

12071

No. _____

Supreme Court of Illinois

Newhall

vs.

Galena & Chicago Union

R.R.Co.

Horatio Marshall
vs. ^{appellant}
The Galena & Chicago
Union Rail Road Co.
et. al. ^{appellees}

And now at this day comes
the said Horatio Marshall appellant by Judd
Frank & Goodrich his solicitors and says that
in the record and proceedings in the above
entitled cause and in the rendition of the de-
cree therein there is manifest error in this
to wit

1st That the decree rendered in said
cause was given and rendered for appellees,
whereas by the laws of the land and in Equity
said decree should and ought to have been
rendered for said appellants and against said
appellees

2 The Court erred in dismissing the
bill of Complaint

3 The Court erred in not granting an injunc-
tion as prayed for by appellants

Judd Frank & Goodrich
Solicitors for Appellants

Filed July 7th 1853.

L. Leland Clerk.

By P. H. Leland Depy.

State of Illinois } J. J.
County of Cook }

Pleas before the Honorable John M. Wilson Judge of the Cook County Court of Common Pleas within and for the County of Cook and State of Illinois. at a vacation term of the Cook County of Common Pleas. begun & held at the Court House in the City of Chicago in the County and State aforesaid on the First Monday of July in the Year of Our Lord One thousand eight hundred and fifty three. and of the Independence of the United States the Seventy Eighth

Present the Hon John M. Wilson Judge
Cyrus P. Bradley Sheriff
Attest Walter Kimball Clerk

Be it Remembered that heretofore to Wit. On the twenty first day of June in the Year of Our Lord One thousand Eight hundred and fifty three. was filed in the Office of the Clerk of the Cook County Court of Common Pleas. a Bill. which said Bill is in words and figures as follows. to Wit:

State of Illinois
Cook County Court of Common Pleas }

To the Hon John M Wilson Judge of
the Cook County Court of Common
Pleas in Chancery sitting.

Complaining shew unto your Honor your
Orator Horatio Newhall of the County of
Jo Davis in the State of Illinois, that the
general assembly of the State of Illinois
passed an act entitled "An act to incorporate
the Galena and Chicago Union Railroad
Company" approved January 16th 1836, a
copy of which is herewith attached and
marked ~~to~~ schedule "A" which your orator prays
may be taken as a part of this your orators
Bill of complaint - that said general assembly
afterwards passed another act entitled "An
act to amend an act entitled an act to incor-
porate the Galena and Chicago Union Railroad
Company" approved January 16th 1836 "approved
on the fourth day of March, in the year of our
Lord One thousand Eight hundred and thirty
Six", a copy of which said act is herewith
attached and marked schedule "B" which
your orator prays may be taken as a part
of your orators Bill of complaint - that said

General Assembly afterwards passed another act
entitled "An act to amend an act entitled an
act to incorporate the Galena and Chicago Union
Railroad Company approved January 16. 1836
and and an act to amend the same approved
March 4. 1837 approved on the 24th day of February
in the year of Our Lord One thousand eight
hundred and forty seven a copy of which said
act is herewith attached and marked Schedule
"C" and made a part of this your orators
bill of complaint, that said general assembly
afterwards passed another act entitled an act
to amend an act entitled an act to incorporate
the Galena and Chicago Union Railroad
Company approved January 16th 1836 "approved
February 18th 1837, a copy of which said act is
herewith attached and marked Schedule "D"
and which your orator prays may be taken
as a part of this your orators bill of complaint

And your orator further shows unto
your Honor that he has been informed and
believes and upon such information and belief
charges that the several acts of which Schedules
A B C D herewith attached are copies contain
embrace & include all the corporate rights powers
and privileges possessed by the said Galena
& Chicago Union Railroad Company.

And your orator further shows unto your Honor that previous to or during the year Eighteen hundred and thirty seven the said Galena and Chicago Union Railroad Company became a body corporate and authorized to execute the powers contained in said Act set forth in Schedule A by complying with the requirements of said Act.

And your orator further shows unto your Honor that ~~the~~^a survey of the route of the road authorized by said Charter between Galena and Chicago, was made in the year eighteen

hundred and thirty seven or the early part of 1838 and that in the year last aforesaid the work on said road was actually commenced at or near Chicago, by grading & laying a portion of the superstructure of said Road.

And your orator further shows unto your Honor that the route of said Road between Galena & Chicago is located as follows.

Commencing at the City of Chicago it runs in a westerly direction to a point in Dupage County known as the junction a distance of about thirty miles from Chicago thence said Road is located through Elgin in Kane County; Marseus in McHenry County; Belvidere in Boone County; Rockford in Winnebago County; to Freeport in Stephenson

County at which point it unites with the Galena Branch of the Illinois Central Railroad Company, and the balance of the route of said Road between Freeport and Galena is being constructed by the said Illinois Central Railroad Company by an arrangement and agreement between the said Galena and Chicago Union Railroad Company & the said Illinois Central Railroad Company.

And your orator further shews unto your Honor that said Road was so far completed that said Galena & Chicago Union Railroad Company commenced operating the same as far as Elgin on or about the twenty second day of January in the year of our Lord one thousand eight hundred & fifty: to Mazonia on or about the 15th day of October A D Eighteen hundred & fifty one: to ^{Belvidere} ~~Rockford~~ on or about the ^{third} ~~first~~ day of December A D Eighteen hundred & fifty one: to Rockford on or about the first day of August Eighteen hundred & fifty two: And the balance of said Road between Rockford and Freeport is so far advanced that the same will be ready for operation in the month of August next.

And your orator further shews unto your Honor that from the time said Road was put into operation the running of said Road

have been such that dividends have been made to the holders of stock therein semi-annually as follows. March 1850 ten per cent, November 1850 eight per cent, May first A.D. 1851 seven per cent, November first A.D. 1851 eight per cent, May first A.D. 1852 eight per cent, August first A.D. 1852 twelve per cent, February first eighteen hundred & fifty three eight per cent.

And your orator further shows unto your Honor that he now holds & owns twenty ~~seven~~ shares of stock in said Galena & Chicago Union Railroad Company and that there has been paid into said Company on each of said shares the sum of one hundred dollars: that your orator has owned said shares from the day of August in the year eighteen hundred and forty seven until the present time: that your orator has received dividends upon said stock as follows viz in March 1850 ten per cent on the amount paid upon said shares; in November 1850 eight per cent; in May 1851 seven per cent; in November 1851 eight per cent; in May 1852 eight per cent; in August 1852 twelve per cent; in February 1853 eight per cent.

and your orator further shows unto your Honor and charges that the time prescribed by the Charter of

said Company for the location and construction of any branch or branches or of any lateral road or routes expired on the sixteenth day of January in the year of our Lord one thousand Eight Hundred and forty nine.

And your orator shows unto your Honor that on and previous to the first day of January in the year of our Lord one thousand Eight Hundred and fifty three a sufficient sum of money had been obtained by subscriptions to the Capital Stock, by loans and from the earnings of said road to fully complete equip and put in successful and complete operation the said Road between Chicago and Freeport and that the remainder of said line to Galena was under contract and in course of construction by the Illinois Central Rail Road Company with the money, funds and credit of said Illinois Central Rail Road Company

And your Orator further shows
unto your Honor that the Board
of Directors of the said Galena
and Chicago Union Railroad
Company have in violation of
the provisions of their Charter
and without the authority
of law ~~and~~ against the wishes
and consent of your orator
since the said first day of January
A D Eighteen hundred and fifty three
caused to be surveyed and located and
are about commencing the construction of a
new Road beginning at the aforesaid junc-
tion in DuPage County and running thence
Westerly to the Town of Geneva in Kane
County thence through the County of Rock
about five miles south of Syracuse to a point
in Ogle County where said Road would inter-
sect the Rockford & Rock Island R.R. Road

And your orator further shows
unto your Honor and charges that said
new Road is to be built and constructed
with the money credit and funds of the
said Galena & Chicago Union Railroad
Company, and in part with the funds means
credit & money of your orator as a street
holder

holder as aforesaid in said Company and your orator further shows unto your honor that the said Galena & Chicago Union Rail Road Company have entered into a contract with the Rockford and Rock Island Rail Road Company to aid in the construction of as much of said Rockford and Rock Island Railroad as shall extend from Apple County aforesaid to Dixon in Lee County and from thence to Albany on the Mississippi river that there is an arrangement agreement and understanding between said Galena & Chicago Union Rail Road Company and the said Rockford and Rock Island Rail Road Company to lease the part of the road above described and that said Galena & Chicago Union Rail Road Company shall fully stock equip and operate the same and to divide the profits thereof between the said companies

And your Orator further shows unto your honor that the said Galena & Chicago Union Rail Road Company are about to apply the money property and funds of their Company to the construction equipment and operation of said Rockford and Rock Island railroad or some part thereof and in part the money

funds and property of your Oator as a
stockholder as aforesaid in violation of the
powers contained in their Charters and of
the rights of your Oator as a stockholder
and against the wishes and without the
assent of your Oator,

And your Oator further
shows unto your Honor that the construction
of said Branch Road and the performance
by said Galena & Chicago Union Rail Road
Company of said agreement with the Rock-
ford and Rock Island Rail Road com-
pany will involve a large expenditure
of money which will have to be met by
the earnings of said Galena & Chicago Union
Rail Road Company in whole or in part
and if not in whole, then partly by loans of
money by said Company and on its credit
and will involve great liabilities which will
lessen the dividends, which would otherwise
be made and jeopard the interests of your
Oator in said stock and lessen the value
thereof.

And your Oator further shows unto
your Honor that if, as he avers the facts to
be, the construction of said Branch Road
and said contract with said Rockford and
Rock Island Rail Road Company is either

of them are without authority of law and unauthorized by said act of incorporation. or the said act or either of them amendatory thereof that liabilities will be contracted and money expended which will greatly embarrass if not entirely ruin the credit and absorb the means and earnings of said Galena and Chicago Union Rail Road Company, and render the Stock of your Orator therein of little or no value.

And your orator further shews unto your Honor that the said Branch Road will be as he is informed and believes to a considerable extent and effect a rival road to the said Galena and Chicago Union Rail road and that the Charter of the said Rockford and Rock Island Rail Road Company authorizes the construction of a Rail Road from the Rockford down the Valley of the Rock River to Dixon and the connection of said Branch Road with the same at a point below Rockford must and will have a tendency to divert more or less of trade and business from the present Road of said Respondents

And your Orator charges that in other respects said Branch Road will compete with and divert the business from said present Road and have a tendency to cause

the value and dividends of the stock of your
Orator,

And your Orator further sheweth unto your
honor that the present directors of the said Galena
and Chicago Union Rail Road Company are
William A. Brown, Thomas Alger, John B. Turner
Charles Walker, Walter S. Jewberry, Elisha S.
Hadsoroth, Hugh S. Dickey, Dexter A. Knowlton
George Smith, Benjamin W. Haymond, James A.
Collins, Charles Hampstead and Thomas A. Robertson
who by the Charter of said Company have the
direction of its business and affairs, and your
Orator prays they may be made defendants
to this bill of Complaint and that as
such Directors they are threatening to commence
and have actually commenced the construction
of said Branch Road and threatened to ap-
propriate the funds and pledge the credit of
said Galena & Chicago Union Rail Road Com-
pany to the construction thereof and to the per-
formance of the said Contract with said Rock
-ford and Rock Island Rail Road Company
without authority of the Charter and acts man-
-dating of the Charter of said Galena and Chicago
Union Rail Road Company as he is advised
by Counsel and verily believes and to the injury
of the interest and stock of your Orator in
said Company

But now so it is, may it please your honor, that the said Galena and Chicago Union Rail Road Company and the said Directors combining and confederating with divers persons to your orator unknown and who when discovered your orator prays may be made parties defendants hereto, sometimes give out and pretend that they have authority by the terms of the Charter of said Galena and Chicago Union Rail Road Company, and the acts amendatory thereof, to constr^{ct} said branch Road, and to make and fulfill the said contract with the said Rockford and Rock Island Rail Road Company; and at other times they pretend that the construction of said Branch Road and the fulfillment of said contract will not affect the credit, business or interests of the stock of said Company or that of your orator injuriously-and they threaten to go on and build said branch road and to perform said contracts with said Rockford and Rock Island Rail Road Company—all which pretences of the said directors are contrary to equity and good conscience, and tend to injure and oppress your orator.

In tender consideration whereof, and for as much as your orator is remediless by the strict rules of the common law, and can only have adequate discovery and relief in a court of equity where are properly cognizable

To the end therefore that the said Galena and Chicago Union Rail Road Company and the directors thereof and their confederates when discovered may upon their and each of their corporal oaths to the best of their remembrance, knowledge and belief, true, perfect, and direct answer make to all and singular the matters aforesaid as fully as if the same were herein again repeated and they thereunto particularly interrogated, and that the said ^{directors} especially may set forth and declare whether they are not proceeding or about to proceed to construct said Branch Rail Road as herein charged if not how otherwise, and whether said Galena and Chicago, ^{Union} Rail Road Company has not through its directors, agents or otherwise made a contract as herein charged with said Rockford and Rock Island Rail Road company, and if not such contract as herein charged some other and what contract and if not in the manner charged how otherwise

And, ^{the premises considered} your orator prays that said defendants & each of them their agents & servants may be ^{perpetually} permanently enjoined from surveying, locating, constructing, equipping or operating said Branch Rail Road from the said Junction on the Galena and Chicago Union Rail Road in the County of

suppage, through Geneva in the County of Kane, and
through the County of DeKalb to a point in Ogle County
where said Road will intersect the Rockford & Rock
Island Rail Road - and from aiding in the construc-
tion or equipments of any part of said Rockford
and Rock Island Rail Road, and from leasing any
part of the said Road of said Rockford and Rock
Island Rail Road company, and from applying
any of the funds of said Galena and Chicago
Union Rail Road Company or loading its
credit and incurring any liability for and in
the construction operating or equipment of
said Branch Rail Road or any part of
said Rockford and Rock Island Rail Road
And that your Orator may have such other
further or different relief as to equity and
good conscience may seem meet and that
until the final hearing of this cause said
Defendants and every of them their agents
and servants may be restrained and enjoined
as above prayed, and that a writ of injunction
to that purport and effect may issue out of and
under the seal of this Court accordingly. And
that a writ of summons may issue out of this Court
under the seal thereof to said defendants ac-
cording to the practice of this Court com-
manding them and each of them as the law
directs. And your Orator will &c

Horatio Newhall
Judd, Friend & Goodrich
Sole for Complainants

State of Illinois }
for Davies County } William A Bradley
Clerk of the Circuit Court of said County
do hereby Certify, that the above named Com-
plainant being duly sworn says the facts in the
 foregoing Bill of Complaint charged as of his own
 knowledge are true and those charged as of
 his information and belief are true as he
 verily believes

In Witness Whereof I have hereunto set
 my hand and seal of said Circuit Court
 at my Office in Galena in said County
 this 13th Day of June A.D. 1853

Wm A Bradley Clerk
By Geo W. Middleall Deputy

Exh 65

CASUALTIES.

SEPT. 22, 1852.—Charles Waterbury, Conductor of a freight train, was seriously injured while improperly on the top of a car and coming in contact with a bridge.

SEPT. 28, 1852.—A rail was feloniously taken up from Kishwaukie bridge, by Giles Bennett, (as confessed.) The train passed the bridge, the passenger car capsizing on the bank; injury to passengers slight.

Nov. 22, 1852.—Rial Estis, Conductor of a Freight train, was killed by coming in contact with a bridge while on the top of a car, for what purpose not known.

FEB. 21, 1853.—Henry Apple was killed by a locomotive, while walking improperly on the track, a short distance west of Elgin. The accident occurred on a curved part of the line, the sight limited by its being in a deep cut. The whistle was blown, and the breaks applied, but too close when seen by the Engineer to be prevented. The deceased was deaf, and probably did not hear the alarm.

No passengers have been killed or seriously injured on the cars during the year.

During the year three employees were killed and four injured, while working on construction trains.

In one case, the train was thrown from the track, at Elgin, by a cow suddenly getting before it, killing one man and injuring three others.—The other two cases were occasioned by the fatuitous acts of the deceased.

AN ACT to Incorporate the Galena and Chicago Union Railroad Company, Approved January 16, 1836.

"A"
Schaefer
SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all such persons as shall become Stockholders, agreeably to the provisions of this act, in the Corporation hereby created, shall be, and for the term of sixty years from and after the passage of this act, shall continue to be a body corporate and politic, by the name of the "GALENA AND CHICAGO UNION RAILROAD COMPANY," and by that name shall have succession for the term of years above specified, may sue and be sued, complain and defend, in any Court of Law or Equity, may make and use a common seal, and alter the same at pleasure, may make by-laws, rules and regulations for the management of property, the regulation of its affairs, and for the transfer of its stock, not inconsistent with the existing laws, and the constitution of this State and of the United States, and may moreover appoint such subordinate agents, officers and servants, as the business of the said Corporation may require, and allow to them a suitable compensation, prescribe their duties, and require bond for the faithful performance thereof, in such penal sums, and with such sureties as they may choose, who shall hold their offices during the pleasure of a majority of the directors of the said Corporation.

SEC. 2. The said Corporation shall have the right to construct, and during its continuance to maintain and continue a Railroad, with a single or double track, and with such appendages as may be deemed necessary for the convenient use of the same, from the town of Galena, in the county of Jo Daviess, to such point at the town of Chicago as shall be determined, after a survey shall have been made of the route, to be the most eligible, proper, direct and convenient therefor.

SEC. 3. The capital stock of the said Corporation shall be one hundred thousand dollars, which shall be deemed personal property, and shall be divided into shares of one hundred dollars each. The capital stock of said Corporation may, at any time hereafter, be increased to a sum not exceeding one million of dollars, if the same shall be judged necessary to the completion of the said work, and the same shall be subscribed for and taken under the direction of the Directors of the said Corporation, wherever they shall direct one or more books to be opened for such purpose, and shall be subscribed and taken in such manner as the Directors of the said Corporation for that purpose shall order and appoint.

SEC. 4. That William Bennet, Thomas Drummond, J. C. Goodhue, Peter Semple, J. W. Turner, E. D. Taylor, and J. B. Thomas, Jr. shall be Commissioners for securing subscriptions to the capital stock of said Corporation, who shall give notice within twelve months after the passage of this act, of the time and place where books will be opened at Galena and Chicago, and such other places as they may deem necessary, in some public newspaper printed at the said places, at least thirty days

previous to the opening such books, for the receiving subscriptions to the capital stock of said corporation.

The majority of the Commissioners shall attend at the place appointed by such notice, for the opening of said books, and shall continue to receive such subscriptions to the capital stock of said Corporation, from all persons who will subscribe thereto, until the whole amount thereof shall have been subscribed, when the said books shall be closed. Each subscriber, at the time of subscribing, shall pay to the Commissioners one dollar on each share of the stock subscribed for by him, and the said Commissioners shall, as soon as the Directors are elected, deliver to them the whole amount so received.

SEC. 5. The affairs of said Corporation shall be managed by a Board of seven Directors, to be annually chosen by the stockholders, from among themselves, as soon as may be, after the stock has been subscribed. The Commissioners shall give notice of the time and place at which a meeting of the stockholders will be held for the choice of Directors.— And at such time and place appointed for that purpose, the Commissioners, or a majority of them, shall attend and act as inspectors of said election; and the stockholders present shall proceed to elect their Directors by ballot, and the Commissioners present shall certify the result of such election, under their hands, which certificate shall be recorded in the books of the Corporation, and shall be sufficient evidence of the election of the Directors therein named.

All future elections shall be held at the time and in the manner prescribed by the by-laws and regulations of the said Corporation. Each stockholder shall be allowed as many votes as he owns shares at the commencement of such election, and a plurality of votes shall determine the choice; but no stockholder shall be allowed to vote at any election after the first, for any stock which shall have been assigned to him within thirty days previous to holding such election.

The said Directors shall hold their offices for one year after their election, and shall elect one of their number as President of the said Board.

SEC. 6. The said Corporation is authorized to construct, make and use a single or double railroad or way, of suitable width and dimensions, to be determined by the said Corporation, on the line, course or way which may be designated and selected by the Directors, as the line, course or way whereon to construct and make the same; and shall have power to regulate the time and manner in which goods, effects and passengers shall be transported, taken and carried on the same; and to prescribe the manner in which the said Railroad shall be used; by what force the carriages to be used thereon may be propelled; and the rate of toll for transportation of persons or property thereon; and shall have power to erect and maintain houses, toll-gates and other buildings for the accommodation and management of the said road, and transport thereon as may be deemed suitable to their interest. And they may also construct, maintain and use such other lateral routes as may be deemed advantageous, and expedient, and necessary, under the same rights and privileges as by this act is provided for the constructing of the main route. And it shall be lawful, also, for the said Corporation to unite with any other Railroad Company already incorporated, or which may be incorporated upon any part of said road, upon such terms as may be agreed upon by

the Directors of said Companies; and also, to construct such other and lateral routes as may be necessary to connect them with any other route or routes which may be deemed expedient.

SEC. 7. If, at any time after the passage of this act, it shall be deemed advisable by the Directors of the said Corporation, to make and establish a good Turnpike road upon any portion of the route of the Railroad by this act authorized to be constructed, then the said Directors are hereby authorized and empowered to construct a Turnpike, on any portion of the said route, of the following dimensions: not less than one hundred feet wide, twenty-two feet of which shall be based with stone, or gravel, or other hard substance, well compacted together, and of sufficient depth to secure a good foundation where necessary, the whole of which shall be faced with gravel, or stone, of a depth not less than six inches, in such manner as to secure a firm and even surface, rising in the middle by a gradual arch; and where other roads may intersect, it shall be so constructed that carriages may conveniently pass over the Turnpike road. And the said Corporation is hereby authorized to erect, at both ends of said road, and at such other points upon the line thereof, as many gates as shall be deemed necessary thereon.

SEC. 8. It shall be lawful for said Corporation to appoint toll-gatherers to collect and receive of, and from all persons using said road, the following rates of toll, to wit: For each and every mile of transport or travel upon the said Turnpike road, for a man and horse, two cents; or for a single person, one cent. For four or six horses or ox wagon and driver, loaded, three cents; and for the same, when empty, two cents. For all four horse carriages and driver, five cents. For a two horse wagon, or one yoke of oxen and wagon, three cents. For two horse pleasure carriages, four cents. For a one horse carriage or gig, two cents. For horses, mules or cattle in droves, half a cent per head. For hogs, goats and sheep, one mill per head. When sleds are used instead of wheels, one-half of the above specified toll: And it shall be lawful for any toll-gatherer to stop and detain any person from going on said road, until he shall pay to him the toll properly chargeable to him; and when any person shall pay to the toll-gatherer the toll chargeable to him, the toll-gatherer shall give him a ticket, authorizing him to pass the whole distance of the road for which he has paid. And the President and Directors shall cause to be kept upon each gate, in some conspicuous place, where it may be easily read, a printed list of the tolls which may be lawfully demanded. Said Corporation shall cause to be erected mile posts or stones, to be maintained, and also erect guide posts at the intersection of all highways leading into, or from such Turnpike road, on which shall be inscribed the name of the town or public place to which it leads, and if any person shall wilfully cut down such posts, or shall wilfully break or throw down any of the said gates or turnpike, or shall dig or spoil any of the said road, or anything thereunto belonging, or shall forcibly pass either of the gates, without first having paid the legal tolls, such person shall pay and forfeit, for every such offence and injury, the sum of twenty-five dollars, to be recovered by the said Corporation in an action of debt before any Justice of the Peace of the county where the offender or offenders may be found; and if any person shall turn out of the said road and pass any of the gates, and again enter upon such road,

to avoid the payment of toll, he shall forfeit to the Corporation the sum of five dollars, to be recovered in like manner.

SEC. 9. If any toll-gatherer shall unreasonably delay or hinder any traveler or passenger, or shall demand more toll than by this act is allowed, he shall forfeit and pay to the person injured the sum of five dollars, in the manner provided in the preceding section; and if he shall be unable to pay it, the Corporation shall be held responsible therefor.

SEC. 10. As soon as any five miles of the Turnpike road shall be completed, said Corporation may erect gates thereon, and collect the toll allowed by this act. And it shall be the duty of the said Corporation, when said road shall have been completed, to keep it in good repair; and whenever, from any cause whatever, the same shall become injured, the said Corporation shall immediately proceed to repair the same. And it shall be lawful for the said Corporation to commence the construction of the said Railroad, or way, or Turnpike, at such points, on any part of the aforesaid route, or routes herein before described, as in its judgment it may appear expedient and proper. Said Corporation are authorized to borrow any sum of money which may in their discretion be deemed necessary, not exceeding its capital stock, to aid in the construction of the said roads; and if it shall at any time appear to the said Corporation, that any part thereof, or any surplus funds, are not necessary to be retained, the same may be loaned on such terms as the Directors of the said Corporation may deem proper; not, however, at a higher rate of interest than that now allowed by the laws of this State.

SEC. 11. In case the Corporation shall not be able to acquire the title to the lands through which the said road shall be laid, by purchase or voluntary cession, it shall be lawful for the said Corporation to appropriate so much of said lands as may be necessary for its own use, for the purposes contemplated by this act, on complying with the provisions of the six following sections:

SEC. 12. The Directors may present a petition to the Judge of the Circuit Court of the County in which the said land may be situate, setting forth, by some proper description, the lands which are wanted for the construction of said Railroad, or Turnpike, or the appendages thereto; and the names of the owners thereof, if known, distinguishing, with convenient certainty, if it can be done, the parcels claimed in severalty by the respective owners, and praying for the appointment of appraisers to assess the damages which the owners of said land will severally sustain by reason of the appropriation thereof by the said Corporation to its own use.

SEC. 13. On the presentment of such petition, said Circuit Judge shall appoint a day for the hearing of the parties in interest and shall direct such notice as he shall deem reasonable, to be given of the time and place of hearing; and in case it shall appear that any of the owners of said lands is a *femme covert*, an infant, or insane, or otherwise incompetent to take proper care of his or her interest, it shall be the duty of said Judge to appoint some discreet and reputable person to act in the premises, in his or her behalf.

SEC. 14. At the time appointed for such hearing, the said Judge shall appoint three disinterested persons, freeholders, residents of the county in which said lands may lie, for the purpose of assessing such damages, and

in the order in which they were appointed, shall direct and specify what lands are proposed to be appropriated and occupied by the said Corporation, for the purpose aforesaid.

SEC. 15. Said appraisers, after being duly sworn before some officer properly authorized to administer oaths, honestly and impartially to assess such damages, shall proceed, by viewing said lands, and by such other evidence as the parties may produce before them, to ascertain and assess the damages which each individual owner will sustain by the appropriation of his lands, for the use or accommodation of such Railroad or Turnpike, or their appendages.

SEC. 16. The said appraisers shall make a report to the said Judge, in writing, under their hands, reciting the order for their appointment, and specifying the several parcels described therein, with all necessary certainty, the names of the owners of the respective parcels, if known, and if not known, stating the fact, and specifying also the damages which the owners of the said respective parcels will sustain by reason of the appropriation of the same, for the purposes aforesaid; and in case either of the parties are dissatisfied with the assessment, the said Judge may, on the hearing of the parties and interest, modify the assessment as to him shall appear just.

SEC. 17. On the payment of the damages thus assessed, together with the expenses of assessment, as the same shall be settled by said Judge, or on depositing the amount thereof for the use of such owners, in such bank or monied incorporation as the said Judge shall direct, the said corporation shall immediately become entitled to the use of said lands for the purpose aforesaid; and the report of the said appraisers, with the order of said Judge, modifying the same, if the same shall have been modified, shall be recorded in the office of the Recorder of the County in which said lands shall be situate, in the same manner and the like effect as Deeds are recorded, without any other proof than the certificate of the said Judge, that the report is genuine.

SEC. 18. And when the said order shall have been so recorded as aforesaid, the said Corporation shall be seized and possessed of such land or real estate, and may enter upon and take possession, and use the same for the purpose herein before recited.

SEC. 19. Said Corporation shall be bound to repair all Public Highways, Bridges, and Water Courses, which may be injured in constructing said Railroad, or its appendages; and shall restore them, so far as practicable, to as good a condition as they were before they were injured.

SEC. 20. The said Corporation shall be allowed three years from the passage of this act, for the commencement of the construction of the said Railroad and Turnpike; and in case the same shall not be completed within ten years thereafter, the privileges herein granted shall be forfeited.

SEC. 21. Any person who shall wilfully injure said Road or any of the appendages thereto, shall be deemed guilty of a misdemeanor, and shall forfeit to the use of the Corporation a sum equal to three times the amount of damages occasioned by such injury; to be recovered, with costs of suit, in the name of such Corporation, in an action of debt, before any Court having cognizance thereof, or before any Justice of the

Peace, in the county where such injury or offence may have been committed.

SEC. 22. This act shall be deemed and taken as a public act, and shall be construed beneficially for all purposes herein specified or intended; and all copies thereof, printed by or under the direction of the General Assembly of this State, shall be received in all courts and places whatsoever in said State, as sufficient evidence thereof, without further proof.

JAMES SEMPLE,

Speaker of the House of Representatives.

A. M. JENKINS,

Speaker of the Senate.

Approved, 16th January, 1836.

JOSEPH DUNCAN.

STATE OF ILLINOIS, }

DEPT OF STATE. }

I, ALEXANDER P. FIELD, Secretary of State of the State of Illinois, do certify the foregoing to be a true copy of the enrolled Bill, on file in this Department.

In testimony whereof, I have hereunto signed my name, and affixed the State Seal, at Vandalia, the 29th January, 1836.

A. P. FIELD, Secretary of State.

Schedule B

AN ACT to amend an Act Entitled An Act to Incorporate the Galena and Chicago Union Railroad Company, Approved January 16, 1836.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the Capital Stock of the Galena and Chicago Union Railroad Company be, and the same is hereby authorized to be increased to a sum not exceeding one million of dollars, in addition to its present capital, with the assent of the Stockholders of the said Company, to enable them to complete the construction of the Road authorized by the Charter of said Company.

SEC. 2. The said additional Capital Stock shall be taken under and according to the provisions of the third section of the original act of incorporation, and the time for the final completion of said Road is extended five years; and the said Company having applied to the United States for a right of way over the public lands, may receive, take, and hold all such lands as may be ceded or granted to said Company by the United States, or by individuals, for the purpose of enabling them to construct said Road, or to erect thereon depots, toll-houses, and for such other purposes and uses as may be deemed necessary and useful to said Company; and they may dispose of any fractional or surplus portion thereof, if any there should be, whenever it shall appear that so much thereof is not absolutely necessary to be retained whereon to construct said Road; and erect such depots, toll-houses, and other appendages, to raise additional means wherewith to enable said Company to construct said Road in the best possible manner.

SEC. 3. Should it appear impracticable for the said Company to construct the said Road the whole distance contemplated by said act, or that it would be more advantageous to the Company, or the public interest,

that the said Road should be connected with the State Central Railroad, then the said Company are authorized to terminate the said Road at such point as shall be deemed most practicable—and may intersect and connect the said Road with the said Central Railroad in its course to Galena: *Provided*, Nothing contained in the provisions of this act shall authorize the said Company to have, purchase, receive, or hold any land upon any line of any Railroad authorized to be constructed by the State, nor to construct any Railroad upon or near the same line, or any Railroad authorized to be constructed by the State.

NEWTON CLOUD,

Speaker of the House of Representatives, pro. tem.

W. H. DAVIDSON,

Speaker of the Senate.

Approved, 4th March, 1837.

JOSEPH DUNCAN.

Schuman C

AN ACT to amend An Act to Incorporate the Galena and Chicago Union Railroad Company, Approved Jannary 16, 1836, and an Act to amend the same, Approved March 4, 1837.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the Board of Directors of the Galena and Chicago Union Railroad Company shall hereafter consist of such number of Directors as shall be determined upon from time to time by the Stockholders of said Company, at any meeting thereof for the choice of Directors: *Provided*, That such number shall not be less than seven, nor more than thirteen; said Directors shall be stockholders in said Company, and shall be elected annually by the stockholders, either in person or by proxy, and shall hold their offices for one year, and until their successors shall be elected and qualified. But any vacancy occurring in said Board between elections may be filled by the Board at any legal meeting of the Directors; and the person so elected to fill the vacancy shall hold his office until the next annual meeting.

SEC. 2. The words "Bank or Monied Incorporation," contained in the seventeenth section of the Act to Incorporate the Galena and Chicago Union Railroad Company, approved January 16th, 1836, are hereby stricken out of said act, and the words "place, or with such person or persons" inserted in their place and stead.

SEC. 3. There is hereby granted to the Galena and Chicago Union Railroad Company the right of way through such portions of the public land belonging to this State as remain unsold, for the construction and extension of the Railroads proposed or authorized to be constructed by said Company; *Provided*, That the portion of public land occupied therefor shall not exceed one hundred feet in breadth; that the route of said road or roads shall be designated and marked on the ground by plain landmarks within the period of twelve months from the approval of this act, and a copy of the notes of survey and plat thereof, with a description of said landmarks, shall be transmitted to the Auditor's office within ninety days after said survey shall have been completed as aforesaid: *And provided further*, That if any of said lands shall be sold by

the State previous to such survey, the provisions of this section shall not apply to such lands as shall have been thus sold previous to such survey: *And provided further*, That if at any time after the construction of said roads, or any part thereof, the said railroads shall be suffered to fall into utter decay, or shall cease to be used as and for the purposes of a railroad, then and from that time all right of way hereby granted shall revert to the State, and the same shall be disposed of by the State in the same manner that they might have been disposed of if this act had not been passed.

SEC. 4. Should the said Company find its present capital insufficient for the completion of the works authorized by the acts to which this act is an amendment, and for the accomplishment of the objects of the same, the Board of Directors of said Company are hereby authorized and empowered to increase the capital stock of said Company to any amount not exceeding three millions of dollars.

SEC. 5. Nothing in this act contained, nor in the acts to which this is an amendment, shall be so construed as to confer any banking powers upon said Company.

SEC. 6. This act shall take effect from and after the time that it shall be accepted by the stockholders of said Company, at a regular meeting to be called for that purpose, the evidence of which acceptance shall be the record of that fact upon the books of said Company.

NEWTON CLOUD,

Speaker of the House of Representatives.

JOSEPH B. WELLS,

Speaker of the Senate.

Approved, Feb. 24, 1847.

AUGUSTUS C. FRENCH.

DEPARTMENT OF STATE, ILLINOIS.

I, HORACE S. COOLEY, Secretary of State, do hereby certify the foregoing to be a true and correct copy of the original law on file in my office.

Witness my hand, and the Great Seal of State, at Springfield
this 22d day of March, A. D. 1847.

{ L. S. }

H. S. COOLEY, *Secretary of State.*

AN ACT To amend the 10th Section of an Act entitled An Act to Incorporate the Galena and Chicago Union Railroad Company,

Approved January 16, 1836.

Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the President and Directors of the Galena and Chicago Union Railroad Company are hereby authorized to pay such rates of interest on loans of money, not exceeding twelve per cent. per annum, as may be agreed upon by a majority of the Board of Directors: Provided, A majority of the Stockholders present in person or by proxy at any annual meeting of the said Stockholders, shall assent to the pay-

ment of such rate or rates of interest as shall have been recommended by their Board of Directors.

Z. CASEY,
Speaker of the House of Representatives.
WILLIAM McMURTY,
Speaker of the Senate.

Approved, February 12, 1849.

A. C. FRENCH.

OFFICE SECRETARY OF STATE, ILLINOIS.

I, HORACE S. COOLEY, Secretary of State of the State of Illinois, do hereby certify the foregoing to be a true and correct copy of the original enrolled law on file in my office.

{ L. S. }

Witness my hand, and the Great Seal of State, at Springfield,
this 20th day of March, A. D. 1849.

H. S. COOLEY, *Secretary of State.*

Schedule D

AN ACT to amend an Act entitled An Act to Incorporate the Galena and Chicago Union Railroad Company, Approved January 16, 1836.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the Galena and Chicago Union Railroad Company be, and they are hereby authorized to straighten the line or route of said Railroad whenever and wherever said Company may deem it expedient; and for that purpose may obtain by purchase or condemnation the right of way in the manner provided in said act incorporating said Company, and may lay down and maintain one or more additional tracks on said Road, whenever they shall deem the public interest requires it.*

SEC. 2. *Said Company shall have the right to obtain by purchase or condemnation, in the manner provided in their said act of incorporation, additional depot grounds, for the use of said Company, whenever they shall deem it necessary.*

Schedule D

JOHN REYNOLDS,
Speaker of the House of Representatives.
G. KOERNER,
Speaker of the Senate.

Approved, February 12, 1853.

J. A. MATTESON.

UNITED STATES OF AMERICA, }
STATE OF ILLINOIS. } ss.

I, ALEXANDER STARNE, Secretary of State of the State of Illinois, do hereby certify that the foregoing is a true and correct copy of an enrolled law now on file in my office.

{ L. S. }

In testimony whereof, I hereunto set my hand, and cause the Seal of State to be hereto affixed, at Springfield, this 7th day of March, A. D. 1853.

ALEXANDER STARNE, *Secretary of State.*

And afterwards to wit on the second
day of July in the Year of our Lord
Eighteen Nin and Fifty Three came
the said defendants the Galena and
Chicago Union Rail Road Company
et al by James H Collins their soli-
citor and filed their Answer to the
said Complainant's bill of Com-
plaint, in the office of the Clerk of
said Court, which said Answer
and Exhibits thereto attached are
in words and figures as follows to wit

In Chancery

The joint and several answer of The
Galena & Chicago Union Rail Road Company, John B
Swoner, Walter S. Newbery, Charles Walker, James W.
Callins, William H. Brown, Elisha S. Wadsworth, Thomas
Dyer, Benjamin W. Raymond, Defendants to the Bill of
Complaint of Horatio A. Shaw Complainant

These defendants, now and at all times
hereafter saving and reserving to themselves all manner
of benefit and advantage of exception to the many errors
and insufficiencies in the complainant's said Bill of
Complaint contained for answer thereto, or unto so
much or such parts thereof as these Defendants are
advised is material for them to make answer unto.

They answer and say,

They admit that
the General Assembly of the State of Illinois passed
an act entitled "an act to incorporate the Galena &
Chicago Union Rail Road Company" approved January
16, 1836, as in said complainant's said Bill alleged, which
said act is a Public act or law of the State of Illinois.

And these Defendants also admit that a copy
of said act of incorporation is, as they verily believe annexed
to said Bill of Complaint marked "Schedule A" though
these Defendants for greater certainty pray leave to refer
to the printed laws & Statutes of this State for the particular
provisions & contents of said act.

And these Defendants further admit that the
General Assembly afterwards passed another act entitled
"an act to amend an act entitled an act to incorporate the
Galena & Chicago Union Rail Road Company, approved
January 16th 1836, approved on the fourth day of March
1837, a copy of which last mentioned act, as these Defendants
verily believe is annexed to said Bill of Complaint.

Marked Schedule "B" and said General Assembly
also passed another act entitled "an act to amend an act
to incorporate the Galena & Chicago Union Rail Road
Company approved January 16, 1836. and an act to
amend the same approved March 4th 1837." approved on
the 24th day of February 1847. a copy of which last men-
- tioned act is as these defendants verily believe annexed to
the said Bill of complaint marked "Schedule C" and said
General Assembly also passed another act entitled "an
act to amend an act entitled an act to incorporate the
Galena & Chicago Union Rail Road Company approved
January 16, 1836. approved February 12th 1853
a copy of which said last mentioned act is as these defen-
- dants verily believe annexed to the said Bill of Complaint
& marked "Schedule D".

And these defendants further answering
admit that the several acts aforesaid embrace all the legis-
- lation specially relating to the Galena & Chicago Union
Rail Road Company. except an act entitled "an act to amend
the 10th section of an act entitled "an act to incorporate the
Galena & Chicago Union Rail Road Company" approved
January 16, 1836. approved February 12, 1849. and these de-
fendants also admit that the said company by virtue of the
first above mentioned act became a body politic and corporate
and continued such body politic and corporate to the present
time and are well entitled to hold up & exercise all and
singular the rights, privileges and franchises vested in them
by the said Original act of incorporation and the said
several amendments thereto above mentioned and referred
to.

And these defendants further answering
say that some time after an organization under said
act of incorporation by a choice of directors and a
Subscription to the capital stock of said company and

on the Twenty fourth day of September in the year of our Lord One Thousand Eight Hundred and thirty eight the president of said company reported to the Board of Directors thereof that said company was ready to proceed with the construction of said Road, and thereupon the said Board of Directors passed an order or resolution authorizing the said president to proceed with the location & construction of said Road as far as practicable this fall (meaning the fall of the year 1838) and to take such measures to that end as should seem to him expedient: a copy of which said resolution is hereto annexed marked (exhibit A) but these defendants have no knowledge, recollection or information of the precise time when the workⁿ of construction of said Rail Road was actually commenced, but these defendants according to the best of their remembrance, information, & belief, say that some time in or about the month of November in the year of Our Lord Eighteen Hundred and thirty eight some posts or piles were set into the ground on the west side of the city of Chicago extending westerly on or nearly in a line with Randolph Street and some stringers placed upon said posts or piles upon which to lay rails for a Rail Road, but no rails or track were ever to the knowledge or belief of these defendants laid upon said stringers, but the work as well as the ground upon which the same was laid was wholly abandoned and nothing further was done or attempted to the knowledge or belief of these defendants towards the commencement or construction of a Rail Road under said act of incorporation until in or about the year One thousand eight hundred and forty six when said company surveyed and adopted the present line or route of said Rail Road & commenced the construction of said Rail Road and have prosecuted the same ever

Since

And these defendants further say that they have no knowledge or information whatever, save from the said bill of complaint, that a survey of the route of said Road authorized by said act of incorporation was made between Galena & Chicago in the year 1837 or early part of the year 1838, as alleged in said bill of complaint and these defendants do not believe that any survey whatever was made in said year 1837 or in the early part of the year 1838, though it may be true that some preliminary or random lines may have been run in the summer of 1838, & possibly in the year 1837.

And these defendants deny that the work of said road was actually commenced in the year 1838, at or near Chicago or elsewhere by grading or laying a part or portion of the superstructure or otherwise, or that any thing was done, or attempted except as hereinbefore stated mentioned put in or about the year Eighteen hundred and forty Six as aforesaid.

And these defendants further say that the plan upon which said Road was originally proposed to be constructed was wholly impracticable and useless and was abandoned, and a different plan adopted in the year last aforesaid, and said Road constructed on said plan on the line now occupied by said Road which commences in the city of Chicago on the line of Kinzie Street and runs in a westerly direction to junction DuPage County about thirty miles from Chicago, thence through Elgin, Kaneva, Belvidere, Rockford & Freeport in Stephenson County at which point it is expected said Road will unite with the Galena Branch of the Illinois Central Rail Road which is now in a course of construction from Freeport aforesaid to Galena, but these defendants say

that no agreement or positive or ^{definite} arrangement has yet been entered into between the said Galena & Chicago Union Rail Road Company, and the said Illinois Central Rail Road Company, in relation to a connection between said Roads but such connection has often been spoken of and no doubt will be consummated.

And these defendants admit that said Galena & Chicago Union Rail Road was so far completed that said Company commenced operating said Road as far as Elgin about the 22^d day of January 1850. and ^{as} far as Belvidere about the 3^d day of December 1851. and as far as Rockford about the first of August 1852. and the remaining distance between Rockford & Freeport, is in progress of completion and is expected to be ready for operation by the first day of August next.

And these defendants further admit that from the time said Road was put in operation, untill the present time the earnings of said Road have been considerable & since the semi annual dividends have been made at or about the times & of the respective amounts mentioned in said Bill of complaint.

And these defendants admit that the said Complainant owns twenty shares of stock in said Galena & Chicago Union Rail Road Company, & that there has been paid to said Company One hundred Dollars upon each share of said Complainant's said stock and that said Complainant has owned said stock since the year 1847. and that he has received dividends thereon at the times and in the amounts mentioned in the said Bill of complaint.

And these defendants further answering expressly deny that the time prescribed by the said Charter of said Company for the location and construction of any branch or branches or of any lateral Road or route expired on the sixteenth day of January Eighteen Hundred and

forty time: or that said time has expired at any time since
or has yet expired: on the contrary thereof, these defendants
say and insist that the time prescribed in said charter and
the amendments thereto for the location & construction of the
main trunk of said Road will not expire until after the
Sixteenth day of January, Eighteen hundred and fifty
four, and these defendants respectively submit & insist
that the time for the construction of said lateral Roads or
branches will not expire then, expiring but that the right to con-
struct lateral Roads or branches, will continue until
long after the Sixteenth day of January 1854.

And these defendants further aver
and aver generally, that previous to or on ~~or about~~ the first
day of January 1853, a sufficient sum of money
had been obtained by subscriptions to the Capital
Stock by loans & from the earnings of said Road or other-
wise fully to complete Equip and put in successful
& complete operation the said Rail Road from Chicago
to Freeport, including the branch or lateral of said
Road from Belvidere to Beloit which is a part of the
said Galena & Chicago Union Rail Road: on the contrary
these defendants say that before and on the said first day
of January last aforesaid, said company, had not obtained
the subscriptions, to said Capital Stock, by loans, from
the earnings of said Road, or in any other way, or manner suf-
ficient money, to construct, complete & Equip and put
in complete operation even that part of said Road from
Chicago to Freeport, but lacking funds & means therefor
to the sum of more than One hundred thousand dollars
for the completing of said Road & Beloit Branch
more than three hundred thousand dollars according
to the best judgment & belief of these defendants.

And these defendants admit that part of the
Galena Branch of the Illinois Central Rail Road between

Freeport & Salina is under contract and in course of construction by said Illinois Central Rail Road Company.

And these Defendants further answering say that the Board of Directors of the Salina & Chicago Union Rail Road Company have since the said first day of January 1853. caused to be surveyed and located have put under contract and the same is now in course of construction a branch or lateral Rail Road now resting with and proceeding from the main line or route of said Salina & Chicago Union Rail Road from junction aforesaid in the county of DuPage, and running thence in a westerly course through the Town of Geneva in Kane County and through the County of DeKalb about five miles south of Tiptonville to a point at or near Jefferson Grove in the County of Ogle where said lateral or branch Road will intersect the Rockford & Rock Island Rail Road but these defendants expressly deny that said Board of Directors have in violation of the provisions of their said Charter or without the authority of Law surveyed, located and commenced the construction of said lateral road. on the contrary these defendants say and insist that said board of directors had and still have full and complete power and authority under and by virtue of their said Charter and the amendments thereto to survey locate, construct & complete said lateral road and operate the same as fully and absolutely as any other part of the said Salina & Chicago Union Rail Road.

And these Defendants further say that they have no knowledge or information whatever save from the said bill of complaint, that the said lateral Road was surveyed located & its construction commenced against the wishes and consent of the said complainant.

and they can neither admit or deny the same but leave the said Complainant to make proof thereof as he may be advised.

And these Defendants deny that they have since the said first day of January 1853. located or commenced any other Road except said last mentioned lateral or branch Road.

And these defendants admit that said lateral road is to be built and constructed with the money, credit & funds of the said Salina & Chicago Union Rail Road Company and in part with the ^{funds means and} credit of the said Complainant as a stock holder.

And these defendants further answering say that while the expediency of the construction of said lateral or branch Road was under consideration by the said Board of Directors, said Board with a view of ascertaining whether any and what connection could be made by said Salina & Chicago Union Rail Road Company with other Rail Road companies in case said lateral or branch Road should be constructed, appointed a committee of said Board to confer with the Rockford & Rock Island Rail Road Company and also with the Mississippi & Rock River Junction Rail Road Company relative to the forming of a connection with said companies respectively. And the said committee so appointed about the third day of May last past. had some correspondence with committees of said companies respectively & a communication or proposition was made by the Committee of the said Salina & Chicago Union Rail Road Company to the committee of the said Mississippi & Rock River Junction Rail Road Company in substance and to the effect that the said Salina & Chicago Union Rail

road company. proposed to construct a Road
from junction aforesaid to a point about twenty
miles North Easterly from Dixon and by agree-
ment under the charter of the Rockford & Rock
Island Rail Road Company. from thence to
Dixon and then connect with the Mississippi &
Rock River Junction Rail Road. and as soon
as constructed to stock and operate said Road
from that point to Dutton & Albany when consoli-
dated with that company upon fair & equitable
terms thereafter to be agreed upon, on the case of
a disagreement. the same to be fixed by three dis-
interested Superintendents of Rail Roads. to which
communication said committee of the said Missis-
sippi & Rock River Junction Rail Road Company
returned an answer in substance and to the effect
that said committee had no doubt, it would meet
the views of the Company of which they were a
Committee. to have said "Road" and operated by
the said Galena & Chicago Union Rail Road Company
as one Road by the Mississippi some just arrangement
being made for the division of profits in proportion
to the interest of the Roads & should recommend the
acceptance of the proposition to the Board of their
Company. And no doubt that it would be adopted
And the said Committee so appointed by the directors
of the Galena & Chicago Union Rail Road Company
in their communication to the Committee of the Rock-
ford & Rock Island Rail Road Company proposed
in substance and to the effect. that the said Galena
& Chicago Union Rail Road Company should lease
for a nominal sum that part of the line of said
Rockford & Rock Island Road from Dixon to a
suitable point of connecting the same with a Branch
of said Galena & Chicago Road North Easterly from

Dixon to be determined by said Galena & Chicago Union
Rail Road Company, not east of a south line from
Rockford, being a distance of about twenty miles
with all the right & privileges pertaining to the same, and
to stock & operate upon just and equitable terms such
part of said Rockford & Rock Island Rail Road
as might be ^{constructed} between Dixon & Albany in connection
with the Mississippi & Rock River Junction Rail Road
as might be hereafter agreed upon; or in case of dis-
agreement, said terms to be fixed by three disinterested
practical Superintendents of Rail Roads, to which
said last communication the said Committee of
the said Rockford & Rock Island Rail Road Company
returned an answer, in substance and to the effect
that in behalf of their said Company they accepted
the said proposition & pledged themselves as well as
their Company to carry out the views contained therein.

And these defendants further say that
the foregoing correspondence was reported to the said
Board of Directors, about the seventh day of May,
last, and is all the correspondence that has been had
between said Companies respectively to the knowledge or
belief of these defendants; and no action of the said
Board of Directors, of the said Galena & Chicago
Union Rail Road Company, has been had or taken
upon the report of said Committee towards a sanction
or ratification thereof by said Board or otherwise.

And these Defendants expressly deny that
said Galena & Chicago Union Rail Road Company
have entered into any contract whatever with the
said Rockford & Rock Island Rail Road Company
to aid in the construction of so much of said Rock-
ford & Rock Island Rail Road as shall extend from
Ogle County to Dixon & from there to Albany, in the

Mississippi River or to lease equip or stock, any part
of said Road, or Operate any part thereof, as is entirely
alleged in said Bill of Complaint: And these
defendants deny that there is any such or similar
agreement, or arrangement or understanding or any
Other agreement or arrangement, or understanding
or any Other agreement, or arrangement or understanding
between said Companies whatever. And
these defendants say that said committee of said
Board of Directors of said Galena & Chicago Union
Rail Road Company, had no power or authority
& were not authorized to enter into any contract
with said Other companies whatever & their acts have
not in anywise been ratified.

And these Defendants deny that said
Galena & Chicago Union Rail Road Company are
about to apply the Money, profits & funds of said
Company, to the construction equipment & Operation
of the said Rockford & Rock Island Rail Road
or any part thereof, or the Money funds & property
of the said complainant, as a stock holder, or any
part thereof in violation of the powers contained in
said charter & the amendments thereto or in violation
of the rights of the said complainant as a stock holder
or otherwise to the knowledge or belief of these defen-
dants.

And these defendants admit that the construction
of the said later Branch road from Junction as herein
before mentioned, would involve the expenditure of a large
sum of money that is to say, about the sum of Eight hundred
& twenty five thousand Dollars which is partly provided
for by the issuing of new or additional stock & by loans
made and to be made, and from the earnings & resources
of said company: but these defendants expressly deny that
such liabilities & Expenditure will in their judgment

Belief in any manner lessen the dividends which would otherwise be made or jeopardize in the least the interests of the said Complainant in said stock or lessen the value thereof. On the contrary thereof these defendants say that before the Directors determined upon the construction of said lateral or Branch Road a large majority, that is to say Eleven of said Directors out of thirteen of said Board carefully, deliberated and maturely considered the expediency of constructing said lateral or Branch Road & came to the conclusion & are still firmly of the Opinion & belief, that the construction of said Road would greatly advance the pecuniary interests of the Stock holders in said Galena Chicago Union Rail Road Company, & would protect the main line of said Road against injurious competition & increase the value of said Stock and promote the General prosperity of said Company as well as that portion of the country through which said Branch is located, and these defendants were advised by the larger Stock holders abroad and at home to proceed with said work, and since said work has been determined upon the share holders in said Company have with great unanimity approved of the construction of said lateral or Branch Rail Road, these defendants have no knowledge or belief that any Stock holder representing any but an inconsiderable of stock in said Road has expressed any dissatisfaction whatever at the proceedings of the directors in respect to the construction of said Branch except the said Complainant and these defendants say that they are interested in the stock of said Road & have paid into the said Company the amounts mentioned & set forth in Schedule B. hereto annexed to which these defendants pray leave to refer that they verily believe that their Stock will be more valuable by the construction of said lateral Road than it would be without it, and said Branch which is about forty eight miles in length will yield as much profit to

the said Company at least as any forty eight miles of said main line part of junction aforesaid and will nearly double the value of the Road between junction & Chicago.

And these defendants further say that they expect and believe and have no doubt, whatsoever that said lateral road will be intersected and will unite with other Rail Roads extending westerly to the Mississippi river which will also be connected with Rail Roads in Iowa which will bring a great amount of trade & travel to the said lateral Road and will greatly increase the business & revenue thereof as well as that part of the main line between junction & Chicago.

And these defendants deny the existence of any contract or contracts between said Galena & Chicago Union Rail Road & the said Rockford & Rock Island Rail Road Company or any other Rail Road company which in the performance thereof will embrace large or any expenditures of money whatever or which will be any charge upon its credit or resources whatever or which will involve liabilities or lessen the dividends of said Road or jeopardize in the least the Stock of said Complainant as is untruefully alleged in said Bill.

But these defendants respectfully insist & submit that the said Galena & Chicago Union Rail Road Company have under & by virtue of their said Charter & the amendments thereto and the General laws of this State full power and completely authority to enter into such a contract with the said Rockford & Rock Island Rail Road Company as is charged and set forth in said Bill of Complaint and that if indeed such a contract had been made (which these defendants do not admit but deny) as stated in said Bill the same would be legal & would not be a violation

the rights of any stock holder of the said Galena & Chicago Union Rail Road Company: If however said Branch should be constructed in violation of Law and without authority, then these defendants admit that such

Construction would result in the loss of the money
& means invested in it, & would embarrass, though not
ruin said Company, and would absorb the means
& perhaps the earnings of said Company & reduce the
value of said stock of the said complainant but would
not render it of little or no value, in the opinion & belief
of these Defendants,

And these defendants further answering
deny that the said lateral or branch Rail Road will
be to a considerable or to any extent or effect a rival
Road on the contrary these Defendants verily believe that
it will greatly contribute to the business & profits of the main
line and will not in any way, compete with or operate
injuriously to the interests of the main line

And these Defendants admit that the Charter
of the Rockford & Rock Island Rail Road Company au-
thorizes the construction of a Rail Road from Rockford
down the Valley of Rock River to Dixon & Rock Island
But these defendants deny that a connection of the said
lateral or branch Road at a point below Rockford where
the same may intersect said Rockford & Rock Island
Rail Road, as located and under contract for construction
& as intended to be built and terminated, must or will
have a tendency more or less to divert trade or business, or
any trade or business from the present or main Road of
these defendants, or that the said lateral Road will in other
respects compete with or divert the business from the main
Road or have any tendency to lessen the dividends or the
value of the stock of the said complainant; These defendants
do not believe that any such consequences will result
from the construction of said lateral Road, or that the
interest of the said complainant will be at all affected
or impaired thereby

And these defendants further answering

admit that the present Directors of the said Valued
Chicago Union Rail Road Company are William H.
BROWN, Thomas Dyer, John B. Turner, Walter L. Newbery,
Charles Walker, Elisha S. Madsen, Benjamin W. Raymond,
George Smith, Hugh J. Dickey, Thomas L. Robertson, Dexter
A. Howdell, & Charles S. Hempstead, & James McColliers,
and that they have the direction of the business & affairs
of said Company.

And these Defendants admit that said
Directors have caused the said lateral road to be actually
commenced as stated in said Bill of Complaint.

And these Defendants further answering
say that they have also purchased five thousand tons
of I. Rail Iron at the cost of about Three Hundred &
fifty thousand Dollars which is now in the course of
delivery. Have also purchased ties & various other materials
for the construction of said lateral or branch road am-
ounting to the further sum of about thirty thousand
Dollars besides grading and other expenses amounting
to some twenty thousand more, and all the necessary financial
arrangements are made or nearly so, for the rapid prosecution
& completion, and equipment of said Road and the right
of way mostly obtained therefor, and these Defendants
expect to ~~complete~~ and verily believe that said Rail
Road will be completed & in operation by or before the
fifteenth day of January next unless prevented by the
proceedings of the said complainant in this case, and
these Defendants say that the ^{interuption} ~~interruption~~ of said Work
at this time would be attended with most disastrous
consequences to said Company, and would nearly un-
dermine and endanger & jeopardize the stock of the said Com-
plainant, as well as the other stock holders in said
Company, ^{and subject said Company} to a loss, as these Defendants verily believe
of more than two hundred thousand Dollars, and
these Defendants admit that the said property & material

Funds already Obtained are intended to be applied
in the construction of said lateral or branch Rail Road
but they deny that the Funds or property of said Company
are to be applied to the performance of any contract
with the said Rockford & Rock Island Rail Road
Company or to any other Object or purpose not
authorized by the Charter of said Company & the annual
Meetings thereof or to the injury of said Complainant or
his interest in the Stock of said Company.

And these Defendants deny all and all
manner of unlawful combination or confederacy where
with they are charged. without that, that any other
matter or thing material or necessary for these defendants
to make answer unto, and not herein or hereby well and
sufficiently answered into confessed or avoided, traversed or
denied is true to the knowledge or belief of these defendants
all which matters and things these defendants are ready
to aver maintain & prove as this Honorable court shall
direct. Humbly pray to be hence defended with their
reasonable costs and charges.

Seal

George J. Dickey
John B. Turner
C. H. Collins
Chas. Dyer
William H. Brown
B. H. Raymond
W. L. Newberry

John B. Turner President
W. M. Larrabee Secretary

State of Illinois
Cook County

On this second day of July A D
1853, personally came before me, John B. Dwyer, William
H. Brown, Walter S. Newberry, Hugh J. Dickey, Benjamin
W. Raymond & James H. Collins & Thos. Dyer who subscribed
the foregoing answer, who being by me duly sworn, say each
for himself, that he has heard the foregoing answer
by him subscribed, read & knows the contents thereof, that
the same is true of his own knowledge, except as to the
matters & things therein stated to be upon information and
belief, and as to those matters he believes it to be true
Sworn & subscribed before
me this 2^d day of July.
A D 1853.

J. W. Davenport
Notary Public

Great Seal

John B. Dwyer
William H. Brown
W. S. Newberry
B. W. Raymond
Hugh J. Dickey
Jas H. Collins
Thos Dyer

(A)

At a meeting of the Directors of the Galena
& Chicago Union Rail Road Company
Present

Mr Hubbard
Mr Gale
Mr Collins
Mr Brown

On the 24th day of September 1837

The President stated to the Board that
the Company were ready to proceed with the construction
of the Road &c forth. Whereupon Mr Brown Having
been appointed Secretary of the meeting. On Motion it
was resolved that Mr Francis Howe be appointed
Secretary of the company. On Motion it was resolved
that an installment of ten Dollars on each share of
the capital stock shall be paid to the President of the
Company on or before the 5th day of October next.

On Motion it was resolved that the President be
authorized to proceed with the location and construction
of the Road as far as practicable, this power, and to take
such measures to this end as shall seem to him expedient.

Whereupon the meeting adjourned sine die
Signed W H Brown Secretary pro tem.

A True copy from the Records
W. H. Taraboo Secy
I & C. U. R. R. Co

(B)

I William M. Sarrahu Secretary of the
Galena & Chicago Union Rail Road Company do
hereby certify that the following named persons are
Directors of said Company, and that they hold, and
as I believe own the number of shares of Stock in said
Company set opposite their respective names, and
that they have paid thereon the sums below specified
to wit:

			Amount paid in
John B. Spruner	500 Shares	\$30,000	\$ 25,000
Walter L. Newbury	263 "	26,300	19,800
Charles Wacker	32 "	3,200	3,200
James H. Collins	108 "	10,800	7,200
Wm. H. Brown	327 "	32,700	27,700
Elihu S. Wadsworth	109 "	10,900	10,900
Thomas Ayer	160 "	16,000	16,000
Benj. W. Hayward	44 "	4,400	3,900
George Smith	1100 "	110,000	110,000
Wesley J. Hickey	22	2,200	2,200
Thos. D. Robertson	132.	13,200	8,000
Dexter A. Kewellton	233	23,300	13,200
Charles S. Hempstead	110.	11,000	8,500
Totals	2940	\$294,000	\$255,700

Witness my hand this 1st day of July A.D. 1850
Wm. M. Sarrahu
Secretary

And afterwards to wit: on the fourth day of July in the year
of our Lord One thousand Eight Hundred and fifty three
was filed in said cause in the Office of the Clerk of the said
Court a stipulation which is in words and figures as
follows to wit:

Cook County Court of Civil Pleas

Noratis Newhall

^{vs}
The Galena & Chicago
Union Rail Road Company
Hillman & Brown et al

In Chancery

It is hereby stipulated and agreed
between the parties to the above entitled cause.

1st That said cause be heard on bill and
answer, and a decree pro forma dismissing the bill be entered.

2^d That an appeal to the supreme court be
allowed to complainant without filing any bond, and
that upon filing the Record in said court the cause shall be
docketed and heard at term of said court now being
holden at Ottawa.

Dated this 2^d July 1853.

Chas. Drink & Goodrich

Sols for complt

A McCallum

Defts Sols.

And Afterwards to this on the 11th day of July 1853 it
being one of the days of the said July term, the following
proceedings were had and entered of Record in said cause
to wit:

Noratis Newhall

^{vs}
The Galena & Chicago
Union Rail Road
Company et al

In Chancery

And now comes the said parties by their solicitors and this
cause come on to be heard upon Bill and answer and
it is ordered adjudged and decreed that the bill be dismissed
and the said ~~complainant~~ Defendants pay and recover
against complainant their costs in this behalf expended
and have execution therefor

And thereupon said complainant prays an
appeal to the Supreme Court which is allowed without
bond pursuant to the stipulation of the parties, file of
record which stipulation is made a part of the Record
in this cause

State of Illinois }
County of Cook } S.S.
I Walter Kimball Clerk
of the Cook County Court of Common Pleas within
and for the County of Cook & State aforesaid Do
hereby Certify that the above foregoing is a true
copy and Transcript of the Bill, answer
Stipulation and Order of Record, as the same
are on file in my office in the case of
Morato Kimball Complainant and the
Galena & Chicago Union Rail Road Compa-
ny Defendants in Chancery.

In Testimony whereof I have
hereunto set my hand & the Seal
of said Court at Chicago in said
County this 6th day of July
A.D. 1853

Walter Kimball Clerk

Horatio Kimball

of
The Galena & Chicago
Union Rail Road
Company et al

Transcript

Filed July 7th 1853.

L. Leland Clk.

By P. H. Leland Depy.

Prepared

Wm. Grant & Co. Secy.

Certified by
Comptroller

John B. Turner Esqr

1
Detroit April 6th 1853

Dear Sir

I have examined the charter of the Chicago & Galena Union rail road company with reference to the questions submitted to me for my opinion which is herewith enclosed.

Those questions are.

First. Has the Company authority under its charter & the amendments thereto to construct a road diverging from their present line thirty miles west of Chicago to Galena via Savannah?

2nd. Has it a right to construct a road diverging at the same point to Savannah or terminating at any point short of that place?

3rd. If they have the right to construct either of said roads, is there any limitation as to the time within which they shall complete it?

By section 6 of the charter of the company it is authorized to construct a single or double rail road ~~or wagon~~ on the line which may be designated by the directors as the line whereon to construct the same & by section two the termini of the main road on Galena & Chicago.

By section 6 this further unusual power is conferred upon the company viz. And they may also construct maintain and use such other lateral routes as may be deemed advantageous and expedient and necessary under the same rights and privileges as by this act is provided for the constructing the main route.

And it shall be lawful for the said company to unite with any other rail road Company already incorporated or which may be hereafter incorporated upon any part of the route of the

said road upon such terms as may be agreed upon by the directors of the said Companies. And also to construct any other and lateral routes as may be necessary to connect them with any other route or routes which may be deemed expedient.

This is a very broad grant of power and authorizes the Company expressly to construct lateral routes such as may be deemed expedient without any restriction and without specifying that they shall connect with any other company or road.

It is an unlimited and unrestricted grant of power and under it the company may construct a lateral road running from any point on its line to any other point or to any terminus of its line. A lateral road means a side road.

A road running from the side and located by the side or parallel with another. In the grant of power there is no limit as to its length or as to its point of commencement or terminus and I can perceive no reason why the right of the Company is not perfect to construct a road from the junction to Galena by Savannah or by any other route which shall be a lateral route.

This would involve an answer to the several questions. But there exists the other express grant contained in the last clause of section b. which authorizes the construction of any other and lateral routes which may be necessary to connect them with ^{any} other route or routes which may be deemed expedient. This is a distinct authority and under it a road may be constructed from the junction or any other point to connect with the Dixon and Albany or any other road which it may be expedient to connect with.

These powers seem to have been granted to enable the Company to connect itself with any line of travel in the vicinity and also to protect itself against

the power of other corporations which might spring up in its neighborhood and endeavor to cripple its resources.

The ~~main~~ question is, what limitation of time there is within which to construct the said roads if any. The only limitation to be found in the charter is the 20th section which provides that the said corporation should be allowed three years within which to commence the construction of said roads and that if it be not completed in ten years thereafter then the privileges granted by the Charter should be forfeited. By the act of January 16th 1836 amending the Charter the time for completing is extended five years, making in all eighteen years from the passage of the act. The act was passed January 16th 1836. That period terminates January 16th 1854.

If there were no other action of the Legislature I should think that probably the Company would have been liable to perfect all its franchises if the main line was not completed the whole distance from Galena to Chicago by that time and of course all power to build the lateral roads might be taken from it by a judgment of forfeiture of all its franchises. But by the amendatory act of 1836 above alluded to it is provided that if it should appear that it was more advantageous to the Company or the public interest that the road of said company should be connected with the State Central road then the said company, were authorized to terminate said road at such point as should be deemed most practicable and might intersect and connect the road of the Company with the said Central Road in its course to Galena.

The State Central Road was not constructed but the Illinois Central Rail Road Company was chartered to carry out and more than carry out the great design of the State. By section 11 of the Charter of that company it was provided that when the route of said road or either of its branches should intersect

corp. connect with, or run along or upon the line of any other rail road now constructing by any other Company the two Companies shall join in making the necessary arrangements &c for uniting and when the route of any other company should be occupied as aforesaid just compensation should be made to such other company for all expenditures made by them in the location of such road and in case of disagreement arbitrators will be designated by the act.

Now the Galena & Chicago Union Rail Road Company had located the route of its road by way of Scales Mound to Galena and the Illinois Central Company have come upon and adopted its route as it was contemplated by the Charters of both companies. it might and as a necessary and legal consequence the Galena and Chicago Company are released from constructing so much of the road of that company as is covered by the location of the route of Illinois Central Company. It results also that if the Chicago & Galena Company constructs its road to the junction by the 16th of January next all its duties required by its charter to the public are complete so far as the construction of the road is concerned and its rights & privileges become absolute. Its right to construct its lateral roads is as absolute and unlimited in point of time as any other of its rights.

There was no limit fixed in the Charter when these rights should cease or become perfect. Every limitation of that kind applied simply to the main line. That being completed within the time fixed by the Charter secures all the other rights of the company to be exercised whenever the circumstances of the country or the Company render it expedient.

I think therefore that it is very clear that the power of the Company to build these lateral roads is not limited in point of time but may be exercised whenever the Company may think it expedient to call the power into active life

And having commenced any such road they may
complete it as and when the means and the
necessities of the Company may render it ex-
pedient.

Very Respectfully

Yours

James F. Joy

Legal Opinion
of

James F. Poy
in relation to Abolition of
the F. & A. M. R. R. Comp.

Marshall

Galena & Chicago U.R. Co Appeal
from Cook.

This is a bill filed by a stockholder to restrain the Galena & Chicago Union Railroad Co from building a branch road from the Junction, within thirty miles of Chicago, in a westerly direction to a point about twenty miles north of Dixon, where it will intersect the Rockford & Fox River Valley railroad, a distance of about fifty miles, on the ground that the construction of said branch railroad is in violation of the charter of said Company, and contrary to law.

The right of a stockholder to file such a bill will not probably be questioned; & if it is, I shall spend no time in discussing that question, as the jurisdiction of a court of equity in such a case is palpable, & needs no citation of authorities to support it.

The decision of the case must turn on the proper construction of the charter of the company, which was passed

January 16, 1836. The second section of the charter authorizes the company to construct & maintain a railroad, with such appendages as may be deemed necessary for the convenient use of the same, from the town of Galena, to such point at the town of Chicago as shall be determined, after a survey shall have been made of the route, to be the most eligible, proper, direct and convenient therefor.

By the 3^d sec. of the act the Capital Stock of the corporation is declared to be one hundred thousand dollars, with permission to increase the same, to a sum not exceeding one million of dollars, if necessary to the completion of the work.

The concluding portion of the sixth section is as follows: "And they (the company) may also construct, maintain and use such other lateral routes, as may be deemed advantageous, expedient and necessary, under the same rights and privileges as by this act is prescribed for the construction of the main route. And it shall be lawful, also, for the said corporation to unite with any other railroad company already incorporated, or which may be incorporated, upon any part of said road, upon such

terms as may be agreed upon by the directors of said companies; and also to construct such other and lateral routes as may be necessary to connect them with any other route or routes which may be deemed expedient."

Sec. 20 declares, that "The corporation shall be allowed three years from the passage of this act, for the commencement of the construction of the said railroad and turnpike; and in case the same shall not be completed within ten years thereafter, the privileges herein granted shall be forfeited."

The charter contains the provisions usually inserted in acts of incorporation for railroad purposes, and gives the authority to appropriate lands necessary for the use of the road, on making compensation therefor.

On the 4th of March 1837, an act amendatory of the original charter was passed, which authorized an increase of the capital stock of said Company to a sum not exceeding one million of dollars in addition to its then capital, & enable said Company "to complete the construction of the road authorized by the charter of said company."

Sec. 3 of the amendatory act authorizes the company to terminate their road where it strikes the central railroad on its route to Helena; and by Sec. 2 of the same act, "the time for the final completion of said road is extended five years.

A second amendatory act was passed Feb. 24, 1847, by the 4th section of which the company is authorized to increase its capital stock to any amount not exceeding three millions of dollars.

A third amendatory act was passed Feb. 12, 1849, which contains nothing material in the investigation of this cause.

Feb. 12, 1853, a fourth amendatory act was passed, which authorizes the Company to straiten the route of their road, and for that purpose to procure the right of way by purchase or condemnation, and to lay down and maintain one or more additional tracts on said road.

The foregoing are believed to be all the provisions of the charter, having a

particular bearing upon the points raised in this case.

In construing acts of incorporation under which the incorporators claim to exercise rights and privileges conferred upon them by the sovereign power, the rule is, that the construction is to be strict, and that the powers of the corporation are not to be extended by implication beyond what is granted by the terms of its charter, or is necessary to carry into effect some granted power.

This rule is now so well settled that a reference to authorities is hardly necessary to sustain it.

If the defendants possess the authority to construct the railroad in question, they derive it from their charter. It cannot be pretended that they possess it in any other way, and that the charter confers no such authority, at this time, I will now endeavor to show.

The great and leading object which the

legislature had in view in chartering the Galena & Chicago Union Railroad Company was clearly the construction of a road between those points. Other powers it is admitted are granted in the charter, and among them the power to build lateral roads; but all these other powers are but incidents to the main object, the construction of a railroad from Galena to Chicago, and are to be used only in subordination to & for the purpose of accomplishing the principal design. not as principal powers which could be exercised of themselves, but as dependent upon the main power granted; for it will not be contended, I apprehend, that the company would have authority to construct a lateral road, without ever building the main one. This would be an absurdity, for one road could not be lateral, or belong to the side of another, which did not exist.

But the right to construct the principal road from Chicago to Galena, without ever building any of the lateral routes is undoubted.

This shows that the lateral routes authorized by the charter to be constructed are but incidents to the main road, not distinct and independent roads of equal or greater

importance than the main trunk, or that part of the main trunk to which they are incident.

Is the road which defendants are about to construct of such a character? It is a road some fifty miles in length, and which is to cost, as the answer admits, more than eight hundred thousand dollars.

The capital stock of the company by the original act of incorporation was only one hundred thousand dollars, with authority to increase it to one million; and can it be, that the legislature designed that more than eight tenths of all the money which the company was authorized to use, of its whole capital stock, should be swallowed up in the construction of routes lateral to the one which was the main object & purpose of their grant? Would any person when subscribing for stock in the Galena & Chicago Union Railroad Company, ^{under this charter} ever dream that more than eight tenths of his subscription was to be appropriated to the construction of routes lateral to such road, leaving it unbuilt? Was this the understanding of the original subscribers to the stock of the road, residing along the route of the same between Chicago

and Galena? The idea is preposterous. It is true, that by an act amending the original charter, the company were authorized to increase their capital to ~~a sum to~~ three millions of dollars, but resort must notwith- standing be had to the original act of incorpora- tion, to determine what the legislature meant, by the term "lateral routes", for it is only in the original act that authority is given to construct them. If it be said that the original capital of the company was insufficient to have constructed the main road from Chicago to Galena, & that it might with equal propriety be argued, that therefore the Legislature did not intend to give authority to construct that road, my answer is, that the illegality of appropriating any portion of the capital to subordinate matters is the more apparent, when the whole of it was ~~insufficient~~ barely suf- ficient to accomplish the main object of the grant. The whole capital of the company at this time is not probably more than sufficient to complete the main road to Galena, should the company eventually be compelled to take it there; and they aver in their answer that no ar- rangement has yet been made with

the Central Railroad Co. to go in on their road. The record also shows that the company have not the necessary funds to complete the road even to Freeport, but that including the Peibit branch it will require some three hundred thousand dollars more than the company has been able to raise by subscription to stock or otherwise to finish the road to that point. In such a state of its finances, what authority, it may be enquired, had the company to undertake the construction of a ^{lateral route, if this were admitted to be such,} ~~new & independent,~~ ~~not ~~new~~~~, which is to cost near a million of dollars -

The road defendants are about to construct is almost twice as long as that portion of the G. & C. M. R. R. Co. between the point of intersection and Chicago. Thus the lateral route, or the incident is a much more important & more extensive road, than the principal road with which it unites, for it is only over the thirty miles of road between the junction & Chicago, that the freight & travel brought over the road about to be constructed would not pass.

It is difficult to determine exactly what is meant by lateral routes, but I think it certain that, ^{another} the Legislature that

passed the act of incorporation, nor the complainant when he subscribed stock in the company, supposed that the company under the clause in their charter authorizing them to construct lateral routes, would have the authority to build a ~~road~~ new and independent road, as this is claimed to be by the owner, of greater extent and far more expensive than the main road, or rather that part of it of which it is ~~but~~ the feeder -

Upon a hasty examination of the Statutes, I find that similar power to construct lateral routes, is conferred upon numerous other railroad companies. The St. Charles Branch Railroad Co. are authorized by Sec. 4 of their charter to unite with any other railroad company; "and also to construct such other and lateral routes as may be necessary to connect them with any other route or routes which may be deemed expedient"

Private Laws 1849, 80 -

The same power is given to the Aurora Branch Railroad Co. Private Laws 1849, 98 & 6, and to the Peoria & Ogawha R. R. Co. ib 100 & 2.

General power is given to Mt. Carmel

and New Albany Railroad Company to unite with any railroad now constructed or hereafter to be constructed either in this State or the State of Indiana. Private Laws 1851, 250.

Similar power to extend to & unite with any other railroad ^{or to be constructed} constructed in the State is given to, ^{the} Jay River Valley, the Mississippi & Rock Island Junction, the Ottawa, Oswego & Jay River Valley, the Bellville & Illinois, the Springfield & Pine Bluff, the Wetash Valley, & the Joliet & Pine Bluff Railroad Companies - Acts 1852, p. 33, 51, 60, 120, 145, 192, 227 -

To suppose that the legislature in all these instances, and a careful examination would doubtless disclose many more, would go on to enact a carefully guarded law, creating a corporation to construct a particular line of railroad, discussing it, and there by a single clause to authorize such corporation under its act of incorporation to construct roads anywhere, & everywhere, all over the State, is ludicrous. The Legislature could never have so intended.

It is absurd to suppose that they would fix the points where the road which is, ^{clearly} ~~apparently~~ the object of the grant must pass, while by a general authority to construct lateral routes, ~~to~~ or to extend to & unite with other roads, they confer upon the Company authority to construct roads in any direction.

If the defendants have authority under their Charter to construct a road from the Junction out into Ogle County, what road may they not construct?

What is to prevent them from running a road from this spot in Chicago to Cairo or any other point. Where is the limit?

This is an important question & it has to be met by the Court. The State is being covered over with chartered companies, and the only safety of the People consists in holding them strictly to the powers granted. Let them take nothing by implication which is inconsistent with the main object of the incorporation, neither allow them under any general and undefined terms used in reference to the principal object had in view, to claim ~~powers~~ ^{powers} ~~which~~ to exercise powers far more extensive than the main object of granting the charter will warrant.

The privileges & powers claimed under

these acts of incorporation, are not like those
conferred by a general ^{law}, under which any
and every body may organize; but they
are exclusive to the corporations; and if
they can succeed in establishing their right
to exercise the floating powers claimed to
have been granted by the general & undefined
terms to be found in many of their charters,
there is ^{no} limit to the powers which many
incorporated companies in this state possess.

As this is the first case in which these
floating powers have been called in
question, it is to be hoped that the court
will put a construction upon them, that
will confine their operation to the main
object had in view ~~when the act of~~ in granting
the charter.

The defendants manifestly cannot
derive the power to construct the road
in question from the last paragraph of
the sixth section of the original act, for
the reason, that no such lateral road was
necessary to connect their road with
the Rockford & Rock river railroad.

The record shows that those roads would
be connected at Rockford, without the
construction of any lateral road for that

Purpose, and the Charter of the Rockford
& Rock Island Railroad Company only
authorizes the construction of a railroad
from some point on the Galena & Chicago
Union railroad company at Rockford
to the city of Rock Island. Private
Laws 1857, 97-

There is a second ground on which
it is insisted that the defendants have no
authority to construct the road in question,
even admitting that it is such a road
as was contemplated by the charter.

The original act of incorporation
was approved Jan'y. 14, 1836, and took
effect from its passage. The company
were allowed three years from the passage
of the act within which to commence
their road, and unless it was completed
within ten years thereafter, it was declared
that the privileges thereby granted should
be forfeited. Among the privileges granted
was that of building "such lateral routes
as might be deemed advantageous, and
expedient and necessary, under the same
rights and privileges" as by the act were
prescribed for the construction of the main

route. The right to construct the main route by the original charter, most undoubtedly expired, at the end of thirteen years from the passage of said charter, which was on the 16th. of January 1849.

The authority to construct lateral routes is granted under the same privileges as are prescribed for the construction of the main route — One of those privileges was to have till Jan'y. 16-1849, ~~to~~ to complete it, provided it was commenced within three years from Jan'y. 16-1836. The same period of time was granted to the corporation within which to construct lateral routes, ~~because they were to be so~~ and they can only be constructed under the same rights and privileges as the main route, unless by some sort of implication or construction which would be contrary to a well settled rule of law, the privilege of constructing lateral routes can be extended beyond ~~the~~ what is expressed in the charter, and beyond the time fixed for the completion of the main road. How long have the company within which to construct lateral routes, if the privilege does not expire with that granted for the construction of the main

road? Will it be insisted that they may construct lateral routes at any time within the ~~dipty~~ years which the charter is to run, if so, they certainly have a privilege not derived from or under any rights or privileges prescribed for the construction of the main route; & where but from this clause of the charter, do they get the privilege to construct lateral routes at all?

It will be observed that the corporation is authorized to unite with other railroad companies at any time, the charter expressly providing, that they may make such union "with any other railroad company already incorporated or which may be incorporated"; But the defendants cannot claim the right to construct the road in question under this clause of this charter for two reasons - First. They already, now or will have a connection at Rockford, & therefore there was no necessity for making another -

Secondly. They do not pretend that they are about to construct the road for the purpose of a connection with the Rockford & B. J. R. R. but expressly deny that they

have made any contract with the directors
of that company for any purpose, and it
is only by mutual agreement that
~~union~~ railroad companies are author-
ized to unite their roads.

The amendatory act of March 4, 1837,
extending the time for the completion of
the main road five years, has no appli-
cation to the lateral routes, as is most
manifest from its terms. The whole
act has reference to the main road alone,
and the extension of time is declared to
be "for the final completion of said road."

The question is not whether it ~~whether~~
it would have been convenient, & whether
the Legislature ought not to have extended
the time for constructing lateral routes as
well as the main one, but what have they
done; and upon the principle of construc-
tion applicable to ~~the~~ grants of privileges
of this character a right conferred for one
purpose cannot be extended to another
although equally deserving of legislative
favor.

The main point in this case, & upon I chiefly rely for its reversal is, that the road about to be constructed is not a lateral route within the meaning of the charter, nor such a road as the directors have the right to appropriate the money of a stockholder in the Galena & C. M. R. R. Co. to the construction of.

The grand object of the act of incorporation was a railroad from Chicago to Galena, and the very clause of the act conferring the right to construct lateral routes denominates it "the main route". It is only such lateral routes as are advantageous, and expedient and necessary that the company were ever authorized to construct, and there was surely no necessity for the road about to be constructed. Whether its construction is expedient or advantageous is perhaps matter of opinion.

That the company did not themselves suppose they possessed such powers as they are now attempting to exercise is manifest from the fact that they

procured the passage of an act
by the Legislature at its last session
authorizing them to straighten their
road & lay down additional tracks.

If they previously had authority to
construct an independent road
fifty miles long, under a general
clause of their charter, it would
surely seem broad enough to
authorize the laying down an ad-
ditional track.

Newhall

v
Galena & Chicago
Union R. R. Co.

Argument of
S. Trumbull on
behalf of appellant

84.

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vs.
Gal. & Ch. Union
R. R. Co. et als.

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