

12088

No. \_\_\_\_\_

# Supreme Court of Illinois

Mississippi & Atlanta R. R. Co

---

vs.

People.

---

71641  7



State of Illinois  
Clark County ss. Be it remembered that  
at a Term of the Clark Circuit Court began and  
held at the Court-house in Marshall on Monday  
the second day of May in the year of our Lord  
one thousand eight hundred and fifty three before  
the honorable Justin Harlan State Judge of  
the fourth Judicial Circuit of the State of  
Illinois comprising the County of Clark the  
following order of said Court was had to wit,

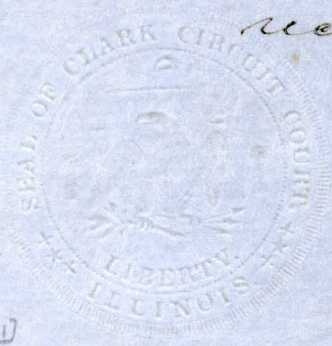
"It appearing to the Court now here  
that Alfred Mitchell esq. State attorney for  
the fourth Judicial Circuit of the State of Illi-  
nois comprising the County of Clark is ab-  
sent and not attending to the duties of his said  
office, it is ordered by the Court that Charles  
H. Constable esq. be and he is hereby appo-  
inted State attorney for the time being to at-  
-tend during this term of this Court or until  
the said State attorney shall appear and re-  
sume the duties of his said office, to the  
discharge of such duties as devolve by law  
upon the State attorney and which may  
be required to be performed during the abs-  
ence of the said regular officer.

I William P. Bennett clerk of the Clark  
circuit Court hereby certify that the forego-  
ing is a true copy of an order entered of  
record at the term aforesaid

Witness my hand and seal of said  
Court at Marshall this 25th day  
of May A. D. 1853

Wm P. Bennett

Clerk





State of Illinois }  
Clark County } &c. Be it remembered that  
at the May term of the Clark County Circuit Court began and held at the Court house in Marshall in the County of Clark in the State of Illinois, on Monday the second day of May in the year of our Lord one thousand eight hundred and fifty three and continued from day to day until Monday the seventh judicial day, before the Honorable Justin McLean Sale Judge of said Court, James Eldridge S. Jarney and files his affidavit and also his bond for costs which are in the words and figures following; to wit,

State of Illinois }  
Clark County } In the Clark County Court May Term 1853

Eldridge S. Jarney a citizen of said County of lawful age and duly sworn deposes and says that "The Mississippi and Atlantic Railroad Company in the County and State of said for the space of six months last past and upwards have used and still do use the following liberties, privileges and franchises, to wit, of being capable in law of purchasing holding and carrying any real estate and personal property whatsoever, necessary for the construction & equipment and operating a railroad from a convenient point on the State line on the East to connect with the Tennessee and Richmond Railroad, taking its course thence through the Counties of Clark, Cumberland



and through or near the North West corner  
of Jasper County and through the county  
of Effingham and to Cananda in Fayette  
County and thence through the counties  
of Bond Madison and through or near  
the North West corner of St. Clair County  
and to terminate at or near Illinois  
town on the Mississippi river and for  
the erection of all necessary buildings, yards  
and appurtenances for the use of the same,  
and also the following liberties, privileges  
and franchises, to wit, that of obtaining  
and holding by gift grant or purchase  
the right of way for said Railroad, to cau-  
se a survey or surveys thereof to be made, to  
enter upon lands and waters for that pur-  
pose, to receive and hold real estate and  
other property by gift grant or purchase  
to aid in the construction maintenance  
and accommodation of said Railroad to  
enter upon possess and use such lands and  
other property acquired by gift grant or  
purchase as may be necessary for the con-  
struction and maintenance of said Rail-  
road, its Stations and depots, to lay out  
said Rail Road not exceeding six rods wide  
and to construct the same on said land  
and upon or across any stream of water  
water course, road highway, rail road or  
Canal which the route of the said railroad  
may intersect, to join and unite with other  
rail roads, to change the line of the said  
railroad to take transport carry and car-  
ry persons and property on said railroad  
by Steam or other power, to erect and maintain



all necessary and convenient buildings stations  
apots and fixtures and machinery for the ac-  
commodation use and transportation of pas-  
sengers freight and business on said rail road  
and to regulate the time and manner of tra-  
nsporting thereon passengers and freight and  
the compensation to be paid therefor and to  
borrow money for the construction of the  
said rail road, fixtures and the equipment  
thereof as fully as if incorporated by law  
with ample authority and capacity for  
those purposes, and further this affiant  
says nat.

Subscribed & sworn to  
in open court this  
9th day of May A. D. 1853

Wm P. Bennett

clerk

Bond for cost

The People of the State of  
Illinois on the relation of  
Elbridge S. Tanney

vs.

The Mississippi and  
Atlantic Railroad Company

Clark Circuit  
Court May Term  
1853

We do here by under  
ourselves security for costs in this cause and  
acknowledge ourselves bound to pay or cause  
to be paid all costs which may accrue in  
this action either to the opposite party or to  
any of the officers of this court, in pursuance  
of the laws of this State, dated this 9th day  
of May A. D. 1853

E. S. Tanney

Wm H. Constable

Approved by me this 9th  
May 1853 Wm P. Bennett

clerk



And upon the filing of the affidavit of said  
the said Charles H. Canstale, State attorney  
for the time being files the following paper  
to wit,

"The State of Illinois

In the Circuit Court  
within and for the County of Clark at the  
May Term A.D. 1853

Clark County St.

Charles H. Canstale  
acting State attorney for the time being under  
and by virtue of the appointment of the said Circuit  
Court of said county, Alfred Fitchell State  
attorney for the fourth judicial Circuit ~~of the~~  
State of Illinois comprising the said county  
of Clark duly elected and qualified and  
being absent from attending to his duties  
at this said term of the said Circuit Court,  
in the name and by the authority of the  
People of the State of Illinois upon the re-  
lative of Eldridge S. Farney, a citizen of  
the county of Clark comes and by leave of the  
Court for this purpose first had obtained  
now here before the honorable the Judge of  
the said Circuit Court, and in the name of  
the People of the State of Illinois gives the said  
Court here to understand and be informed,  
that "the Mississippi and Atlantic Rail-  
road Company", to wit, in the said county of  
Clark and State of Illinois for the space of  
six months now last past and upwards  
have used and still do use without any war-  
rant, grant or charter, the following liberties  
privileges and franchises, to wit, that of being  
capable in law of purchasing holding and



Carrying any real estate and personal property whatsoever necessary for the construction equipment, and operation of a rail road from a convenient point on the State line on the east to connect with the Gene Haute and Richmond Railroad, taking its course thence through the counties of Clark, Cumberland & through or near the north west corner of Jasper County and through the county of Effingham and to Maudslaw in Fayette County, and thence through the counties of Band, Madison, and through or near the north west corner of St. Clair County and to terminate at or near Illinoistown on the Mississippi river, and for the erection of all necessary buildings yards and appurtenances for the use of the same and also the following liberties, privileges and franchises, to wit, that of obtaining and holding by gift, grant or purchase the right of way for said rail road, to cause a survey or surveys thereof to be made to enter upon lands and waters for that purpose to receive and hold real estate and other property by gift, grant or purchase to and in the construction maintenance and accommodation of said Rail road - to enter upon and possess, and use such lands and other property acquired by gift, grant or purchase as may be necessary for the construction and maintenance of said rail road its Stations and depots, to lay out said rail road not exceeding six rods wide and to construct the same on said land and upon or across any stream of water, water



Course, road, highway, rail road or canal which the route of the said railroad may intersect, to join and unite with other railroads, to change the line of their said rail road to take transport, carry and convey persons and property in said railroad by steam or other power to erect and maintain all necessary and convenient buildings stations depots and fixtures and machinery for the accommodation use and transportation of passengers, freight and business on said railroad and to regulate the time and manner of transporting thereon passengers and freight and the compensation to be paid therefor and to borrow money for the construction of said railroad fixtures and the equipment thereof as fully as if incorporated by law with ample authority and capacity for those purposes. All of which said liberties privileges and franchises the said "The Mississippi and Atlantic Railroad Company", to wit at the County of Clark aforesaid, during all the time of - ovesaid have usurped and still do usurp upon the said people of the State of Illinois, to their great damage and prejudice contrary to the form of the Statute in such case made and provided and against the peace and dignity of the People of the State of Illinois, Whereupon the said State attorney prays the advice of the said Court in the premises and due process of law against the said "The Mississippi and Atlantic Railroad Company" aforesaid in this behalf to be made to answer to the said People of the State of Illinois, by what warrant they claim to have, use, and enjoy the liberties, privileges and franchises aforesaid &c. Charles H. Canstale

State attorney Pro. Sec.



And upon the filing the affidavit and bond  
of the said the following order of said Court  
was entered of record, to wit,

Clark Circuit Court

The People of the State of Illinois  
upon the relation of Eldridge

S. Jancy vs.

The Mississippi and Atlantic  
Rail road company

} Information  
in the nature  
of a Quo warrant  
&c.

This day came Charles H. Con-  
stable acting State Attorney for the said Circuit  
Court, and moves the Court upon affidavit  
filed herein and now shown to the Court  
for leave to file an information in the nature  
of a quo warranto in the name and by  
the authority of and for the people of the State  
of Illinois upon the relation of Eldridge S. Jancy  
a citizen of the said County of Clark against the  
Mississippi and Atlantic Rail Road Company  
requiring them to show by what warrant grant  
or charter they have use and exercise certain  
rights, privileges, liberties and franchises in the  
said information contained, and thereupon  
the Court grants leave to file the same and the  
recursion the same is filed, and the said the "Mi-  
ssissippi and Atlantic Railroad Company" having  
been notified that said application would be  
made, to file the said information now by their  
attorneys came into Court, to waive process and  
enter their appearance to the said information  
and the same having been read to them they file  
their plea thereto, to wit:

State of Illinois

"The Mississippi and



Atlantic Railroad Company

ad.

Quo warranto &c.

The People of the State of Illinois  
on the relation of Eldridge  
Tanner

And the said the "Mississippi and Atlantic Railroad Company" came, and having heard the said information read & complain, that under color of the premises in the said information contained, they are greatly vexed and disquieted; and this by no means justly; because, protesting that the said information and the matters therein contained are sufficient in law, and that they need not nor are they obliged by the law of the land to answer thereto, yet, for plea in this behalf the said the "Mississippi and Atlantic Railroad Company" say that by a certain act enacted by the People of the State of Illinois represented in the general assembly, approved November 18th 1849 entitled "An Act to provide for a general system of Railroad incorporations," any number of persons not less than twenty five being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing owning and maintaining such railroad by complying with the following requisitions: when stock to the amount of at least one thousand dollars for every mile of said Railroad so intended to be built shall be in good faith subscribed and ten percent paid thereon as therein required, then, the said subscribers may elect directors for the said Company; thereupon they shall severally subscribe articles of association in which shall



he set forth the name of the Corporation the number of years the same is to continue, which shall not exceed fifty years; the amount of the Capital Stock of the company which shall be the actual cost cost of constructing the road, together, with the cost of the right of way, motive power, and every other expenditure for the completion and running of said road as nearly as can be estimated by competent engineers; the number of Shares of which said Stock shall consist; the number of directors and their names, to manage the concerns of the company, who shall not be one half in number of the Stock holders, and shall hold their office until others are elected; the place from and to which the ~~proposed~~ road is to be constructed and each County into or through which it is intended to pass, and its length as near as may be, and the names of five commissioners to open books of subscription to the Stock of said company: Each subscriber, to said articles of association shall subscribe thereto his name, place of residence and the number of shares of Stock taken by him in such company. The said articles of associations may be filed in the office of the Secretary of State where ten per cent, on the amount of the Stock subscribed shall have been paid actually and in good faith paid, in cash to the directors named in such articles and there is endorsed thereon or annexed thereto an affidavit made by at least three of the directors named in such articles that the amount of Stock required as aforesaid has been subscribed, and that ten per cent, on the amount has actually been



paid in, and thereupon the persons who have  
subscribed, and all persons who shall from  
time to time become stockholders of such com-  
pany shall be a body corporate by <sup>the</sup> name spe-  
cified in such articles, and have, possess and  
enjoy all the powers, liberties, privileges and  
franchises given, authorized and allowed by  
said act; and a copy of the said articles of  
association filed in pursuance of said act with  
a copy of the affidavit of said endorsement there-  
on or annexed thereto, and certified to be a copy  
by the secretary of State, of the State of Illinois, or  
his deputy, shall in all courts and places be pre-  
sumptive evidence of the incorporation of such com-  
pany and of the facts therein stated; and when the  
certificate shall have been filed as aforesaid the  
persons who shall have signed and acknowl-  
edged the same and their successors shall be a  
body politic and corporate, by the name stated  
in such certificate, and shall be capable of suing  
and being sued and may have a common  
seal and may make and alter the same at  
pleasure and be capable in law of purchas-  
ing holding and conveying any real estate  
and personal property whatever necessary for  
the construction of said road and for the  
erection of all necessary buildings, yards and  
appurtenances for the use of the same; and  
among other liberties, privileges and franchises  
may have that of obtaining and holding  
by gift grant or purchase the right of way  
for said Rail road, to cause a survey or sur-  
veys thereof to be made, to enter upon lands  
and waters for that purpose, to receive and  
hold real estate and other property by gift



grant or purchase to aid in the construction  
maintenance and accommodation of said  
Rail road, to enter upon and possess and use  
such lands and other property acquired by  
gift grant or purchase as may be necessary  
for the construction and Maintenance of  
said railroad, its Stations and depots, to lay  
out said rail road ~~not~~ not exceeding six rods  
wide, and to construct the same over said  
land and upon or across any stream of  
water, water course, road highway, railroad  
and Canal, which the route of the said  
road may intersect, to join and unite their  
railroad with any other rail road before con-  
structed or ~~thereafter~~ to be constructed at any  
point on its route and upon the ground  
of such other rail road company, to change  
the line of the said rail road whenever a ma-  
jority of the directors shall so determine as author-  
ized by said act, but no such change shall vary  
the original route of such road to exceed  
one mile laterally, to take transport, carry  
and carry persons and property on said  
Railroad by Steam or other power, to erect  
and maintain all necessary and convenient  
buildings, Stations depots and fixtures and  
machinery for the accommodation use and  
transportation of passengers freight and  
business on said railroad and to regu-  
late the time and manner of transporting  
thereon passengers and freight, and the  
compensation to be paid therefor but such  
compensation for any passenger and his  
ordinary baggage not to exceed three cents  
per mile and to borrow money for the



construction of said railroad, fixtures and the equipment thereof, as by the said act enacted by the people of the State of Illinois represented in general assembly, reference thereto being had, will among other things, more fully appear and at large appear. And the said the Mississippi and Atlantic railroad company further say, that by the force of the said act and the provisions thereof, articles of association, heretofore, to wit, on the 20th day of July 1850 and at the County of Clark aforesaid were signed and acknowledged in the following words and figures to wit, In conformity with an act of the general assembly of the State of Illinois, entitled, "An act to provide for a general system of railroad incorporation" the undersigned have associated for the purpose of constructing, running and maintaining a railroad as set forth in the following articles

1st. The name of said corporation shall be the Mississippi and Atlantic railroad company

2nd The same shall continue fifty years from the date of its incorporation

3rd The amount of the Capital Stock of said company including the cost of constructing the road, the right of way motive power and other appurtenances for the completion and running of said road as near as can be estimated by competent engineers will be two Millions of dollars, making forty thousand Shares of fifty dollars each



4th There shall be seventeen directors to manage the concerns of this company as follows, Justin Hallan, James W. Hedges, William B. Archer, Lora Corey, John C. Wright, James Ewart, John S. Maschfort, Presley Funkhouser, Robert Blackwell, Francis Hill, Henry L. Waterman, William S. Wait, Benjamin Johnson, Samuel White, William McLean, Gentiss Blackman and Salamon H. Mudge

5th. The road to commence at a convenient point on the State line to connect with the "Pine Haute" and Richmond Railroad' taking its course through the counties of Clark, Cumberland and through or near the north west corner of Jasper county, and through the county of Effingham and to Candalia in Fayette county and from thence through the counties of Band, Madison, and through or near the north west corner of St. Clair county, and to terminate at or near Illinois town on the Mississippi river and as nearly opposite the Eastern termination of the contemplated "Pacific Railroad" as practicable a distance of one hundred and sixty miles or thereabouts

6th. Nelson D. Sweeney of Madison, Salamon A. Phelps of Band, Nathaniel M. McCurdy of Fayette, Oscar Andrews of Clark, Michael S. Hale of Band, are appointed commissioners to open books for subscription to the stock of said road

| Names of subscribers | Place of residence     | No of shares of stock taken |
|----------------------|------------------------|-----------------------------|
| J. Hallan            | Marshall Clark Co. Ill | 30                          |



|                            |                     |   |    |
|----------------------------|---------------------|---|----|
| J. P. Cooper               | "                   | " | 8  |
| R. B. McElene Martinsville | "                   | " | 5  |
| R. A. Darnell              | "                   | " | 5  |
| G. Shaw                    | Marshall            | " | 45 |
| L. Corey                   | "                   | " | 41 |
| Mrs Lutz                   | "                   | " | 15 |
| W. B. Archer               | "                   | " | 10 |
| Uri Maully                 | "                   | " | 25 |
| James Wright               | "                   | " | 2  |
| James Laurence             | "                   | " | 2  |
| John Cutright              | Cumberland Co. Ill. | " | 35 |
| James Ewart                | "                   | " | 10 |
| E. H. Starkweather         | "                   | " | 5  |
| W. T. Wisener              | "                   | " | 10 |
| H. P. H. Bromuell          | Book                | " | 5  |
| Presley Finkhauser         | Effingham           | " | 20 |
| W. J. Hankins              | "                   | " | 20 |
| W. J. A. Fisher            | "                   | " | 10 |
| John F. Maschfort          | "                   | " | 20 |
| John E. Sheftaugh          | "                   | " | 20 |
| L. B. Parks                | "                   | " | 10 |
| W. C. Greenup              | Hayette             | " | 10 |
| R. H. McLaughlin           | "                   | " | 42 |
| A. M. McBundy              | Randallia           | " | 10 |
| Erueger Capps              | "                   | " | 50 |
| Ezra Griffith              | Hayette Co.         | " | 20 |
| A. Peak                    | do                  | " | 10 |
| H. C. Maternan             | do                  | " | 10 |
| Daniel Washburn            | do                  | " | 2  |
| John H. Kroger             | Effingham Co. Ill.  | " | 2  |
| William J. Nait            | Band Co. Ill.       | " | 43 |
| Samuel White               | "                   | " | 20 |
| John Etoler                | "                   | " | 10 |



|                             |                     |   |   |    |
|-----------------------------|---------------------|---|---|----|
| Bery Johnson                | "                   | " | " | 20 |
| E. B. White                 | "                   | " | " | 5  |
| William Harris              | "                   | " | " | 3  |
| W. S. Wait Jr.              | "                   | " | " | 2  |
| W. G. Dale                  | "                   | " | " | 20 |
| Wait & Alexander            | "                   | " | " | 4  |
| S. A. Phelps                | "                   | " | " | 4  |
| A. R. Lenny                 | Madison County Ills |   |   | 4  |
| William McLean              | "                   | " | " | 5  |
| Geo F Allen                 | "                   | " | " | 5  |
| John Ellison                | "                   | " | " | 6  |
| Calvin Butler               | "                   | " | " | 2  |
| A. H. Judd                  | "                   | " | " | 20 |
| Curtis Blackman             | "                   | " | " | 20 |
| H. S. Sanders               | "                   | " | " | 2  |
| S. H. Mudge & Mrs E. Wilson | "                   | " | " | 40 |

By W. S. Wait proxy

James H. Hedges Martinsville Clark Co Ills 4  
by R. A. Hamell atty.

And the said the "Mississippi and Atlantic Railroad Company" further say that the said subscribers to the said Articles of Association were with other subscribers, previous to the signing and executing the said articles of association to the Stock of the said contemplated railroad as afterwards set out and defined in the said articles of association and more than twenty five in number; and that the Stock subscribed to the said contemplated railroad before the signing and executing the said articles of association amounted to one hundred and fifty thousand dollars and the same was subscribed in good faith and au-



amounted to at least one thousand dollars for every mile of the said railroad so intended to be built and ten per cent of the said sum so subscribed, to wit, sixteen thousand dollars have been paid thereon before said Articles of Association were executed, and signed as aforesaid and seventeen directors for the said Company were elected by the said subscribers as afterwards named in the said articles of association in manner and form as required by the said act entitled "An act to provide for a general system of railroad incorporations"

And the said the "Mississippi and Atlantic Railroad Company" further say that there was thereupon endorsed (another to annexed) the following certificates and affidavits, to wit, we the undersigned directors in the Mississippi and Atlantic Railroad Company certify that the amount of stock necessary for the incorporation of said company has been subscribed viz. one hundred and sixty thousand dollars, and that ten per cent, or the amount viz. sixteen thousand dollars has been actually paid in as required by law.

August 7. 1850

William S. Wait  
Gentl. Blakeman  
Bey. Johnson

State of Illinois }  
County of Band } On this 12th day of August A.D.  
1850 before me M. J. Dale, county Judge, in and  
for said county, and by virtue of said office a  
Justice of the peace of said county personally



Came William S. Wait Curtis Blakeman and  
Benjamin Johnson, three of the directors of the  
Mississippi and Atlantic Railroad Company  
who being duly sworn declare and say that the  
facts and matters set forth in the foregoing  
certificate by them subscribed were true  
Sworn to and subscribed before } William S. Wait  
me at my office in Greenville } Curtis Blakeman  
said County and State, the day } Ben. Johnson  
and year last aforesaid }  
M. G. Dale Co Judge

I hereby certify that the cash specified  
viz. sixteen thousand dollars has been paid in  
and is now in my hands subject to the orders  
of the president for the use of the Mississippi  
and Atlantic railroad company

August 10 1850

Ebenezer Capps  
Treasurer

Witness M. G. Dale

Clerks office County Court

State of Illinois

Band County } ss. J. E. Gashier clerk of  
the County Court in and for said County,  
hereby certify that M. G. Dale whose name ap-  
pears to and before whom, the above affid-  
avit was made, was on the day of the date  
of the same (viz.) August 12th 1850 County  
Judge of the County aforesaid, duly com-  
missioned and qualified, and that full  
faith and credit are and of right ought to  
be given to all his official acts, and that the  
above signature is <sup>his</sup> genuine signature.

In Testimony whereof I have here-  
to set my hand and affixed the



L.S.

Seal of said Court at Greenville this  
14th, day of August 1850

E. Gashins clerk

And the said the "Mississippi and Atlantic  
Rail road company" further say that after-  
wards, to wit: on the 12th day of October 1850 the  
said articles of association, certificates and af-  
fidavit were filed in the office of the Secretary  
of State of the said State of Illinois and thence  
a copy of said Articles of association and the  
said certificates and affidavit, the Secretary of  
State of the said State of Illinois, appended the  
following certificate to wit:

United States of America  
State of Illinois

} SS. I David L.  
Gregg Secretary of State of said State of Illinois  
do hereby certify that the foregoing is a true  
copy of the original articles of association  
of the "Mississippi and Atlantic Rail  
road company" now on file in my office

In Testimony whereof I have hereto  
set my hand and affixed the great  
seal of State at <sup>Springfield</sup> ~~Springfield~~ <sup>at the city of</sup> this 12th  
day of October A. D. 1850 and of the  
independence of the United States the  
seventy fifth David L. Gregg  
Secretary of State.

which said certified copy of said Articles of  
association certificates and affidavit the  
said the "Mississippi and Atlantic Rail  
road company" now bring into court  
and show to the court and make proof  
thereof And the said the Mississippi and  
Atlantic Railroad company" further say

L.S.



that by the force of the said act of the people of the State of Illinois, entitled "An act to provide for a general system of railroad incorporations" and of the provisions thereof, and the said articles of association so made and filed as aforesaid and certified as aforesaid, they were thereby created and constituted and still continue to be, and are a body politic and corporate in fact and in name and are entitled to do all lawful acts, to have, use, and enjoy all the rights, liberties, privileges, franchises and immunities granted to them, <sup>and conferred upon them</sup> by said act, and by the law of the land; by virtue whereof, they, the said the "Mississippi and Atlantic Railroad Company" for all the time in the said information in that behalf mentioned have used and exercised, and still do use and exercise the liberties, privileges and franchises of a body politic and corporate in law, fact and name, by the name of the Mississippi and Atlantic Railroad Company" as authorized by said act, and by the same name suing and being sued, pleading and being impleaded, defending and being defended, answering and being answered unto in all courts and places whatsoever, and also the liberties, privileges and franchises of having a common seal and making and altering the same at pleasure and of being capable in law of purchasing, holding and carrying any real estate and personal property whatsoever necessary for the construction, equipment and operating a railroad from a common point on the State line on the east to connect with the



Gene Haute and Richmond Railroad, taking its course thence through the counties of Clark Cumberland, and through or near the north west corner of of Jasper County and through the county of Effingham, and to Vandalia in Fayette county and from thence through the counties of Bond, Madison, and through or near the North West corner of St. Clair county and to terminate at or near Eministown on the Mississippi river and nearly opposite the eastern termination of the contemplated 'Pacific Railroad' as practicable, a distance of one hundred and sixty miles or thereabouts, and for the erection of all necessary buildings, yards and appurtenances for the use of the same, and of obtaining and holding by gift, grant or purchase the right of way for said Railroad and of making a survey or surveys thereof, and of entering upon lands and waters for that purpose and of receiving and holding real estate and other property by gift grant or purchase, <sup>for maintenance and accommodation</sup> to aid in the construction of said Railroad and of entering upon possessing and using such lands and other property so acquired by gift grant or purchase as may be necessary for the construction and maintenance of said railroad its stations and depots, of laying out said railroad not exceeding six rods wide and of constructing the same on said lands so acquired and upon or across any stream of water, water-course road highway, railroad, or canal which the route of this said railroad may intersect and of joining and uniting with



Other railroads as authorized by said act: and of changing the line of this railroad as authorized also by said act, and of taking transporting carrying, and carrying passengers and property on said railroad, by steam or other power, of erecting and maintaining all necessary and convenient buildings, stations, depots and fixtures and machinery for the accommodation, use and transportation of passengers, freight and business of said railroad and to regulate the time and manner of transporting thereon passengers and freight and the compensation to be paid therefor as authorized by said act and subject to the limitations therein stated, and of borrowing money for the construction of said railroad, fixtures and the equipment thereof as fully authorized by said act. And the said the "Mississippi and Atlantic Railroad company" further say that they have acquired by gift grant or purchase the right of way for the construction of their said railroad as aforesaid, and have acquired also all the lands by gift, grant or purchase necessary for the construction equipment and operating said railroad, its stations and yards and depots, and have located the route of their said railroad and are proceeding as well they may, to construct the same upon their own lands acquired for that purpose. And the said the "Mississippi and Atlantic railroad company" have claimed used and enjoyed, and yet do claim to have, use and enjoy all the rights, liberties, privileges and franchises allowed to, and conferred on them



in and by the aforesaid act of the people of the State of Illinois, as it was lawful for them to do and especially the right, liberty, privilege and franchise of laying out, constructing, and maintaining and running their said rail road upon their own lands, and the right liberty, privilege and franchise to acquire by voluntary gift, grant or sale to them all the lands and other property necessary for the location, construction, maintenance and use of said railroad, as well they might under said Act. And without this the said the "Mississippi and Atlantic railroad Company" during all or any part of the time mentioned in said information have usurped and do still usurp the said liberties privileges and franchises mentioned in the said information or any of them upon the said people of the State of Illinois in manner and form as by the said information is above supposed all which several matters and things they the said the "Mississippi and Atlantic Railroad Company" are ready to verify &c. whereupon they pray judgment and that the aforesaid liberties and franchises by them claimed in manner aforesaid may be allowed and adjudged to them, the said the "Mississippi and Atlantic Railroad Company" and that they may be dismissed and discharged by the Court here and upon the premises above charged upon them &c.

W. Worthington }  
John A. McCannand } Attys.



And thereupon the said Charles H. Canstale  
acting States attorney as aforesaid files a de-  
-murrer thereto, to wit,

"Black Circuit Court

The People of the State of Illinois

The Mississippi & Atlantic  
Railroad Company

} Quo Warranto

And the

Said Charles H. Canstale acting States att-  
orney as aforesaid in the name and by  
the authority of and for the People of the  
State of Illinois in this behalf comes and  
says, that the said plea of the said the "M-  
ississippi and Atlantic Railroad Company"  
by them above pleaded and the matters there-  
contained in manner and form as the  
same are above pleaded and set forth are  
not sufficient in law to bar the said people  
of the State of Illinois from having and  
maintaining their aforesaid action they  
against them the said the "Mississippi and  
Atlantic Railroad Company" and the  
said people of the State of Illinois are not  
bound by the laws of the land to answer  
the same which they are ready to verify  
wherefore for want of a sufficient plea  
in this behalf they the said people pray  
Judgment and the said the "Mississippi  
and Atlantic Railroad Company" with  
the said rights, liberties, privileges and fran-  
chises may in no way intermeddle, but may  
be altogether excluded from the same &c.

Charles H. Canstale  
States atty &c."



and thereupon the said the Mississippi & Atlantic Railroad Company file a joint answer to said demurrer to wit:

"Circuit Court

The Mississippi and Atlantic Railroad Company"

vs.

Quo Warranto

The People of the State of Illinois upon the relation of Eldridge S. Janney

And the said the Mississippi and Atlantic Railroad Company say that their said plea by them above pleaded and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said people of the State of Illinois from having and maintaining their aforesaid action thing against them the said the "Mississippi and Atlantic railroad company" and that the said the Mississippi and Atlantic Railroad Company are ready to verify and prove the same, when, where, and in such manner as the Court here shall direct and award; wherefore in as much as the said people of the State of Illinois as aforesaid have not answered the said plea, nor hitherto in any manner denied the same the said the "Mississippi and Atlantic Railroad Company" pray Judgment and that the aforesaid rights liberties privileges and franchises in form aforesaid claimed by the said the "Mississippi



And Atlantic Railroad Company" may for  
the future be allowed to them, and that  
they may be dismissed and discharged  
by the Court hereof and from the premises  
aforesaid &c.

W. Worthington }  
John A. McElmound } atty's

And by consent upon the proceedings thus  
made up, the matters therein set ~~up~~ are  
submitted at the present term of this Court  
for the consideration and Judgment of the  
Judge of the said Court thereon.

Which said consideration and  
Judgment is by order of the Court entered  
of record in the words following, to wit

"Black Circuit Court

The People of the State of Illinois  
upon the relation  
of Edwidge S. Tanney

vs.  
The Mississippi and  
Atlantic Railroad  
Company

3  
Information in  
the nature of a Quo-  
Warranto

This day the parties  
in the above cause appeared and the said ca-  
use having been heard upon the said  
information and plea thereto and demurr  
to said plea and finding to said demurr after  
argument of counsel and due consideration  
the Court finds the said plea of the "Mississ-  
ippi and Atlantic Railroad Company"  
and the matters and things therein contained



in manner and form as the same are  
above pleaded and set forth sufficient in law  
to bar and preclude the said People of the  
State of Illinois from having and main-  
-taining their aforesaid action against them  
the said the "Mississippi and Atlantic Rail-  
road Company" and therefore the court  
doth overrule the said demurrer, and there-  
-upon is it considered and adjudged by  
the court that the said the Mississippi  
and Atlantic railroad company may  
use have and enjoy all the said rights  
liberties, privileges and franchises in and  
by their said plea claimed and that the  
said the "Mississippi and Atlantic railroad  
company as to the said premises be dis-  
missed from this court, and it is  
further considered and adjudged by the  
court that the said the Mississippi and  
Atlantic Railroad Company have and  
recover from the said Elbridge S. Saw-  
ney relator as aforesaid in this behalf  
their—

---



costs and charges by them expended and  
they have execution, whereupon earnestly  
said Charles H. Canstale acting State  
attorney as aforesaid, and prays an appeal  
in the name and by the authority of the  
People of the State of Illinois aforesaid  
from the judgment of this Court in this  
behalf rendered, to the Supreme Court  
of the State of Illinois in accordance  
with the Statute in such case made and  
provided which said appeal is allowed  
upon the said Eldridge S. Jarney re-  
-lator in this behalf as aforesaid within ten  
days hereafter filing his bond to the said de-  
fendants in the office of the Clerk of this Court  
with Jonathan K. Greenough as his security in  
the sum of two hundred dollars conditioned for the  
prosecution of this said appeal with effect or in  
default of so doing for the compliance of  
whatever judgment the said Supreme Court  
may render against the said relator touching  
the costs of this cause upon the trial or dismis-  
sal of the said appeal, and thereupon by leave of  
the Court now here obtained, it is agreed by  
and between the said Charles H. Canstale  
acting State attorney as aforesaid, Attorney for  
the <sup>said</sup> people of the State of Illinois in the relation a-  
foresaid, "Caelus Worthington and John A Mc  
Clemmand Attorneys for the said the "Mississip-  
pi and Atlantic Railroad Company" in this  
behalf that this appeal is to be taken to the  
Supreme Court of the State of Illinois for the  
third <sup>the term</sup> General division of the State to be holden  
at <sup>the town</sup> Alton in said State on the second Mon-  
day of the month of <sup>the month</sup> June next to be sub-



=mitted and tried at same convenient period during the said June term thereof in the same manner and with the same legal force, effect and validity as to the judgment of the court thereon as if submitted and tried in the Supreme Court for this the second Grand division of the State of Illinois.

and afterwards, to wit on the thirteenth day of May A. D. 1853 there here came into court with the Clerk of this court the said Eldridge S. Jamney relators as aforesaid with Jonathan R. Greenough as his security, and files with said Clerk his bond in this behalf in the words and figures following to wit,

"Know all men by these presents, that M. Eldridge S. Jamney and Jonathan R. Greenough of the county of Clark and State of Illinois are held and firmly bound unto the Mississippi and Atlantic Railroad Company in the penal sum of two hundred dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves and each of our heirs executors or administrators, jointly, severally and firmly by these presents

Witness our hands and seals this 18th May Anno Domini 1853

The condition of the above obligation is such that, Whereas the People of the State of Illinois at the May Term A. D. 1853 of the Clark Circuit Court, did institute proceedings of "Quo Warranto" against the Mississippi and Atlantic Railroad Company, in pursuance of law, and the relation of Eldridge S. Jamney the above named obligor upon which judgment was rendered in favor of the said Railroad company and ag-



- against the said information with costs against the said relator from which said Judgment the said People of the State of Illinois prayed an appeal to the Supreme Court of the State of Illinois which was allowed by the said Court upon the terms that the said Eldridge S. Jarney relator in that behalf should within ten days from the date of the said order file his bond to the said defendants, in the office of the Clerk of the said Clark Circuit Court with Jonathan K. Greenough as his security in the sum of Two hundred dollars, conditioned for the prosecution of the said Appeal with effect or in default thereof for the compliance with whatever judgment the said Supreme Court may render against the said relator, touching the costs of that Cause upon the trial or dismissal of the said Appeal. Now if the said People of the State of Illinois upon the relation aforesaid prosecute this said Appeal with effect or in default of so doing, the said Eldridge S. Jarney comply with whatever judgment the said Supreme Court may render against him as relator as aforesaid, touching the costs of this Cause upon the trial or dismissal of the said Appeal then this obligation to be void otherwise to remain in full force & virtue.

Taken and approved by  
me at my office this  
13th May A. D. 1853

Wm P. Bennett

Clerk of the Clark  
Circuit Court

Eldridge S. Jarney (Seal)  
Jonathan K. Greenough (Seal)



Copy of cost bill

The People of the State  
of Illinois in the relation  
of Elbridge S. Samney

vs.

Quo Warranto

The Mississippi and At-  
lantic Rail road company

Plaintiffs cost

W. P. Bernell clerk per

Entering Atty's appearance 10

Filing 4 papers 20

Making affidavit 10

Entering order of filing Quo Warranto 20

Entering order of filing return to plea 20

Entering order of adjournment 20

Taking bond for cost 20

Entering order allowing appeal 20

Taking appeal bond 50

Making transcript & return 9 60

Certificate & seal 35

Entering satisfaction of Jud. for cost 15

Defendants

Entering appearance of Atty's. 10

Filing 4 papers 20

Entering order of filing plea 20

Entering order of filing return 20

Entering Jud. for cost 20

Making & recording cost bill 30

Issuing execution 40

Filing same 5

Backeting same 10

Entering & recording Atty's return 10

\$13.85

State of Illinois {  
Clark County } ss.

W. P. Bernell



Clerk of the Clark Circuit Court for  
the County of Clark and State of Illi-  
nois hereby certify the foregoing to be a  
true and perfect transcript of the Judgment  
and proceedings in the the cause of "The  
People of the State of Illinois on the rel-  
ation of E. S. Jarney v. The Mississippi &  
Atlantic Railroad Company" now of re-  
cord and on file in my office

Witness my hand and the  
Seal of said Court at Marshall  
in the said County and State  
this 25th day of May A. D. 1853  
Wm. P. Bennett

Clerk C. C. C.

State of Illinois vs. 3<sup>rd</sup> Grand Supreme Court Division  
June Term A.D. 1853

The People of the State of Illinois  
on the relation of Eldridge  
S. Jarney, Appellants  
v.

The Mississippi & Atlantic  
Railroad Company, Appellees

} Appeal from Clark Co.

And now comes the said  
People on the relation aforesaid, by Charles H. Cor-  
stable, their Attorney, and say that in the a-  
bove record of the proceedings aforesaid, and in  
the rendition of the judgment aforesaid  
manifest error hath intervened to their  
prejudice, in this, to wit;

1<sup>st</sup> That by the record aforesaid it appeared  
that the said Clark Circuit Court erred in  
over-ruling the Demurrer of the said



People, to the plea of the said Mississippi & Atlantic Rail Road Company by them as aforesaid pleaded -

Truly - That the said Circuit Court erred in rendering judgment upon the said Demurer in favor of the said Mississippi & Atlantic Rail Road Company, and against the said People of the State of Illinois &c.

Truly - That the court erred in rendering judgment in favor of the said Mississippi & Atlantic Rail Road Company, when by the law, of the land judgment should have been rendered against  
tion &c.

All of which  
are ready to verify by the  
Wherefore the  
the said record  
and



Clark

Atlantic  
Company.  
Asperellus

from Clark  
word + ruin

July 18<sup>th</sup> 1853.  
L. Leland Clk.  
By P. H. Leland

Constable, atty.



Illinois Sup. Court

The Mississippi and Atlantic  
Railroad Company

vs

The People of the State of Illinois  
on the relation of Eldridge S. Hamer

} Two warrants  
on appeal &c

} And the said

The Mississippi and Atlantic Railroad Company  
come and join in the errors assigned as aforesaid,  
and say there are no errors in the record and  
proceedings aforesaid in manner and form as the  
same are above assigned, and this they are ready  
to maintain &c, wherefore they pray judgment  
&c.

J. H. McClelland -  
S. Worthington attys.



1853  
No 15 P.D.

Illinois Sup. Court

Miss & Attaché Railroad Co  
vs 15 P.D.

The People of Illinois vs

Grinder in error

Filed July 18<sup>th</sup> 1853.

L. Leland Clk.  
By P. H. Leland Supt.

12088

1853

Attest  
At Clerks Office  
attys.



The People of the State of  
Illinois upon the relation  
of Eldridge & Sarney

as  
the ~~Atlantic~~ <sup>or Atlantic</sup> Mississippi  
Rail Road Company

In the Supreme Court of  
the State of Illinois  
Error to Clerk

of consent with & leave  
division

And for a further plea in this behalf the  
said defendants by leave of the Court first had  
and by the agreement of the parties hereto  
show to the Court that heretofore to wit on  
the 12<sup>th</sup> day of January A.D. 1854 Joel A. Matteson  
who was then the Governor of the State of Illinois  
duly elected qualified and commissioned at  
Springfield in said State issued his pro-  
clamation which proclamation was in substance  
as follows

I Joel A. Matteson Governor of the State of  
Illinois, to all to whom these presents shall  
come greeting

Whereas it is provided by the tenth  
section of the fourth article of the constitution  
of this State that the Governor may on extra-  
ordinary occasions convene the General Assembly  
by proclamation and whereas there are matters  
of importance which in my estimation  
require the early attention of the General  
Assembly

Now therefore I Joel A. Matteson  
Governor of the State of Illinois by virtue of  
the provisions of the constitution, <sup>as aforesaid do by this my proclamation</sup> convene the  
General Assembly and appoint Thursday  
the 9<sup>th</sup> day of February 1854 for the meeting  
thereof at which time the members of the



Senate and House of Representatives will assemble in the City of Springfield and give consideration to the subject matters embraced in the objects herein set forth to wit

To divide the State into Senatorial and Representative Districts

To Amend Charters of towns Cities Railroads ferries dykes and plank roads and to extend the same

To Amend the School Law and provide a superintendent of Common Schools for the State

To prevent eastern manufacturers and Sellers from selling their accumulated stocks of goods by samples

To Amend the Township organization law

To pass an act in relation to the interest of the State in the Swamp and other lands in St Clair County

To Amend the law establishing County Courts and to grant a change of venue in certain cases

To Pass laws recognizing the existence of and conferring additional powers upon corporations formed or which may be formed prior to the action of the Legislature thereon under the act to provide for a general system of



Railroad incorporations, approved November 5<sup>th</sup> 1849, declare the public utility of their works sanction the routes and termini thereof and authorize the construction of the same

To locate State roads and pass acts in relation to public roads

To authorize counties to borrow money for the erection of county buildings and to issue bonds therefor and make provision for paying the interest on the same and also to define and establish the boundaries of counties

To appropriate the Seminary fund for the endowment of an industrial university

To amend the act in relation to Swamp lands

To authorize the board of Supervisors of McHenry County to appropriate money for educational and other purposes

To amend the law creating the recorder's court of the City of Chicago

To charter a gas light Company in the City of Springfield

To pass laws to consolidate Railroads and plank roads in this State and with rail roads and plank roads in other States to make a mutual interest of the same



And to allow one to take the name of the other  
as the directors of the Corporations may agree  
in this State and with roads in other States  
and to pass such laws as will fully  
carry out the object as above to issue bonds  
by bonds so consolidated & clear interest as  
may be agreed upon

To settle and adjust matters with the Commission-  
ers and assessors of the Galatin County Soline

To pass such law in relation to the County seat of Logan County as may seem expedient  
To provide for defraying the expenses of the <sup>Springfield</sup> Session of the General Assembly to improve the Street and  
square around the State house to complete  
public buildings and for transcribing records  
of fund Commissioners office

In testimony whereof I have hereunto  
set my hand and caused the great seal  
of State to be affixed

Done at the City of Springfield  
this 2<sup>nd</sup> day of January in the Year of our Lord  
one thousand eight hundred and fifty four  
And of the independence of the United States  
the seventy eighth

(Signed) J A Watterson

By the Governor

Alexander Stone Secretary of State

And they were that on said 9<sup>th</sup> day of February  
AD 1854 the Legislature of said State of Illinois  
convened at Springfield in pursuance of said  
proclamation and at their said session there  
& there began & shall on act was passed by the



General Assembly in due form of law which  
act is entitled "an act recognizing and  
authorizing the construction of the Mississippi  
and Atlantic Rail Road" which act is in  
substance as follows

See 1<sup>st</sup> Be it enacted by the People of the State of Illinois  
+ represented in <sup>the</sup> General Assembly That The  
Mississippi and Atlantic Rail Road Company  
as formed under articles of association filed  
in the office of the secretary of state is hereby declared  
to be a valid and subsisting corporation of that  
name duly organized under and duly vested with  
all and singular the rights privileges and powers  
contained in an act entitled an act to provide  
for a General System of Rail Road incorporation  
approved November 5 1847 and said company is hereby  
authorized to commence construct and maintain the said  
Mississippi and Atlantic Rail Road from a point on the  
Eastern line of the State of Illinois in the direction of Terre  
Haute Indiana to a point on the Mississippi river at or  
near Illinois town as in their articles of association speci-  
fied in accordance with the provisions of the act herein  
before recited the acts and proceedings thereof and of this act  
and the acts and proceedings of said company hitherto in  
and about the prosecution and construction of said road  
its crossing connections and running arrangements  
with other roads within the state are hereby declared valid  
and binding

Section 2<sup>nd</sup> The said Mississippi and Atlantic Rail Road is  
hereby declared to be a work of sufficient public  
utility to justify the taking of private property for  
constructing and maintaining said road and  
the same may be appropriated whenever requisite



under the provisions of the acts now in force for that purpose.

Sec 3. Said Company shall have power to borrow money for the construction ~~and~~ equipment and maintenance of said road and to give its bonds therefor at such rate of interest as its directors may prescribe not exceeding seven per centum per annum and for security therefor to mortgage its road, property and franchises and any sale of said bonds at less than par shall be as valid and binding upon said Company as if the same had been sold for the par value thereof.

Sec 4. Said company shall have power to take and hold stock in or loan its credit to any Rail Road Company within this state whose road may connect directly or by connecting lines with said Mississippi and Atlantic Rail Road.

Sec 5. Said Company is hereby empowered to construct so much of the line of road as lies between the eastern line of this state and Terre Haute under such provisions as may be made by the laws of the State of Indiana, or to form a connection with any company that may be organized for that purpose, to consolidate the stock of said Companies or to lease manage or control the said connecting line of road on such terms as may be agreed upon between the parties.

Sec 6 This act shall take effect and be in force from and after its passage.

which said act was afterwards during the same session of the General Assembly to wit on the 23<sup>d</sup> day of February A.D. 1854 signed and



and approved by the Governor of said State of Illinois and became a law and is now a law of said State in no wise amended or repealed

And the said defendant aver that by virtue of the laws of this State theretofore existing and by virtue of said above recited act and under and in pursuance of their organization and articles of association filed in the office of the Secretary of State for said State and mentioned in the former plea filed herein they are now a valid and subsisting corporation and have the right to construct the rail road mentioned and referred to in the above recited act and specified in said articles of association in the manner in said law and articles specified And this they are ready to verify whereupon they pray Judgment be and that said writ of *quo warranto* be dismissed  
Cummell & Cook  
attys for defts.

The People of the State of  
Illinois upon the relation of  
Eldridge S. Tenney  
vs

The Mississippi & Atlantic  
Rail Road Company

In the Supreme Court of the  
State of Illinois

Error to Clark County  
If consent in the 3<sup>rd</sup> House division

It is hereby stipulated and agreed by and between the parties to the above entitled suit that the defendants shall be permitted to file the annexed plea in said court and the attorney



representing the People a demurrer thereto  
and that said plea shall have the same effect  
and be considered by said Supreme Court  
in the same manner and with like effect  
as if this proceeding had been commenced  
subsequent to the passage of the act recited  
in said plea and said plea had in the  
proper time & manner been interposed in  
the Circuit Court of said Clark County  
in connection with the plea before filed  
herein and a demurrer to said plea overruled  
in said Circuit Court and the cause thereupon  
removed to said Supreme Court  
And it is further agreed that if the defendants  
are now by virtue of the several laws of this  
State including the act recited in the plea  
annexed a valid Corporation and authorized  
to construct a rail road in the manner and  
on the route specified in their articles of  
association (which articles of association  
now on file in the office of the Secretary of  
this State are hereby made a portion of this  
agreed case to be considered by said court  
in determining the same) then the writ of  
quo Warranto shall be dismissed otherwise  
the proper judgment shall be rendered in  
this court against the defendants, and it  
is further stipulated that this case may be  
decided by said court without a rehearing  
at the same time that the original cause  
could be decided by law if this stipulation had  
not been made a part of the case either party having  
leave to file a written brief or argument in 16 days



from the filing of this agreement, and it is agreed that  
the demurrer heretofore filed shall be considered  
as being filed as to the annexed piece in the same  
manner as if filed subsequent to the filing of the  
~~annexed~~<sup>said</sup> piece

Charles H. Constable  
Atty for Relator &c.

Sumner Glover & Cook  
Atty for defts



The People of the State  
of Illinois upon the  
relation of Eldridge  
Rumney is

The Mississippi and  
Atlantic Railroad  
Co

Agreed case

12088

Filed April 15<sup>th</sup> 1854.

L. Deland Clk.  
By P. K. Deland Depy.

6/33200  
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