

14665

No. _____

Supreme Court of Illinois

Johnson

vs.

Ewing Female College

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 254

J. W. Middleton & Co., Stationers, 196 Lake St.

Exhibits
W. H. Case
1864

State of Illinois }
Kane County }
September Term 1863

Now, before the Hon Charles B. Lawrence Judge of the Fifth Judicial Circuit of the State of Illinois at a Court begun and held at the Court House in the City of Knoxville in said County on the Fourth Monday of September 1863 being the 28th day of said month

Present

Hon C. B. Lawrence Judge

James H. Stenak State Attorney

John H. Smith Clerk

J. Calvin Cook Sheriff

Court opened by proclamation

State of Illinois } Kane Circuit Court
Kane County } Sept Term 1863
Ewing Female University Pla,

vs

John Johnson Deft

Plaintiff

Whereof said Court will please issue a Summons in said Cause against John Johnson Commanding him to appear at said Court, and answer said Plaintiff of a Plea of Trespass on the Case in promise to the damage of Plaintiff of One thousand dollars directed to the Sheriff of said County.

"Filed Aug 29/63
J. H. Lewis clerk"

W. M. Craig
P. H. Sanford
Atty for pff.

State of Illinois,
Knox County.

The People of the State of Illinois.
TO THE SHERIFF OF

COUNTY. GREETING:

WE COMMAND YOU TO SUMMON

John Johnson

if *you* may be found in your County, to appear before the Circuit Court of said County of Knox, on the first day of the next term thereof, to be holden at the Court House in Knoxville, on the *fourth* Monday in the month of

September next, to answer unto *Ewing Female University* in a Plea of *Trespass* on the case on promises to the damage of said Plaintiff *One Thousand dollars* (as they say)

and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of said Court to be held as aforesaid.

WITNESS, JOHN H. LEWIS, Clerk of our said Court,
and the Seal thereof, at Knoxville, this *29*
day of *August* A. D., 186*3*.

John H. Lewis, CLERK.

Stamps to book 378
J. H. Lewis Aug 29/63

State of Illinois
Knox County }
Knox Circuit Court
September Term A.D. 1863.

Ewing Female University

John Johnson

vs
assumpsit

Ewing Female University Plaintiff
complains of John Johnson the defendant who
has been summoned to answer unto said plaintiff
of a plea of *Trespass* on the case on promises,
For that whereas herebefore to wit on the 1st day of
April A.D. 1863 at the County of Knox and State

of Illinois the said defendant made Executions and delivered to the plaintiff this certain Contract the writing substantially in the words and figures following to wit:

"We the subscribers promise and agree to pay to the Trustees of the Evening Female University an Institution of Learning to be located in the City of Hannibal in the County of Boone and State of Illinois and their successors and associates in office the sum set opposite our names for the purposes of Erecting suitable and necessary buildings and furnishing the same with the necessary books, maps, Charts, philosophical and Chemical apparatus in Subscription payable in real Estate, the same to be valued by three disinterested persons to be selected by the trustees and such real Estate to be conveyed to the institution on or before the first day of September A.D. 1858 and in default of making such conveyance the amount of such subscriptions to be due ^{in monthly} ~~and~~ payable in ^{Cash subscriptions to be due} installments of 25 per Cent Each as follows: the 1st Installment to be due on the first day of July A.D. 1857; the 2nd Installment on the first day of January A.D. 1858; the 3rd Installment on the first day of July A.D. 1858; and the 4th ^{and remaining} Installment on the first day of January A.D. 1859.

Names	Amounts Cash Subscription		Amounts Real Estate Subscription		Total Amount	
	dollars	Ct	dollars	Ct	dollars	Ct
Abel S. Wrightley	100	00	00	00	100	00
Cephas Ames	100	00			100	00
Leilus Croley	200	00	100	00	300	00
John Eads	500	00			500	00
John H. Southern	200	00	100	00	300	00
John G. Lewis	400	00			400	00

(4)

W. Moore Taylor	100 00			100 00
G. M. Ewing	300 00			300 00
O. B. Palmer	200 00			200 00
H. S. Woods		1 acre lot & Bldg		
John Miller	200 00	Woods addition		200 00
U. Ewing	300 00			300 00
P. D. Rogers	100 00			100 00
James Brothers	50 00			50 00
C. H. Adams	100 00			100 00
Samuel Douglas	lot 2, 3, 4 & 5	By C. H. Adams to H. H. Adams		
W. M. Craig	100 00			100 00
Geo. A. Chas.	200 00			200 00
C. Runkle	200 00			200 00
Henry Ames	200 00			200 00
Z. W. Harris	50 00			50 00
Erin Mapie	50 00			50 00
P. H. Sanford	100 00			100 00
A. Taylor Jr	50 00			50 00
E. Runkle	100 00	200 00		300 00
Walter Smith	200 00	in or materials		200 00
Thomas Muir	50 00			50 00
John M. Cowan	100 00			100 00
Abraham Hallen	200 00	in lumber		200 00
James Lawrence	50 00			50 00
Benj. Herbert	100 00	in S. H. Hall		100 00
Edwin Huggins	100 00	in S. H. Hall		100 00
W. H. Thayer				50 00
John Armstrong	100 00			100 00
John West	100 00			100 00
John S. Miller		Shaw's Shop		100 00
J. M. Gibson		in S. H. Hall	50 00	50 00
John Goodell				100 00

(5)

Wm G Colgan

Wm. T. Emory Esq. 4.576. B2 + L3 B3 Emory & Briggs and Kinsville

C. H. Higgins

Essex Patrick

shall be included worth
in the Year 1875

in in Real Estate

ing shall be enacted in 1840 into John Johnston

William G. Miller

James Knox

521

no ii

25

4000

400

3000

32

4000

in & by the terms of which said Contract the said defendant in Consideration that the said plaintiff would erect a building for the purposes mentioned in said Contract worth \$40,000 viz Eighteen months from the date said def^t so executed said Contract agreed and promised to give to said plaintiff by the name and style of the trustees of the Evening Female University in real Estate four hundred dollars.

And Plaintiff avers that it was within eighteen months from the time of executing said Contract by Defendant such a building worth \$10,000 for the purposes specified in said Contract to wit: at said County and State, And Plaintiff avers that it demanded of said defendant thereupon to wit: on 22nd day of March 1862 at said County and State, payment in real estate of the sum of ten thousand dollars mentioned and described in said Contract which said ^{payments} defendant absolutely ^{did} and still does refuse to make to Plaintiff. By means whereof and by force of the Statute in such case made and provided the said defendant then and there became liable to pay to the said plaintiff the said sum of money in said Contract specified according to the term and year of said Contract, and being so liable the said defendant in consideration thereof demands to wit:

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on the day and year aforesaid at Henne County and State aforesaid undertook and then and there faithfully performed Plaintiff to pay said sum of four thousand dollars in said contract specified according to the term and effect thereof.

And whereas also the said defendant afterwards on the first day of August in the year of our Lord one thousand eight hundred and Sixty three to wit in said Henry became and was indebted unto the Plaintiff in a large sum of money to wit one thousand dollars for money before that time lent and advanced to and paid, laid out and expended for said defendant by said plaintiff at said defendant request: and for money before that time lent and received by said defendant to and for the use of said plaintiff and also in like sum for goods, wares and merchandise before that time sold and delivered by said Plaintiff to said defendant at like special instance and request: and also in like sum for the labor, care and diligence of said Plaintiff before that time done and performed by said Plaintiff for said defendant and at like instance and request of said defendant and also in like sum then and there found due and owing said Plaintiff on an account stated between them and being so indebted said defendant in consideration thereof then and there undertook and promised to pay said Plaintiff said last mentioned sum of money when thereunto afterwards requested.

Yet the said defendant not regarding his said promise and undertakings but continuing etc. although often requested to do so has not paid said Plaintiff either of said sums of money above mentioned.

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or any part thereof: but so to as has hitherto been
neglected and refused and still does neglect and
refuse, to the damage of said Plaintiff of one thousand
and dollars and therefore brings this suit etc.

C. M. Craig ^{Ans}

P. H. Sanford Atty for plff

Copy of Instrument and account sued on,

See first Count of this declaration for

Copy of instrument sued on wherein a true copy is
set forth

John Johnston

To Ewing Female University Dr.

To money lent and advanced \$4,000

To money expended and paid out for \$1,000

To money received for use of \$1,000

To goods, ware and merchandise \$1,000

To labor and services \$1,000

To balance of account stated \$1,000

"Filed Sept 18th 1863

J. H. Sims Clk

John Johnston

vs

Ewing Female University

} Pleas Sept 1863

And the said defendant
John Johnston, by T. G. Frost his attorney
comes and defends the wrongs & injuries when &c
and says that he did not undertake and
promise in manner & form as the said plaintiff
has ^{above} ~~alleged~~ charged complained against him &c.

and the said plaintiff is himself upon the Country &c.

P. H. Sanford Atty for plff

T. G. Frost Atty for def.

(8)

And for a further plea in this behalf said defendant says action non because he says that the only cause of action in said declaration contained is upon a promise by the defendant to pay \$1000 for the Erection of buildings &c suitable & necessary for the Evening Female University "when a building should be erected worth \$10000 if such building should be erected in 18 months" from the time of making such promise. And said defendant says that said building was not erected in 18 months from the making of said promise and this he is ready to verify wherefore he prays Judge &c

T. G. Frost Atty for def.

And for a further plea said defendant says action non because he says that the plaintiffs only cause of action in said declaration contained is upon the special Contract set up in said second plea above pleaded & he says that the building erected within 18 months from the time of said Contract was not then worth \$10000 & this he is ready to verify wherefore he prays Judge &c

T. G. Frost Atty for def.

And for a further plea in this behalf said defendant says action non because he says that the plaintiffs only cause of action contained in this declaration is upon the promise set forth in the second of defendants pleas above pleaded and that the Erection of the building mentioned in said promise was not completed within 18 months from the time of making said promise and subscribed by said defendant & this he is ready to verify wherefore he prays Judge &c

T. G. Frost Atty for def.

Filed Sept 29/63

J. H. Sims Atty

(9)

Sept 29 1863 Present same as of the first day
 vs
 Ewing Female University } *apropos*
 John Johnston

This day came the defendant
 by his attorney and moved the Court for a continuance
 to be held
 herein, whereupon it was ordered that said case be continued
 by to-morrow morning.

Sept 30 1863 Present same as of the first day
 vs
 Ewing Female University } *apropos*
 John Johnston

This day came the plaintiff
 by attorney and demurred to defendants pleas num-
 bered 2, 3 & 4 and the Court having heard said
 demurrer it is ordered that the same be sustained
 with leave to defendant to amend special pleas

State of Illinois }
 Henry County } *vs* Henry Circuit Court
 September Term 1863
 Ewing Female University } *ap*
 vs
 John Johnston

And the said plaintiff as to the
 said pleas 2, 3 & 4 above pleaded by the said deft. holds
 that the same and each of them and the matters therein
 contained in manner and form as the same are
 above pleaded and set forth are not sufficient
 in law to bar or preclude him, the said plaintiff
 from having or maintaining his aforesaid action
 thing against the said defendant and that the

(10)

Said Off is not bound in law to answer the same
or either of said pleas and this he is ready to verify
he wherefore he prays Judgment &c

And for Special Causes of demurr to each of said
pleas said Off assigns the following:

First - Because in each of said pleas de-
fendant sets forth that the only cause of action in said
declaration contained is another & different contract
than that set forth in said declaration

"Filed Sept 30/63 P.H. Sanford atty for Off
J. H. Lewis Clk"

Strom County Circuit Court
Sept term Oct 1863

Erving Female University } Amended Pleas
John Johnson }

2 And for a further plea in this
Ishag said defendant says Actis non because he
says that the plaintiff's only cause of action & contained
in his declaration is in the promise set forth in
the first Count of said declaration and that
said promise was made upon the following Condi-
tion viz: "When a building should be erected
worth \$10,000. I will give in real Estate \$2000 if
such building shall be erected in eighteen months
which was not valid in said subscription &
signed by said defendant by the name and sig-
of John Johnson. It being then and there clearly
meant & intended that said building worth ten
thousand dollars should be erected in eighteen months
from the time of making said subscription & promise

(11)

And if so Enctd within that time, that then said defendant should give to said plaintiff in real Estate four hundred dollars. And said defendant says that said building was not Enctd in Eight months from the time of making said subscription & promise & said condition was not fulfilled & that he is ready to verify wherefore he prays Judgment &c
T. G. Frost City Secy

3 And for a further plea in this behalf said defendant says actin now because he says that the plaintiffs only Cause of action & contained in his declaration is in the promise set forth in the first Count of said declaration & that said promise was made upon the condition set forth in the defendants second plea & plea lastly abov pleaded

And defendant says that the Erection of said building mentioned in said promise & condition aforesaid was not completed within Eight months from the time of making said promise & subscription & said defendant & this he is ready to verify wherefore he prays Judgment &c

T. G. Frost City Secy

4 And for a further plea in this behalf to the first Count of said declaration said defendant says that the plaintiffs only Cause of action & contained in the first Count of said declaration is in the promise set forth in said first Count of said declaration and that said promise was made upon the following condition in substance & effect viz: "That a building (more) ten thousand dollars I will give in real Estate & if such building shall be Enctd in Eight months" which was incorporated in said subscription signed by said defendant by the name and style

(12)

of "John Johnson". It being then, then & thereby means
and intended that said building should be erected
in Eighteen months from the time of making said
Subscription & promise & to worth ten thousand dollars
And if erected within that time then then said
defendant should give to said Plaintiff in
Real Estate four hundred dollars and said
defendant says that said building was not
erected in Eighteen months from the time of
making said Subscription & promise & said con-
dition was not fulfilled & this he is ready to
verify wherefore he prays Judgment &c
T. G. Frost Atty for def.

5 And for a further plea in this behalf to the first
Count of said declaration said defendant says
Actio non because he says that the plaintiff's only
cause of Action & contained in his declaration
is on the promise set forth in the first Count of
said declaration and that said promise was
made upon the condition set forth in the de-
fendant's second plea & lastly above pleaded.

And defendant says that the erection of said building
mentioned in said promise & condition aforesaid was
not completed within Eighteen months from the time
of making said promise & subscription by said de-
fendant & this he is ready to verify wherefore he prays
Judgment &c

T. G. Frost Atty for def.

6 And for a further plea in this behalf to all the
Counts of said plaintiff's declaration except the first

(13)

Count & to all the Common Counts of said declaration
 said defendant says actio non because he says
 that the plaintiffs very Cause of action & contained in
 his declaration is in the promise set forth in the
 first Count of said declaration and that said promise
 was made upon the following Condition viz "That a
 building shall be erected with \$10,000 I will give
 in Real Estate & so of such building shall be
 erected in Eighteen months" which was incorporated
 in said subscription and signed by said defen-
 dant by the name & style of "John Johnston"
 At long then, there & hereby recant and instructs
 that said building should be erected in Eighteen months
 from the time of making said subscription & promise & if
 is erected within that time that then said defendant
 should give to said plaintiff in Real Estate four
 hundred dollars & said defendant says that said
 building was not erected in Eighteen months from the
 time of making said subscription & promise & said
 Condition was not fulfilled & this he is ready to prove
 wherefore he prays Judgment &c

J. G. Frost. Atty for def.

7

And for a further plea in this behalf to all the Counts
 of said plaintiffs declaration Except the first Count
 & to all the Common Counts of said declaration said
 defendant says actio non because he says that
 the plaintiffs very Cause of action and contained
 in his declaration is in the promise set forth
 in the first Count of said declaration and that
 said promise was made upon the Condition set
 forth in the defendants second plea & plea lastly
 above pleaded.

And defendant says that the erection of said building mentioned in said promises promises & conditions aforesaid was not completed within eighteen months from the time of making said promises & subscription by said defendant and this he is ready to verify wherefore he prays judgment &c

T. J. Frost Atty for def.

8

And the said defendant for a further plea in this behalf comes & defends the wrongs and injury whereunto and says that the said plaintiff might not to have or maintain this aforesaid action against the said defendant because he says that the said plaintiff was not a body corporate and that there was no such corporation as the Emory Female University at the time when the promises are alleged to have been made in said plaintiff's declaration & when the same were made & this he is ready to verify wherefore he prays judgment whether the plaintiff might further to have or maintain this action against him

T. J. Frost Atty for def.

9

And the said defendant for a further plea in this behalf comes & defends the wrongs & injury whereunto and says that the said plaintiff might not to have or maintain this aforesaid action against the said defendant because he says that the said plaintiff is not a body corporate and that there is no such corporation as the Emory Female University though named as plaintiff in this suit & that said Emory Female University was never a corporation nor organized

(15)

as such under the laws of this State & has not legal capacity to sue or to maintain this action and this he is ready to verify wherefore he prays judgment whether the plaintiff ought further to have or maintain this action against him
T. G. Frost Deft City

10. And for a further plea to the first Count of the said plaintiffs declaration, defendant says Aven now because he says that although he did make the promise set forth in said first Count of said declaration that there is no consideration whatever for said promise & was no consideration therefor when said promise was made And this he is ready to verify wherefore he prays judgment whether the plaintiff ought further to have or maintain this action against him

Tels Oct 2/63

T. G. Frost

J. W. Ellis Att'y

Deft City

Oct 5th 1863 Present James as of the 1st day of this month
Erving Female University }
20 } Appumpit
John Johnston

This day came the plaintiff by Attorney and demurred to defendants amended pleas herein And the Court having heard said demurrer it is ordered that to plea No one be admitted and that demurrer to all the other special pleas be sustained.

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State of Illinois
Kane County } Kane County Circuit Court
Sept Term Oct 1863,
Living Female University

vs
John Johnson And the said plaintiff by Wm
Craig and P. H. Sanford his attorney comes and defends
the wrongs saying and says that the pleas from 2 to 10
inclusive and the matters therein contained in manner &
form as the same are above stated and set forth are
not sufficient in Law for the said defendant to have
or maintain his aforesaid action there against the
said plaintiff. And he the said plaintiff is not
bound by law to answer the same. And this he is now
to prove wherefore by reason of the insufficiency of the
said pleas in this behalf the said plaintiff prays
judgment and that the said defendant may be
barred from having or maintaining his aforesaid action
there against him

Wm. Craig and P. H. Sanford
Atty for Plaintiff

And for special Causes pleas assign the following Causes,
To 2^d plea answers to general Issue & is argumentative
To 3^d Plea answers to general issue and argumentative
To 4th & 6th Plea Same objection as to 2^d Plea and same
is same as 2^d
To 5 & 7 Same objections as to 3^d is just like 3.
To 8 Plea same Plea Not till Incorporation when
Subscription given
To 10 answers to general Issue

Filed Oct 6/63

J. H. Lewis Clerk

(171)

Oct 6th 1863 Present same as of the first day of this Term
Ewing Female University

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20

John Johnson

Apurpessit

On defendants motion it is ordered by the Court that this suit be continued until the next term of this Court: It is therefore considered by the Court that the plaintiff bears its costs of it in this suit expended at the present term of this Court and may have execution therefor.

Oct 7 1863 present same as yesterday

Ordered by the Court that all motions in arrest of judgment and for new trials be overruled when not otherwise disposed of.

Ordered that all costs not otherwise disposed of be assessed against the losing party or parties.

Ordered that all suits at law or in Chancery not otherwise disposed of be continued until the next term of this Court.

Ordered that the Court adjourn until Court comes.

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State of Illinois }
 Hann County }
 February Term 1864

Pleas before the Hon Charles B. Lawrence, Judge of the Sixth Judicial Circuit of the State of Illinois at a Court begun and held at the Court House in the City of Hannville in said County on the Third Monday of February in the year of our Lord One thousand Eight hundred and Sixty four being the 15th day of said month.

Hon Charles B. Lawrence Judge

James H. Stewart States Attorney.

John H. Ellis Clerk

J. Calvin Carr Sheriff

Court opened by proclamation

Feb 15th 1864 Present same as the first day,
 Ewing Francis University

33.

70

John Johnston

Apumpit

This day came the parties and attorneys and issues being joined for trial put themselves upon the Country therefore came a Jury to wit: Henry Potts, Levi Sherman, T. J. Davis, Lewis Adams, Asa Wiley, James Coff, O. D. Huggins, J. C. Smith, J. M. Keys, Thomas McElroy, E. B. Hunt, Geo. C. Hughes, who being duly sworn, tried and sworn well and truly to try the issues joined herein after

(19)

Hearing the evidence was permitted to separate under
instructions from the Court & required to meet the Court
at 10 past 8 o'clock tomorrow morning

State of Illinois }
Kane County } Kane Circuit Court
Feb. 10 1864
Ewing Female University }
vs } Apumpick
John Johnston }

And now comes said plaintiff and
for replication to defendant's 9th Plea by him above
pleaded says procludi non because it says that
plaintiff is a body corporate That there is such
a corporation as the Ewing Female University, That
the Ewing Female University was a corporation and
organized as such under the Law of said State
and has legal capacity to sue and of this Plea
puts itself upon the Court

Said plaintiff ante the lib,
S. H. Street Atty for def
J. H. Craig
Atty for Pla
Filed Feb 10/64
J. H. Craig

33
Feb 10 1864 Present same as of the first day of this term
Ewing Female University }
vs } Apumpick
John Johnston }

This day again came the
parties and their attorneys and also came the
jury Emerson Unpublished Person who after hearing
the arguments of counsel for each says: On the

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Jury find the sum for the plaintiff and apportion its damages at the sum of four thousand dollars (\$4000). Thereupon came the defendant by attorney and in the Court for a new trial and in arrest of judgment therein.

Plaintiff's Instructions

If the Jury believe from the Evidence that the Plaintiff had erected a building for the purpose that the subscription was given for in 18 months after the date of said subscription worth \$4000 and that the plaintiff is an incorporate body & demanded, before the commencement of this suit of the defendant payment of said subscription according to the terms of said subscription and the same was refused then the Jury will find for the plaintiff. Even though the building was not fully completed provided the Jury believe that the erection of the building as to its exterior was substantially completed.

The Jury are instructed that if they believe from the Evidence that the plaintiff is an incorporate body. That the defendant ~~was~~ on or about the 15th day of March 1858 subscribed four thousand dollars in real Estate on the subscription paper and no evidence on the condition therein specified, That Plaintiff before the commencement of this suit demanded payment of defendant of said subscription or a deed of \$4000 worth of land and the same was refused. And that the plaintiff erected a building in Kennesaw Ga in eighteen months

must after defendant signed said subscription pay
reasonably worth \$4000 as a Summary finding
then the Jury will find for the plaintiff

Filed Feb 16/63

J. H. Lewis' Clerk

Deft instructions

The Court is requested on behalf of the defendant
to instruct the Jury as follows:

1- The defendant's subscription is in law a
conditional contract and the plaintiff cannot
recover without showing that the condition upon which
the subscription depends has been fulfilled and unless
the Jury find upon the Evidence that the building
contemplated by the subscription & worth \$4000 was
actually erected within 18 months from the making
of the contract & subscription they should find a verdict
for the defendant.

2- It is not a compliance with the condition of
defendant's subscription that a building was commen-
ced and in process of erection & partially completed
& that too even at an expense of \$4000 and that
amount actually expended within the 18 months from
the making of the subscription but it must appear
that the erection of the building was substantially
completed as to its exterior within the 18 months
that it was then worth \$4000 and unless the Jury
so believe on the Evidence they should find for
the defendant.

3- The plaintiff cannot recover on the plea of
in this case unless it is found that the plaintiff

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as charged in the declaration demanded a deed of real estate of the defendant on said real estate before the commencement of this suit in conformity to the terms of defendant's subscription, a demand of payment ^{in cash} is not sufficient,

5- Under the pleadings in this case ~~the plaintiff~~ the plaintiff must be found to be a corporation and unless sufficient proof has been given to establish this fact the Jury should find for the defendant.

Tried Feb 16/64

J. H. Hunt Att'y

4- The Erection of the building contemplated by the defendant's subscription must be construed in law must ^{be} something more than a bare Erection of the walls of the building not properly enclosed ~~without~~ ^{with} roof, windows, floors & doors but it must be substantially a completion of the building within the 18 months from the making of the subscription & it should be worth \$10,000 within that time & unless the Jury finds such to be the facts on the Evidence they should find for the defendant.

6- Unless the plaintiff was a corporation at the time of the making of the contract the defendant is not entitled to a verdict.

7- The Jury in determining the question whether the execution of the subscription has been finished and in determining whether the building was

(23)

worth \$4000 cannot in making up the estimate
add in the value of Sash or any articles on
hand but not put into the building within
the 18 months from the making the subscription
by the defendant.

Filed Feb 16/64

J. H. Sims cler

The Jury find^{the} issue for the plaintiff and
assess its damages at the sum of four thousand
dollars (\$400)

Filed Feb 16/64
J. H. Sims cler

Abraham Skelly - Foreman of the Jury.

Knox Circuit Court

Ewing Female University,

vs

John Johnston

Try Term Oct 1864

And now comes the said

defendant and moves for a new trial in this cause
upon the following grounds

1st The Court erred in sustaining the plaintiff's
demurrer to defendant's. second. third. fourth. fifth.
sixth. seventh eighth & ninth amended pleas
in each decision in admitting each & every of
said pleas.

2^d The Court erred in admitting the Certificate
of incorporation offered by the plaintiff recorded
in the records office of Knox County in evidence.

3^d The Court erred in admitting in evidence the
Certificate of incorporation offered by the plaintiff
purporting to have been recorded in the Secretary
of State office or the copy of the Certificate

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from said Secretary of State Office
4th - The Court erred in admitting the Evidence
offered by the plaintiff and objected to by the
def.

5 - The Court erred in excluding the Evidence
offered by the def. & excluded by the Court.

6 - The Court erred in refusing to give def's
instructions Number 4. Six & Seven & each and
Every of them.

7 - The Court erred in modifying def's second
instruction by the addition of the words "as to
its Exterior".

8 - The Court erred in giving the several instructions
asked by the plaintiff & given by the Court & in
his decision as to Each & Every of them.

9 - The verdict of the Jury is against Law.

10 - The verdict of the Jury is against the
instructions of the Court.

11 - The verdict of the Jury is against the
Evidence.

P. H. Frost

Filed Feb 19/64

City of N. Y.

J. H. Davis Clk

Feb 25/64 Present same as of the first day
Caring Female University

33,

John Johnson

} Appellant

This Cause coming on for
a hearing on defendants' motion for a new trial
and in view of Judgment and the Court
having heard said motion it is ordered that

(25)

the same be amended. It is therefore considered by the Court that the plaintiff recover of the defendant the sum of (\$400) Four hundred dollars the amount of its damages ascertained by the jury aforesaid together with its costs by it in this suit expended and may have Execution therefor. Thereupon came the defendant and excepted to the rulings and decision of the Court and prayed an appeal to the Supreme Court of the State of Illinois. Whereupon it is ordered by the Court that the appeal prayed be granted on condition that the defendant file a good and sufficient appeal bond to be approved by the Clerk of this Court, by consent, in the sum of (\$800) Eight hundred dollars within twenty days of the date hereof and that said defendant file his bill of exceptions within twenty days.

Ordered by the Court that all motions pending in said Court for new trials and in arrest of Judgment not otherwise disposed of be amended.

Ordered that all other motions not otherwise disposed of be continued until the next term of this Court.

Ordered that all costs not otherwise taxed be assessed against the losing party or parties.

Ordered that all suits at law or in Chancery not otherwise disposed of be continued until the next term of this Court.

Ordered that Court adjourn until Court in Commence

State of Illinois }
 Boone County } Boone Circuit Court
 February Term A.D. 1864

Ewing Female University

vs

John Johnston

Be it remembered that at the February Term of said Court held in and for said County and State at the Court House in Hannibal on the 15th day of February A.D. 1864 before the Hon. L. B. Lawrence Judge. The following persons the parties aforesaid came in to be tried by a Jury of the County aforesaid for that purpose duly empanelled and sworn and upon the trial of said issue the Counsel for the plaintiff to maintain said issue on his part offered and read in evidence the Certificate of incorporation of the Ewing Female University filed in the records office of Boone Co. Mo. To the reading of which in Evidence the Counsel for defendant then and there duly objected for the following reasons:

1st Because said Certificate was not properly acknowledged, The Certifying Officer not stating that the persons acknowledging were personally known to him.

2 The Signatures were not proved.

3 — Because the Certificate does not contain the No & designation of the persons whose names are to be established though the Institution is of the rank of a University.

4th Because as aforesaid contends the Certificate is not acknowledged by all the persons who have subscribed the same as corporations but is acknowledged by only a portion of the same.

The Court overruled said objections and allowed said

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Certificate to be read in Evidence, to the decision of
the Court the defendant duly excepted said Certi-
ficate was in the words and figures as follows:

State of Illinois }
County of Kane } It the undersigned being desirous
of Establishing an Institution of Learning in the City
of Knoxville in said County under and by virtue of
an Act of the Legislature of said State Entitled "An
Act for the Incorporation of Institutions of Learning"
Approved January 26th A.D. 1849, do certify and declare
that said Institution shall be known and called
Knoxville Female University and that the same shall
be managed and directed by fifteen Trustees viz:
P. H. Sanford. Cephas Ames. W. S. Knightley, John
Eads, Leander Douglass, L. H. Corley. Abrah. Hudson
John C. Sanborn. O. B. Palmer, Geo. H. Whittem,
J. M. Cairns. Edson Huggins. J. B. Smith, Abram
Lightner and Hugh S. Woods in which the following
branches of Literature and Science are purposed
to be taught viz: Algebra, Chemistry, History and Geography
of Language, Cosmography, Mathematics, Ecclesiastical History,
Terminology, Nomenclature, & Technicality. Geometry, Science
of Government, Latin & Greek, Zoology, Intellectual
philosophy, Natural theology, Principles of Christianity,
French, German, Spanish, Celtic Intellectual
philosophy, Trigonometry, Astronomy, Natural
philosophy, Comic Sciences, Elements of Criticism,
History of Literature, Logic, Eulogy, Drawing
Painting and Embroidery.

John Eads	Cephas Ames
Leander Corley	Geo. H. Whittem
Henry Ames	J. B. Cairns

Wm Anne Taylor
 C. Waterbury
 John G. Sanborn
 P. H. Sanford
 Leonard Douglass
 E. L. Phillips
 Abiah Thaler
 Mrs C. Taylor
 Geo M. Thaler
 John D. Brown
 Elias Bruce
 H. S. Thos.

E. Huggins
 G. M. Ewing
 Thomas S. Paice
 Miles Smith
 Cyrus W. Palmer
 J. B. Smith
 H. S. Knightley
 A. Comins
 Wm Ames
 Chauncey H. Adams
 O. B. Palmer
 W. Lightner

State of Illinois
 County of Kane } I, Wm McGowan a Justice of the
 peace in and for said County Certify that on this
 day personally appeared before me John Eads, Belates
 Cooley, Henry Ames, Wm Anne Taylor, C. Waterbury,
 John G. Sanborn, P. H. Sanford, Leonard Douglass
 E. L. Phillips, Abiah Thaler, Mrs C. Taylor, George M.
 Thaler, John D. Brown, Elias Bruce, Cyrus Ames
 Wm H. Phillips, J. D. Ames, E. Huggins, G. M. Ewing,
 Thomas S. Paice, Miles Smith, Cyrus W. Palmer, J. B.
 Smith, H. S. Knightley, A. Comins, William Ames
 Chauncey H. Adams, O. B. Palmer, Hugh S. Thos
 Abraham Lightner, whose names appear subscribed
 to the foregoing instrument of writing and severally
 acknowledged the signing of the same to be their volun-
 tary act and used for the uses and purposes therein set
 forth

Given under my hand and seal this first day of
 February 1858
 Wm McGowan J. P. Seal
 "Filed Feb 1 1858"
 C. Ames Clk

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Wm Anne Taylor
C. Waterbury
John G. Sanborn
P. H. Sanford
Seander Douglass
E. L. Phillips
Abraham Thullen
Wm C. Taylor
Geo M. Thullen
John T. Brown
Silas Bruce
H. S. Woods.

E. Huggins
G. M. Ewing
Thomas S. Vail
Miles Smith
Cyus W. Palmer
J. B. Smith
H. S. Hightley
C. Comins
Wm Ames
Chauncey M. Adams
O. B. Palmer
W. Hightley

State of Illinois
County of Knox } I, Wm McGowan a Justice of the
peace in and for said County certify that on this
day personally appeared before me John Eads, Seider
Cooley, Henry Ames, Wm Anne Taylor, C. Waterbury,
John G. Sanborn, P. H. Sanford, Seander Douglass
E. L. Phillips, Abraham Thullen, Wm C. Taylor, George M.
Thullen, John T. Brown, Silas Bruce, Cyphas Ames
Wm H. Thullen, J. M. Ames, E. Huggins, G. M. Ewing,
Thomas S. Vail, Miles Smith, Cyus W. Palmer, J. B.
Smith, H. S. Hightley, C. Comins, William Ames
Chauncey M. Adams, O. B. Palmer, Hugh S. Woods

State of Illinois, }
KNOX COUNTY. } ss.

No. 22118

I, J. E. Lewis, Clerk of the Circuit Court, and ex-Officio Recorder, within
and for the said County of Knox, and State aforesaid, do hereby certify that the within and foregoing Instrument of Writing,
was filed for record on the 11th day of February, A. D. 1885
at 1 o'clock, P. M., and duly recorded in Volume 35 of Deeds,
on page 440.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said
Court, at Knoxville, the day and date aforesaid.

Cyphas Ames, CLERK.
Per E. H. Bruce Deputy Clerk.

"Filed Feb 1 1888"
C Ames Clk.

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The Plaintiff then offered and read in evidence a Copy of the Certificate of Incorporation of Living Female University, ^{certified} by the Secretary of State.

To the reading of which in evidence the deft by his Counsel objected for the following reasons,

1st On the same grounds as already stated on which the objections were made to the said Certificate from the Records Office of Henne County,

2. Because it contained various and intestine laws,

State of Illinois

County of Henne } In the undersigned being decisions of
Establishing an Institution of Learning in the City of
Kennerville in said County under and by virtue of an
Act of the Legislature of said State entitled An
Act for the Incorporation of Institutions of Learning
approved January 26 A.D. 1849 do Certify and declare
that said Institution shall be known and called Living
Female University and that the same shall be man-
aged and directed by fifteen trustees viz: P. H. Sanford
Cephas Arms, W. M. Wrightley, John Eads, Francis C.
Glass, Belton Corley, Abiah Threlton, John G. Sanborn,
O. B. Palmer, Geo. H. Whitson, John T. Combs, Eamon
Huggins, J. B. Smith, Abraham Sigler, W. H. Hughes,
J. Woods, in which the following branches of Literature
and Sciences are proposed to be taught viz: Algebra
Chemistry, History and Structure of Language, Living
nities, Mathematics and Mechanics, Rhetoric,
Nomenclature and Technicality, Grammar, Science
of Government, Latin and Greek, Botany, Intellectual
Philosophy, Natural Theology, Elements of Christi-
anity, French, German, Spanish, Italian,
Intellectual Philosophy, Trigonometry, Astronomy,
Natural Philosophy, Moral Philosophy, Logic -

Securus. Elements of Criticism. History of Literature
 Egir. Analogy. Drawing. Painting & Embroidery;
 John Eads Ephras Amis
 Belois Cooley Mrs H. Whittier
 Henry Amis J. M. Cams
 H. Anne Taylor E. Huggins
 C. M. Waterbury G. M. Ewing
 John V. Sanborn Thomas S. Vaie
 P. H. Sanford Miss Smith
 James Douglass Cyrus C. Palmer
 E. I. Phillips J. B. Smith
 Abrahm Wheeler H. N. Kerguelin
 Mrs C. Taylor C. Connor
 Mrs M. Wheeler Mrs Amis
 John T. Brown Chauncy H. Adams
 Elias Bruce O. B. Palmer
 H. S. Woods A. Sighner

State of Illinois }
 County of Monroe } R. I. William McCaran a Justice of the
 peace in and for said County certify that on this
 day personally appeared before me John Eads, Belois
 Cooley Henry Amis, H. Anne Taylor, C. Waterbury
 John V. Sanborn P. H. Sanford James Douglass
 E. I. Phillips, Abrahm Wheeler, Mrs C. Taylor Mrs M.
 Wheeler, John T. Brown, Elias Bruce, Ephras Amis
 Mrs H. Whittier, J. M. Cams, E. Huggins, G. M. Ewing
 Thomas S. Vaie Miss Smith, Cyrus C. Palmer,
 J. B. Smith H. N. Kerguelin, C. Connor, Mrs Amis
 Chauncy H. Adams, O. B. Palmer, Leigh S. Woods
 and Abraham Sighner whose names appear
 subscribed to the foregoing instrument of writing
 and severally acknowledged the signing of the same

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to be their voluntary act and deed for the uses specified
therein set forth

Given under my hand and seal this first day of Feb
ruary A.D. 1858,

Wm. McConard J. P. Seal

United States of America
State of Illinois } S. O. M. Hatch, Secretary of
State of the State of Illinois do hereby certify that the
 foregoing is a true copy of the Certificate of organization of
Ewing Female University filed Sept 26 ~~Oct 1863~~
and now on file in my office. In witness whereof
I have hereunto set my hand and affixed the great
seal of State at the City of Springfield this 26th day
of September A.D. 1863.

Stamp Off

O. M. Hatch Secretary of State

To the reading of which in evidence the defendant
then and there objected, which the Court overruled
the objection & permitted the said Certificate to be read
in evidence and the defendant to the decision of the
Court excepted

Plaintiff then offered in evidence an act
entitled an Act to Incorporate the Ewing Female
University found on page 363 of private laws of
1859 Ills.

An Act to incorporate the Ewing Female University.

Section 1. Be it enacted by the people of the State
of Illinois represented in the general Assembly, that
the trustees and proprietors of the Ewing Female University
in the City of Hannibal, Boone County, Illinois are hereby

Enforced Feb
ary 19. 1869.
Body printed

constituted a body corporate and politic by the name of "The Ewing Female University" located and always to remain at the said City of Cincinnati for the purpose of promoting Collegiate and academic female Education.

§ 2. All the subscriptions, moneys, receipts, personal, property, real estate and other assets, and claims in favor of and all liabilities against the Ewing Female University shall legally vest in and rest upon the following named persons and their successors in office who are hereby constituted a corporate board of trust for said university: John G. Sanburn, H. Mearns, Knightley C. Arms, John Eads, John W. Carns, George W. Chatham, Patrick H. Sanford, Abrahm Whelan, Amiel B. Palmer, Abraham Feghtner, Casus Huggins, Zebulon Croley, James Kump, Calvin Waterbury, Scander Douglass, Hugh S. Ords, Wm. H. Whitten, Harry Curtis, William G. Miller, George W. Ewing, Isaac Cary, Charles Woodard, Miles Smith and W. H. Knease Taylor.

§ 3. The trustees of said university are hereby fully authorized and empowered in their corporate name to collect all subscriptions or donations, devises or bequests which may have heretofore been made or which shall hereafter be made to and for the use and benefit of the said university or for the purpose of founding and establishing the same.

§ 4. Said board of trustees when full shall be composed of twenty four trustees and this number shall be perpetuated by successors elected by the proprietors and by the Presbyterian Synod of Ohio in manner as follows: On the second Monday of January in the year eighteen hundred and sixty, the board of

Board of Trust

Trustees of Trustees

Election of the trustees

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Classes

trustees shall meet and the half first and second named shall, by lot, for themselves separately divide ^{its own} Each ~~in one~~ half into four equal classes: the term of office of the first class shall expire by the second Monday in January. Eighteen hundred and Sixty One, that of the second class in one year, that of the third class in two years and that of the fourth in three years thereafter. The said Synod of Penna. may at each of its annual meetings commencing in the year Eighteen hundred and Sixty Elect three trustees for said university to hold their office in said board for the term of four years from the second Monday in January next following their election: Said Synod may also fill any other vacancy occurring in the last named half of the board of trustees of said university. The first half of the trustees named in this board of trust for said university shall be perpetuated in succession as follows. This board shall give to each donor or his legal representative a certificate of one share for each fifty dollars paid into the fund of said university. Receipts the moneys paid by and for the Synod of Penna. Each share shall entitle its legal holder in person or by proxy to vote in the Election of trustees: the said shares to be transferable in the books of the Company. Said Shareholders in a meeting for that purpose held on the first Monday in November in the year Eighteen hundred and Sixty and on the same ^{day} in each year thereafter shall elect three trustees of said university for the term of four years from the second Monday in January next following their election, and also fill all other vacancies which may have occurred in the first named half of the board of trustees.

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of said university, The Secretary of the board shall give public notice in the City of Knoxville at least ten days before the time of the holding of said annual meeting to the share holders. If in any year said shareholders or said Synod shall fail to elect trustees to fill the vacancies in said board for the next year, the trustees shall at their meeting on the second Monday in January next following fill such vacancies by electing the requisite number of trustees each day to fill its own vacancies.

Power of
Trustees

§ 5. The board of trustees shall possess the power and be subject to the liabilities which are usual to Corporate bodies, but they shall use the powers hereby conferred with sole reference to the object for which this Corporation is granted, namely, the promotion of academic and collegiate female education, To this end the said board of trustees shall have full power to sue and be sued, plead and be impleaded, to have and use a common seal which they may change at pleasure, to purchase, receive, hold, lease, mortgage, sell and convey estate, real and personal, to appoint and remove officers and agents of said board and to require security of any or all ^{officers or} agents for the full performance of their duties, prescribe the course of study, appoint and remove the president, professors, teachers, and agents for instructing and governing the pupils, give the compensation for services rendered and for board and tuition for scholars, erect and ^{buildings} procure apparatus, furniture and fixtures as they may be needed make all rules and regulations necessary for governing said school Endow professorships, receive, hold and accept donations entrusted to them, confer such literary

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honors, degrees and diplomas as may be conferred by other Universities and Colleges of this State and perform all other duties implied in this trust and embraced in the objects of this Charter subject to the laws of the United States and of the State of Illinois.

Quorum § 6. A majority of ^{said board of} the trustees regularly assembled shall constitute a quorum for the transaction of ^{the} business of said Corporation, except that in electing and dismissing members of the faculty, buying, selling, mortgaging or leasing real estate an affirmative vote of at least thirteen members of the board of trustees shall be required; and all conveyances of any real estate belonging to said Corporation shall be signed by the president of the board of trustees, in his official capacity, and acknowledged before any officer authorized to take and certify acknowledgment by the laws of the State of Illinois.

Religious test

§ 7. No religious test shall ever be required of any trustee, president, professor, teacher, agent or pupil in said university, but in default of a correct, moral, dutiful and diligent department any member of the faculty, agent or pupil may be dismissed by the trustees from the ~~university~~ and privileges of said university.

Property

§ 8. All the property, real and personal at any time belonging to said university shall be held and used by its board of trustees solely for the promotion of female education, and while so held and used shall not be subject to taxation for any purpose whatever. Provided the property exempt shall not exceed in value fifty thousand dollars.

§ 10. The President, Secretary and Treasurer shall be elected by the board of trustees from its own members at the meeting on the second Monday in January of each and every year.

§ 11. This Act is hereby declared to be a public act and may be read in evidence in all (Courts) of Law or Equity within the State without further proof and shall take effect from and after its passage.

Approved February 19 1859.

To the reading said act in Evidence defendant objected but the Court overruled said objection and permitted the act to be read to the Jury and defendant duly objected and excepted to the opinion of the Court,

The plaintiff then offered in evidence a subscription paper which was in the words and figures as follows:

That the Subscribers herein and agree to pay
to the trustees of the Young Female University an
Institution of learning to be located in the City of
Knoxville in the County of Sevier and State of Tennessee
and their Successors and associates in office the
sum of \$100,000 in arrears for the purpose of erecting
suitable and necessary buildings and furnishing
the same with the necessary books, maps, charts,
philosophical and chemical apparatus. Subscriptions
payable in real estate, the same to be valued

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by three disinterested persons to be selected by the Trustees. And such real estate to be conveyed to the Institution on or before the first day of September A.D. 1858, and in default of making such conveyance the amount of such subscription to be due in money, Cash subscriptions to be due and payable in installments of 25 per Cent each as follows, the 1st installment to be due on the first day of July A.D. 1858, the 2nd installment on the first day of January A.D. 1859, the 3rd installment on the first day of July A.D. 1859, and the 4th and remaining installment on the first day of January A.D. 1860.

Names	Amount Cash		Amount Cash		Total	
	Subscription	Admission	Subscription	Admission	Subscription	Admission
Mr. N. Higley	400 00		600 00		1000 00	
Alphas Amos	1000 00				1000 00	
Isidore Croley	200 00		400 00		600 00	
John Eads	200 00				200 00	
John G. Sanborn	200 00		400 00		600 00	
John W. Camm	400 00				400 00	
Mr. Maria Taylor	100 00				100 00	
G. M. Ewing	300 00				300 00	
Q. B. Palmer	200 00				200 00	
H. S. Woods	100 00				100 00	
John Hunter	200 00				200 00	
Alfred Ewing	300 00				300 00	
P. D. Rodgers	100 00				100 00	
James Butcher	50 00				50 00	
W. H. Adams	100 00				100 00	
Francis Cuyler	200 00				200 00	
W. M. Craig	100 00				100 00	
Geo. A. Charles	400 00				400 00	
W. Rumble	200 00				200 00	

Henry Adams	200 00			200 00
B. M. Adams	50 00			50 00
Geo. Maple	50 00			50 00
P. H. Sanford	100 00			100 00
W. Tyler Jr	50 00		50 00	50 00
E. Runkle	100	200		300
Miss Smith	200	in or 200 00		200 00
Thomas Muir	50 00	"		50 00
Wm McCowan	100 00			100 00
Ulrich Wheeler	200	In Runkle		200
James Saunders	50 00			50 00
Prof. Hubbard	100 00	in Runkle in Saunders & others		100 00
Edson Huggins	100 00			100 00
Dr. H. H. Huggins				50 00
Wm Armstrong	100 00			100 00
Wm Carter	100 00			100 00
John S. Martin		6 Shares Stock into F. B. & Co.		150 00
J. W. Nelson		50 00		50 00
Wm Gosnell				100 00
Mr. J. Coleman			82 50	50 00
Wm. H. Huggins		Wm. H. Huggins add 100 00		100 00
Emmett Palmer				20
When a building shall be erected worth \$10,000 or more in real estate if such building shall be erected in 18 months John Johnston				
William G. Miller				50
James Kemp				100 00
		200 00		200 00

Defendant objected to the reading of said subscription paper to the jury. The Court overruled the objection and the subscription paper was read to the jury. The defendant duly accepted to the opinion of the Court in permitting said subscription paper to be read to the jury.

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W. M. Craig a witness sworn on behalf of the plaintiff testified as follows. I was authorized by plaintiff to demand payment of John Johnston on his subscription and the subscription paper was placed in my hands for that purpose & on the 22^d day of March A.D. 1858 John Johnston came in my office in Hannibal Mo. I presented him the subscription and told him that I was authorized by the Ewing Female University to demand and receive payment of the subscription I asked Johnston the deft. first for a deed or conveyance of real estate in payment of the subscription which he refused I then demanded from him payment in money which he also refused I was acting under orders of the trustees of Ewing Female University as agent. Johnston absolutely refused to pay the subscription in any way.

John Eads. a witness called & sworn by Plaintiff. Examined on his voir dire testified: I am now a trustee of Ewing Female University - was one of the stockholders - sold my stock and transferred it in good faith and got my pay for it - then a new agreement by which I am to take it back. I sold it because I expected to be a witness in this case. The sale was a bona fide one - I considered it to be a good one.

The witness was objected to by the deft as incompetent - objection overruled by the court and deft. accepted the ruling of the court. John Eads was then sworn and examined in chief & testified as follows: I caused the subscription paper to Johnston to be signed at March 15th 1858.

Corp Examined. Minutes said we located or selected the site for the building March 15th 1858, and Johnston subscribed the same day. I fire the date of location of site by the records of the trustees of the University but know that Johnston subscribed the same day and previous to the selection of the site.

Plaintiff then offered in evidence the record of the trustees of the Evening Female University showing that Wm. Craig was authorized to demand payment of Johnston of his subscription.

"March, 11, 1862.

On motion of P. H. Sanford that Wm Craig Esq. be appointed Agent of this board to make a demand of John Johnston for the payment of his subscription to the Evening Female University.

Board adjourned
P. H. Phillips Secy.

It was admitted that the book so offered was the record of the Evening Female University.

G. W. Harris was then called by the plff as a witness who after being sworn on his oath said I am neither a stockholder or trustee. I sold my stock to John Cairns last September. My object in transferring the stock was to get the money for it. A number of the trustees asked me to transfer my stock in order to be a witness. I would not do so for the purpose of being a witness.

Defts Counsel objected to witness as incompetent which objection was overruled by the Court and said Harris was sworn and examined as a witness in

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To which ruling of the Court Aff. by his Counsel then and then duly accepted, Said Stone testified as follows:

I know the Ewing Female University building in question. I did the mason work on it. - Subscriptions for the institution were commenced in the first part of March or latter part of February 1858 - He located the site for the building March 15th 1858 - In June 1858 I staked out the ground on which building was to stand and then commenced digging for the foundation in that month.

I handed the rocks and commenced laying the foundation in July 1858. In the fall of 1858 I finished laying the first or basement story except the water table - In June 1859 I resumed the work on the walls which I finished September 15th 1859 except the East gable end which I could not finish till the Rafters were up. There was 1500 bricks which could not be put in use after the rafters were put up and they were not laid till after September 15th 1859. All of the rest of the stone and brick work was done. The heavy timbers and joists and studding were framed and in the building. The building was valued at \$10,000 + \$12,000 on the 15th day of September 1859. I have worked as mason ever since I was 18 years of age, I have been a contractor about 30 years. I am acquainted with the value of such work. The Building was built for the Ewing Female University and is located in Knoxville Knease County State of Illinois, about 80 rods north of the Court House.

On Cross Examination by Aff. Counsel said Stone testified as follows:

I did all the stone and brick work on the building.

The building was completed in the fall of 1860 except the porch - prior to June 1859 I had the foundation of just story and except the water table. The water table was put on before September 15th 1859. I had the main walls finished except the East gable end on Sept 15th 1859. I had thought the roof was framed before that time, but in talking with Mr Huggins I think I may be mistaken in that. On the 15th of Sept, 1859 the roof was not up, the glass was not in - but the glass was purchased the door frames and the doors were not in - the sashes were not in but were made and ready to be put in, the window frames were all in ready for the sashes. There was no floor except loose boards or planks some of which were nailed to the building, on regular floors were laid, there was some 5000 or 6000 feet of lumber in and about the building used for loose flooring and scaffolding. In this condition the building was worth between \$10000, & \$12000, I put up the East gable end sometime in October of same year was a day and a half putting it up. In summer of 1860 I put up chimney tops I built myself. It took me 20 days to build chimney tops. I put them up in July or August 1860. In my estimate I do not include materials on hand. Most of the finishing lumber was on the ground worth over \$1000 - All of the sand and plastering was on the ground - I have made an estimate of the cost of the building and have it here - I can give you the items if you wish, I furnished the rock and laid them they furnished the lime and sand - My items are,

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164 perch of mch in wall at \$3	\$492.00
650 M. bricks at \$6. per M.	3900.00
Laying Bricks	1877.50
Gravel and Sand for bricks	1500.00
4 Stone door Sills	100.00
Water table in Building	160.00
Windowsills & Sills in Garments	750.00
54 Iron Window Sills in Building	135.00
Iron Work (Cinchers)	20.00
Plan & Superintendence	175.00
Miss Smiths Hardware Fee	339.
54 Window frames at \$7.50	405.00
17 Common Window frames at \$4.	68.00
Heavy Lumber	130.00
Laths &c	730.00
Sash in hand not in Building	125.00
Laths from Phuler	100.00
Carpenter Work	400.00
Common Lumber	60.00
Drayage	40.00

My total Estimate from these items is \$10341.50
 Some of the Common Lumber might have been used
 in the Building afterwards - but most of it spoiled
 further use - I know my Estimate for the bricks and
 mortar are low enough for when I had got the work
 done the Building Committee thought I had charged
 too much and we referred the matter to George C.
 Charles & Cephas Arms - I had charged them for
 laying 182170 bricks - In their Estimate they only
 made 12 bricks less, I charged them for 166 perches
 of Bricks - They found I perched less, I submitted
 with the Committee in Charles & Arms Estimate.

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The Chimney tops cost 8000 but the gable end cost 1500. In my Estimate I called the brick in the Building 600 M. On the 15th day of Sept 1859 I think there was more but wanted to be sure and get it low enough in my Estimates.

The entire Building after its completion cost \$18000. The building was worth Sept 15th 1859 from \$10,000 to \$11,000.

I think the Luss was bought before Sept 15th 1859. The whole Building was completed the following Summer of 1860.

The Pff. here stated his case.

Thereupon the defendant to maintain the issue on this point introduced Carson Huggins who being sworn testified, I worked on this Building in the summer of 1858 I had charge of the Carpenter work & did a good deal of it. I worked by the day and worked till it was finished - I worked a month or so in summer and also in the fall of 1858 and commenced again in the spring of 1859. The building was completed in the winter of 1860 & 1861 and I worked in it till that time. On the 15th day of September we had it up to the square the gable end was not finished, the roof was not on, there was no timber brought for the roof September 15th 1859 the Building was worth less than \$10000. He made an Estimate in Sanford's office last Saturday night - the witness Starns was there part of the time - I could not make out the value or cost over \$9500 on the 15th of September 1859. I was one of the trustees of the institution - the State Census Rec is reckoned lower than Starns had it the whole bill is \$110.

(45)

Sanford took down the items as they were called off when we made up the Estimate of \$9500. The value of the Building September 15th 1859 I put at \$9500 perhaps a little more perhaps a little less. There was some drayage bills I got them up as far as I could recollect.

On Corp Examination Miners said - There was 54 window frames worth \$750 each - 17 Common window frames worth \$4 each - the Sash were made & worth \$125 - the Heavy lumber was worth \$155. Joists were worth \$735 - Joists got of Their in building worth \$800. Carpenter work was worth \$365 - Drayage \$25 - I never took any measurement or made any Estimate of the Brick & Stone work myself - In fixing my Estimate at \$9500 I wrote the Statements of Stones in Sanford's Office as to number of bricks The Bricks were then called 600 M. and I estimated them at \$20. per M. in the wall including lime & sand and work. I received the same wages as other Carpenters & know the value of it. I know what Masons charged for Brick, lime, sand & work at that time - In my opinion the money expended on that Building was judiciously and economically expended.

Here the Defendant rested his case.

Thereupon the Plaintiff recalled J. W. Starnes who testified as follows: When these Estimates were made Sanford said to me that Haggins would be at his office and wanted me to come up. I went to his office last Saturday night. Haggins was not there but came in afterwards. I could only give it to him

(46)

that night in the night. I had not with me the papers by which I settled with the Committee and could not be accurate as to the amount of Mason work. It made out the Mason work Huggins went out to hunt up bills of Carpenter work and I went home. I gave to him the number of bricks then at 600 M. The Estimate James has been 650 M.

On Exp Examination witness said,

The Entire Bricks in the whole building was a sum of 680,000

The Testimony here closed the foregoing being all the Evidence given in said trial.

The Court at the request of the Plaintiff then gave the following instructions,

The Jury are instructed that if they believe from the Evidence that the plaintiff is an unincorporated body, That the defendant on or about 15th day of March 1855 subscribed four hundred dollars in real Estate in the subscription paper read in Evidence on the occasion therein specified that Plaintiff before the commencement of this suit demanded payment of defendant of said subscription or a deed of 400th worth of land and the same was refused, And that the plaintiff erected a building in Minnesota in eighteen months next after defendant signed said subscription paper reasonably worth \$1000 as a Seminary building Then the Jury will find for the plaintiff.

If the Jury believe from the Evidence that the plaintiff had erected a building for the purpose

Gives

(47)

Givins

Filed Feb 16/64
P. H. Lewis Clerk

that the subscription was given for in 18 months
after the date of said subscription worth \$10000
& that the plaintiff is an incorporate body & demand
and before the commencement of this suit of the
defendant payment of said subscription accor-
ding to the terms of said subscription and the
same was refused then the Jury will find for
the plaintiff even though the building was not
fully completed provided the Jury believe that the
erection as to its exterior was substantially completed.
To the giving of each and every of said instru-
ments the debt by his counsel then and there
duly objected and excepted.

The Court at the request of the defendant thereupon
gave the following instructions.

1- The defendant's subscription is in law a con-
ditional contract and the plaintiff cannot recover
without showing that the condition upon which the
subscription depends has been fulfilled: And
unless the Jury find upon the evidence that the
building contemplated by the subscription and worth
\$10000 was actually erected within 18 months from the
making of the contract & subscription they should
find a verdict for the defendant.

3- The plaintiff cannot recover on the pleadings in this case
unless it is found that the plaintiff as charged in the
declaration demanded a deed of real estate of the
defendant in said real estate before the commencement
of this suit in conformity to the terms of defendant's
subscription. A demand of payment in
cash is not sufficient.

Givins

Givins

5- Under the pleadings in this case the plaintiff must be found to be a corporation unless sufficient proof has been given to establish this fact. The Jury should find for the defendant.

The Court against the defts objections also modified defts instructions No 2 asked by the defts as follows viz: by inserting the words "as to its Erection"

2- It is not a compliance with the conditions of the defendants subscription that a building was commenced and in process of erection and partially completed & that too even at an expense of \$10,000 & that amount actually expended within the 18 months from the making of the subscription but it must appear that the erection of the building was substantially completed, ^{as to its Erection} within the 18 months & that it was then worth \$10,000. And unless the Jury so believe on the evidence they should find for the defendant.

To Each and Every of which modification of the Court of the said instruction no. 2 as asked by the defts & given by the Court the Counsel for the defendant then & there duly objected & excepted.

The Counsel for the defendant thereupon requested the Court to give the following instructions in behalf of the defendant:

4- The Erection of the Building contemplated by the defendants subscription must be construed in law to be something more than a bare erection of the walls of the Building, not properly enclosed and without roof, windows, floor or doors - but

(49)

it must be substantially a completion of the building within the 18 months from the making of the subscription & it should be worth \$10,000 within that time & unless the Jury find such to be the facts on the evidence they should find for the defendant.

6- Unless the plaintiff was a corporation at the time of the making of the contract the defendant is not entitled to a verdict.

7- The Jury in determining the question whether the completion of the subscription has been fulfilled and in determining whether the building was worth \$10,000 cannot in making up the estimate add in the value of sash or any articles on hand but not put into the building within the 18 months from the making of the subscription by the defendant.

Which the Court severally refused to give to which ruling of the Court in refusing to give such separate instructions so refused by the Court the counsel for the defendant then and there duly severally & separately excepted.

The Jury found a verdict for the plaintiff as follows: "The Jury find the issue for the plaintiff and award its damages at the sum of four hundred dollars (\$400).

Abraham Wiley Foreman of the Jury.
Immediately after the reading of the verdict by the Clerk of said Court & while the Jury were in court before the Jury were asked by the Court if that was their verdict and each and all of the Jury answered that it was their verdict.
And thereupon came the defendant and made his motion for a new trial as follows:

Refused

Refused

Kennebunk Court

Bangs Female University

vs

John Johnson

Feb 1890 Ad 1804

And now comes the said defendant & moves for a new trial in this cause upon the following grounds
 1st The Court Erred in sustaining the plaintiff's demurrer to defendant's second, third, fourth, fifth, sixth, seventh, eighth & ninth amended pleas, & in each decision in overruling each & every of said pleas.

2^d The Court Erred in admitting the Certificate of incorporation offered by the plaintiff & recorded in the records office of Kennebec County, in evidence.

3^d The Court Erred in admitting in evidence the Certificate of incorporation offered by the plaintiff purporting to have been recorded with the Secretary of State's Office or the Copy of the Certificate from said Secretary of State's Office.

4. The Court Erred in admitting the evidence offered by the plaintiff and objected to by the deft.

5= The Court Erred in excluding the evidence offered by the deft. & excluded by the Court.

6= The Court Erred in refusing to give deft's instructions numbered 4, 5 & 6 & 7 & 8 & 9 & 10.

7= The Court Erred in modifying deft's second instruction by the addition of the words "as to its intention"

8= The Court Erred in giving the several instructions asked by the plaintiff & given by the Court & in his decision as to each & every of them.

9= The verdict of the Jury is against law.

10= The verdict of the Jury is against the instruction of the Court.

51

11- The verdict of the Jury is against the evidence
 Filed Feb 14/64 J. G. Frost
 J. H. Smith etc

Atty. for deft

Which motion for a new trial was overruled by
 the Court to which ruling of the Court in denying
 said motion the Counsel for the defendant then
 and there duly accepted.

And because none of the said exceptions, so
 offered + made to the opinion + decision of the
 said Circuit Judge, do appear upon the record
 of the said trial therefore on the prayer of the
 said deft by his Counsel the said Circuit Judge
 has to this bill of exceptions put his seal + sub-
 scribed his name according to the statute
 in such case made and provided

This 1st day of March A.D. 1864

C. B. Lawrence Seal

Filed Mar 14/64 by consent of all parties
 being within the rule

J. H. Smith etc

Know all men by these presents that Dr. John Johnson
 and Richard S. Lee are held and firmly bound
 unto Emory Female University in the penal sum
 of One thousand dollars lawful money of the United
 States for the payment of which well and duly
 to be made or paid ourselves, our heirs, executors
 Administrators and assigns jointly by these presents
 Thomas W. Jones and Isaac the 4th day of March 1864
 The condition of the above obligation is such
 that whereas the said Emory Female University did

(52)

at the February term A.D. 1864 of the Keweenaw County
Circuit Court recover a judgment against said
John Johnson for the sum of four hundred dollars
and costs of suit from which judgment the said
John Johnson has taken an appeal to the Supreme
Court of the State of Illinois.

Now if the said ^{John} Johnson shall pay the judgment
costs, interest and damages in case the judgment
shall be affirmed and shall duly prosecute the
said appeal, then this obligation to be null &
void, otherwise to remain in full force & virtue.

John Johnson Paid
Richard S. Kew Paid

Approved by me, by agreement of parties this 15th
day of March A.D. 1864

John H. Lewis Clerk

Filed Mar 15 1864
John H. Lewis Clerk

State of Illinois
Keweenaw County } I, John H. Lewis Clerk of the Circuit
Court within and for the County and State aforesaid, do
hereby certify that the foregoing is a true, correct and
complete record of proceedings in the above entitled cause
except Precepts for Subpoenas, Subpoenas, witnesses offered
and affidavits for continuance as the same appear
from the books and files of my office.



Witness my hand and the seal of said
Court at my office in Keweenaw this
15th day of April A.D. 1864

John H. Lewis in case
Per Saml E. Charles Deputy

Supreme Court of the State of Illinois

April Term A D 1864.

John Johnston Plaintiff in Error

vs

Owing Female University defendant in Error

afterwards to wit on the third Tuesday of April in this same Term, before the Justices of the Supreme Court of the People of the State of Illinois at the Court Room in the City of Ottawa comes the said John Johnston by Thomas B. Frost his attorney and says that in the record ^{and} proceedings aforesaid and also in giving the judgment aforesaid there is manifest error in this -
to wit -

- 1st The Court erred in sustaining the Plaintiff's demurrer to defendant's second, 3^d, 4th, 5th, 6th, 7th, 8th and 10th amended pleas & in each decision in overruling each ^{and} every of said pleas.
- 2^d The Court erred in admitting the Certificate of incorporation offered by the plaintiff recorded in the recorder's office of Knox County in Evidence
- 3^d The Court erred in admitting in evidence the Certificate of incorporation offered by the Plaintiff purporting to have been recorded in the Secretary of State's office. or the Copy of the Certificate from said Secretary of State's office.
- 4th The Court erred in admitting the evidence offered by the plaintiff and objected to by the Defendant.
- 5th The Court erred in excluding the evidence offered by the defendant and excluded by the Court.
- 6th The Court erred in refusing to give defendant's instructions Number 4, 6, & 7 & each & every of them

7th The Court erred in modifying defendants 2^d instruction by the addition of the words "as to its exterior"

8th The Court erred in giving the several instructions asked by the Plaintiff & given by the Court & in his decision as to each and every of them

9th The Verdict of the jury is against law

10th The Verdict of the jury is against the instructions of the Court

11th The Verdict of the jury is against the evidence

12th The Court erred in denying defendants motion for a new trial

And the said John Johnston prays that the judgment aforesaid for the errors aforesaid and other errors in the record and proceedings aforesaid may be reversed annulled and altogether held for nothing and that he may be restored to all things which he hath lost by occasion of the said judgment &c

J. H. Frost

attorney for Plaintiff in error

Supreme Court of the State of Illinois
 vs
 Ewing Female Seminary
 Deft in Error

April 11, 1864

John Johnston
 Plff in Error

And hereupon afterwards met on the third Tuesday of April A. D. 1864 in this same Court before the Justices of the Supreme Court of the People of the State of Illinois at the Court House in the City of Ottawa Comes the said Ewing Female Seminary by Douglas Henry Sanford its Attorney says there is no error in the record & proceedings aforesaid nor in giving the judgment aforesaid & it prays that the Court now here may proceed to examine as well the record & proceedings aforesaid as the matters aforesaid above assigned for error that the judgment given aforesaid may be in all things affirmed &c

Douglas Henry Sanford
 Atty for Deft in Error

254 28

John Johnson
as

Bowling Green
University

Record & Errors

Filed April 21. 1864
L. Leland
Clark

SUPREME COURT.

AT OTTAWA.

APRIL TERM, A. D. 1864.

JOHN JOHNSTON, Appellant,
vs.
EWING FEMALE UNIVERSITY, Appellee.

Argument and Brief of Appellee.

A. M. CRAIG AND P. H. SANFORD, Att'ys for Appellee.

This is an action brought by Appellee to recover of Appellant the amount of his subscription to Ewing Female University.

The Defendant in Court below plead that Plaintiff was not a body corporate *when the subscription was taken*, and the Court rightfully and legally sustained a demur to the plea.

A subscription made in contemplation of an organization under the law of 1849 or under a special charter to be afterwards obtained, is legal and a party is bound to pay. [Tonica & Petersburg R. R. Co. vs. McNeely, 21 Ills., page 72. Robertson vs. March & al, 3d Scammon, 198.]

The 9th plea upon which issue was taken raised the question of *null corporation* fairly and this is all that Appellant could ask.

The Appellant complains that the Court erred in sustaining the demur to the several amended pleas.

These pleas amounted to the general issue, and for this reason were obnoxious to special demur and the demur was properly *sustained*.

Cook vs. Scott, 1 Gilman 338.

The Court committed no error in admitting the Certificate of Incorporation.

ration, recorded in Knox County, in evidence. Said certificate was in due form properly acknowledged and recorded, as is by statute required.

It was not necessary for the officer to say that the parties were personally known to *him*, as is the case in the acknowledgement of a deed. There is no chance for a fraud being perpetrated, as there might be for a party acknowledging a deed not known to the officer.

The Court committed no error in admitting in evidence, the certified copy of the certificate of Incorporation recorded in the office of the Secretary of State. The interlineations and erasures, upon inspection by the Court, explained themselves; and Appellant must present the original document to the Supreme Court for the Court to inspect, and see if the Circuit Court decided *wrong*. This he has not done and this Court must decide that the Court below decided correctly.

The evidence offered by Appellee and admitted by the Court was properly done.

The Appellant offered no evidence in the Court below which was refused.

The instructions of Appellant refused and modified by the Court were properly refused and modified.

The Appellant was bound to pay when a building should be *erected*. The word *completed* was not used in the subscription, and the instructions of Appellant refused and modified by the Court, each and all went on the hypothesis that the subscription called for a building to be *completed* as well as erected. The Court had no right to tell the jury that the building must be completed when the contract or terms of the subscription only required the Appellees to erect a building in 18 months worth \$10,000.

The instructions of Appellee given by the Court were right.

They presented the law of the case fairly to the jury, and left them to say whether Appellees had substantially complied with their contract and under the evidence was entitled to recover.

The verdict is sustained by the evidence. The Appellee agreed to *erect*, not *complete*, a building *in 18 months* after the signing of the subscription paper by the Appellant worth \$10,000. The building was erected in the time, as shown by the proof, worth \$10,346 30. The building was not only erected in the time, but *substantially completed*, and the material on the ground to complete the building ENTIRE.

Appellees were organized February 1st, 1858, under the general Law, obtained a special charter in 1859. [See Laws of 1859, page 363.]

On the 11th day of March, 1862, (See Record), the Trustees authorized

A. M. Craig to demand of Appellant his subscription. On the 22d of March, 1862, A. M. Craig demanded of Appellant payment of his subscription and payment was refused.

Has substantial justice been done? I answer, it has. The case was fairly submitted to the jury under the law and the evidence. They rendered a verdict for the Appellees. Ought that verdict in justice be reversed? What was the intention of Johnston, the Appellant, in incorporating the condition in his subscription, that a building should be erected in 18 months worth \$10,000? His intention evidently was to secure the erection of a building which would be an honor and a lasting benefit to the cause of education. That his money should not be invested in a trifling building and the enterprise be a failure. So far as the principle and true spirit of his contract is concerned, it could not and did not effect his rights or the rights of society if the building was not erected precisely on the day his contract required. At the end of the 18 months after his subscription was taken, the building was erected and worth some \$12,000, and the necessary material on hand to complete the same; the workmen employed and the work progressing; and, as the proof shows, the building has been completed, and the Seminary in successful operation, which is an honor and a credit to all those who invested their money in the enterprise.

The Court properly refused to grant a new trial.

It does not follow that a new trial will be granted even if the jury find against the weight of evidence and against the instructions of the Court, provided the Court is satisfied that justice has been done, as it unquestionably has been in this case.

3 Scammon, page 17. 1 Scammon page 491. 1 Gilman, page 475.

A. M. CRAIG,
Attorney for Appellee.

Ewing Howell
University

Apples. Aug. & Birch

Filed April 30. 1864

L. Schmidt

SUPREME COURT,

APRIL TERM, A. D. 1864.

Abstract of Record.

JOHN JOHNSTON,
Appellant,
vs
EWING FEMALE UNIVERSITY,
Appellee. } Appeal from Knox.

T. G. FROST, A. M. CRAIG & P. H. SANFORD,
Att'y. for Appellant. Att'ys. for Appellee.

This was an action of Assumpsit, commenced by Ewing Female University, the Appellee, against John Johnston, the Appellant, in the September term of the Knox County Circuit Court, before the Hon. C. B. Lawrence, Judge, to recover the amount of a conditional subscription made by the Appellant for the erection of a Seminary Building.

2 Summons issued August 29, 1863, returnable the fourth Monday of September. Returned duly served.

3, 4, 5, The Declaration contained, besides the common counts, a
6, 7, 8, special count upon the subscription paper, setting the same
9, 10, 11 forth in full. The defendant plead the general issue and
several special pleas, which, upon demurrer, were overruled.

12, 13, 14, Thereupon, the defendant below filed nine amended special
15, 16 pleas, to which the plaintiff below demurred.

17 The court overruled the demurrer to the first amended special plea, and sustained the demurrer to all the other amended special pleas.

10 These special pleas set up that plaintiff's only cause of action was on the subscription paper set forth in the declaration.

tion, and that the condition embodied therein, viz: "when a building should be erected worth \$10,000, to give in real estate \$400, if such building should be erected in eighteen months," had not been complied with.

Said defendant below also plead *nul tiel corporation* when the subscription was given; also when the suit was commenced.

Plaintiff below joined issue on the pleas not overruled, and the cause was continued, on the application of the defendant below, to the February term, A. D. 1864; and on the 15th of February, A. D. 1864, the issues joined were tried before His Honor Charles B. Lawrence, and a jury.

A verdict was rendered in favor of the plaintiff below, under the instructions of the court, for the sum of four hundred dollars.

Defendant below made a motion for a new trial, which was overruled by the court.

Defendant below excepted, and a judgment was rendered upon the verdict.

Plaintiffs entered their motion for an appeal to the Supreme Court, which was granted by the court, upon bond being filed by defendant below, and thirty days were granted in which to prepare and file bill of exceptions.

Bill of Exceptions.

STATE OF ILLINOS, }
KNOX COUNTY, } ss

KNOX CIRCUIT COURT,
February Term, A. D. 1864 }

EWING FEMALE UNIVERSITY, }
vs. }
JOHN JOHNSTON. }

Be it Remembered, That at the February term of said Court, held in and for said County and State, at the Court House, in Knoxville, on the 15th day of February, A. D. 1864, before the Hon. C. B. Lawrence, Judge, the issue joined between the parties aforesaid, came on to be tried by a jury of the county aforesaid, for that purpose duly empanelled and sworn; and upon the trial of said issue the counsel for the plaintiff, to maintain said issue on his part, offered and read in evidence the certificate of incorporation

Female University, filed in the Recorder's office of Knox
County, Ill.



28

John Eads,	Cephas Arms,	Zelotes Cooley,
Wm. H. Whitton,	Henry Arms,	J. W. Carns,
H. Knox Taylor,	E. Huggins,	C. Waterbury,
G. M. Ewing,	John G. Sanborn,	Thomas S. Vaill,
P. H. Sanford,	Miles Smith,	Leander Douglass,
Cyrus C. Palmer,	E. L. Phillips,	J. B. Smith,
Alvah Wheeler,	H. N. Keightly,	Wm. C. Taylor,
C. Corwin,	Geo. W. Wheeler,	Wm. Arms,
John T. Brewer,	Chauncey K. Adams,	Silas Bruce,
O. B. Palmer,	H. S. Woods,	A. Lightner.

"Filed Feb. 1, 1858. C. ARMS, Clerk."

STATE OF ILLINOIS, }
 Knox County, } ss.

No. 25108.

I, Cephas Arms, Clerk of the Circuit Court, and ex-officio
 Recorder within and for the said County of Knox and State

aforesaid, do hereby certify that the within and foregoing instrument of writing was filed for record on the 1st day of February, A. D. 1858, at 6 o'clock P. M., and duly recorded in volume 38 of Deeds, on page 440.

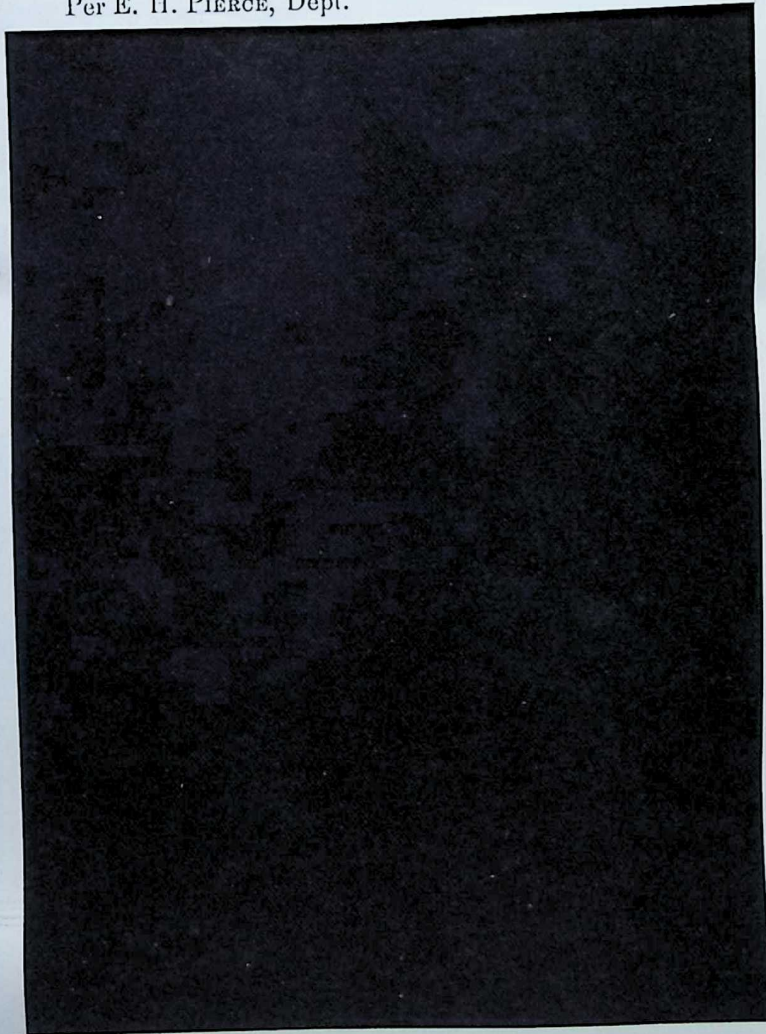
In testimony whereof, I have hereunto set my hand
and affixed the seal of said Court, at Knoxville,
[L. S.] this 1st day of February, A. D. 1858.

CEPHAS ARMS, Clerk.

Per E. H. PIERCE, Dept.

29

30



certificate to be read in evidence; and the defendant, to the decision of the court, excepted.

Plaintiff then offered and read in evidence an act entitled an act to incorporate the Ewing Female University, found on page 363 of private laws of 1859, Ill.

AN ACT to Incorporate the Ewing Female University.

31 SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That the trustees and proprietors of the Ewing Female University, in the the City of Knoxville, Knox County, Illinois, are hereby constituted a body corporate and politic, by the name of "The Ewing Female University," located and always to remain at the said city of Knoxville, for the purpose of promoting collegiate and academic female education.

32 § 2. All the subscriptions, moneys, receipts, personal property, real estate and other assets and claims in favor of, and all liabilities against the Ewing Female University, shall legally vest in and rest upon the following named persons and their successors in office, who are hereby constituted a corporate board of trust for said University: John G. Sanburn, H. Nelson Keightly, Cephas Arms, John Eads, John W. Carns, George A. Charles, Patrick H. Sanford, Alvah Wheeler, Orville B. Palmer, Abraham Leightner, Edson Huggins, Zelotes Cooley, Wm. H. Whitton, James Knox, Calvin Waterbury, Leander Douglass, Hugh S. Woods, Harvey Curtis, William Y. Milier, George M. Ewing, Isaac Carey, Charles Holland, Miles Smith and H. Knox Taylor.

§ 3. The trustees of said University are hereby fully authorized and empowered, in their corporate name, to collect all subscriptions or donations, devises or bequests, which may have heretofore been made, or which shall hereafter be made to and for the use and benefit of the said University, or for the purpose of funding and establishing the same.

33 34 [The balance of said act is found on pages 363, 364 and
35 36 365, of the Private Laws of Illinois, of 1859]

To the reading of said act in evidence defendant objected; but the court overruled said objection and permitted the act to be read to the jury, and the defendant duly objected and excepted to the opinion of the court.

The plaintiff then offered in evidence a subscription paper, which was in the words and figures as follows:

A Tyler jr	50 00	50 00
E Runkle	100 00	200 00
Miles Smith	200 00 or in materials	200 00
Thomas Muir	50 00	50 00
Wm McGowan	100 00	100 00
Alvah Wheeler	200 00 in lumber	200 00
James Laurence	50 00	50 00
Benj Hebard	\$100 00 in stock in Mason and Odd Fellow's Hall	
Edson Huggins	100 00	100 00
W H Whitton		50 00
Wm Armstrong	100 00	100 00
Wm Hester	100 00	100 00
John S Winters, 6 shares in M & O F I S Society		150 00
J M Gilson	50 00	50 00
Wm Goodell		100 00
H G Colegan		50 00
H T Morey, lots 4, 5 and 3, B 2, and L 3 B 3, Morey & Higgin's ad- dition, Knoxville		100 00
C H Huggins		25 00
Enick Patrick		
When a building shall be erected worth \$10,000, I will give, in real estate	400 00	400 00
if such building shall be erected in 18 months. JOHN JOHNSTON.		
William Y Miller		50 00
James Knox		1250 00

Defendant objected to the reading of said subscription paper to the jury.

The court overruled the objection, and the subscription paper was read to the jury.

The defendant duly excepted to the opinion of the court, in permitting said subscription paper to be read to the jury.

39 A. M. Craig, a witness sworn on behalf of the plaintiff, testified as follows: I was authorized by plaintiff to demand payment of John Johnston on his subscription, and the subscription paper was placed in my hands for that purpose, and on the 22d day of March, A. D. 1862, John Johnston came into my office in Knoxville, Ill. I presented him the subscription, and told him that I was authorized by the Ewing Female University to demand and receive payment of the subscription. I asked Johnston, the defendant, first for a deed or conveyance of real estate, in payment of the subscription, which he refused. I then demanded from him payment in money, which he also refused. I was acting under orders of the trustees of Ewing Female University, as agent. John Johnston absolutely refused to pay the subscription in any way.

John Eads, a witness called and sworn by plaintiff, exam-

ined on his *voir dire*, testified: I am still a trustee of the Ewing Female University; was one of the stock holders; sold my stocks and transferred it in good faith, and got my pay for it; there is no agreement by which I am to take it back; I sold it because I expected to be a witness in this case, but the sale was a *bona fide* one; I considered the sale a good one.

The witness was objected to by the defendant as incompetent.

Objection overruled by the court, and defendant excepted to the ruling of the court.

Said witness Eads was then sworn and examined in chief, and testified as follows: I carried the subscription paper to Johnston, and he signed it March 15th, 1858.

40 CROSS-EXAMINED.—Witness said: We located the site for the building March 15th, 1858, and Johnston subscribed the same day. I fix the date of location of site by the record of the trustees of the University, but know that Johnston subscribed the same day, and previous to the selection of the site.

Plaintiff then offered in evidence the record of the trustees of the Ewing Female University, showing that A. M. Craig was authorized to demand payment of Johnston of his subscription:

"March 11, 1863.

On motion of P. H. Sanford, that A. M. Craig, Esq., be appointed agent of this Board to make a demand of John Johnston for the payment of the subscription to the Ewing Female University.

Board adjourned.

W. H. WHITTON, Sec."

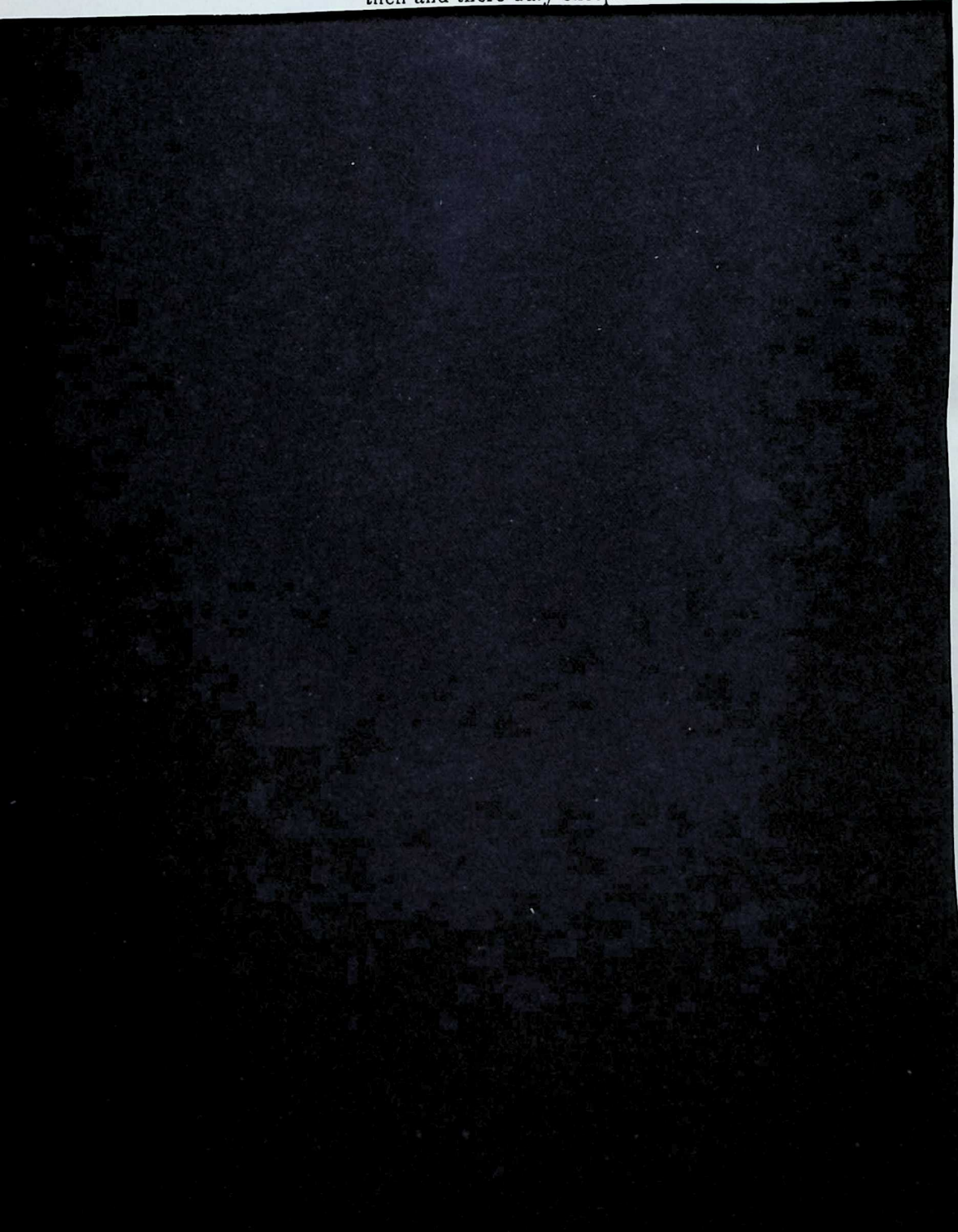
It was admitted that the book offered was the record of the Ewing Female University.

Z. W. Stevens was then called by the plaintiff as a witness, who after being sworn on his *voir dire*, said: I am neither a stockholder or trustee. I sold my stock to John Carns last September. My object in transferring the stock was to get the money for it. A number of the trustees asked me to transfer my stock in order to be a witness. I would not do it for the purpose of being a witness.

Defendant's council objected to witness as incompetent, which objection was overruled by the court, and said Stevens was sworn and examined as a witness in chief.

41

To which ruling of the court Defendant, by his counsel, then and there duly excepted.



43	164 perch of rock in wall, at \$3	-	-	\$492.00
	650 M brick @ \$6 per M	-	-	3900.00
	Laying brick	-	-	1877.33
	Lime and sand for brick	-	-	1500.00
	4 stone door sills	-	-	100.00
	Water table in building	-	-	160.00
	Window sills and lintels in basement	-	-	70.00
	54 iron window sills in building	-	-	135.00
	Iron work [anchors]	-	-	20.00
	Plan and superintendence	-	-	175.00
	Miles Smith's hardware bill	-	-	23.97
	54 window frames at \$7.50	-	-	405.00
	17 common window frames @ \$4	-	-	68.00
	Heavy lumber	-	-	135.00
	Joists, &c	-	-	735.00
	Sash on hand, not in building	-	-	125.00
	Joists from Wheeler	-	-	100.00
	Carpenter work	.	.	400.00
	Common lumber	.	.	60.00
	Drayage	.	.	40.00

My total estimate from these items is - \$10,346.30

Some of the common lumber might have been used in the building afterwards, but most of it spoiled for further use. I know my estimate for the brick and rock are low enough, for when I had got the work done the building committee thought I had charged too much, and we referred the matter to George A. Charles and Cephas Arms. I had charged them for laying 182,170 brick. In their estimate they only made 62 brick less. I charged them for 166 perch of rock; found two perch less. I settled with the committee on Charles and Arms' estimate. The chimney tops took 8000 brick. The gable end took 1500. In my estimate I called the brick in the building 650 M, on the 15th day of Sept., 1859. I think there was more, but wanted to be sure and

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We made an estimate, in Sanford's office, last Saturday night; the witness Stevens was there part of the time; I could not make out the value or cost over \$9500. On the 15th of September, 1859, I was one of the trustees of the institution. The stone-cutter's bill is acknowledged lower than Stevens had it. The whole bill is \$110. Sanford took down the items as they were called off, when we made up the estimate of \$9500. The value of the building September 15th, 1859, I put at

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\$9500—perhaps a little more, perhaps a little less. There was some drayage bills; I got them up as far as I could recollect.

On cross examination witness said: There was 54 window frames, worth \$7.50 each; 17 common window frames, worth \$4 each; the sash were made, and worth \$125; the heavy lumber was worth \$135; joists were worth \$735; joists got of Wheeler, in building, worth \$100; carpenter work was worth \$365; drayage \$25. I never took any measurement or made any estimate of the brick and stone work myself. In fixing my estimate at \$9500, I took the statements of Stevens in Sanfords office as to number of brick. The brick were then called 600 M, and I estimated them at \$10 per M in the wall, including lime and sand, and work. I received the same wages as other carpenters, and know the value of it. I know what masons charged for brick, lime, sand and work at that time. In my opinion, the money expended on that building was prudently and economically expended.

Here the defendant rested the case.

Thereupon the plaintiff recalled Z. W. Stevens, who testified as follows: Before these estimates were made, Sanford said to me that Huggins would be at his office, and wanted me to come up. I went to his office last Saturday night. Huggins was not there, but came in afterwards. I could only give it to him that night in the rough. I had not with me the papers by which I settled with the committee, and could not be accurate as to the amount of mason work. We made out the mason work. Huggins went out to hunt up bills of carpenter work, and I went home. I gave to him the number of brick then at 600 M; the estimate should have been 650 M.

On cross examination witness said: The entire bricks in the whole building was upwards of 680,000.

The testimony here closed, the foregoing being all the evidence given on said trial.

The court, at the request of the plaintiff, thereupon gave the following instructions:

The jury are instructed that if they believe from the evidence that the plaintiff is an incorporate body; that the

defendant on or about the 15th day of March, 1858, subscribed four hundred dollars in real estate, on the subscription paper read in evidence, on the condition therein specified; that the plaintiff before the commencement of this suit, demanded payment of defendant of said subscription or a deed of \$400 worth of land, and the same was refused, and that the plaintiff erected a building in Knoxville, Ill., in eighteen months next after defendant signed said subscription paper, reasonably worth \$10,000 as a seminary building, then the jury will find for the plaintiff.

If the jury believe from the evidence that the plaintiff had erected a building for the purpose that the subscription was given for in 18 months after the date of said subscription, worth \$10,000, and that the plaintiff is an incorporate body, and demanded before the commencement of this suit of the defendant payment of said subscription, and the same was refused, then the jury will find for the plaintiff, even though the building was not fully completed, provided the jury believe that the erection as to its exterior was substantially completed.

"Filed February 16th, 1864. J. H. LEWIS, Cl'k.

To the giving of each and every of said instructions the defendant by his counsel then and there duly objected and excepted.

The court, at the request of the defendant, thereupon gave the following instructions:

1st. The defendant's subscription is in law a conditional contract, and the plaintiff cannot recover without showing that the condition upon which the subscription depends has been fulfilled, and unless the jury find upon the evidence that the building contemplated by the subscription and worth \$10,000, was actually erected within 18 months from the making of the contract of subscription, they should find a verdict for the defendant.

3. The plaintiff cannot recover on the pleadings in this case unless it is proved that the plaintiff, as charged in the declaration, demanded a deed of real estate of the defendant or said real estate before the commencement of this suit, in

conformity to the terms of defendants subscription. A demand of payment in cash is not sufficient.

48 5. Under the pleadings in this case the plaintiff must be proved to be a corporation, and unless sufficient proof has been given to establish this fact, the jury should find for the defendant.

The court against the defendant's objections also modified defendant's instruction No. 2 asked by the defendant, as follows, viz: by inserting the words "as to its exterior."

2. It is not a compliance with the condition of the defendant's subscription that a building was commenced and in process of erection, and partially completed, and that, too, even at an expense of \$10,000, and that amount actually expended within the 18 months from the making of the subscription, but it must appear that the erection of the building was substantially completed (as to its exterior) within the 18 months, and that it was then worth \$10,000, and unless the jury so believe on the evidence they should find for the defendant

To each and every of which modifications of the court of the said instruction No. 2, as asked by the defendant then and there duly objected and excepted.

The counsel for the defendant thereupon requested the court to give the following instructions in behalf of the defendant:

49 4. The erection of the building contemplated by the defendant's subscription, must be construed in law to be something more than a bare erection of the walls of the building, not properly enclosed, and without roof, windows, floors or doors, but it must be substantially a completion of the building within 18 months from the making of the subscription, and it should be worth \$10,000 within that time, and unless the jury find such to be the facts on the evidence, they, should find for the defendant.

6. Unless the plaintiff was a corporation at the time of the the contract, the defendant is (not) entitled to a verdict.

7. The jury in determining the question whether the condition of the subscription has been fulfilled, and in determin-

Refused }

ing whether the building was worth \$10,000, cannot, in making up the estimate, add the value of sash or any articles on hand but not into the building within the 18 months from the making the subscription by the defendant.

"Filed Feb. 16, 1864. J. H. LEWIS, Cl'k.

Which the court severally refused to give. To which ruling of the court in refusing each separate instruction so refused by the court, the counsel for the defendant then and there duly, severally and separately excepted.

The jury found a verdict for the plaintiff.

Thereupon came the defendant and made his motion for a new trial, as follows :

KNOX CIRCUIT COURT, }
February Term, A. D. 1864 }

EWING FEMALE UNIVERSITY, }
vs. }
JOHN JOHNSTON.

And now comes the said defendant and moves for a new trial in this cause upon the following grounds :

1st. The court erred in sustaining the plaintiff's demurrer to defendant's second, third, fourth, fifth, sixth, seventh, eighth and tenth amended pleas, and in each decision in overruling each and every of said pleas.

2d. The court erred in admitting the certificate of incorporation offered by the plaintiff, recorded in the recorder's office of Knox county, in evidence.

3d. The court erred in admitting in evidence the certificate of incorporation, offered by the plaintiff, purporting to have been recorded in the Secretary of State's office, or the copy of the certificate from said Secretary of State's office.

4th. The court erred in admitting the evidence offered by the plaintiff and objected to by the defendant.

5th. The court erred in excluding the evidence offered by the defendant and excluded by the court.

6th. The court erred in refusing to give defendant's instructions numbered four, six and seven, and each and every of them.

7th. The court erred in modifying defendant's second instruction by the addition of the words "as to its exterior."

8th. The court erred in giving the several instructions asked by the plaintiff and given by the court, and in his decision as to each and every of them.

9th. The verdict of the jury is against law.

10th. The verdict of the jury is against the instructions of the court.

57/ 11th. The verdict of the jury is against the evidence.

T. G. FROST, Att'y for Def't.

Filed February 19th, 1864.

J. H. LEWIS, Clerk.

Which motion for a new trial was overruled by the court, to which ruling of the court in denying said motion the counsel for the defendant then and there duly excepted.

And because none of the said exceptions so offered and made to the opinion and decision of the said Circuit Judge, do appear upon the records of the said trial, thereupon on the prayer of the said defendant, by his counsel, the said Circuit Judge has to this bill of exceptions put his seal and subscribed his name according to the statute in such case made and provided.

C. B. LAWRENCE. [L.S.]

Filing of Clerk.

Appeal Bond approved by Clerk.

Clerk's certificate.

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ASSIGNMENT OF ERRORS.

1st. The court erred in sustaining the plaintiff's demurrer to defendant's 2d, 3d, 4th, 5th, 6th, 7th, 8th and 10th amended pleas, and in each decision in overruling each and every of said pleas.

2d. The court erred in admitting the certificate of incorporation offered by the plaintiff, recorded in the recorder's office of Knox county, in evidence.

3d. The court erred in admitting in evidence the certificate of incorporation offered by the plaintiff, purporting to have been recorded in the office of the Secretary of State, or the copy of the certificate from said Secretary of State's office.

4th. The court erred in admitting the evidence offered by the plaintiff and objected to by the defendant.

5th. The court erred in excluding the evidence offered by the defendant and excluded by the court.

6th. The court erred in refusing to give defendant's instructions numbered 4, 6, 7, and each and every of them.

54 7th. The court erred in modifying defendant's second instruction by the addition of the words "as to its exterior."

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11th. The verdict of the jury is against the evidence.

T. G. FROST, Att'y for Def't.

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John Johnson

AS

Emory Female University

Abstract

Gilead April

21. 1864

J. C. Carter M.D.