

No. 12832

Supreme Court of Illinois

People ex-rel.

vs.

County of Tazewell, et al.

9 9 53

The People ex, rel,
The Sheriff & County
Recorder

The County of Tazewell,
Ill.

9 P.D.

12832

1859

The People of the State
of Illinois upon the
Relation of the Peoria
& Aquana Rail Road
Company

as

The County of Lozeville
The Board of Supervisors
and the Chairman of said
Board of the County of Lozeville

In the Supreme
Court
at Ottawa
April Term
A.D. 1859

Petition for
Mandamus

The Defendants in the
above Entitled proceeding having been furnished
with a copy of the same and with the several
Exhibits therein referred to, hereby agree to waive
all Service of process, and enter their appear-
ance in said Cause at the next term of the
Supreme Court to be held at Ottawa, and that
the Cause shall stand for hearing at said term
in the same manner as though process had
been regularly issued and served on the
said Defendants, They the said Defendants

Reserving the right to plead, answer or
demur to the Petition as they may see
advised; and the filing of this paper shall
be deemed and taken as an appearance
as aforesaid in this proceeding.

Dec. 20. 1838.

James Roberts
att'y of Forrest County

To the Hon the Supreme Court
Of the State of Illinois April Term
A.D. 1859.

The People of the State of Illinois upon the Relation
~~the People~~ of the Peoria and Aquana
Rail Road Company — Respectfully
represented, — That by an act of the
General Assembly of the State of Illinois
Entitled "An act to incorporate the Peoria
and Aquana Rail Road Company," ap-
proved February 10. 1849 — and by an
act Entitled "An act to Amend an act
to incorporate the Peoria & Aquana Rail
Road Company Approved February 10th
1849," passed and approved on the
16th day of February A.D. 1851 — And
by another act Entitled "An act to
amend an act Entitled an act, to amend
an act to incorporate the Peoria and
Aquana Rail Road Company, approved
February 10th 1851," passed and approved
on the 22nd day of June A.D. 1852.

Said Petitioners were duly incorporated
and become a body corporate and
politic under the name style and
title of the Peoria & Aquana Rail
Road Company, with power and
authority to construct a Rail Road
from Aquana & Burlington, on the

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^{Sid}
Mississippi River through Pionia
and the County of Logan in said
State to the Indiana State line:

Your Relator further state that the
said Pionia & Ogema Rail Road Company
men, and still on in due form of law
Organized, and Existing as a Corporation
under and by virtue of the several
laws aforesaid; and that long previ-
ous to the 3rd day of August A.D.
1853, they had located and partly
constructed their said Road through
the County of Logan aforesaid.

And your Relator further shew that
long previous to the said 3rd day
of August A.D. 1853, to wit at the
General Election for State and County
Officers in said County and in the
State of Illinois for the year A.D.
1849, the said County of Logan
had by vote of the People of said
County in due form of law taken
and recorded, adopted the several
Township Organization laws of
this State, and by such vote had
made them binding and obligatory
upon the People of said County.
Which said township Organization
and the several laws of this State

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relating to the same & the rules of government under the same for County purposed, have ever since that time been, and still are in full force, in the said County of Logansport

And your Petitioners further state that at a meeting of the Board of Supervisors of said County held in due form of law on the 23rd day of August A.D., 1853. and at the several days hereinafter in the Record and proceedings of said Board mentioned, the following Petition, and Order of said Board of Supervisors were duly presented, made and Recorded by said Board - to wit:

State of Illinois }
Logansport County }

Board of Supervisors
Special Term August 23, 1853

Levine Allen Esqr offered the following Petition to wit -

To the Honorable Board of Supervisors of Logansport County, in Session - The Undersigned

4 being citizens and voters of your County would respectfully solicit your honorable body to Reconsider the resolution passed at your last Meeting Ordering a Vote of the County for or against Subscribing \$100,000. to the Stock of the Mississippi and Natchez Rail Road Co and instead thereof request that only \$75,000 be taken in the Miss. and Natchez R R Co and that the balance of \$25,000 be subscribed to the Capital of the Eastern extension of the Poria and Oronoke Rail Road Company and that the order for said election be so amended or a new one made so as to authorize the Clerk of your Board to issue the proper legal Notices for an election to be held on the 24th day of September 1853 at the usual places of holding Elections throughout the County ordering the electors thereof to vote for or against the two named subscriptions respectively; and we would further suggest that the payment of the Subscriptions be provided for by issuing of a like amount of bonds of this County bearing an annual interest of seven per Cent payable semi-annually at the American Exchange Bank New York having twenty years to run - Thinking these two Subscriptions would be more

5) Equal and just and satisfactory to the
Citizens of the County than the one for-
=mally proposed we hope your body will
=submit them to the People. When ever, one
entitled to vote will have a fair oppor-
=tunity to express his opinion for or
against them and as in duty bound
your Petitioners will ever pray &c
Thomas M. Gil T. King Jacob Glanzer
Robt Cr Dunham Eben Lindsey James
Haines Wm J. Stockpole M Lockhart
J Wagnander Dan Thompson T.B.
Kellogg Cr, W.B. Doolittle David Mack
Wm Cr Finney - Which petition was
on Motion received and laid on the table
untill two o'clock this afternoon

On Motion the Rail Road Petition was taken up
Lemuel Allen offered the following reso-
=lution to wit - Resolved that this board
order an election and the same is hereby
ordered to be held on the 24th day of
September next at the usual places
of holding elections throughout the County
of Lozessell requiring the Electors thereof
on that day to vote for or against subscrip-
=tion by the County of Lozessell of \$100,000
as follows \$75,000. of said Subscription

6) to be made to the Capital stock of the Mississippi and Natchez Rail Road Company and \$25,000. There to be made to the Capital stock of the Eastern extension of the Florida and Ocala Rail Road Company. Said subscription of \$100,000 to be paid by same amount of Bonds of the County of Tazewell to be issued bearing seven per cent interest per annum payable semi-annually at the American Exchange Bank in New York the principal of said bonds to be payable twenty years after their date and that the clerk of this Board be ordered to procure a sufficient number of Printed Notices of said Election fully specifying the true object and condition of the vote to be taken thereat as is required by Statute authorizing said Election and that he furnish each Supervisor of this County with three Copies of said Notices to be posted up in their respective townships as required by Law and that the resolution for an election passed by this Board at their last Meeting be and the same is hereby rescinded - The eyes and Mays being called said resolution

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was declared to be adopted

With Talbot Clerk

State of Illinois }
 Tazewell County } ss

Board of Supervisors

Special Term Sept 26 AD 1853

Leanne Olsen offered the following pa-
 -ambs and Resolution:

Whereas at the
 Meeting of the board of Supervisors of
 Tazewell County held at the Court house
 in Pekin on the 23rd day of August AD
 1853 an election to vote for or against
 Subscription by the County of \$100,000.
 to be appropriated as follows \$75,000.
 To the Capital stock of the Mississippi and
 Wabash Rail Road Company and \$25,000.
 To the Capital stock of the Eastern extension
 of the Peoria and Mankato Rail Road
 Company was ordered by them to be held on
 the 24th day of September 1853 at the
 usual places of voting in said County
 and notice of said election having
 been given as required by the act of the
 Legislature authorizing the same and

8)

the Election being held in pursuance thereof on said day and the votes for and against said subscription cast thereat being counted and returned by the Judges and Clerks of Elections as in other Cases and a Majority of the votes of said County taking as a standard the Number of votes thrown at the last General election previous to this vote upon the Question of subscription under the act authorizing such vote for County Officers to wit Eighteen hundred and twenty four (1824) being found to be in favor of said subscription do voted upon and seven hundred and ten (710) against subscription the whole Number of votes at last November election being two thousand three hundred and eighteen (2318) which Preamble and Resolution was on Motion adopted.

State of Illinois }
 Sangamon County } ss

I John Gidley Clerk
 of the County Court in and for said
 County do Certify that the foregoing is a
 true and correct copy of the proceedings
 of the Board of Supervisors in relation to

9 the Election for and against subscrip-
-tion to the stock of the M & M and
Eastern Extension of the Point
and Ogishwa Rail Roads
as appears of record in my
office -

Witness John Gridley Clerk of the
County Court & Seal thereof at Pekin
Sept 7th 1858

John Gridley
Clerk

As by a duly Certified Copy of the
said Petition, Ordinal and records of
said boards will fully and at large
appear; Said Copies are hereto attach-
ed Marked "A" and made part
of this Petition.

And Your Petitioner for this State
thats said Petition was in due form
of law presented to and acted upon
by the said Board of Supervisors
of Tazewell County, that an Election
was in fact in due form of law or-
dained, and published, and that the
same was regularly and legally held
and conducted, and resulted in
manner and form and at the time
stated and set forth in the said

10 Records, orders and proceedings of
the said Board of Supervisors herein
before recited

And Your Petitioners further
state and shew to the Court, that
it thereupon became lost and still
is the duty of the said Board of su-
pervisors of said County - The Chair-
man of said Board, and the said
County of Loganville, to subscribe the
sum of Twenty Five thousand dollars
or two hundred and fifty shares to
the Capital stock of the Eastern Ex-
tension of the Plover & Quaker Rail
Road Company, and to issue the
bonds of said County in payment
of said Subscription, pursuant to the
Petition, votes orders and proceedings
of said Board of Supervisors and
of the People of the said County of Loganville
aforesaid.

And Your Petitioners further state
that heretofore, although often and repeatedly
requested so to do, the said Board of Super-
visors of Loganville County, the Chairman of
the said Board, and the said County of
Loganville have refused to subscribe the
said sum of Twenty Five thousand dollars

11 Or two hundred and fifty Shares to the Capital Stock of the Eastern Extension of the said Peoria & Aquana Rail Road Company, or to issue any bonds in payment of the same, as they were in duty bound to do.

And Your Petitioners for this State, that at a regular meeting of the Board of Supervisors of said County of Sevier held, and being in Session on the 13th day of September A.D. 1838, at Peoria in said County, Your Petitioners presented to and filed with the said Board of Supervisors, their Petition in writing praying them among other things that the said Board would for and on the behalf of said County, subscribe the said sum of Twenty five thousand dollars to the said Capital Stock of the said Peoria & Aquana Rail Road Company, and issue their bonds for the same sum in payment thereof to said Company, according to the terms and conditions of the vote of the People aforesaid, and the requirements of law, and the records and Orders of the said Board of Supervisors of said County; a copy of which said Petition marked "H H" is hereto attached and made part of this Petition.

12 And your Petitioners further state that ~~on~~ ^{and at the} the same day ~~and~~ place last aforesaid and at the time aforesaid They presented to said Board of Supervisors then & there in session, the original Stock Subscription Book, to the Eastern Extension of the said Ponia and Aguana Rail Road Company, and requested said Board of Supervisors to cause their said Subscription to be made in the same; which said Book your Petitioners have now in court and are ready to produce for the inspection of said Court or the defendants if desired.

And your Petitioners further state, that at the same time and place last aforesaid, they tendered and offered to deliver to the said Board of Supervisors for the Benefit of said County a Certificate of two hundred and fifty Shares of Stock at one hundred dollars per Share of the said Eastern Extension of said Ponia and Aguana Rail Road Company, which the said Board of Supervisors then and there refused to accept or receive. A copy of which said Certificate is hereto attached marked "H" and made part of this Petition. The original your Petitioners will produce upon the hearing of this cause.

~~and certain facts regarding the said~~

Your Petitioner further state that
On the 14th day of September A.D. 1858
and, and during the same Session of
the Board of Supervisors of said County
last aforesaid, the said Board of Super-
visors, by a Report of a Committee
to whom the Petition aforesaid was
referred, and the resolution of the
said Board thereon, then and there
rejected the prayer of the said Petition
and decided that they said Board
nor said County would subscribe
to the Capital Stock of said Road
as aforesaid in any manner howsoever
and the said County of Logansport and
the said Board of Supervisors of said
County, then and there wholly and absolutely
refused to subscribe any Stock ~~to~~ or
issue any Bonds for, the payment of
the same to the said Iowa & Logansport Rail
Road Company, as in law, Justice &
equity they were bound to do, a copy
of which said Report with the action of said
board thereon is hereto attached & made part hereof
marked "C". Whereupon your Petitioner then
and there on the said 14th day of
September, A.D. 1858. immediately gave

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Notice to the Said Board of Supervisors then still in Session, that they would on the 3rd Monday of April next or as soon thereafter as Council can be held, apply to this Court for a Mandamus, to compel the said Board of Supervisors of said County, the Chairman of said Board and the County of Tazewell to subscribe said Stock, and to issue bonds in payment of the same pursuant to law and in accordance with the Petition, Orders recited and proceedings of said County, and the Board of Supervisors of said County before recited. A Copy of which said Notice marked "II" is hereto attached and made part of this Petition.

In consideration of the Premises your Petitioners pray, that this honorable Court will issue a writ of Mandamus directing, requiring and compelling the ^{Board of} Supervisors of said County of Tazewell; the Chairman of the said Board of Supervisors and the County of Tazewell to subscribe Two hundred and Fifty Shares at one hundred dollars per share to the Capital Stock of the Eastern Extension of the

15. Provia and Aquaka Rail Road Com-
pany, and directing, requiring and com-
pelling the ^{Board of} Supervisors of said County of
Tazewell, the chairman of the said Board of
Supervisors, and the County of Tazewell—
~~to~~ to issue the bonds of said County
in payment of said subscription, in due
form of law; bearing date on the 26th day
of September A.D. 1853 with Seven per cent
interest per annum, payable Semi Annually
at the American Exchange Bank in New-
York— Payable twenty years after their date;
in conformity with the Petition, votes of the
People of said County & the Records and pro-
ceedings of the said Board of Supervisors
of the said County of Tazewell.— and
Your Petitioners as in duty bound will
say &c.

M. Shuple
Solicitor for Petitioners

The Provia Aquaka
Rail Road Company
by their Solicitor
M. Shuple

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State of Illinois
Peoria County

William H. Cuyler who is a
party in interest ⁱⁿ one of the ~~parties~~ of Cuyler & Co
Lessee of the Eastern Extension of the Peoria & R.R. being duly
Sworn Says, the foregoing Petition Subscribed
by said Peoria & Aquila Rail Road Company
is true to the best of his knowledge infor-
mation and belief and further saith not.
Sworn to before me
this 20 December

A.D. 1858.

Wm. H. Cuyler

Witness my hand
and Official Seal
at Peoria Ill. this
20th December A.D.
1858,

Bernard Bailey JP

State of Illinois } Board of Supervisors
Pazewell County } Special Term August 28th 1855

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Samuel Allen Esq. offers the following
Petition To wit

To The Honorable Board of Super-
visors of Pazewell County in Session

The undersigned
being citizens and Voters of your County would
respectfully solicit your Honorable body to rescind
the resolution passed at your last meeting, ordered
a vote of the County for or against subscribing \$100000
to the Stock of the Mississippi and Wabash Rail Road
Co and instead thereof request that only \$75000 be taken
in the Miss and Wabash R.R Co and that the balance
of \$25000 be subscribed to the Capital of the Eastern
Extension of the Peoria and Ogawaqua Rail Road Co
and that the order for said Election be so amen-
ded or a new one made so as to authorize the Clerk
of your Board to issue the proper legal notices for an
Election to be held on the 24th day of September 1855
at the usual places of holding Elections throughout the
County ordering the Electors thereof to vote for or
against the two named Subscriptions respectively
And we would further suggest that the payment of
the Subscriptions be provided for by issuing of a like
amount of Bonds of this County bearing an annual
interest of Seven per cent payable semiannually
at The American Exchange Bank New York having
20 Years to run Thinking these two Subscriptions

Exhibit "A"

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would be more equal & just and satisfactory to the
 Citizens of this County than the one formerly proposed
 we hope your body will submit them to the people
 when every one entitled to vote will have a fair oppor-
 tunity to express his opinion for or against them and
 as in duty bound your Petitioners will ever pray &c
 Thomas & Gill & King Jacob Clauser Robt &
 Dunham John Middle James & Grimes Wm D Stack-
 pole M Parkberry J Waginseller Paul Thompson
 B Kellogg & W B Doolittle David Mark Wm A
 Driney

Which petition was on motion received and
 laid on the Table until 2 O'clock this afternoon

On motion The Rail Road Petition was taken up
 Lemuel Allen offered the following resolution
 to wit. Resolved that this Board order an Election
 and the same is hereby ordered to be held on the 24th
 day of September next at the usual places of holding
 Elections throughout the County of Tazewell requiring
 the Electors thereof on that day to vote for or against
 Subscription by the County of Tazewell of \$100,000 as
 follows \$75,000 of said Subscription to be made to the
 Capital Stock of the Mississippi and Wabash Rail
 Road Company and \$25,000 thereof to be made to the
 Capital Stock of the Eastern Extension of the Peoria
 and Aquawake Rail Road Company said sub-
 scription of \$100,000 to be paid by same amount of

Exhibitor 11

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Bonds of The County of Pajewell To be issued bearing seven per cent interest per annum payable semi annually at The American Exchange Bank in New York The principal of said Bonds To be payable Twenty years after their date And That the clerk of This Board be Ordered to procure a sufficient number of printed Notices of said Election fully specifying the true object and condition of the vote to be taken thereat as is required by Statute authorizing said Election and that he furnish each Supervisor of this County Three copies of said notices to be posted up in their respective Towns as required by Law and That the Resolution for an Election passed by This Board at their last meeting be and the same is hereby rescinded

The Ayes and Nays being called said Resolution was declared to be adopted

Leah Tabbot Clk

"Exhibit A"

State of Illinois
Pajewell County

Board of Supervisors

Special Term Sept 24 AD 1853

Samuel Allen offers the following Preamble and Resolution

Whereas at the meeting of the Board of Supervisors of Pajewell County held at the Court House in Pekin on the 23d day of August AD 1853 an Election to vote for or against Subscription by the County of \$100,000 to be appropriated as follows

Exhibit A

20 \$75,000 to the Capital Stock of the Mississippi and
Wabash Rail Road Company and \$25,000 to the Capital
Stock of the Eastern Extension of the Peoria and
Ogawka Rail Road Co was ordered by them to be
held on the 24th day of September 1853 at the usual
places of Voting in said County and Notice of said
Election having been given as required by the act of
the Legislature authorizing the same and the Election
being held in pursuance thereof on said day and the
votes for and against said subscription cast thereat
being counted and returned by the Judges and Clerks
of Elections as in other cases and a majority of the
voters of said county taking as a standard the number
of votes thrown at the last general Election previous to
this vote upon the question of Subscription under the act
authorizing such vote for County Officers to wit Eighteen
hundred and Twenty four (1824) being found to be in favor of
said Subscription so voted upon and seven hundred
and Ten (710) against Subscription The whole number of
votes at last November Election being Two Thousand
Three hundred and Eighteen (2318)

Which Preamble and Resolution was on motion adopted

State of Illinois

Jaywell County ss John Quilley clerk of the County Court in
and for said county do certify that the foregoing
is a true and correct copy of the proceedings of the Board
of Supervisors in relation to the Election for and against
Subscription to the Stock of the M & W and Eastern Extension
of the Peoria and Ogawka Rail Roads as appears of
Record in my office Witness John Quilley clerk of the County Court

11 State of Illinois } Board of Supervisors
22 Jayville County } Special Term August 23rd 1853

Leamur Allen Esqr. offers the following petition
To wit:

To The Honorable Board of Supervisors of
Jayville County in session

The undersigned
being citizens and voters of your County would
respectfully solicit your honorable body to
Rescind the resolution passed at your last
Meeting ordering a vote of the County for or
against subscribing \$100,000. to the stock of the
Missouri and Holbrook Rail Road Company and
instead thereof request that only \$75,000. in the
Missouri and Holbrook R.R. Co. and that the balance
of \$25,000. be subscribed to the Capital of the
eastern Extension of the Peoria and Ogwanke
Rail Road Co. and that the order for said
election be so amended or a new one
made so as to authorize the Clerk of your
Board to issue the proper Legal Notices
for an election to be held on the 24th day
of September 1853 at the usual place of
holding Elections throughout the County
ordering the electors thereof to vote for or against
the two named subscriptions respectively.
And we would further suggest that the

Exhibit "H" #11

Exhibit #

21. To the Hon the Board of Supervisors
of Sevier County Now in Session
Whereas, at a Session of the Board
of Supervisors of Said County Com-
menced on the 23rd day of August
A.D. 1853, an order was made
and passed by Said Board Sub-
stantially as follows-

Q3

Exhibit III

payment of the subscriptions be provided for by issuing of a like amount of Bonds of this County bearing an annual interest of seven per cent payable Semi annually, at the American Exchange Bank New York having twenty years to run. Thinking then two subscriptions would be more equal and just and satisfactory to the Citizens of the County than the one formerly proposed we hope your body will submit them to the people when every one entitled to vote will have a fair opportunity to Express his opinion for or against them and as in duty bound your petitioners will ever pray to -

Thomas H. Gill T King Jacob Clauser Robt A. Durham John Gridley James Waines Wm. J. Stackpole M. Tackaberry, J. Hogenmiller Danl. Thompson B. Kellogg Jr W.B. Doblittle David Mark William A. Roney

Which petition was on. Motion received and laid on the table until 2. O'clock this afternoon

On Motion the Rail Road petition was taken up: Lemuel Allen offered the following resolution to wit: - Resolved that the board order an election; and the same is hereby ordered to be held on the 24th day of September next at the usual places of holding

Exhibit III

Q4

Elections Throughout the County of Tazewell
requiring the Electors thereof on that day to vote
for or against subscription by the County of Tazewell
of \$100,000. as follows \$75,000. of said sub-
scription to be made to the Capital stock of the
Mississippi and Holston Rail Road Company
and \$25,000. thereof to be made to the Capital
stock of the Eastern Extension of the Roanoke
and Cygnus Rail Road Company. Said
Subscription of \$100,000. to be paid by same
amount of Bonds ~~of \$100,000~~ of the County of Tazewell
to be issued bearing seven per cent interest per
annum payable semi-annually at the Amer-
ican Exchange Bank in New York the principle
of said bonds to be payable twenty years after
their date and that the Clerk of this Board be and
he procure a sufficient number of printed notices
of said Election fully specifying the time
object and condition of the vote to be taken
thereon as is required by statute authorizing
said Election and that to furnish each
Supervisor of this County three copies of said
notice to be posted up in their respective
towns as required by law and that the
Resolution for an election passed by the Board
at their last meeting be and the same is hereby
renewed. The ayes and Nays being called said
Resolution was declared to be adopted.

Edith S. Sargent

Exhibit

25 And whereas also at the ~~same~~ Session
of the Board of Supervisors of said County
held at a Special Term on the 26th day of
September A.D. 1853, an order was made and
passed by said Board Substantially as follows

" State of Illinois } Board of Supervisors
Tazewell County } ss Special Term Sept 26. 1853

Levin Allen offers the following preamble
and resolution:

Whereas at the Meeting of the
Board of Supervisors of Tazewell County held
at the Court House in Pekin on the 23rd day of
August A.D. 1853 an Election to vote for or
against Subscription by the County of \$100000.
to be appropriated as follows; \$75000 to the
Capital Stock of the Mississippi and Molask
Rail Road Company, and \$25000. to the
Capital Stock of the Eastern Extension of the
Pavia and Ogawka Rail Road Company was
ordered by them to be held on the 24th day of
September 1853 at the usual places of voting
in said County, and Notice of said Election
having been given as required by the act of
the Legislature authorizing the same and
the Election being held in pursuance thereof
on said day and the votes for and against
said Subscription cast thereat being
counted and returned by the Judges and clerks

Exhibit

26.

of Election as in other Cases and the Majority
of the voters of said County taking as a standard
the Number of votes thrown at the last general
election previous to this vote upon the question
of Subscription Under the act authorizing such
vote for County officers To Wit Eighteen hundred
and twenty four ¹⁸²⁴ being found to be in favor
of said Subscription so voted upon and
seven hundred and ten (710) against Subscription
the whole Number of votes at last November
Election being two thousand three hundred
and eighteen (2318)

Which Preamble and Resolution herein motion
adopted

State of Illinois
Tazewell County. I John Gidley Clerk
of the County Court in and for said County do
Certify that the foregoing is a true and correct
Copy of the proceedings of the Board of Supervisors
in relation to the election for and against sub-
scription to the stock of the M & W and Eastern
extension of the Iowa and Cyauauka Rail
Roads; as appears of record in my
office - Witness John Gidley Clerk
of the County Court and Seal
thereof at Pekin Sept 7. 1858



John Gidley Clerk

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And whereas in truth and in fact
the said Election was held, the votes
cast, returned and counted in
due form of law in favor of a subscrip-
tion of twenty five thousand ^{dollars} \$25,000
on the part of the said County of
Sagewill to the Capital Stock of the
Eastern Extension of the Plover and
Ogona Rail Road Company, in all
due form of law and according
to statements contained in the said
Order before recited - And whereas
upon said Election being so had and
held, and the votes so returned and
canvassed, it became and was
the duty of the Board of Supervisors
to subscribe the said sum of twenty
five thousand dollars to the Capital
Stock of the said Plover and Ogona
Rail Road Company, and to issue
the Bonds of the County in payment
for the same bearing an interest in
trust of seven per Cent Payable Semi-
Annually in the City of New York
To be come due and payable at the
End of twenty years from their
date, in accordance with the order
for an Election and the vote of the

Exhibit F

28

People of Said County had taken &
 returned thereon, which the Said
 Boards of Supervisors had hitherto
 failed and neglected to do; Now
 therefore the Said Plover & Quaker
 Rail Road Company do hereby re-
 spectfully request and demand
 of the Said Boards of Supervisors
 of Tazewell County now in Session
 that the Said Board do now for
 and on behalf of Said County, ~~and~~
 subscribe the Said Sum of Twenty
 Five thousand dollars to the capi-
 tal stock of the Said Plover & Quaker
 Rail Road Company and issue their
 Bonds for the same sum in pay-
 ment therefor, to Said Company ac-
 cording to the terms and conditions
 of the Note of the People aforesaid
 and the requirements of law and
 the Orders of Said Boards of Super-
 visors before recited - And the
 Said Plover & Quaker Rail Road
 Company herewith tender to Said
 Board the Original Stock subscrip-
 tion Book of Said Company, for the
 purpose of Receiving Said Subscrip-

Exhibit II

Exhibit #

29 tion, and also herewith tender and
offer to deliver to said Board of Su-
pervisors, or to any agent they may
appoint to receive the same a Certif-
icate of two hundred and fifty
shares of stock in said Ponca
& Aquala Rail Road Company
for the benefit and use of the said
County of Tazewell.

The Ponca & Aquala
Sept. 13th 1858 Rail Road Company
By A. H. Purple
their atty.

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To the Hon Board of Supervisors
of the County of Logan now in Session

You are notified that on the
first Tuesday after the third Monday
in April next, or as soon thereafter
as Counsel can be heard, Application
will be made by the undersigned to the
Supreme Court of the State of Illinois
at their Session then to be held at Al-
ton in the County of Jackson in said
State for a Mandamus to compel the
Board of Supervisors of said County
the chairman of said Board and
the County of Logan to subscribe
two hundred and fifty shares to the
Capital Stock of the Peoria and
Oquoka Rail Road Company, and
to issue the Bonds of said County
in payment of said Subscription
pursuant to the Petition of the un-
dersigned, and the orders and Resolutions
of this board therein contained,
which was on yesterday presented
to this board.

The Peoria & Oquoka Rail
Road Company
by *W. H. Phelps*
their atty.

Sept 14. 1858

State of Illinois
Jazwell County

Board of Supervisors Sep^r Term
September 13th A.D. 1858

31

At the Public Esq Attorney for the Peoria and
Aquanaka Eastern Extension Rail Road Company presen
ted a Petition from said Company to subscribe for stock
of \$25000 voted for by the citizens of Jazwell County
which Petition was received and read and on motion
of Mr Maus was referred to the committee on finance

September 14th 1858

The Committee on Finance to
whom was referred the Petition of N McPurple Attorney
for the Eastern Extension of the Peoria and Aquanaka
R.R Co made a Report adverse to the prayer of the
Petitioners which was received read and adopted
as follows

The Committee on finance to whom was refer
ed the Petition and sundry documents of the Peoria
and Aquanaka Rail Road company have had the
Subject under consideration and have been constrain
ed to Report unfavorable to the prayer of Petitioners

W S Maus

J R Kellogg

Henry Pratt

J L Adams

State of Illinois
Jazwell County

I John Grilley clerk of the County
Court in and for said County do hereby
certify that the foregoing is a true and correct copy

of the action of the Board of Supervisors upon the
Petition of the Peoria and Oquawka Eastern Extension
Rail Road company as appears of Record in my
office

In Testimony Whereof I have hereunto
my hand and affixed the Seal of said
Court at Peoria this 20th day of Decem-
ber AD 1858

John Grilleby Clerk

N^o. 485

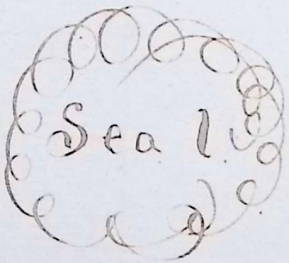
250 Shares

Peoria & Ogawaika Rail Road Company

32 State of Illinois

Be it Known that Tazewell County of — is entitled to Two hundred fifty Shares in the Capital Stock of the Peoria & Ogawaika Rail Road Co on which the full sum of one hundred Dollars per share has been paid. Transferable by Said Tazewell County, personally or by Attorney —

Witness the signature of the President and Secretary and the Seal of the Corporation at Peoria this 3^d day of Sept 1858.



Chas. H. Secor
President

Henry Nolte
Secretary

Exhibit - 977
Shares \$100 each

9

The People ex rel.

v.

The County of Faywell

Filed April 12 1859

Leland
clerk

The People of the State
of Illinois upon the
Petition of the Peoria
& Quaker Rail Road
Company

^m
The County of Peoria
Others

Petition for
Mandamus

And the Petitors by way
of Amendment to their said Petition
by leave of the Court and by consent
of the Defendants Counsel, State, that
pursuant to the said Application made
to said Board of Supervisors as stated
in the Original Petition filed in this
proceeding, to wit on the 7th day of March
A.D. 1854. the Petitors made an appli-
cation to said Board of Supervisors
requesting said Board to subscribe
to the Stock of said Road, which
said Application ~~and the order of~~
~~the said Board thereon~~ is as follows
A Certified Copy whereof ~~is~~ ^{is} the
Order of said board thereon is hereto
attached marked "C", and made
part of this Petition

H. G. Gaylor
for Petitioner

State of Illinois Board of Supervisors
Pazwell County Es. Special Term March 6th 1854

The Directors of The Eastern Extension of the Peoria and Oquawka Rail Road Company made application to The Board of Supervisors to subscribe \$25,000 to the Capital Stock of said Company. The further consideration of which was laid on the table till to Morrow Morning

Tuesday March 7th AD 1854

Mark Aikin in behalf of the Attorney for The Eastern Extension of the Peoria & Oquawka Rail Road Company presented to the Board the Subscription Book of said Company and afterwards presented the following notice to wit.

To The Board of Supervisors of Pazwell County in The State of Illinois a majority of the voters of said Pazwell County having voted in favor of subscribing Twenty five thousand dollars to the Capital Stock of the Peoria and Oquawka Railroad Company to be applied in the construction of the Eastern Extension of the said Peoria and Oquawka Railroad You are now hereby notified and requested by the said Railroad company to make said Subscription in the book of said company now presented to your board for that purpose. You are also notified that five per centum upon said Subscription is due to said company at the time of

Making said Subscription

You are also notified that by reason of apportionment already made on the capital stock of said company belonging to the Eastern Extension of said Railroad there is now due upon all such capital stock (exclusive of said five per cent) thirty five per centum thereon

You are therefore hereby notified to pay the apportionment so made and due from said Dagwell County to the said company on the said subscription of Twenty five Thousand dollars



In Witness Whereof Rudolphus Rouse President of said company has hereto subscribed his name and Washington Cockle Secretary of said company has subscribed his name and affixed the Seal of said company this 6th day of March A.D. 1854

Washington Cockle
Scty P & O R R Co"

Rudolphus Rouse Presd
P & O R R Co"

Both of which was on motion laid on the Table

W W Croffman Chm

State of Illinois

Pageville County

I John Gridley Clerk of the County
Court in and for said County do hereby
certify that the foregoing instrument of writing is a
full true and correct copy of an application of the Peoria
and Oquawka Railroad Company for the subscription of
twenty five thousand dollars by said County as appears
of Record in my office

In Testimony Whereof I have hereto set my
hand and affixed the seal of said Court
at Pekin this 16th day of April AD 1859

John Gridley Clerk

Filed April 20, 1859
L. A. Daniel
Clerk

1 The People of the State
of Illinois ex Re
The Peoria & Aquana
Rail Road Company

vs
The County of Jozevill
and others.

In the Supreme Court
April Term A.D. 1859

Application for a
Mandamus.

Argument of Relator:

There is really no issue of fact in this case,
so much of the return of the Respondents as
is traversed is shown by the Law and by
the record to be untrue.

It is stated in the return that the Relator
is not the legal Owner of the Road and
that the same has been mortgaged for more
than its value.

There is no Evidence to support either
proposition - The Court gives the Company
the title to the Road, and a mortgage or
deed of trust of whatever amount does
not divest such title.

It is immaterial however whether
the Company had or had not parted with
its title - The Proceeding must be in the
name of the Company with which the contract
or vote for Subscription was made - given

And if other parties either purchased, assigned or mortgaged should happen to be entitled to the benefit of the Subscription - This would be a question only between them and the Company in which the defendants have no interest and about which they have no right to complain

It is said in the Return that more than five years had elapsed between the time of taking the vote for the Subscription and the Application for such Subscription

It is shown by the Record that this is a mistake - The vote was taken on the 26th Sept 1853. and this Application was made on the 14th Sept 1858, twelve days before the expiration of five years.

The Record also shows that a similar Application was made on the 7th day of March A.D. 1854

But even if five years had elapsed I know of no Statute of limitations, nor no Analogous to Statutes of Limitations which can operate as a bar to the performance of an official duty - So far as time is concerned, Courts in some cases and under some circumstances will exercise a discretion in allowing or refusing a Mandamus.

3 But never in a case like this— none of the authorities cited by the opposing counsel bear upon a question of this sort.

In this case the General Assembly had passed a valid, Constitutional law authorizing the People of a County to determine by a vote whether the County should subscribe to the Stock of a projected Rail Road.

That vote had been taken, and it was determined by a decided Majority that the Subscription now demanded by the Relators should be made.

The law is imperative— It declares in express terms that if the voters decide in favor of the Subscription, it shall be made. People, Stat. Vol 2. p 1073. S. 4

No discretion is left to the Judges or Supervisors— The People have decided. The proceeding to make the Subscription is a simple Ministerial duty.

Besides it is the plain right of the Company and of the residue of the Stockholders and Subscribers, that the County should subscribe according to the vote.

They subscribe to the same Stock upon the credit of the vote taken and in full faith and confidence that they have or will have other Responsible Stock holders

And partners, who are to share with them
in the losses or profits of the enterprise

It is the Vote of the People and not the
mere mechanical acts of Subscription which
creates the liability on the part of the County
and makes it a Stock holder in the Company

Without the vote, no Stock can be taken
When the vote is taken, and a decision
made in favor of Subscription, it is a
Mandate, which the Officers of the County
must obey

Vox Populi — Vox Dei —

It is but a lame argument, to say that the
People of the County are not insisting upon
this Subscription — It might with equal
propriety be urged, that the maker of a
promissory note is not bound to pay it,
because he, does not insist upon it

The vote is a contract that the
County will Subscribe to the Stock of
the Road — The Company might be com-
pelled to receive the Subscription and
issue the Stock.

5. The Second point made by the relator is that the vote is void because the interest on the bond is required to be paid in the city of New York - And the Council think this point is settled by the decision in the case of Pittymon vs the Supervisors of Gazavill County N. H. 406. I agree with him.

It is so settled and in our favor.

The Third point I have already shown has no foundation in fact.

The Fourth is that it is in the discretion of the Respondents, notwithstanding the vote whether the bonds should or should not be issued.

This is a strange proposition. What was the law made for? Was it to let the People determine whether the Stock should be subscribed, or was it to allow them to determine whether the County in its discretion, contrary to their vote and advice should do as it pleased upon the subject.

If such was the object of the law the General Assembly might have saved much time trouble and expense and

Q Same of the People, & money by leaving the whole matter in the discretion of the Judges or Supervisors, without reference to the opinion or decision of the People.

Possibly the Board of Supervisors might exercise a discretion whether they would or not Order an Election — But the exercise of their discretion must end there.

If it is matter of discretion whether after the vote is taken the County will subscribe to the Stock — by the same rule of reasoning it might in its discretion decide not to issue the Bonds, or pay the interest or principal after the bonds had been issued.

The law, as before shown not only permits, but commands that the County shall subscribe and shall pay.

The Fifth point made by the return is too exquisitely technical to deserve consideration — The Vote was to subscribe \$25,000 to the Costum Extension — of the "Ponia and Aquaka Rail Road Company."

It is clear that the vote was taken for the benefit of the Ponia & Aquaka Rail Road Company, but to be applied to the

7 Construction of the Road in a particular locality most beneficial to the inhabitants of the County — The Eastern Extension was authorized by the laws referred to in the Petition — The Stock and Capital and Subscriptions to this portion of the road were kept entirely separate and distinct from that subscribed to the Construction of the Original Road from Plover to Ogden & Burlington — and for this reason this portion of the road to which this Stock was to be subscribed was denominated, the "Eastern Extension,"

I do not see the necessity of noticing the 6th 7th 8th & 9th Points made by the Petition.

What are they?

That the road has been mortgaged

That the Company is insolvent

That the vote does not comply with the Statute

That it does not allow the Supervisors to determine whether they will pay in bonds or bond money

8. For the present I will leave all these points to settle themselves and proceed to the consideration of the First point made in the Return -

That the law is unconstitutional not being embraced within the scope of the Governor's proclamation

If this be so, then this Court and the General Assembly have all the time since the passage of this law, been committing grave and irreparable errors; and all the subscriptions by towns and cities to the stocks of any and all Rail Roads & incorporations are wholly void, and cannot be enforced.

This Court has in various cases, and applications recognized the constitutionality of the law, and the General Assembly by passing a Supplement to it on the 1st March 1854 has treated it as valid

Pu. & Stat. Vol 2. 1076

The act itself is entitled "An act Supplemental to an act entitled "An act to provide for a general system of Rail Road incorporations," Pu. & Stat, p 1072. 1060

The Original law was approved on the 5th and the Supplement on the 6th Nov. 1849

Both were passing and under the consideration of the General Assembly at the same time - They must be taken and construed together as being parts of the same act.

Would any sensible man have thought of questioning the Constitutionality of the law, on account of its not being embraced within the scope of the proclamation provided both laws had been incorporated in the One act; It is precisely the same thing as if they were.

But if it stood alone even, the law is strictly within the provision of the Proclamation.

The terms of the proclamation are "To take such action as the General Assembly may deem best for the Public interest upon the 6th Sec. of the 10th article of the Constitution which provides, &c."

The General Assembly is not called upon by this Proclamation to pass any General law to encourage internal improvements, but to "take such action as it may deem best for the Public interest upon the Subject." This allows the General Assembly to exercise their discretion in the matter, and to pass any

10 General law which would tend to the encouragement of internal improvements
If the ~~Respondents~~^{Respondents} are successful upon this point they will be entitled to a Patent as for a useful invention.

The Remaining point is the Scutle

That the vote was taken for a Subscription to two Companies at the same time, and that the voters were necessarily required to vote for or against both at the same time - That they could not vote for the One Subscription and against the Other

This is not true in fact.

There is nothing in the Order which prohibited them from voting as they pleased - For or against Either proposition

The Order is

"to vote for or against a Subscription by the County of Leeward of \$100,000 as follows \$75,000 of said Subscription to be made to the Capital Stock of the Mississippi and Natchez Rail Road Company & \$25,000 thereof to be made to the Capital Stock of the Eastern Extension of the Pavia & Ogden R.R. Co.,
p. 6. Record

11 But Suppose it be true that the Order Compelled them to vote for or against both— Is there any thing in the law to prohibit the County from making such an order, provided the amount voted for does not exceed the limits prescribed by law— Where is it? What is there in such a proceeding that is immoral impolitic or unconstitutional? It is only in the nature of an argument held out to one portion of the People of the County to another portion of the same People in different locations to induce them to accomplish, or aid in the accomplishment of the favorite measure of each.

It might with equal force and propriety be contended that if two men who candidates at an Election one for Sheriff and another for the Legislature that if they should agree that they would persuade all their friends to vote for each other, for the purpose of ensuring the Election of both, that the Election would be void.

912 Suppose the vote for each of these
Subscriptions had been taken separate
and on different days — and the
friends of each projected enterprise
had agreed in writing "If you will
vote for my measure to day we will
vote for yours to morrow" and they
had actually carried out and per-
formed the Contract, would the
vote have been void? What had this
Court to do, with the reasons and in-
fluences which operated upon the
minds of the voter to induce him to
vote in a particular way?

And really all that this argument
amounts to is, that if propositions to
vote for Subscriptions to Rail Roads
are Separately Submitted, the voters
might vote differently from what they
would if Submitted together —

13 In One part of the Shuttlemans argument he complains that by the Vote the County is deprived of the Right which he says is given by the Statute to pay in Bond issued by the County, or at their Option to borrow money to pay the Subscription

He forgets the requisitions of the 4th Sec. of the act. (Pupl., Stat. p. 1073.) which require the Notice of the Election to State whether Bonds shall be issued or the money be borrowed &c—

Had it been any other way the Vote would probably have been a nullity.

The Defence in this case is a most ungracious inequitable and impudent attempt to evade the law and defend the Relator— The Vote was taken upon the question in Sept. 1853. — In March A.D. 1854. Application was made for the Subscription and the bonds which Respondants were bound to issue — That Application had been upon their record ever since, and again formally renewed in September 1855.

134 All this time the Relators have been
knocking at their door and asking
for Justice and law - And because
the Respondents have refused to pay
for nearly five years, and on account
of such refusal, (as they say) the
Relators have become insolvent and
been obliged to Mortgage their Road for
more than its value - The delay of the
Relators to Enforce the Claim & Right
is to operate as bar by analogy to the
Statutes of Limitations

The Road has been constructed
and the Respondents are enjoying its
benefits - They have the full benefit
of the Contract on the part of the
Relators, and because it has been
built with other money and means
than those of the respondents, and the
Company have thereby become embarrassed
and obliged to pledge the Road in
Security for the money that built
it, they are, or ought to be exonerated
from the performance of their Contract
and the duties and obligations which
the law imposed - and that is because
of their own neglect & refusal
nearly five years have elapsed since

15 The vote was taken the company had become insolvent

There is nothing in the Record to show that the Railroad are in any worse condition so far as Solvency is concerned now, than when the vote for Subscription was taken

And in fact the Company is as solvent now, as it was then

It might now be in a better condition, had the Respondents taken and paid their Stock - But it is well known and understood that it is the usual and ^{Company's} universal practice for all Rail Roads to give Mortgages upon their Roads to raise money to aid in its construction, and that all local Subscriptions to Stock is in the nature of a donation from which Subscribers to the Stock are only to be benefited or remunerated by the construction of the Road

The People of the

State of New York

vs.

Superior Court

County of

Albany

Shirley

In Reply to Suggestions made by Counsel
that It is Not Shown that Calls for
Stock Subscriptions have been made by
the Company to the Extent of the Capital
Stock Subscribed, and that therefore
Respondents are not bound to issue Bonds
to the Extent for the amount prayed for
in the Petition; my Reply is

1. That the Respondents Return does
not set this up as a reason why
the prayer of the Petition should not be
granted.
2. That from the lapse of time, and from the
fact that the Road has been constructed
and is in operation, the Court may pre-
sume that Calls for the entire Subscriptions
to Stock have been made.
3. That in any event this cannot Operate
to Bar the Right of the Petitioners to a
Mandamus to Compel the Subscription
to the Stock and the issuing of Bonds
to pay the amount which Respondents were
bound to pay at the time the Subscription
ought to have been made

4th. That if the Court is of the Opinion
that the Subscription should be made
the Order or Mandamus might re-
quire the Respondents to deliver the
bond upon call already made, or
hereafter to be made — in the same man-
ner and the same comparative amounts
as other Stockholders had been, or should
be called upon to pay —

In Conclusion I desire to say that
if any question or point in this case
should be decided against the Petitioner
I ask leave if I see proper to amend the
Petition in that respect — or to traverse any
points or facts presented by the Return, in
case the answer to the same should
be overruled —

A. Dwyer

⁹
The People Ex. Re.
The Perin & Ogden
R.R. Co 9
vs

Supervisors of
Logan Co
vs them

Agreement
by

People

Filed April 22 1859
L. Leland
clerk

1
Contract
Recorded Apr. 6. th 1857
Peoria & O. R. R. Co
and
Oruger Secor & Co

This contract made
this 20th day of June A.D. 1855 between
the Peoria & Ogawka Rail Road
Company of the first part, and Charles
A. Secor, James F. Secor, William H.
Oruger Samuel Gilman and
Thomas C. Fields of the City and
State of New York of the second
part Witnesseth: That the said Parties,
of the second part for and in con-
sideration of the sum of One dollar
to them in hand paid by the said
party of the first part, and the
Covenants and agreements herein
after mentioned to be performed
by the said party of the first part, have
covenanted, contracted and agreed
with the said party of the first part,
that they will forthwith proceed
to complete and finish that part
of the Peoria and Ogawka Rail
Road which lies between the East
Bank of the Illinois River and

the junction of said "Eastern Extension" with the Chicago and Mississippi Rail Road. So far as the workmanship and the manner and form of completing, constructing and equipping the same is concerned, according to the terms and conditions of a certain contract made and executed between William H. Cuyler James Henry Charles A. Secor and William F. Bucknor and the Peoria and Ogawka Rail Road Company made and executed the 14th day of June A.D. 1853. and will complete and finish the same to Walnut Grove Station, by the first day of November A.D. 1855 and to the junction of said Road with the Illinois Central Rail Road by the first day of October A.D. 1856 and to the junction of said Road with the Chicago and Mississippi Rail Road by the first day of October A.D. 1857 - And the said party of the first part, agree to pay the said party of the second part for constructing said Road the sums and prices stipulated to be paid in the contract

last aforesaid, except that the Mortgage Bonds stipulated to be received in said Contract at their market value by the said parties of the second part, are to be received by them at the sum or price of seventy five cents, on the par value of the same, and except also, that in addition to the said sum so agreed to be paid for said work, in said Contract, the said party of the first part covenants and agree to pay the said parties of the second part the sum of Four thousand dollars per mile for each and every mile of said Road when finished as aforesaid, as follows: The first payment of Four thousand Dollars per mile to be made when said Road shall be finished to Walnut Grove Station.

The second, at the same rate when said Road shall be finished to the Junction with the Illinois Central Rail Road, and the third and last at the same rate, when said Road shall be finished and equipped to the Junction thereof with the Chicago

and Mississippi Rail Road at
 at the several Times and dates
 which the parties of the Second
 part have herein before contracted
 and agreed to finish and equip
 the Same. The Said Additional
 Sum of Four Thousand dollars
 per Mile to be paid in Income Bonds
 to be issued by the party of the
 first part, to be paid out of the
 earnings and profits of that part
 of the Said Eastern Extension of
 Said Road, which lies between
 the Said East Bank of the Illinois
 River and the Junction ^{with} ~~at~~ the
 Chicago & Mississippi Rail Road
 only. Said Bonds to be payable at
 the expiration of Ten or Twenty Years
 at the discretion of the party of the
 first part, in the City of New York
 and to bear interest at the rate of Eight
 per cent per Annum which shall be
 payable Semiannually in the City of
 New York aforesaid, which Said
 interest on Said Bonds, to be paid
 out of the earnings of said portion
 of ~~the~~ ^{Said} Road, by the Said parties of
 the Second part. The Said party

of the first part further agree and contract that upon the completion of said Road in manner aforesaid, they, the said party of the first part will immediately create a sinking fund sufficient to pay the accruing interest on, and the principal of said income Bonds at their maturity out of the earnings of said portion of said Road. The said parties of the second part, further contract and agree that if they can, on or before the 1st day of October A.D. 1854 sell the said Mortgage Bonds, received and to be received under the said original Contract at their market value at a greater price or sum than seventy five cents to the dollar, that they will account to and settle with the said party of the first part for such excess. And the said parties of the second part, further agree that until said Road is constructed and delivered to the said party of the first part, they will pay the interest on said Mortgage Bonds, received and to be received under said original contract at which time

of said delivery the said interest so by them advanced shall be refunded and repaid by the said party of the first part together with ten percent interest on the same from the dates of the payment thereof by the said party of the second part. And the said parties of the second part further Contract and agree to furnish all the additional necessary Rolling Stock and equipment not mentioned in said Original Contract, and required for the necessary and convenient operation and running of said road. For which the said party of the first part, contract and agree to pay them: The party of the second part upon the completion and delivery of said Road to said party of the first part, the Original Cost of the same, with ten percent interest, thereon, from the dates of the purchase of the same by the said party of the second part. — And it is further understood Contracted and agreed between the parties aforesaid, that the parties of the second part shall retain possess.

7.

ion and control and have the use and management of the said road before described from Peoria aforesaid to the Junction with the Chicago and Mississippi Road aforesaid after its ~~completion~~ and shall and may apply the nett earnings of the same to the payment of any and all manner of indebtedness due to the said parties of the second part from the said party of the first part, on any contract or contracts, for the building and constructing said Road, and for Interest, additional rolling stock and equipments, Fencing and ballasting, if it shall be necessary to ballast said portion of said Road, and until such time, as the earnings of said portion of said Road, are and shall be duly and lawfully set apart, and appropriated to the sole and exclusive use of the stock holders, who have or shall subscribe stock for the Building and construction of the Eastern Extension of said Road; and in case the said earnings of said portion of said Road, are,

or shall not be so set apart and appropriated to the stockholders aforesaid, then and in that case, said parties of the second part, shall retain the possession, and have the control and management of said portion of said Road, until such time as that any and all indebtedness of the Peoria & Ogawaha Rail Road Company, for the construction and equipment of that portion of the Peoria & Ogawaha Rail Road from Peoria to Burlington, if any such indebtedness shall exist, shall be so provided for, and arranged, that none of the earnings of that portion of the said Road from Peoria to the Junction with the Chicago and Mississippi Rail Road, can or shall be appropriated or applied to pay any portion of such indebtedness. And it is further understood and agreed, that from and after the time that the said parties of the second part ~~shall~~ shall be fully paid, whatever sum shall or may be due to them, for the

9

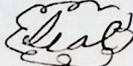
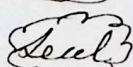
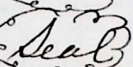
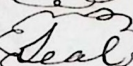
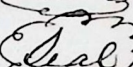
for the construction and equipment of said portion of said Road, to the time the same shall be delivered to the party of the first part, the said party of the second part, shall and will, after paying the interest on the Bonds, pay out of the earnings of said Road, to the stockholders, holding stock upon said portion of said Road, a dividend of six per cent per annum. And it is further understood, and agreed, that the party of the first part, shall appoint an Engineer to superintend the construction of said Road, and that the parties of the second part shall pay him a salary of not exceeding fifteen hundred dollars per annum, and that if more money shall be required to secure the services of a competent person for that purpose, the residue shall be paid, by the said party of the first part, and that the payments of the Mortgage Bonds mentioned in the Original contract, are to be made and said Bonds delivered upon the estimates of such

Engineer, as the work progresses, and
 as provided in said Original con-
 tract. It is further understood and
 agreed, that if any person or persons
 shall sustain any damage or in-
 jury, on account of the fault or
 neglect of the said parties of the
 second part in the construction,
 management or running of the
 said Road, the parties of the second
 part will pay the same, and save
 said party of the first part harm-
 less therefrom. It is further
 mutually ~~contracted~~ and
 agreed between the parties
 that, that a certain contract
 made between the said party
 of the first part, and William
 H. Cruver, Charles A. Secor
 James Hurry and William F.
 Bucknor dated January 5th
 A.D. 1854 and a certain other
 contract between the said party
 of the first part and Cruver
 Secor & Co. dated the 14th day
 of June A.D. 1854 be, and each
 of them are hereby rescinded
 and annulled - and the said

parties of the second part agree, after the completion of the said ~~Road~~ Road to the Chicago and Mississippi Rail Road to render a monthly account of the earnings and expenditures of said Road, to the party of the first part; And the said parties of the second part agree that they will consent to the division of the stock received and to be received by them under their contracts with the Peoria & Ogawka Rail Road Company may be divided so that the Eastern Extension Stock, and the stock between Peoria & Burlington, can be separated if the same has not already been done; And the said party of the first part agree to continue to deliver to said parties of the second part similar stock to that already issued to them under their contract according to the terms and conditions of the Original Contract aforesaid.

In witness whereof the said parties

of the second part have herewith
 subscribed their names and
 affixed their seals respectively
 and the President and Secretary
 of said Company have subscribed
 their respective names hereto and
 affixed the seal of said Company,
 the day and Year first above written

Charles A. Secor 
 James F. Secor 
 Samuel Gilman 
 Wm H. Cruzer 
 Thomas C. Fields 

The Peoria & Ogawaka Rail }
 Road Company }
 Geo. C. Bestor Pres

Henry Nolte
 Secy P. & O. R. R. Co

State of Illinois }
 Peoria County }
 I, J. Henry Nolte
 do solemnly swear by the ever living
 God that I am the acting Secretary
 of the Peoria and Ogawaka Rail
 Road Company and that George
 C. Bestor was acting as President
 of said Company and executed
 the within contract, and the

Seal attached to the same is the Seal
used by Said Company.

Henry Volte

Subscribed and Sworn to this
20th day of December A.D. 1856

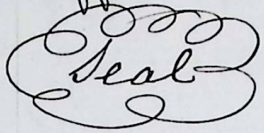
Seal

Bernard Bailey N.P.

State of New York }
City & County of New York } ss.

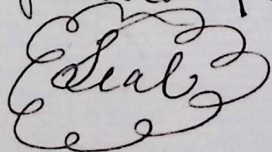
Be it known that on
this Fifth day of January in the Year
of our Lord One thousand eight hun-
dred and fifty seven before me
Daniel Seixas a Notary Public in
and for the State of New York, duly
Commissioned and Sworn, dwell-
ing in the City of New York personally
came Charles A. Secor, Samuel
Gilman ~~xxx~~ James F. Secor and
Thomas C. Fields known to me
to be the persons described in
and who executed the within
instrument and they severally
acknowledged to me that they ex-
ecuted the same for the uses and
purposes therein mentioned.

In Testimony whereof I have hereunto
Subscribed my name and affixed my

Official Seal the day and Year aforesaid
 Daniel Seixas. Notary Public

State of Illinois &
 Peoria County &

I Enoch P. Sloan Clerk
 of the Circuit Court in and for
^{of Peoria in the State} the County of Illinois, do Certify,
 that on this day personally appeared
 before me, William Holmuger, whose
 name appears subscribed
 to the foregoing contract as having
 executed the same and who
 is personally known to me, to
 be the real person who, and
 in whose name the acknowl-
 edgement is proposed to be made,
 and acknowledged the execu-
 tion thereof, as his voluntary
 act and deed for the purposes
 and uses therein expressed.
 Given under my hand and the Seal of said
 Court at Peoria this Twenty Third day of
 January A.D. 1854.



Enoch P. Sloan Clerk

State of Illinois }
Tazewell County }

I Merrill C. Young
Clerk of the Circuit Court, and Ex Officio
Recorder within and for said County,
do hereby certify that the foregoing
fourteen pages contain a true
and correct copy of a certain Instru-
ment found Recorded in my Office
in Book G. of Mortgages on Pages
530, 531, 532, 533, & 534. as the
same remains of Record

Witness my hand and
Official Seal this 18th
day of April A.D. 1859

Merrill C. Young Clerk

Contract

53

P.O. R.R. Co

+
Cruger Secor & Co

Made

June 20th 1855

Recorded

April. 6th 1857

Proclamation!

J. A. Matteson Governor of the State of Illinois.

To all to whom these presents shall come, greeting:
Whereas, it is provided by the 10th section of the 4th article of the Constitution of this State, that the Governor may on extraordinary occasions convene the General Assembly by proclamation; and whereas there are matters of importance, which in my estimation require the early attention of the General Assembly:

Now therefore I, Joel A. Matteson, Governor of the State of Illinois, by virtue of the provision of the Constitution aforesaid, do, by this my proclamation, convene the General Assembly and appoint Thursday the ninth day of February 1854, for the meeting thereof, at which time the members of the Senate and House of Representatives will assemble in the city of Springfield and give consideration to the subject matters embraced in the objects herein set forth, to wit;

To district the State into senatorial and representative districts;

To amend charters of towns, cities, railroads, ferries, dikes and plank roads, and to extend the same;

To amend the school law, and provide a Superintendent of common schools for the State;

To prevent Eastern manufacturers and jobbers from selling their accumulated stocks by samples;

To amend the Township Organization law;
To pass an act in relation to the interest of the
State in the Swamp and other lands in St. Clair County;
To amend the law establishing County Courts, - and to
grant a change of venue in certain cases;

To pass laws recognizing the existence of and conferring
additional powers upon corporations formed, or which
may be formed prior to the action of the legislature thereon
under the act to provide for a general system of
railroad incorporations, approved Nov. 5, 1849; declare the
public utility of their work sanction the route and
termini thereof and authorize the construction
of the same;

To locate state roads and pass acts in relation to public roads;
To authorize counties to borrow money for the erection of
County buildings and to issue bond therefor and make
provisions for paying interest on the same. And, also to
define and establish the boundaries of Counties;

To appropriate the seminary fund for the endowment of
an Industrial University;

To amend the act in relation to Swamp lands;

To authorize the Board of Supervisors of Mc Henry County
to appropriate money for educational and other purposes;

To amend the law creating the Recorder Court of
the City of Chicago;

To charter a gas light company in the city of Springfield

To pass laws to consolidate railroads and plank roads
in this State and with railroads and plank roads
in other States, to make a mutual interest of the
same, and to allow one to take the name of the other

as the directors of the Corporations may agree in this
and with roads in other states
States, and to pass such laws as will fully carry out
the objects as above; - to issue bonds by roads or consolidated,
to bear interest as may be agreed upon;

To settle and adjust matters with the Commissioners
and lessees of the Gallatin County Saline;

To pass such laws in relation to the County seat of
Logan County as may seem expedient;

To provide for defraying the expenses of the special
sessions of the General Assembly; to improve the square
and streets around the State House, to complete public
buildings and for transcribing records of Land Com-
missioners office -

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

(E.S.)

Done at the City of Springfield this 7th day of
January in the year of our Lord one thousand
eighteen hundred and fifty four, and of
the independence of the United States, the twenty
eighth

By the Governor
Alexander Storm,

J. A. Matteson

Secretary of State -

United States of America
State of Illinois

§.

I, O. W. Hatch, Secretary of State of the
State of Illinois do hereby certify the
forgoing to be a true and correct copy of the
Proclamation issued by Governor Joel A. Matteson
as published in the "Illinois Weekly Journal" on
the 18th of January A.D. 1854 -

Witness my hand and the great
seal of State - done at Springfield
this 16th day of April A.D. 1859 -
O. W. Hatch, Secretary of State

Proclamation
of J. A. Matteson

The People upon the petition of the Peoria & Aquiana Rail Road Company	} In Supreme Court April Term 1859
vs. The Board of Supervisors of Lazear County & others	

And now comes the said Respondents
by James Roberts their attorney and
for replication to the first ~~the first~~
traverse of relation to the first part of
respondents return, that the said
law has not been recognized by
any act of the Legislature of the State
of Illinois except ~~the~~ an act approved
March 1st 1854, which ~~the~~ respondents
also allege is unconstitutional and
void for the reason that it was
passed at a special session of the
Legislature of the State of Illinois
when the subject of the ^{"said"} law was
not one of the subjects upon which
said Legislature were called to-
gether to legislate by the proclamation
of the Governor concerning said
special session of the Legislature
And respondents submit by way of
answer to said traverse that

that if the ~~same~~ said parts ^{you then} it
would not make the act mentioned
in respondents return constitutional

And as to so much of said traverse
as relates to the third part of the
return of ~~relators~~ ^{respondents}, said respondents
say that the same is sufficient
in law to be upheld unto wherefore
they pray judgment &c

And as to so much of said traverse
as relates to the 6th part of respon-
dents return, respondents for replication
say that said respondents have not
the legal title to their road, and that
the same is mortgaged for more
than it is worth.

And as to all other parts of said
return respondents say that the
same is sufficient to bar and
preclude said relators from having
a mandamus and their respondents
may may be inquired of by the Court
&c

James Roberts
for respondents.

People ex rel.
vs.

Board of Supervisors
of Luzerne County

petitioner of and for

STATE OF ILLINOIS, } THIRD GRAND DIVISION.
SUPREME COURT. } APRIL TERM, A. D. 1859.

THE PEOPLE, ON THE RELATION OF THE PEORIA AND OQUAWKA RAILROAD
COMPANY,

vs.

THE BOARD OF SUPERVISORS OF TAZEWELL COUNTY, ILLINOIS.

Motion for Mandamus.

And the said board of supervisors, by James Roberts, their attorney, come and show, for cause why a peremptory mandamus should not issue in this cause, that—

✓ FIRST. The law under which the vote in the affidavit of the relators mentioned and set forth was taken, is a nullity, having been passed at the special session of the general assembly of the state of Illinois, convened by the *proclamation* of the governor of the state of Illinois, on the 22d of October, 1849, when the subject of the law under which the said vote was taken, was not one of the subjects upon which the said general assembly were specially called together to legislate by the said proclamation of the said governor.

SECOND. The vote mentioned in the affidavit of the relators is void, the vote requiring the interest of the bonds to be paid at the American Exchange Bank in New York, when, by law, the county can only pay its obligations at the treasury of the county.

✓ THIRD. The application by the relators to the said board of supervisors to subscribe the stock and issue the bonds in pursuance of the vote set forth in the affidavit of the relators, not having been made for more than five years after the vote was taken, is a recision and abandonment of the right of the relators under said vote. And said application now comes too late.

FOURTH. It is a matter of discretion with the said board of supervisors whether they will issue the bonds and make the subscription in pursuance of the vote.

FIFTH. The Peoria and Oquawka railroad company are not the proper parties to be relators.

✓ SIXTH. That the relators have mortgaged their road for more than its worth since the vote has been taken, and have no longer the legal title to the same.

SEVENTH. The company have become insolvent, and if a subscription is made, the stock would be worthless.

EIGHTH. The vote mentioned and set forth in the affidavit of the relators is void, because it does not comply with the act under which the vote was taken, and is conditional.

NINTH. The vote mentioned in the affidavit of the relators is void in not conforming to the act under which the vote was taken, the act allowing the judges of the county court, or board of supervisors, to pay for the stock purchased either by borrowing money or by issuing bonds, as said board deem most advisable. The vote allows the issuing of bonds *only*, and deprives the board of supervisors of a discretion conferred by the act, and is therefore void.

For which several reasons above set forth, respondents ask that a mandamus be refused, &c.

JAMES ROBERTS, for Respondents.

10) The Vote mentioned in the affidavit of the Relators is void for the reason, that the Vote was taken to subscribe to Two Roads at the same time

James Roberts

People Ex Rel

vs

Board of Supervisors
Tazewell County

Return

Filed April 20, 1859

L. Ireland
Clerk

By the Governor of the State of Illinois -
- A Proclamation -

Whereas, the 10th section of the 4th article of the Constitution of the State of Illinois provides that the Governor "may, on Extraordinary occasions convene the General Assembly by Proclamation;" and whereas, matters of deep interest and importance to the people of this State, for which no legislative provision exists, have been submitted to me, and which in my opinion require the early attention on the part of the General Assembly;

I, therefore, J. Augustus C. Branch, Governor of the State of Illinois, do by this my proclamation convene the General Assembly of said State, and in accordance herewith, the members thereof will assemble at the city of Springfield on Monday the 22nd day of October A.D. 1849, and give such consideration to, and make all necessary provisions for the subject matters herein set forth, as follows, to wit:—

1. To fill the existing vacancy in the office of United States Senator from the State of Illinois.
2. To take such action as the General Assembly may deem best for the public interest, upon the 6th section of the 10th article of the Constitution of the State which provides that "the General Assembly shall encourage internal improvements by passing liberal general laws of incorporation for that purpose".
3. To give the Governor the necessary authority to order the filling of vacancies in County offices now unprovided for by law; and to provide some suitable agent for

discharging the duties heretofore incumbent upon the Attorney General, whose office is abolished by the constitution of the State.

4. To so amend our revenue law as to give force and validity to the same -
5. To provide for the settlement of claims against the State, and also to make provision for the redemption of hypothecated bonds -
6. To grant such relief to the judicial circuits of the State as may afford the proper facilities for the prosecution of the civil and criminal business within their limits, by enlarging the jurisdiction of certain County Courts, the establishment of local courts, or by attaching certain Counties belonging to one circuit, to those of another, so as more completely to equalize the business without increasing the number of circuits -
7. To make such amendments to an act entitled an "an act to establish district courts in the State of Illinois" Approved Dec. 20, 1847 as may be found necessary to carry out the object and intent of said act -
8. To establish an Orphan Asylum and Lying Hospital at or near the city of Chicago -
9. To pass necessary laws for the relief of Gallatin County -
10. To enact a law providing for a Homestead Exemption from execution in certain cases -
11. To amend the law relating to limitations of actions and the taking of testimony in chancery cases -
12. To enact a law to enable the State of Illinois to

commence suits in her own behalf; and make the necessary appropriations to defray the expenses of said special session of the legislature.

[L.S.] Given under my hand, and the great seal of state, of the state of Illinois, at the city of Springfield, this 4th day of September A.D. 1849.

Aug. C. French

By the governor;

H. S. Cooley, Secretary of State.

United States of America
State of Illinois ss.

I O. M. Hatch Secretary of State, of the State of Illinois, hereby certify the foregoing to be a true and correct copy of a Proclamation, issued by his Excellency, Augustus C. French, who was Governor of said State, as therein stated.



In testimony whereof I hereunto set my hand and affix the Great Seal of State at Springfield this first day of April A.D. 1859.

O. M. Hatch,
Secretary of State.

9.

Francis & Lemmon
to Return —

Filed April 20th 1859
L. L. Leland
Clerk

Fees \$2.00

