

13507

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

# Supreme Court of Illinois

Supervisors of Schuyler County

---

vs.

People ex-rel Rock<sup>K</sup> Island &  
Alton R. R. Co.

---

# Supreme Court, Second Grand Division.

JANUARY TERM, 1861.

The People, ex el, the Rock Island & Alton Railroad Compay. }  
vs. } Mandamus.  
The Board of Supervisors of Schuyler County. }

CHARES FARWELL, }  
vs. } Aassumpsit. Appeal from Schyler.  
THE SAME. }

## DEFENDANTS BRIEF.

The act of the 14th. Feb., 1855, incorporating said railroad, is not in violation of the provision in the 23rd. Sec. of Art. III. of the constitution, which provides that "no private or local law which may be passed by the General Assembly, shall embrace more than one subject, and that shall be expressed in the title." This provision is *directory only*. Pim. v. Nicholson, 6, Ohio R. (N. S.) 176. Washington v., Page 4th. Cal. 288. Supervisor's v. People 4th. Seld. 317.

This law is a substantial compliance with the requirements of the constitution Sun. M. Ins. Co., v. N. York, 4th. Seld. 241. Brewster v. Lay et al. 19 N. Y. R. 116, Davis v. State 7 Maryland 152, succession of Lonzetti, 9 La. (Ann.) 329 Sedgwick on Stat. and Coust. law. 50, 52 and 3. 567 and 8. Belleville and Illinoistown R. R. Co. v. Gregory 15 Ill. 20 28 Ala. 466, and 2 Stock R. (N. J.) 171.

It is not necessary that the journal should show affirmatively the several readings of the bill. Sec. 23rd. Art. 3rd. Court. 3 Ohio S. R. 479, 6 Ohio, S. R. 178. But even if that is required, the journal in this case does show that the bill was read three times as required by the constitution Senate Journal, 1855, p.

The only question is whether the word "which" in the journal refers to the bill, amendments, or to the whole sentence for its antecedent. It may refer to either, depending upon the sense and construction of the sentence. Here the word "which" refers to "saine," i. e. "bill," which is the *principal word* in the sentence. The phrase "with an amendment" is only a limiting or qualifying adjunct of the main thought, and in its office limits the word "same," i. e. "bill" so as to show how the bill was reported. This objection is obviated by the amendment of 1857, p 802. The power was executed properly by the Board of Supervisors. Special acts of 1857, p 9—1031. Prettymon v. Tazwell Co. 19 Ill. 406—412. Sep. Law, 1851, p 51.

The legislature has power to authorize a subscription without a vote. Bush. v. Shipman, 4 Scam. 187. Brewster v. Lay. et. al. 19 N. Y. R. 116. Prettymon v. Tazwell Co. 19 Ill. 413.

C. L. HIGBEE, Att'y for Appellee's.

116 + 117

Superior of  
Schuyler Co.

77

A. I. + A. R. R. Co.

+ Fawcett

Appellee's brief

Filed Jan 15/65  
J. H. Conway  
clerk

## SUPREME COURT.

State of Illinois—Second Grand Division.

January Term, 1861.

The People, *ex rel.* The Rock Island and Alton Rail Road Company, }

*V's.*

*Mandamus.*

The Board of Supervisors of Schuyler County. }

Charles Farwell, }

*V's.*

*Assumpsit.*

The Same. }

APPEALS FROM SCHUYLER.

## A B S T R A C T.

These cases were by consent, tried together, upon the same evidence.

The first case is mandamus, to compel the Defendant to issue and deliver to the Relator bonds of the County of Schuyler to the amount of \$16,000, in payment of an alleged subscription of said County to the stock of the relator, Rail Road Co.

Page.  
1 to 10.

The writ alleges the charter and organization of the R. R. Co.; an order of the Board of Supervisors of said County, directing an election to be held as stated in the order hereinafter set forth; that at said election a majority of the voters voting on the question, voted in the affirmative; a subscription of \$75,000, to the capital stock of said Co. by the Chairman of said Board, under authority of said Board under acts of 1855 and 1857, hereinafter mentioned, on the 31st day of July 1858. Orders of said Board directing the issuing and delivery of bonds to the amount of said subscription—the issuing and delivery of \$59,000 accordingly; that \$16,000 remain unissued, and seeks the delivery of the same \$16,000. Petition filed Oct. 19, 1860.

11 to 17.

The return alleges, that the act incorporating said R. R. Co. approved February 14, 1855, never became a law; that the election in said writ mentioned is illegal and was not held in pursuance of said act; that the Board of Supervisors had no authority to cause said election to be held, said subscription to be made or said bonds to be issued; that the act of Feb. 14, 1855 and the act of Feb. 14, 1857, are respectively void; that by neither of said acts, had the Board of Supervisors power to cause said election to be held, said subscription to be made or any bonds to be issued; that the same was not done under any general law of the State; that said County is not bound to issue said bonds; that the County Court of said County never acted in the premises; that said Rail Road is an impracticable enterprise, and has become a failure; that the organization of said R. R. Co. was false and colorable and without the requisite subscription or payments; that the other counties through which said R. R. runs, have not and will not subscribe to the stock of the same; and that the enterprise is substantially abandoned. Alleges that the R. R. Co. fraudulently procured the subscription to be made, alleging fraud generally and specifically—fraudulent representations of the Co. as to the condition of the road, as to subscriptions before then obtained, and as to the action of other Counties, &c. Alleges that the Board of Supervisors, in March 1860, rescinded its orders directing said bonds to be issued and ordered that no more bonds be issued. Alleges that said subscription is void, and not binding upon said County.

23 to 27.

It was agreed that these cause be tried upon the evidence, without formal pleadings, each party to have the benefit of any special pleadings, and the same as though pleadings were verified by oath.

The second case, is assumpsit, to recover upon thirty-six interest coupons of said bonds issued, of \$35 each.

Plea—general issue, with agreement that all matters of defense, may be given in evidence under said plea.

Bill of Exceptions.

Page 18.

The Relator proved, an order of the Board of Supervisors as follows :

19.

" Ordered, that an election be held in the several towns at the usual places of holding elections in Schuyler County, for State and County officers, on Saturday the 26th day of April 1856, for the purpose of voting for or against taking seventy five thousand dollars in the capital stock in the Rock Island and Alton Rail Road—said subscription to be issued in bonds of said County, payable in twenty years, and to bear interest at the rate of seven per cent. per annum, said election to be holden under the provisions of said Rock Island and Alton Rail Road Act, approved February 14, 1855, and that said notices contain these conditions, and that so much of the proceedings of this Court at the last special term, as conflicts with this order be rescinded," and proved that notices containing the questions submitted were given ;

19 to 22.

that the election was held on 26th April 1856, under said order upon the questions submitted, and that 1016 votes were cast at said election, of which 717 were in the affirmative and 299 negative ; that returns were made to Board of Supervisors ; that on 26th November 1856, said R. R. Co. attempted to organize, under Act of Legislature of 14th Feb. 1855 ; that said election was held under said Act ; that all acts necessary for the organization of said Co. except so far as relates to the subscription required by said Act, are performed ; proved orders of said Board of Supervisors, directing subscription of \$75,000 to capital stock of said Co. ; and subscription of same, in pursuance of such orders, by Chairman of said Board, on 31st July 1858 ; proved orders of said Board directing bonds to be issued in payment of such subscription ; that said Board caused such bonds to be executed in the name of Schuyler County, to the amount of \$59,000 ; and of the same \$37,500 to be delivered and that of said \$69,000 \$21,500 residue, were afterwards delivered, by one Campbell, Treasurer of said County, under the circumstances stated in his testimony, and read in evidence said 36 coupons of \$35 each, signed by Samuel Leonard, Chairman of the Board of Supervisors ; that the coupons read in evidence, are the coupons belonging to the last named bonds (\$21,500) ; that said Board after said subscription, appointed an agent to cast the vote of said County in said Company ; that said agent did cast the vote for said County at the first election of said R. R. Co. thereafter ; that before the commencement of either of these suits said Charles Farwell held the coupons of said \$21,500 of bonds, for interest thereon, amounting to \$1,260 ; that payment of the same had been duly demanded and refused ; that before the commencement of said Mandamus, the said R. R. Co. having made due calls of payment of all stock subscribed, demanded of said Board, said residue of said subscription, \$16,000, and that said Board refused to execute and deliver them ; and proved by one Anderson, that he was the first Secretary of said Company, and at the organization of same, 26th November 1856, and produced a record book of said Company of that date, in which it is stated, that at a meeting of the Commissioners named in said Act, it appearing that more than \$500,000 had been subscribed to capital stock of Company, a meeting of the stockholders was held and Company organized by election of Directors, which statement in said book purported to be a collated statement of the total amount of subscriptions, corporation and private added into a total of \$511,000. The defendant at the time objected to said statement as evidence of the amount of subscriptions, and which objection was not waived. And read in evidence said Act of the Legislature, approved Feb. 14, 1855, the title of which Act is as follows : " An Act to incorporate the Rock Island and Alton Rail Road Company." This Act empowers the Co. to build and operate a Rail Road from Rock Island *via*. Macomb, Rushville, Beardstown and Winchester to Whitehall in Green County ; confers ordinary powers and franchises, and divers extraordinary powers. Sec. 7, provides for opening books for subscriptions, by Commissioners, and that \$500,000 being subscribed and five per cent. paid, (which is required to be paid on subscription) the Co. be organized. Sec. 16 is as follows : " Each of the Counties through which said Rail Road may be located or run, shall have the power and right, by the County Court of such of the said Counties respectively, to subscribe for stock and become stockholders in said Rail Road, the said Counties each being the representative of the stock so subscribed, and for this purpose each of the said Counties, as aforesaid, is hereby authorized from time to time, to borrow such sum or sums of money, as may be necessary for the purpose aforesaid ; to issue and in any way dispose of, or hypothecate their bonds, in denominations of not less than four hundred dollars, bearing a rate of interest not exceeding seven per cent. per annum for any amount so borrowed, and to mortgage the shares so taken or convey the same by deed of trust, to secure the payment of any debt contracted by said County so subscribing, for the purpose aforesaid ; and each of said Counties, hereby authorized in the premises aforesaid to, by their County Court, as fully act as individuals might or could do ; each of said Counties shall and it is hereby made the duty of the County Court of each of

22.

said Counties, to order an election to be held, on the first Monday in June 1855, or at such other time as the County Court may order, from time to time, and a vote to be taken in each of said Counties through which the said Rail Road may pass, for and against the County taking stock in said Rail Road. If a majority of the votes cast are in favor of stock, as aforesaid, it shall be the duty of the County Court to subscribe for stock to the amount of not less than fifty and not more than one hundred thousand dollars; provided, that the stock so subscribed shall alone be responsible for the stock taken by any of the Counties, as aforesaid." Sess. Laws 1855, page 305.

And also read in evidence an Act of Legislature of 1857, which Act is entitled "An Act to amend an Act entitled, 'An Act to incorporate the Rock Island and Alton Rail Road Company.'" Sec. 1 empowers the Co. to extend their Road from Whitehall to Illinoisstown.—Secs. 2 and 3 are as follows: 2. The County Courts of Scott, Schuyler, McDonough and Warren Counties and any other Counties through which this Road may pass, are hereby authorized and directed to issue bonds, in payment of all stock subscribed or to be hereafter subscribed to said Rock Island and Alton Rail Road Company; and are hereby further authorized and empowered to levy a special tax and make all other needful regulations sufficient and adequate for the payment of interest on any bond so issued by said Counties or either of them." 3d. "The said Counties of Scott, Schuyler, McDonough and Warren are hereby authorized and empowered to issue their bonds, for any of the stock so subscribed at a rate of interest not exceeding ten percent. per annum." Secs. 4 and 5 relate to franchises of the Company. Sec. 6 is as follows: "The said Company is hereby authorized and empowered to build, maintain and use a Rail Road bridge over the Illinois River, in such manner as shall not materially obstruct or interfere with the free navigation of said river, and to connect by Rail Road or otherwise, such bridge with any Rail Road termination at or near said point; to fix the amount of capital stock; to divide transfer and increase the same; to borrow money and pledge or mortgage its property and franchises; to condemn according to law property for the use and purpose of said Company; to contract bargain and agree with any Rail Road Company for and in the construction and maintenance of said bridge; to sell or lease said bridge, or the use of the same or of the franchises of said Company to any companies or corporation." Sess. Laws 1857, page 802.

Page.  
23.

Agreed that the Journals of the Senate and House of Representatives, Session of 1859, may be read in this (Supreme) Court.

27.

The Defendant proved, that said election was held, subscription made and bonds issued by action of said Board of Supervisors, under authority of said Acts and none other; that said election was not held under any general law; that the County Court of Schuyler County never acted in the premises, in any manner. Defendant read in evidence from the Journal of the Senate of 1855, the proceedings of the Senate in the matter of the passage of said Act, approved Feb. 14, 1855. The Journal shows, 1st. Feb. 8. Message from the House, informing Senate of passage of Bill, entitled An Act to incorporate the Rock Island and Alton Rail Road Company.

Bill read first time and ordered to a second reading. Rule suspended, bill read a second time by its title and referred to Select Committee.

Feb. 13. "Mr. Palmer, from a select committee to which had been referred House bill for an Act to incorporate the Rock Island and Alton Rail Road Company, reported the same back with an amendment, which was read and concurred in, and the question being, 'shall the bill pass,' it was decided in the affirmative, yeas 23, nays 0." Names of Senators voting. "Ordered, that the title thereof be as aforesaid, and that the Secretary inform the House of Representatives of the passage thereof and ask their concurrence in the amendments thereto."

Feb. 13. Message from House of Representatives informing Senate of concurrence of House in amendments to said bill.

And proved that the foregoing is all said Journal contains relating to said Act.

38.

Peter L. Campbell testified, that he had long been Treasurer of Schuyler County; that said bonds to which said interest coupons were attached, were placed in his hands about January 1, 1859; that he put them in his safe in the counting room of Ray, Little & Co.; that on 21st January 1860, he delivered to W. H. Ray, as agent of the Rail Road Co. \$3,500 of said bonds, and on the 25th January 1860, the balance of same; that they were delivered to said Ray confidentially; that said Leonard, Chairman of said Board of Supervisors, and Tredwell a member of said Board requested him, before delivery of said last 21,000 dollars of bonds, not to deliver them until said Board, about to be called together, should take action on the subject; that he promised them, that he would not deliver them till they could get out an injunction; that within an hour or two thereafter he did deliver said bonds on his own responsibility, as the agent of the County, acting under resolutions of said Board; that before he delivered said bonds, he kept out of the way for two hours or more, to enable them to get out

39.



and serve an injunction on him, that the bonds were placed in his hands to be delivered to the Company, and he supposed he had no right to withhold unless by order of the Board, and no such order was made when he delivered them.

Page 40.

Samuel Leonard testified, that he had been Chairman of said Board for past four years, that himself and said Tredwell another member of said Board, called on said Campbell, Treasurer, while he had in his hands said bonds, and requested him not to deliver them till said Board could be convened and take action on the subject, in January 1860; that said Campbell said he would not deliver said bonds unless he should be compelled; that said Farwell was often present at meetings of Board—also James G. McCreary; that McCreary applied for the County subscription to said Company; that said McCreary, before said subscription was made, stated to said Board, that there was sufficient amount subscribed in McDonough County with the subscription of Schuyler County to build the Road from the Illinois River to Macomb; that McDonough County had issued bonds to the amount of \$50,000 and placed them in the hands of an agent, to be used when Schuyler County should subscribe; that said Company had obtained the sufficient subscription of \$500,000 but had not the five per cent. to pay the first instalment, and wanted said Board to help raise it; that he had obtained the \$100,000 of Scott County subscriptions; that said statements of McCreary were made to said Board, when he was acting as Treasurer and agent of said Company; that said Board would not have subscribed, as witness believed, unless said statements had been made and been believed by said Board; that McCreary also stated, that said Company had brought suit against McDonough County to compel said County to subscribe, and that if Schuyler County did not subscribe it would be prosecuted also. That S. L. Anderson, Secretary of said Company urged the Board in behalf of said Company to subscribe, and said the County would be prosecuted if it did not; that the effect was that individual members of the Board finally yielded, believing they would be compelled to subscribe. That afterwards and before the subscription, they found that McDonough County had not issued any bonds; that said Ray, one of the Directors of said Company, went to Macomb with witness, before the subscription, and found McDonough County had not issued any bonds; That said Farwell was also before said Board with McCreary; that said \$21,000 of bonds, issued in 1859, were placed in said Campbell's hands by said Board, under resolution of the Board, for delivery; that when he and Tredwell requested said Campbell not to deliver the bonds, they had no authority to act for said Board and had not consulted the Board on the subject; that before the subscription, said Board sent witness with Ray to McDonough County to see what that County had done, and that on his return he reported the fact, and subsequently the subscription was made.

43. L. P. Alphin testified. That he was a member of said Board at the time of said subscription; that before the subscription, McCreary represented to said Board, that the Company had sufficient means to grade and tie the Road, if Schuyler County would subscribe. Some of the members thought his statements true, some not; that McCreary further represented, that the other Counties were coming up to the work and that Beardstown had subscribed; that McDonough County had pledged to the Company \$50,000 if Schuyler County would subscribe; that these representations and threats of law by McCreary influenced him some and the Board also; that said Farwell was present before the Board and with McCreary, did all they could to influence them to subscribe; that McCreary also stated to the Board, that the Company would get some \$100,000 from St. Louis to build the Road; that St. Louis had pledged that amount to build the road from Rushville to the Illinois River; that said McCreary represented to the Board before the subscription, that the company had subscriptions or means enough, when Schuyler County should subscribe, to grade and tie the Road; that McDonough County would have enough to make said Road from McDonough and Schuyler County line.

44. J. Black testified. That he was a member of the Board when the subscription was made; that he did not remember positively what was said—so much said; that McCreary urged the subscription before the Board and said the Company had complied with the Charter; that he asked McCreary how much the Company had of subscriptions, but does not remember how much McC. said was subscribed. McC. said that McDonough County would issue her bonds for \$50,000 when Schuyler County would subscribe; that witness went with McCreary and he showed witness books showing subscriptions in McDonough County of \$55,000. Witness was shown certain copies of orders, and stated that he thought the same were before the Board when they were talking about subscribing. One of said papers purports to be a copy of an order of the City Council of Macomb, dated May 20, 1858, recites that the City of Macomb had voted to take \$25,000 in the stock of the Company, that the Company wanted the bonds, resolves, that the bonds be executed and deposited as an escrow with a committee, to be delivered upon conditions, that the Company established their Depot within the City or an addition thereto, that the Counties of McDonough and Schuyler shall have issued and delivered to said Company their bonds in conformity with the votes of said Counties; that the committee

have assurance that the funds aforesaid shall be laid out in McDonough County together with such other funds as shall ensure a connection with the main line South of the Illinois River, or to grade and tie the Road from Macomb to Rushville, and upon delivery of \$25,000 of stock. The other of said papers to be a copy of an order of the County Court of McDonough Co. directing a subscription by said County to said R. R. Co. of \$50,000; that bonds therefor be issued and placed as an escrow in hands of a committee, and be delivered to the R. R. Co. upon the following conditions: that the committee be satisfied that the Company have complied with all the conditions of the order of said Court under which the vote of the County was taken, and when the committee are further satisfied, that the bonds of the City of Macomb will be delivered to the Company, and when said Company shall give certificates of stock for said subscription.

Page 48.

T. J. Kinney testified. That he was a member of said Board, and Chairman of the Committee on said subscription; that committee reported in favor of subscription; that there was not much difficulty in getting the subscription, for the Company threatened the Board with suits to compel subscription, and they thought, as the vote was for subscription, they were compelled to make it.

48. — Pettinger testified. That he was a member of said Board when subscription was made; that said McCreary appeared before the Board and represented that if Schuyler County would subscribe, then the Company would have money enough to grade and tie the Road; that McDonough County had issued her bonds and put them in the hands of a committee to be handed over to build the Road; that said Anderson, Ray and Farwell did not make speeches, but were understood to be trying to get the County to subscribe; that they were generally present, urging the subscription, and acting together to obtain the same.

49. Lewis Irvin testified. That he had conversation with two of the Directors of said Company, McCreary and Ray, before the subscription; that they informed him that Cass County never took any stock in the Company; that Scott Co. took \$100,000, and stated that McDonough Co. did not issue any bonds nor subscribe; that Scott, McDonough and Schuyler were all the Counties that took any stock in the company; that McDonough County voted \$50,000; that Scott Co. paid up her subscription, and no other county but Schuyler had paid anything; that it is about 160 miles from Whitehall to Rock Island and about 200 miles from Illinois-town to Rock Island; that it would cost to construct said road about \$30,000 per mile, grading and bridging per mile about \$10,000; that the Road runs through the counties of Greene, Scott, Morgan, Cass, Schuyler, McDonough, Warren, Mercer and Rock Island; that said McCreary informed witness that a portion of the subscription in Scott Co. was conditional; that it was conditional also in Warren and Knox—the subscription in Knox being \$50,000 and in Warren \$75,000, and witness stated that in Scott County a part only of the subscription was conditional, but could not state how much; that some \$8,000 of it was conditional upon the Road going to one place; that the County Court of Schuyler County had nothing to do with the business of subscribing, issuing bonds, or calling election, but the Board of Supervisors did all that was done in the premises, under the Acts of 1855 and 1857 and not under any general law. That witness was a Director in the Peoria and Hannibal R. R. Co. and has been engaged in building said Road for about six years past; that the subscriptions in Scott and Cass counties have been expended on Rock Island and Alton Rail Road; that said McCreary has informed witness, that in Scott, Cass, Morgan and Greene, the grading and bridging is pretty much done, also from Rushville to McDonough County line; that the City of Beardstown took stock to the amount of \$25,000; that the individual subscriptions in Schuyler Co. were about \$50,000, and that he got enough to organize on taking in subscriptions altogether. And witness stated, that the subscriptions of Knox and Warren Counties were severally conditioned on said Road being located in said respective Counties; that said Road could not run through both of said Counties; that there was strife between the two and that but one could have it; that but little has been done on said Road North of Schuyler County and that has been done in McDonough; that he was familiar with the manner in which the organization of said Company was got up; that Schuyler County adopted township organization in 1850.

51. Defendant then called on Plaintiff to produce the books of subscription of said Company and Plaintiff declined to produce them, and called one Sturtivant, who testified, that the several subscription books were in the hands of collectors in the several counties; that he had been Secretary of said Co. since February 1858; that in July 1858, all the subscriptions to said Road, exclusive of that of Schuyler, amounted to \$700,000; that some \$200,000 was paid out in bonds, under first contracts; that the bonds were worth in New York only half their face; that the contractors received them at about sixty cents on the dollar, average; that from \$18,000 to \$19,000 had been received from McDonough subscriptions, one half of which was expended in said County; that said Road is located through Knox and not Warren County, and through Mercer to Rock Island; that the Company have ties for about 12 miles



of road ; that it has no iron—that the masonry is done on some 50 miles, and the grading of some 60 miles ; that the subscription of Warren Co. is not included in the \$700,000 ; that the individual subscriptions have been nearly collected ; that the road South of Beardstown is ready for the ties, to the Great Western Rail Road, about 22 miles, and ties obtained for some 12 miles of same ; that the Company had expended about \$400,000 out of private subscriptions and County bonds ; that Schuyler and Scott Counties and Beardstown only have paid anything, of corporation aid.

This was all the evidence.

See record in Mandamus case for pageing.

ERRORS ASSIGNED, MANDAMUS CASE.

- 1st. The Court erred in awarding peremptory writ of Mandamus.
- 2d. The Court erred in rendering judgment in favor of the Relator Plaintiff.

ERRORS ASSIGNED IN ASSUMPSIT CASE.

- 1st. The Court erred in rendering judgment in favor of Plaintiff.
- 2d. The Court erred in rendering judgment for 1260 dollars.

SKINNER, BENNESON & MARSH,  
*Attorneys for Appellant.*

116 + 117

Supervisors of  
Schuyler Co.

vs

R. J. R. N. Co.

same

vs

Harrell

Abstract

117

127  
13507

Filed Jan 2<sup>nd</sup> 1861

Wm. C. Currier  
Clerk