miles West of the East line of said township, is the village of St. Charles, containing between 2000 and 3000 inhabitants. That the voters in said village are the majority of voters of said township of St. Charles. That the inhabitants of said village, against the wishes of complainants, procured at the last session of the Legislature, the passage of an Act entitled "an Act to incorporate the St. Charles Railroad Company," which was approved February 18th, 1859, which Act is attached hereto and made a part of complaints, and marked "A" as on Exhibit.

4 That O. M. Butler is now acting Supervisor of the town of St. Charles, duly elected. That R. N. Botsford is the acting town Clerk for said town, duly elected, &c. and both said Butler & Botsford are made defendants. Bill alleges that said defendants by pretence of authority vested in them by said Act, ("Exhibit A") have issued a certain notice, attached hereto and marked ("Exhibit B") &c.

5 That in pursuance of authority to be obtained in pursuance of an election to be held at a time and place, in said notice mentioned, said defendants are about to issue bonds to a large amount, of the said township, making the same a charge on said township, and on the property of its inhabitants, the principal and interest to be paid by tax on all the real and personal property in said township.

That on information and belief, it is not designed to have any Stock taken in said Railroad Company, except such part as shall be taken by the said township; but it is designed to make the said township a R. R. Corporation for the purpose mentioned in said Act.

11 That complainants became property owners in said town under the pledge of the law of the Constitution of this State. That their property should be burdened only with taxes legitimate and necessary for the support of the government, and that it should not be taken for private use against their will, and not for public use without just compensation. That the using said bonds and encumbering complainant's property by taxes, hereafter to be raised to pay principal and interest of the same, is a direct violation of the constitution &c. Complainants show, on information and belief, that O. M. Butler, acting Supervisor of said town, and R. N. Botsford, acting Clerk, are about to issue the bonds of said town to the amount of several thousand dollars under said law in (schedule "A") mentioned, bearing a high rate of interest, pledging all the property in said township for the payment thereof. Complainants had well hoped that
 12 said defendants would have regarded their duty &c., but they not regarding their duty &c., but combining and confederating &c., whose names, &c., have called an election at the village of St. Charles, on the 20th day of May 1859, to get an excuse for issuing said bonds, and intend to issue the same; sometimes pretending that the proceeds shall be applied to building a plug R. R. to connect with the Air-Line R. R. at Geneva, sometimes pretending the same to be
 7 applied to building a plug R. R. to connect with the G. & C. U. R. R., near Clintonville, sometimes they are to be applied to repairing the plug branch R. R. running from St. Charles to the Junction, all of which acting and doings are contrary to equity, &c. Here follows usual prayer for Summons, &c., that defendants answer without oath.

13 And also that a writ of Injunction may issue, restraining defendants' agents, attorneys, and successors from issuing, signing, selling or disposing of any bonds, pledging the township of St. Charles for their redemption, in pursuance of the Act of the Legislature in schedule "A" mentioned, or from doing any other act or thing by which the township of St. Charles may be made liable for any R. R., and that the injunction is final, having been made perpetual.

(Signed)

MARK W. FLETCHER.

Here follows usual affidavit of Mark W. }
 Fletcher, who proposes to sign for himself }
 and the others, Dated May 19th, 1859. }

14 Here follows Exhibit "A" which is a literal copy of "An Act entitled An
 to Act to incorporate the St. Charles Railroad Company" found on pages 506, 507,
 26 508, 509, 510 and 511, of the laws of Illinois for the year 1859, which is here referred to, and respectfully asked to be taken as a part of this abstract.

(Exhibit "B").

27 TOWN MEETING.—Whereas I have been requested by the Supervisor of the township of St. Charles, in the County of Kane and State of Illinois, to call an election or meeting of the citizens, (legal voters) of said township, pursuant to an Act of the general assembly of the State of Illinois, entitled "An Act to incorporate the St. Charles Railroad Company," approved February 18, 1859.

Therefore, pursuant to such request, and in obedience to the law in such cases made and provided. Notice is hereby given to the inhabitants of the township of St. Charles in the County of Kane and State of Illinois, that a town meeting will be held for said township, at the stone building in the village of St. Charles, on the East side of Fox River, where the last annual town meeting was held for said township, on Friday the 20th day of May, A. D. 1859, to ascertain whether or not the citizens of said township, in accordance with law, are desirous that said township shall subscribe for, or cause to be subscribed for any, and if any, how much of the capital Stock of the said St. Charles Railroad Company, in pursuance of law and the Act above referred to; said meeting or election to be conducted and the vote then and there to be taken, in the manner referred to, and pointed out in Sections 11 & 12 of said Act above herein referred to, and in accordance with law, which said section 11 and part of 12, reads as follows:

28 SECT. 11.—That before the Stock aforesaid shall be subscribed, an election be had to ascertain whether the citizens of said township are desirous that such subscription be made; which said election shall be called by the town clerk, whenever so requested by the Supervisor of said township, and held and conducted, and the returns thereof made, in like manner, as at the annual town meeting for the election of township officers for said township.

SECT. 12.—The vote shall be taken by ballot, which shall be printed or written, or partly written and partly printed, "For a Railroad (\$ ") specifying how much, or "against a Railroad."

Given under my hand this ninth day of May A. D. 1859.

R. N. BOTSFORD.

Town Clerk.

30 And afterwards, May 20, 1859, it being one of the days of the May term of said Court, "The complainants, by Fridley, their Solicitor, having their said Bill of Complaint move the Court for an Injunction, which motion is sustained
31 by the Court. It is therefore ordered by the Court that the said defendants be enjoined from issuing, signing, selling, or disposing of any Bonds pledging the township of St. Charles, for the redemption of the same, pursuant to the Act of the Legislature, entitled an Act to incorporate the St. Charles Railroad Co., approved February 18, 1859, &c., and that a writ of Injunction issue &c. Subsequently come the defendants, by Barry their Solicitor, and move the Court to dissolve said Injunction. Writ of Injunction issued in said case on the said 20th day of May 1859, from the proper office, in accordance with the prayer of said bill.

33 On the same day (May 20, 1859,) the said Writ of Injunction was filed in the proper Clerk's office, endorsed as follows:

Executed this Writ May 20, 1859, by delivering to Oliver M. Butler, Supervisor, and Richard N. Botsford, Town Clerk of the town of St. Charles, true copies of this Writ.

E. J. ALLEN,

Sheriff of Kane County.

On same day usual Writ of Summons was issued in said cause, from the proper office and returned and duly filed in the proper Clerk's office, duly served by the proper officer, June 17, 1859, on all the said defendants.

36 On the 28th day of May, 1859, it being one of the days of said May term, on motion of complainants, they have leave to file a supplementary bill in this case.

Supplemental Bill.

37 Complainants allege that since filing the original bill, to wit: May 20,
38 1859, a Town Meeting of the inhabitants of said township was held under and pursuant to the notice marked (Exhibit B") and that a vote was then and there taken by such of the inhabitants of said township as attended said meeting for the purpose as alledged in said notice of ascertaining whether the citizens &c., were desirous that said township should subscribe for, or cause to be subscribed for any, and if any, how much of the capital Stock of said R. R. Co. That at such meeting 119 votes were cast against a Railroad, and that 258 votes were cast for a Railroad, 250 of said votes being for \$6000 capital Stock, and a few of said votes being for \$15,000 capital Stock. That nearly or quite all of said 119 votes were composed of complainants and of the remaining farmers of said township. That nearly or quite all of said 258 votes for a Railroad were given by persons residing in said village. Complainants don't know of a single farmer who voted in favor of a Railroad.

That defendants aforesaid now propose and threaten to issue bonds of said township, in all the sum of \$6000, as soon as the Injunction in this case shall be dissolved.

(Signed)

MARK W. FLETCHER.

PAGE OF RECORD.

40 On the 15th day of June 1859, it being being one of the days of the May term of said Court, the following proceedings were had in said cause.

The respective parties come by their solicitors, &c., the Court being fully advised of the defendants' motion to dissolve the injunction herein heretofore entered in this cause, overrules said motion, to which ruling of the Court the defendants by their counsel, except.

On the 14th day of December 1859, there was filed in the office of the Circuit Clerk of said Court, a demurrer by the defendants in the usual form, was filed to said original and supplemental bills.

On the 16th day of December, the Court being fully advised in the premises, overrules said demurrer, to which ruling of the Court in overruling said demurrer the defendants duly excepted.

43 On the 17th day of December 1859, the following proceedings were had; the complainants by Herrington & Fletcher, their Solicitors come, and on their motion it is ordered by the Court that the defendants be ruled to file their answer instanter, the defendants failed to answer. It is ordered that their default be taken for want of an answer, &c., that complainants' bill be taken as confessed against defendants, and that the Injunction heretofore ordered be made perpetual &c.

Here follows the usual order and the Clerk's certificate of record, &c.

ABSTRACT BY EASTMAN & BOTSFORD, }
Solicitors for Defendants. }

Charles B. Mills

~~449~~ 35

Boston does

is

Dunham does

also

$$\begin{array}{r} 52, 15 \\ 2, 50 \\ \hline 5, 60 \\ 50, 35 \end{array}$$

: Filed Apr 25, 1840

L. Leland

clerk