

12263

No. _____

Supreme Court of Illinois

Peoria & Oquaw^{K4}~~ka~~ R. R. Co.

vs.

Elting.

Filed to the Circuit Court of
Saguenay County, State of Illinois
before the Honorable David Davis
Judge of the Eighth Judicial
Circuit in said State of Illinois.
To the October Term A.D. 1854

Be it Reminded that on
the Thirtieth day of September
in the year of our Lord, One
thousand Eight hundred and fifty four, in a
certain cause wherein The Peoria and Aqueduct Rail-
Road Company was plaintiff and John Celling was
Defendant, by change of venue from the County of
Peoria, the following papers marked "A." "B." "C." & "D."
with a Transcript, were filed, in the words & figures
following to-wit:

" State of Illinois	}	Peoria Circuit Court
" County of Peoria	}	November Term A.D. 1853
" The Peoria and Aqueduct		
" Rail Road Company	}	
" "	}	
" John Celling	}	

Shew of said Court
" That upon a summons in said Cause, returnable
" to said term, in a plea of trespass on the case
" on promises, damages One thousand Dollars
" Julius Manning
" Atty for Jeff.

" State of Illinois	}	
" County of Peoria	}	
"		Peoria Circuit Court
"		November Term A.D. 1853.

"John C. King the Defendant in this suit was
"summoned to answer the Plea and
"Ogawatha Rail Road Company, the plaintiff in
"this suit, of a plea of trespass on the case in
"promissio, and thereupon the said Plaintiff
"by the said plaintiff's Attorney complains &c.
"For that whereas hereafter to wit: on the 12th
"day of February A.D. 1849 the Legislature
"of the State of Illinois passed a certain
"act entitled an act to incorporate the
"Pena and Ogawatha Rail Road Company
"which act was approved by the Governor
"of the said State on the 12th day of February
"A.D. 1849, and became a Law of the said
"State: and also afterwards to wit: on the
"10th day of February A.D. 1851 the said
"Legislature of the State of Illinois passed a
"certain other act, entitled, an act to amend
"an act entitled an act to incorporate the
"Pena and Ogawatha Rail Road Company
"Feb. 12th 1849. which last mentioned act was
"approved by the Governor of said State on the
"10th day of February A.D. 1851. and also became
"a law of said State, which said two acts
"are now to the Court here shown, and which
"said acts became and now laws of the
"said State of Illinois before the doing of
"the acts of the said defendant, and the making
"of the promises and undertakings of the said
"Defendant herein after mentioned
"And whereas also afterwards to wit: on the
"fourth day of February A.D. 1850, at Pena in
"said County for the purpose of organizing
"the said Company under the said acts and
"laws of said State, and becoming a stockholder
"therein and securing to himself the benefits and

"advantages of being such stockholder, the
said Defendant (in conjunction with certain other
persons not parties hereto) made and subscribed
his certain agreement in writing, in the words and
referring following to wit: "We the subscribers severally
agree to become stockholders in the Penna and
Aguawka Rail Road Company to the number of
shares placed opposite our names respectively,
and to pay the amount thereof in such install-
ments as may be called for by order of the
president and directors of said Company.

"Penns fourth day of February 1858"
"To which said Agreement in writing, the said
Defendant then and then subscribed his name and
placed opposite to his name so subscribed
the number of ten shares and the amount of
one thousand Dollars as his the said defendant's
subscription to the Capital Stock of the said
Company. And afterwards the said ten shares
being the said sum of one thousand Dollars
and afterwards to wit on the 20th day of June
A.D. 1858 at Knoxville to wit at the County of
Sevier aforesaid, a sufficient amount of said
stock being subscribed, the said Penna and
Aguawka Rail Road Company became duly
organized under the said acts and laws by the
stockholders of said Company, electing for the
officers thereof, as in said laws provided.
And the said Company being so organized, accepted
of the said subscription of the said Defendant
and the said Defendant paid to the said Plaintiff
five per cent upon his said subscription, that is the
sum of fifty Dollars on his said subscription of
one thousand Dollars. By means whereof the
said Defendant then and then became a
stockholder in said Company, and became

liable to pay to the said plaintiff the said
sum of One thousand Dollars his said subscrip-
tion (except the said sum of fifty dollars paid
as aforesaid) in such installments as might
thereafter be called for from him the said de-
fendant by order of the President and Directors
of said Company, and being so liable the said
defendant in consideration thereof, and in consid-
eration of the promises, afterwards to wit: on the
day and year last afterwards to wit: on the day
and year last aforesaid at the County of Beria
aforesaid neglects, and then and then faithfully
promised the said plaintiff to pay said plaintiff
the said sum of One thousand Dollars (except the
said sum of fifty Dollars paid as aforesaid) in
such installments as might thereafter be called for
from him the said defendant, by order of the
President and Directors of the said Company.
And the said plaintiff avers that afterwards to wit
on the fifteenth day of January A.D. 1853, the
President and Directors of said Company to wit at
the County aforesaid by their order called for
an installment of ten per centum upon the said
defendant's said subscription of one thousand
dollars from the said defendant, to wit, for the
sum of One hundred dollars part of the said
sum of one thousand dollars subscribed by
the said defendant, as aforesaid, of which, the
said defendant had notice
And that afterwards to wit, on the first day of
April A.D. 1853 at the County aforesaid, the
said President and Directors of said Company
by their certain notes and order, called for a
certain other installment from the said defendant
on his said subscription of the amount of ten
per centum on the said defendant's said

"subscription to wit: the sum of one hundred
"dollars, other part of the said defendants said
"subscription of one thousand dollars, of which
"the said defendant also had notice.

"And that afterwards to wit on the first day of June
"A.D. 1853 at the County aforesaid, the said
"president and directors of the said Company, by their
"certain other order called for a certain other
"instalment from the said defendant, upon his
"said subscription of fifty per centum thereon.

"that is for the further sum of fifty Dollars
"other part of his the said defendants said sub-
"scription of one thousand dollars of which the
"said defendant also had notice.

"And that afterwards to wit on the first day of
"November A.D. 1853 at the County aforesaid
"the said president and directors of said Company
"by their certain other order called for another
"instalment of fifty per centum upon said de-
"fendant's said subscription from the said defendant
"that is for the further sum of fifty Dollars, other
"part of the said defendant's said subscription of
"one thousand dollars of which the said defendant
"also had notice.

"And that afterwards to wit on the first day of January
"A.D. 1853, at the County aforesaid the said pres-
"ident and directors of said Company by their certain
"other order called for another instalment of ten per
"centum upon the said defendants said subscriptions
"from the said Defendant, that is for the further
"sum of one hundred dollars other part of the said
"defendants said subscription, of which the said
"defendant also had notice.

"And that afterwards to wit, on the first day of
"February A.D. 1853 at the County aforesaid the
"said president and directors of said Company by

" then certain other order, called for another instalment
" of ten per centum upon the said defendant's said
" subscription from the said defendant, that is for
" the further sum of One hundred Dollars other part
" of the said Defendant's said subscription of one
" thousand Dollars, of which the said defendant also
" had notice.

" And that afterwards to wit, on the first day of August
" A.D. 1853 at the County aforesaid, the said president
" and directors of said Company, by this certain other
" order, called for another instalment of ten per centum
" on the said defendant's said subscription from the
" said defendant, that is for the further sum of One
" hundred Dollars other part of the said defendant's said
" subscription of one thousand Dollars of which the
" said defendant also had notice.

" And that afterwards to wit: on the first day of September
" A.D. 1853 at the County aforesaid, the said president
" and directors of said Company, by this certain other
" order, called for another instalment of ten per centum
" upon his said subscription from the said defendant
" that is for the further sum of One hundred Dollars
" other part of the said subscription of the said defendant
" of one thousand Dollars, of which the said defendant
" also had notice.

" And that afterwards, to wit on the first day of
" October A.D. 1853, at the County aforesaid, the said
" president and directors of said Company, by this certain
" other order called for another instalment of five
" per centum upon the said defendant's said sub-
" scription from the said defendant, that is for the
" further sum of fifty Dollars, other part of the
" said defendant's said subscription of one thousand
" Dollars of which the said defendant also had notice.
" And afterwards to wit; on the twentieth day of
" October A.D. 1853 at the County of Lewis aforesaid

the said several instalments being then and there
 due and payable to the said plaintiff from the
 said defendant, the said plaintiff specially requested
 the said defendant to pay the said plaintiff, the said
 several instalments above specified
 Yet the said defendant not regarding his said
 several promises and undertakings, but contriving
 and intending to wrong, injure and defraud the
 said plaintiff in this behalf, has not as yet
 paid the said plaintiff the said several sums of
 money so called for as aforesaid, nor any nor
 either of them, nor any part thereof, ~~which~~ after
 requested so to do, but to pay the same or any
 part thereof has hitherto neglected and refused,
 and still neglects and refuses to the damage of
 said plaintiff of six thousand dollars, and therefore
 the said plaintiff brings suit &c.

Julius Manning
 Atty for Plff.

Copy of the Instrument sued on as above
 We the subscribers severally agree to become
 stockholders in the Peoria and Aquawake Railroad
 Company to the number of shares placed opposite
 our names respectively and to pay the amount
 thereof in such instalments as may be ordered
 for by order of the President and directors of
 said Company

Signed John Cetting
 Peoria Branch of February 1850.
 No of shares Amount Paid
 10 1000.00. 750.00.

"L"
 The People of the State of Illinois
 To the Sheriff of Peoria County Greeting:
 We command you to summon John Cetting if he
 may be found in your County to appear before
 our Circuit Court on the first day of the next

" then thereof to be held at Ponia within and for
 " the said County of Ponia on the third Monday
 " of November instant they and thus in and said
 " Court to answer unto the Ponia and Ogema
 " Rail Road Company of a plea of trespass on the
 " Case upon promises, to this damage, and thousand
 " dollars say as they say, and make return of this
 " writ, with an endorsement of the time and manner
 " of giving the same, on or before the first day of
 " the term of the said Court, to be held as aforesaid
 " Wm. C. & Gale Clerk of said
 " Court and the seal thereof at Ponia this fifth
 " day of November in the year of our
 " (L.S.) Lord, one thousand eight hundred
 " and fifty three

Jacob & Gale Clerk.

Which paper had the following endorsement thereon
 Return to wit:

" State of Illinois } ss.
 " Ponia County }

" I served this Summons by
 " John C. C. this 10th day of November A.D. 1853.

" Fee 50
 " Copy 25
 " Ret. 10
 " Costs 15
 " 10

S. B. Remond Sheriff
 by John Ryans Deft.

D.

" The Ponia & Ogema
 " Rail Road Company }
 " John C. C. }

In the Circuit Court
 of Ponia County
 November Term 1853.

" And now comes the said
 " Defendant by his Attorneys Purdie & Sanger & Johnson
 " and says that the said Plaintiff's declaration, and the
 " matters and things therein contained in manner & form
 " as therein stated set forth are not sufficient in

"law for the said Plaintiff to have and maintain
"his action aforesaid, against the said defendant
"and that he is not bound in law to answer
"the same, and this he is ready to verify, wherefore
"he prays judgment &c.

"And the said Defendant comes & shews to the Court
"the following special causes of demurrer.

"1 Because the averments in the said declaration
"are inconsistent & contradictory in this:

"That the Laws of the 13th February 1849 & 10th Febry
"1851 became Laws before the organization of the
"Company & subscriptions of stock by defendant
"which it is averred took place on the 11th
"February 1850.

"2^d Because it is not averred what amount
"of stock was subscribed, nor what per cent
"or that any per cent of said stock was paid
"in at, or before the time of the organization of
"said Company.

"3 Because it is not shewn that the Company are
"calling for payments on instalments of stock
"gave 30 days notice in 3 newspapers, as
"required by law of the time and place where
"said payments were to be made.

"4th Because the declaration shews that there has
"been no promise made to the plaintiffs and that
"their only remedy is in a Court of Chancery.

"5th Because, after defendant's entry in the
"stock, the General Assembly by the act of February
"10th 1851 authorized the Company to proceed with the
"road when \$100,000 should be subscribed, thereby
"changing the character of his Contract.

"6th Because said General Assembly by said act
"without the consent of defendant changed the route
"of said Road, and also the branch to the Mississippi

"7th Because the said act of Febry 10th 1851, authorized the construction of a
"branch Road from Monmouth to the Mississippi at or above Shockken port,
"contemplated by the original act, under which the defendant's subscription was
"made.

"8th Because the General Assembly by an act of June 22nd 1852 without the consent
"of the defendant, increased the capital stock of said Company to \$3500,000

8th Because by said act, said Company was
authorized to construct Ferries across the Illinois
& Mississippi Enterprises to which this defendant
did not subscribe

9th Because by said act, said Company were
authorized to extend said road to the eastward
to the State line of Indiana

10th Because by said act, said Company is
authorized to borrow money on the credit of
the Company, & pledge the Capital stock, & mortgage
the road, or give a deed of trust on the same to
construct the whole including the Eastern Extension

Pugh & Sargent & Johnson
for Plff.

Transcript

Proceedings at a term of the Circuit Court, begun
and held at the Court House in the City of Peoria
in and for the County of Peoria in the State of
Illinois, on the second day Monday of September
in the year of our Lord, One thousand Eight
hundred and fifty four, it being the Eleventh day
of said Month, Present the Honorable Andrew Peter
Judge of the seventh Judicial Circuit, in the State
of Illinois Leonard B. Lemmell Sheriff, Albridge
S. Johnson State Attorney and Jacob Gale Clerk to wit:
Tuesday September 19th A.D. 1854

Peoria Aquawka
Rail Road Company }
John Belting } Assumpsit

The Judge of this Court
being interested in the result of this suit, it is
ordered that the venue in this cause be changed
to the County of Jackson in this State, and that
the Clerk of this Court transmit to the Clerk

" of the Circuit Court of said Jayville County
" the papers in this cause, and a transcript from
" the Records, of the proceedings of this Court
" therein to the Clerk of the Circuit Court of
" Jayville County, duly certified according to law.
" State of Illinois }
" Peoria County } 3

" I Jacob Gabler Clerk of the
" Circuit Court in & for the County of Peoria, &
" State of Illinois, do hereby certify that the foregoing
" is a full & correct transcript from the Records
" of said Court of the proceedings therein in the
" suit of the Peoria & Aqueduct Rail Road Company
" against John C. Cline, removed by change of venue
" from said Court, into the Circuit Court of Jayville
" County in the State of Illinois, & that the accom-
" panying papers marked (A), (B), (C), (D)
" respectively are all the papers filed in
" said Cause in my Office.

" In Witness Whereof, I
" have set my hand and affixed the seal of said
" Circuit Court of Peoria County this 2nd day
" of September in the year of our
" Lord One thousand Eight hundred
" and fifty four
" L.S. Jacob Gabler Clerk

And now afterwards at a Term of the Circuit Court
held in the City of Peoria in and for said County
of Jayville in the State aforesaid, on the fifth
Monday of the Month of April A.D. Eighteen hun-
dred and fifty four
And on the tenth day of said term being on the
tenth day of May in the year aforesaid, the
following proceedings were had in said
Cause to wit:

"Poria & Oquawka
"Rail Road Company

"John Elting

Assumpsit

"Now on this day again came the
"parties, and the Court, being sufficiently advised
"of and concerning the premises, is of opinion, that
"the Defendant's Demurrer to the declaration be
"sustained. It is therefore ordered and adjudged,
"by the Court that the Defendant recover of the
"said Plaintiffs the costs and charges by him
"about his said demurrer expended, and that
"execution issue therefor.

"Whereupon the said Plaintiff says he will abide
"by his said declaration.

It is therefore ordered and
adjudged by the Court that the Defendant re-
cover of the Plaintiffs the costs and charges by him
about his defence, and have execution therefor.

State of Illinois

Jay's County

vs

J. John T. Jones, Clerk

& the Illinois Court, in and for said County do
hereby certify, that the foregoing eleven and one
half pages, contain a true, full and complete
transcript of all the papers filed and all the
proceedings had in said Circuit Court,
in a certain cause removed by change of
Venue from the County of Poria in a cer-
tain cause wherein the Poria and Oquaw-
ka Rail Road Company and Peun-
suff and John Elting the Defendants, and
as fully and truly as the same are & record
in my said office.

In testimony whereof, I have
hereunto set my hand and
Seal at Pekin this 24th
day of May A.D. 1856

John A. Jones
J.A.

The People & Defendants } Error & Torts
Rail Road Company }
vs } Assignment of Errors
John Utting }

Said plaintiffs
Assign the following errors

1st The said Circuit Court Erred in
Sustaining the Verdict & the
said declaration -

2nd The Court Erred in rendering
judgment against plaintiffs
upon the Verdict filed by
said defendant

Wherefore plaintiffs submit
that said judgment
of said Circuit Court be reversed
said Cause remanded
claiming Damages
for plffs in error

Respectfully Submitted
J. A. Jones
for plffs

Pearl & Squawkes

Rail Road Co
Plattsburgh

John Elting left in care

Transcript

Am. L. Transcript 3000 ans

\$3.50

Aug 25

\$3.50

Filed June 10, 1856

L. Leland
Clerk

The Peoria & Equawille } Sup Court
 Rail Road Company }
 John Elting } June Term 1856

This case comes
 before this Court upon the ^{Declarations}
 filed by defendant below & the
 declaration of plaintiffs —

The suit is brought upon a
 subscription of defendant to
 ten shares of stock in said
 Rail Road Company —

The declaration just
 recites the Act of Feb'y 12. 1849
 incorporating said Company
 & also the Amendment Act
 of Feb'y 10. 1851 —

The subscription of def't
 Feb'y 4. 1850.

The organization of said
 Company according to the
 provisions of said Act June
 20. 1850 —

The payment of 5-per cent
 on his subscription of \$1000 —
 being \$50 —

The undertaking of def't
 to pay the balance of his
 subscription when called
 for by said ^{tho} directors of said
 Company —

Alleges the different assessments upon said subscription and notice thereof to defendant - his promise & refusal to pay &c.

The 1st Special Cause of Damages assigns inconsistency in alleging that the acts of July 10 1849 & July 12. 1851 were passed & were laws prior to his subscription in July 1850

The declaration making proof of said acts says "which said acts the said ~~defendant~~ were laws of the State of Illinois before the doing of the acts of the said defendant & the making of the promises & undertaking of said defendant hereinafter mentioned -

The meaning of which averment is that the defendant by his said subscription became a stockholder in the Company - that by his subscription under the original act of incorporation he became a party & was bound as well by the provisions of the act of 1849 as by the act of 1851. or that at all events there was nothing in the amendatory act releasing him from his liability or undertaking to the Company

His promise originally was
technically made under the
original act incorporating
said Act Company but
no part of the payments or
installments became due or
were called for (except the said
5 percent paid upon the first
subscription) became due or
payable until after said
amendatory act of 1851 was
passed, and consequently
if liable at all he was liable
under the law as amended.

The main point which is urged
in all the special cases of common
is that by the different amendatory
acts of said incorporation made
the defendant a stockholder
in a different company from
the one to which he subscribed
his name -

Let us see - The act of 1849
establishing the Corporation gave
the Company the right to build
a road from Reine on the Illinois
river to Aquawka on the Mississippi
& to locate the same on such line
course or way as might be selected
by the directors - also to construct
such other & lateral routes as
might be deemed necessary to connect

with any other route or routes as
might be deemed expedient. See
§ 2 of the Act Special Laws of 1849, 699.

The Capital Stock was to be
\$500,000. with power to increase to
\$1,000,000. See § 3 of said Act -
§ 11 - gives the Company power to
negotiate loans & to pledge property &c.

The Amending Act of July 10. 1851
authorizes the Company to organize
when \$100,000 - was subscribed

which was unless as the Company
had already organized - ~~and~~
June 20. 1850 under the original Act.

It also authorizes the said
Company to build a branch
from Monmouth or westward to
the Mississippi at a point to be located
~~there~~

These are the only two paragraphs
which is alleged are in any wise
inconsistent with the original
Charter. and each are assigned
for special causes of demurrer
& in answer to the last I would
only say that it is only granting
the Company particularly & also
what under the original
Charter the Company had a
general right to do. That is to
build branch roads at their
pleasure -

So that so far as the Act of 1851 is concerned it does not in the least so far as I can see change ~~the~~ or vary the original Charter. and that the allegation that the Act of July 11 1857 became a law before the promissory undertakings of defendant were made a misapprehension & wholly immaterial & unnecessary to prove.

The 2^d Cause of demurrer is that the declaration does not aver what amount of stock was subscribed or what per cent. or that any per cent of said stock was paid in at or before the time of the organization of said Company -

In answer to this I will only state a portion of the declaration "On the 20th June 1850 a sufficient amount of said stock being subscribed the said Peninsular & Great Western Rail Road Company became duly organized under the Act & Statute Laws by the Stockholders of said Company electing the officers thereof as in said Laws provided

I apprehend this allegation is sufficient without averring the

minutes of dollars, subscribed &
paid in

The 3^d cause assigned is that the
particular notice required by the
statute isn't through a newspaper
is not alleged -

In this I will only reply
that the declaration alleges notice
& defendant & I apprehend that
it is as much a compliance with
the law to give the parties interested
actual notice, as it is to give them
constructive notice by publication
in a newspaper - But however
the proof might have been whether
by ~~proof~~ actual notice or by
the notice as required by the
statute Act of Incorporation
I think the averment of notice
is sufficient & that it is not
necessary in the declaration
to aver the particular manner
of notice, but that on the trial
of the cause the question may
arise whether the notice proved
is sufficient compliance with
the Act of Incorporation -

The 4th Cause of defence assigned
is that there has been no petition
or that ~~the~~ an action at law will
not lie -

Upon this point I refer the
Court to 22 Connecticut 435
Saunders v. Mayall N. H. Co. as Wilson
12 Connecticut - 499 -

The 6, 7, 8 & 9th Causes of defence
arise under the Amendmentary
Act of June 22, 1852

As to these I would say that they
causes them set up are more
properly causes of defence in
this they set up a subsequent
~~cause of~~ Act of the general
Assembly as Amendmentary
to the Act incorporating the
Company, and that the Court
by of defendant was changed
although nothing is shown by the
declaration that anything has
ever been done by the Company
inconsistent with the original
charter. Nor does the declaration allude
to the Act of 1852 in any manner.
Should the defendant set up this
defence the other party would have
the right as under the decision of
22^d Connecticut 435 - referred to above
to show a case wherein the defendant
by his acts, even if he should show

change in the Corporation sufficient
to absolve the defendant from
his contract would still be bound.

But we contend that even
if the matter can be reached by
summon to the declaratory the
amendatory act referred to
does not ~~not~~ change the nature
of the Corporation as to those who
are defendant or one of the
stockholders from his contract
with the Corporation, or in other
words that there is nothing
in the said amendment
inconsistent with or repugnant
to the original act of incorporation.

A. J. Merriam
Att for plff in error

Pop. RRles
Elting
Pop. Agreement

The Plover and Ogunka
Rail Road Company } Assumpsit
John Elting }

Private bond
1849. p. 99.

Declaration

On 12 February 1849 Legislature passed an act
entitled "an act to incorporate the Plover and Ogunka
Rail Road Company" — Code on the 10th Feb. 1851.
Legislature passed another act entitled "An act to
amend an act entitled an act to incorporate the
Plover and Ogunka Rail Road Company approved
Feb. 12. 1849" — Profect made of acts.

On the 4th Feb. 1850, the Company and Defendant
for the purpose of organizing said Company, with
Others made this agreement

" We the Subscribers specially agree to become
Stockholders in the Plover and Ogunka Rail Road
Company to the number of Shares placed opposite our
names respectively and to pay the amounts thereof in
such installments as may be called for by order
of the President and directors of said Company
Plover 4th day of February 1851. "

defendant subscribed the agreement for 10 Shares \$1000.00

On the 20th June 1850, a sufficient amount of Capital
Stock being subscribed, Company was organized by
Stock holders electing Officers according to law.

Defendant paid 5 per Cent on his Subscription
\$50.00 — By means whereof he became liable to
pay, the Residue of his Subscription, at might
thereafter be called for by order of the President
and directors of said Company

Laws
1852. / 493
and then and then promised to pay in
installments and might thereafter be called for
by the President and directors of said Company
that on the 15th Jan'y 1852, President and
directors called for 10 per cent \$100.00

On 1st April 1852. for 10. per cent more

On 1st Jun 1852. " 10 per cent

On 1st Nov 1852. " 10 per cent

On 1st Jan'y 1853 " 10 per cent

On 1st July, 1853 " 10. per cent

On 1st Aug 1853 " 10 per cent

On 1st Sept 1853 " 10 per cent

On 1st Oct 1853 " 5 per cent

Specially requested defendant to pay 10.
He Refused.

Answer to Declaration

Special Causes of answer

1. Avarments in Declaration inconsistent &
Contradictory in this. It alleged that
the acts of 10 Feb'y 1849. & 10th July 1851 became
laws before the organization of the Company
on 4th Feb. 1850.
2. It is not averred what amount of Stock
was subscribed, Nor what per cent or
that any per cent of said Stock was paid
in at or before the time of the Organization of
said Company.

3. It is not shown that the Company on calling for payments on instalments of stock gave 30 days notice in 3 newspapers as required by law at the time and place where said payments were to be made.
4. Because the declaration shows that no promise has been made to the Plaintiff - and that there only remedy is in a Court of Chancery.
- 5th Because after defendants Subscription to New Stock, the General Assembly by the act of February 10th 1851, authorized the Company to proceed with the road when \$100,000 should be subscribed thereby changing the character of said contract and - Because the said Act of July 10th 1851 authorized the construction of a Branch Road from Monmouth to the Mississippi, etc or above Shock Run, not contemplated by the original act under which defendants Subscription was made.
6. Because the General Assembly by an act of June 22. 1852, without the consent of the defendant, increased the Capital Stock of said Company to \$3500.00.
7. Because the General Assembly by said acts without the consent of the defendant changed the route of said Road, and also the branch to the Mississippi.

8. Because by said act said Company was authorized to construct Roads across the Illinois and Mississippi, Enterprises to which this defendant did not subscribe

9. Because by said act said Company were authorized to extend said Road to the East to the State line of Indiana.

10. Because by said act said Company is authorized to borrow money on the credit of the Company & pledge the Capital Stock, Mortgage the road, or give a deed of trust on the same to construct the whole, including the Eastern Extension.

Verdict Sustained & Judgment thereon

Perio Aguilar R.R.C.

John Estlin

Abstract

The Poria & Ogona Rail
Road Company }
John Elting — }

The abstract hereto attached
containing a statement of the case, the
substance of the declaration — The demand
and the special cause of demand is
the best argument I can advance in favor
of the affirmance of the Judgment in this
case. I call the attention of the Court
especially to the cause of demand and
the the facts referred to in the abstract.

M. E. Triple

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Poirie & Quaker
Co
John^d Elting

Abstract and
argument

Filed June 23. 1856
S. Seland
Clerk

Pruple. for Elting

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Georgia & Oglethorpe
Rail Road Co.
vs

John Belting

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1856

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