No. 14351

Supreme Court of Illinois

Ill. Grank Trunk R. R. Co.

vs.

Cook. vs. Johnson vs. Bell

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 138

14351

Ills Grand Trunk R.R. Co. vs. 186 Cook

1862

Referred

Ills Grand T. R.R.
vs Appeal from Bureau
Caleb Cook admr
of estate P. Cook decd

Supreme Court
of State of Illinois
3rd Grand Division
April T. 1862

And the said appellee comes
and says that there is no error
either in the record and proceedings
aforesaid, or in giving the judgment
aforesaid, and therefore he
prays that the said judgment
may be affirmed & that his costs
may be adjudged to him &c

Mellen & Peters
attys for appellee

27 138

Ills. G. I. R. R.
vs appeal
from Bureau
Caleb Cook &c

Joinder in Error

Filed Apl. 23. 1862
L. Leland
Clk.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

THE ILL. GRAND TRUNK RAILWAY *et al.*
vs.
CALEB COOK, Adm'r of PHILANDER COOK, dec'd.
} ERROR TO BUREAU.

The reply of the defendant in error to the points made by the plaintiffs in error.

1ST. The statement in the bill, of the motives which induced the deceased to give the bond and coupons secured by mortgage, for stock in this contemplated railroad, certainly does not impair the complainant's case. It therefore appears that the whole object sought by the deceased, in taking this stock, has been defeated by the company, and that his estate will get no benefit whatever from the money which is sought to be collected from the estate, and that on the part of the plaintiffs in error, it is a fraudulent attempt to compel the estate to pay the same, when the project of building the road has been abandoned, all of which is confessed by the demurrer of the plaintiffs in error to complainant's bill. But then this estate will be in no worse condition than hundreds of others on the line of this projected road, whom the plaintiffs in error are attempting to swindle in the same way.

2D. The point made by the bill, that the instruments executed by the deceased, being upon their face made payable to the C. A. & M. Railroad Company, and that therefore their assignees would be bound to take notice of the powers of said company, and these instruments being void in their hands, would be equally so in the hands of their assignees, is upon the assumption that this company had no right to take these instruments at all. The plaintiffs in error insist that if this be so, that then there is a perfect defence at law, and complainant cannot resort to a Court of equity. But this, I think, cannot be law. The complainant has the right to enjoin the transfer of these securities and to

remove the cloud made by the mortgage upon this real estate of the deceased, which is necessary to be sold by the administrator to pay the debts of the estate. If the complainant should be mistaken, and a bona fide assignee before maturity of any of these instruments, would, in the opinion of this Court, be protected from complainant's defences set up in the bill, then there would be an indispensable necessity to resort to this proceeding to prevent their transfer.

The plaintiffs in error insist that the making of this point in the bill, together with the assignments on the bond and coupons, as shown by the copies in the record, establishes that they had been assigned when this bill was filed. This is not true. The bill charges that the said railroad company had filed said
Abs. 5 bond and coupons in the County Court of Bureau County as a claim against the said estate.

3 That the said company have threatened to transfer the bond and mortgage, with a view to exclude the equitable defences of complainant, and that said company will transfer the same, unless restrained by injunction; and that said complainant had requested the said company to surrender the same, which they had refused.

4 The point of notice to assignees was made in the bill to anticipate the defense of assignment, if any should be set up in defendant's answer; but that, no answer having been filed, the point is not important. But I wish that the Court would settle the principle for this and other cases.

By the written stipulation, only copies of the *bond* and one of the *coupons* were to be sent up to this Court, as a part of the record, *not the assignments thereon*. These purported assignments are in no way referred to in said stipulation. The bond and coupon were never filed in the case, and I never heard of there being any assignments upon the bond and coupon, until since this case has been brought to this Court. They, in all probability, were entered upon said papers since the decree in the Circuit Court. Any how, this Court cannot notice such purported assignments, because they are no part of the record of the case, and the Clerk had no right to copy them in the transcript.

3D. It is insisted by plaintiffs in error that the estate of the deceased is not released from payment, by the consolidation stated in the bill, although thereby it does make it a different enterprise from that to which the deceased subscribed, and decisions of this Court are cited to establish the position. I have examined the decisions cited. 17 Ill., 429, and 19 Ill., 177, expressly recognize the case of Barnett *vs.* Alton & Sangamon R. R. Co., 13 Ill, 504, as being good law, which holds that "a road intended to secure the advantages of a particular line of travel or transportation cannot be so changed as to defeat the general object. The corporation must remain substantially the same, and be designed to accomplish the same general purposes and subserve the same general intents." And all of the decisions cited concede the general doctrine, that if such a change is made, that the company thereby embarks on a new en-

terprise, the subscriber is released. This bill expressly charges that such change has been effected by the consolidation, which is conceded by the demurrer to the bill, and that there can be no doubt of it from the facts stated in the bill. The subscribers to C. A. & M. R. R. Co. never contemplated embarking in an enterprise to construct a railroad to Joliet, and if it had been made known to them before they had subscribed that such a chpnge would be made, they would have never taken stock. Their object was to get a direct communication to Chicago, by connecting with the C. B. & Q Railroad, at Mendota. They had no interest in having a direct communication with Joliet.

The act of Legislature, Feb. 28, 1854, Scates' Stat., 951, only allows railroads to consolidate where they intersect by *continuous* lines. These contemplated railroads which consolidated did not intersect by continuous lines. I understand the meaning of that to be, where the lines of two railroads, if continued on in the same course, would near into each other by the continuation, and become one: as, for instance, the different railroads now comprising the C. B. & Q. R. R., New York Central, and others. This law certainly does not mean that any railroad company could consolidate with any other railroad company that should cross its track, although their lines of travel and the business to be accommodated by such companies be entirely different. If so, no person subscribing stock to a railroad could tell where the road to which he had subscribed would end.

4TH. It is insisted by the plaintiffs in error, that in this proceeding, the complainant cannot raise the question, that the capital stock of the company has never been subscribed.

This is a technical objection, that was not insisted upon in the Court below, as will be seen by reference to pages 22 and 23 of the record, and the plaintiffs in error stipulated in writing that no such objection should be presented here. The written stipulation, found at the bottom of the 4th page of abstract, says that it was intended "that *all* the legal questions arising upon the face of the bill and the exhibits filed shall be determined in said Supreme Court."

This Court could not determine all of the questions that arise on the face of the bill and exhibits, if this objection now presented should be sustained, and the Court hold that the complainant could not resort to this remedy. There are many cases both at law and equity of a similar character pending in the Court below, and many more to be brought, awaiting the determination of the questions presented by complainant's bill. The question to be considered was whether the complainant could have relief at all upon the facts set up in his bill—not whether this was the proper remedy for relief. The attorneys for the plaintiffs in error must have become fearful that the points presented by the bill are a good defence to the collection of the claims of the company, or they would not now endeavor to prevent a hearing upon these points by urging that this proceeding was not the proper way to bring up these points, when they agreed that these points should be determined by this Court in this very suit.

But this is the proper remedy. This Court decided, in 15 Ill., 400: "If the managers of a corporation are about to engage in an enterprise not contemplated by their charter, or apply the corporate funds or credit to any other than the purposes therein specified, a Court of equity will interfere, by injunction, at the instance of the stockholders. So a Court of equity has jurisdiction to interfere by injunction, where public officers, under a claim of right, are proceeding illegally to impair the rights or injure the property of individuals or co-partners, or where it is necessary to prevent a multiplicity of suits.

This bill charges, and the plaintiffs in error, by their demurrer, admitted it, that this company, for the past year, have ceased all operation in the matter of building said road, and, as the complainant is informed and believes, have altogether abandoned the construction thereof; and the complainant charges and insists that the officers and agents of said company named in the bill, are striving to collect the amount of this bond and mortgage out of the estate of Cook, and to apply the money so collected to some object foreign to the object of the organization. If this be so, the administrator is certainly entitled to prevent, by injunction, the collection, when the money sought to be collected is not to be used for the building of the road for which the stock was subscribed and said instruments executed.

I have looked into all the cases cited by the opposite counsel, in his brief, and I find them all to be *common law cases*, in which it is simply decided that yeu cannot question the organization of an acting corporation, collaterally, but that it must be by direct proceeding for that purpose. But this bill is a direct proceeding for that purpose, and the legality of the preliminary organization of this company is not denied; but it is insisted that the organization has not progressed so far as to authorize the company to collect stock subscriptions, for the reason that all the capital stock has not been subscribed, and it is not yet known that the enterprise will be practicable.

The authorities show that she subscription of all the capital stock is *precedent* to making any demand for stock assessments, and that this can be urged in any suit to collect such assessments.

Crocker *vs.* Williams *et al.*, 2 American Railway Cases, 484, holds that if the requisite amount of capital stock has not been subscribed, there is no corporation. That is precedent to the existence of the company, and if there is no company, then the subscriber got no stock, and that the consideration of a check given for stock had failed. This was in an action of assumpsit.

In the Atlantic Cotton Mills *vs.* Abbot 9 Cashing, R. 423, it was decided that the subscription of the full amount of the capital stock was precedent to making a call upon subscribers for their subscriptions. This was an action of assumpsit, to recover assessments upon stock. To the same effect is Redfield on Railways, page 77, sec. 1.

2 Story's Equity, sec. 705, says "that when a deed, or other instrument originally valid, has, by subsequent events, become extinguished, and yet its existence may be a cloud upon the title, or subject the party to future litigation, when the facts are no longer capable of complete proof, the Court will, by injunction, decree their delivery and cancellation. So, to prevent the transfer of negotiable instruments, the Court will interfere by injunction. Same, sections 906, 955.

If this company, as is charged in the bill, have failed in their enterprise, by not having obtained sufficient capital stock to build the road, and they still improperly, after demand, retain this bond and mortgage, surely they can be compelled, by this proceeding, to give them up to be cancelled.

The special act of January 30th, 1857, only made valid, acts done and contracts entered into *prior to that time.* These instruments were executed *after* that time, and the acts which we charge to be illegal were after that time. This special act, by it preamble, makes valid the temperary or preliminary organization, that could be entered into under the general railroad act, before all the capital stock should be subscribed, but does not and cannot validate the present illegal acts of the company in attempting to collect subscriptions before the requisite capital stock had been subscribed to build the road, and proceeding to collect, too, after the enterprise had proved impracticable and had been abandoned.

The last point raised by the counsel for the plaintiffs in error, and the proper construction of the general Railroad law, approved Nov. 5th 1849, are very fully discussed in the printed brief on file of Samuel Strawder, the attorney for the plaintiff in error, in No. 229—Fay *vs.* Blackstone, error to Whiteside Co., who is on the same side of this question that I represent in this suit. I refer the Court to this brief and will not repeat it. The decision of these questions if adverse to the subscribers to the capital stock of this C. A. & M. R. R. Co., will ruin hundreds of honest farmers on the line of this projected road, where bonds and mortgages to large amounts are held by this fraudulent Company and their confederate assignees, who got up the whole scheme for no other purpose than to defraud the farmers and others on the line, and they had no intention whatever to build the road, but only to get these bonds coupons and mortgages for their own personal use.

MILTON T. PETERS,
Attorney for Deft in Error.

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The Ills. G. N. Railway

Caleb. Cook

Defts. Points

Filed May 12. 1872

S. Lee Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

THE Illinois GRAND TRUNK R. R. COMPANY,
vs.
CALEB COOK, Administrator.

Error to Bureau.

ABSTRACT OF THE RECORD.

1 This is a bill in Chancery, filed by Cook against the Railway Company on the 19th day of February, A.D. 1861. The Bill alleges that the complainant is administrator of Philander Cook;
2 that, on the 16th day of February, A. D. 1857, Philander Cook, who was then living, was the owner of the N. fract. half of section 6, Township 91 N., of Range 15 West, in the county of Butler and State of Iowa, containing three hundred and fifty acres; that at that time Philander Cook executed and delivered to the Camanche, Albany & Mendota R. R. Company a certain coupon bond for five hundred dollars, payable on the 1st day of
3 March, A. D. 1867, with interest at 10 per cent. annually. Attached to said bonds were ten coupons for the interest, and to secure the payment of the bond and coupons, said Philander Cook executed and delivered to the Camanche, Albany & Mendota R. R. Company a mortgage upon the land above described.

That the Camanche, Albany & Mendota R. R. Company was duly organized under the acts to provide for a general system of R. R. corporations, approved Nov. 5th, 1849, and that said Company in June, A. D. 1859, consolidated their road and stock with the Joliet & Terre Haute R. R. Company under and by the provision of an act entitled "An act to enable R. R. Companies and Plank Road Companies to consolidate their stock," approved

Feb. 28th, 1854; and that said consolidated Company agreed
4 to and assumed the name of Illinois Grand Trunk Railway, of which Company Charles B. Stauert, of Geneva, of Kane county, is President; that said Stauart and T. B. Blackburn, of Chicago, claimed to be Trustees of the firm of Oswald & Co., composed of James Oswald, of Stanford, Canada, and Ransom Blackburn, of Buffalo, N. Y., and as such Trustees they claimed some interest in said bonds and coupons.

That on or about the 21st day of January, 1861, the Illinois Grand Trunk Railway filed said bond and coupons in the County Court, County of Bureau, at the January term, A. D. 1861, as a claim against the estate of Philander Cook, and upon motion of the administrator, the consideration of the claim was continued to the February term of said Court.

5 That by the terms of the articles of association of the Camanche, Albany & Mendota R. R. Company the road proposed to be constructed by them would pass through the County of Bureau; that Caleb Cook, at the time the mortgage was given, resided in said county, near the line of said proposed road, and owned real estate in said county, which he believed would be enhanced in value by the construction of said road.

The proposed location of the road was near farming lands owned by said Caleb Cook, and he expected he that would be afforded facilities for marketing his produce by said road.

The bill alleges that the mortgage and bond was given upon the consideration that the R. R. Company would without delay
6 proceed to build their railroad through the County of Bureau, and thus afford to said Cook the benefits and advantages which he expected to derive therefrom, but that said road had not been built, nor had the Company used proper dilligence to build it, but for a year past had wholly ceased work upon the road; and complainant believes that they have altogether abandoned the construction of it, whereby the benefits and advantages which said Philander Cook expected to derive from the construction of said road are wholly lost.

The bill charges that the officers and agents of said Company are striving to collect the amount of the bond and mortgage out of the estate of said Cook, and to apply the money so collected to some object foreign to that for which it was originally subscribed.

That said Company threatened to transfer or dispose of said
7 bond and mortgage, with a view of avoiding the equitable defence complainant might make thereto, and that said Company will assign the same unless in enjoyment.

That said Company never did obtain the requisite amount of *bona fide* subscriptions to enable them to build said R. R. as required by the law under which the Company was organized; that subscriptions to a very large amount were obtained from persons who had not the ability and never intended to pay the same, and that such subscriptions were made and obtained with a fraudulent intent upon the part of the officers and agents of the Company to deceive and injure the *bona fide* holders of the stock and make it appear that the full ~~inscription~~ subscriptions required by law were
8 obtained, and so to warrant the election of Directors and authorize them to call in and demand payment of the *bona fide* subscribers of the stock.

The bill insists that by the law a sum sufficient to build the contemplated road must be fully subscribed in good faith, before the Board of Directors could be elected or authorized to demand the payment of any of the stock subscriptions, and said Company were not authorized to commence the road until the stock subscriptions should amount to a sum sufficient to build said road; that it could not receive promissory notes or other negotiable securities payable at a future period, whereon to raise money to build said road; and that if the bond and mortgage are not void in toto, they are void as negotiable securities payable at the time certain, the said Company having no authority by law to receive the same.

That said bond and mortgage show upon their face that they were given to said R. R. Company, and, therefore, the assignees of said securities are bound to take notice of the power of said Company as given by law; and the bond and mortgage being void in the hands of the original holders, they are equally so in the hands of the assignee.

The bill charges that the act of consolidation of the C. A. & M. R. R. Company with the J. & T. H. R. R. Company made a fundamental change in said Company, and the consolidated Company thereupon embarked upon an enterprise differing entirely from that to which said Cook subscribed, and thereby he was wholly released from all liability to pay said stock subscription secured by said bond and mortgage.

7 That, in settling the estate of said Cook, it will be necessary to sell the real estate mortgaged to pay the debts of said estate, and that said mortgage remains as a cloud upon the title and prevents the sale thereof.

Complainant has requested said R. R. Company to surrender said bond and mortgage to be cancelled, which it refuses to do.

The oath to the answer is waived.

9 The Illinois Grand Trunk Railway, Charles B. Swart, T. B. Blackstone, James Oswald, and Ransom H. Colburn are made defendants to the bill.

Prayer that defendants be enjoined from all proceedings to enforce the collection of said bond and mortgage and coupons, or from selling or assigning the same, and that upon the final hearing the injunction may be made perpetual, and the bond and mortgage be delivered up and cancelled.

21 March 22d, 1861, defendants filed their demurrer to the bill.

24 Demurrer overruled.

27 Decree according to the prayer of the bill.

The parties entered into the following agreement:

25 "It is hereby mutually stipulated by and between the above parties, that this cause may be taken to the Supreme Court of the State aforesaid, upon defendants' demurrer to complainant's bill, with the understanding that a copy of the bond, and one of the coupon notes described in said bill, and also the special act of 1857, in relation to the Camanche, Albany & Mendota Railroad Company, shall be filed and form a part of the record in this cause, and be considered in said Supreme Court in connection with said bill; that if said demurrer shall be overruled, that then the said cause shall be remanded to this Court for further proceedings; it being intended that all the legal questions arising on the face of said bill, and the exhibits filed, shall be determined in said Supreme Court.

Dec. 26, 1861.

MILTON T. PETERS,
Att'y for Compl't.

KENDALL & IDE,
For Deft's.

Copy of Coupon Bond, (referred to in foregoing agreement.)

28 "For value received I, Philander Cook, of the County of Bureau, and State of Illinois, hereby bind myself to pay to the order of the Camanche, Albany & Mendota Railroad Company, at their office, in State aforesaid, the principal sum of Five Hundred Dollars ten years from the 1st day of March, A. D. 1857, which will be on the 1st day of March, One Thousand Eight Hundred and Sixty-seven, payable annually, on the first day of March in each year, after said interest begins to run, which interest is specified in, and secured by ten several interest notes (called coupons) of even date herewith, signed by me, and numbered in succession from one to ten inclusive, and all made payable to the order of the said Company, at their office aforesaid, and each of said coupons is for fifty dollars. The payment of this bond is secured by a certain mortgage of even date herewith, made by me, upon three hundred and fifty-four 22-100 acres of land, being and lying in the County of Butler, in the State of Iowa, and described as follows: The N. frac. half of section No. six, (6) in Township No. ninety-one (91) North, of Range No. fifteen (15) West, containing three hundred and fifty-
22 four and 22-100 acres, in which mortgage this bond and said interest notes, or coupons, are described, and which mortgage will appear of record, in the Recorder's office of the said County of Butler, according to the laws of the State aforesaid.

Witness my hand and seal this sixteenth day of February, A. D. 1857. PHILANDER COOK. [SEAL.]

Executed in presence of
MILO KENDALL.

Endorsement on Bond. C.A.& M. R. R. Co. SAMUEL HARPER, *Treas.* W. W. DURANT, *Sec'y.*

Copy of one of the Coupon Notes, (referred to in foregoing agreement.)

No 5. FEBRUARY 16, 1957.

29 On the first day of March, 1862, I promise to pay to the order of the Camanche, Albany & Mendota Railroad Company Fifty Dollars, at their office in State of Illinois, for a value received, being one year's interest falling due on that day, on my bond of even date herewith, payable to the order of the said Company, at their office as aforesaid.

PHILANDER COOK.

On the back of the above appears the following endorsement: "Sam'l Harper, Treasurer."

(Copy of Act of General Assembly of the State of Illinois, referred to in the foregoing agreement.)

In force Jan. 30, 1857.

AN ACT approving and legalizing the construction of the Camanche, Albany & Mendota Railroad.

Preamble.

WHEREAS the Camanche, Albany & Mendota Railroad Company became a body corporate and politic on the 11th day of September, 1856, by filing articles of association with the Secretary of State, in accordance with the provisions of sections One and Two of an act entitled "An act to provide for a general system of Railroad incorporations," approved November 5, 1849. And whereas, in the opinion of the General Assembly, the construction of the road proposed in said articles of association will be of sufficient public utility to justify the taking of private property for the construction and maintenance of the same. Therefore,

Road, where may commence & be constructed.

Sec. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That said Company may commence and construct their road, from such point as may be deemed expedient in the Town of Mendota, in the County of La Salle, through the Counties of La Salle, Bureau, Lee, and Whiteside, via Prophetstown, to such point as may be deemed expedient in the Town of Albany, in said County of Whiteside.

May take and give bonds.

Sec. 2. Said Company may take and give bonds bearing any rate of interest not exceeding ten per cent. per annum, and shall and may exercise any and all powers, and be entitled to any and all immunities which are conferred by "An act to provide for a general system of Railroad incorporations," approved November 5, 1849.

Acts legalized.

Sec. 3. All the acts done and contracts entered into by said Company, prior to the passage of this act, are hereby sanctioned and legalized.

Sec. 4. This act to take effect from and after its passage.

Approved Jan. 30, 1857.

ERRORS ASSIGNED.

30 1st. The Court erred in overruling defendant's demurrer.

2d. The Court erred in rendering the decree aforesaid in manner and form aforesaid.

GLOVER, COOK & CAMPBELL,
For Appellant.

Sales Book

Abstracts

Filed Apl. 30. 1862
L. Leland
Clk.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

Illinois

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Dec. 26, 1861.

MILTON T. PETERS,
Att'y for Compl't.

KENDALL & IDE,
For Deft's.

Copy of Coupon Bond, (referred to in foregoing agreement.)

28 "For value received I, Philander Cook, of the County of Bureau, and State of Illinois, hereby bind myself to pay to the order of the Camanche, Albany & Mendota Railroad Company, at their office, in State aforesaid, the principal sum of Five Hundred Dollars ten years from the 1st day of March, A. D. 1857, which will be on the 1st day of March, One Thousand Eight Hundred and Sixty-seven, payable annually, on the first day of March in each year, after said interest begins to run, which interest is specified in, and secured by ten several interest notes (called coupons) of even date herewith, signed by me, and numbered in succession from one to ten inclusive, and all made payable to the order of the said Company, at their office aforesaid, and each of said coupons is for fifty dollars. The payment of this bond is secured by a certain mortgage of even date herewith, made by me, upon three hundred and fifty-four 22-100 acres of land, being and lying in the County of Butler, in the State of Iowa, and described as follows: The N. frac. half of section No. six, (6) in Township No. ninety-one (91) North, of Range No. fifteen (15) West, containing three hundred and fifty-
22 four and 22-100 acres, in which mortgage this bond and said interest notes, or coupons, are described, and which mortgage will appear of record, in the Recorder's office of the said County of Butler, according to the laws of the State aforesaid.

Witness my hand and seal this sixteenth day of February, A. D. 1857. PHILANDER COOK. [SEAL.]

Executed in presence of }
MILO KENDALL. }

Endorsement on Bond. C.A.& M. R. R. Co. SAMUEL HARPER, *Treas.*
W. W. DURANT, *Sec'y.*

Copy of one of the Coupon Notes, (referred to in foregoing agreement.)

No 5. FEBRUARY 16, 1957.

29 On the first day of March, 1862, I promise to pay to the order of the Camanche, Albany & Mendota Railroad Company Fifty Dollars, at their office in State of Illinois, for a value received, being one year's interest falling due on that day, on my bond of even date herewith, payable to the order of the said Company, at their office as aforesaid.

PHILANDER COOK.

On the back of the above appears the following endorsement: "Sam'l Harper, Treasurer."

(Copy of Act of General Assembly of the State of Illinois, referred to in the foregoing agreement.)

In force Jan. 30, 1857.

AN ACT approving and legalizing the construction of the Camanche, Albany & Mendota Railroad.

Preamble.

WHEREAS the Camanche, Albany & Mendota Railroad Company became a body corporate and politic on the 11th day of September, 1856, by filing articles of association with the Secretary of State, in accordance with the provisions of sections One and Two of an act entitled "An act to provide for a general system of Railroad incorporations," approved November 5, 1849. And whereas, in the opinion of the General Assembly, the construction of the road proposed in said articles of association will be of sufficient public utility to justify the taking of private property for the construction and maintenance of the same. Therefore,

Road, where may commence & be constructed.

Sec. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That said Company may commence and construct their road, from such point as may be deemed expedient in the Town of Mendota, in the County of La Salle, through the Counties of La Salle, Bureau, Lee, and Whiteside, via Prophetstown, to such point as may be deemed expedient in the Town of Albany, in said County of Whiteside.

May take and give bonds.

Sec. 2. Said Company may take and give bonds bearing any rate of interest not exceeding ten per cent. per annum, and shall and may exercise any and all powers, and be entitled to any and all immunities which are conferred by "An act to provide for a general system of Railroad incorporations," approved November 5, 1849.

Acts legalized.

Sec. 3. All the acts done and contracts entered into by said Company, prior to the passage of this act, are hereby sanctioned and legalized.

Sec. 4. This act to take effect from and after its passage.

Approved Jan. 30, 1857.

ERRORS ASSIGNED.

30 1st. The Court erred in overruling defendant's demurrer.

2d. The Court erred in rendering the decree aforesaid in manner and form aforesaid.

GLOVER, COOK & CAMPBEEL,
For Appellant.

Page 1

State of Illinois }
Bureau County } ss

Be it remembered that on the 19th day of February A. D. 1861. came into the Office of the Clerk of the Circuit Court of the County of Bureau and State of Illinois. Caleb Cook administrator of Philander Cook deceased. by Peters & Winslow his Solicitors and filed his bill in Chancery. Precipe for Summons & Injunction. and Bond for Injunction. and are Severally in the words and figures following to wit

Copy of Bill

To the Honorable M. E. Hollister Judge of the Ninth Judicial Circuit of the State of Illinois in Chancery Sitting in Bureau County in said State

Humbly complaining Shows unto your Honor your Orator Caleb Cook of said County of Bureau and State of Illinois that on the 22 day of November A. D 1859 he was duly appointed by the Judge of Probate of said County administrator of the goods and Chattels & Effects of Philander Cook deceased late of said County and State and that your Orator thereupon entered upon the duties of his said appointment

and is now the administrator of the estate of said Philander Cook. Your Orator further shows unto your Honor that on the 16th day of February A.D. 1857 the said Philander Cook then living was the owner in fee simple of the North fractional half of section Six in Township number Ninety one North of Range Fifteen West in the County of Butler in the State of Iowa containing Three Hundred and fifty four acres and twenty two hundredths of an acre. That on or about the day and Year last mentioned as your Orator is informed and believes the said Philander Cook made Executed and delivered to the Comanche, Albany and Mendota Railroad Company a certain Bond commonly called a Coupon Bond for the Sum of Five Hundred dollars, bearing date the Year said day and year last aforesaid and payable to the said Comanche Albany and Mendota Rail Road Company on the first day of March A.D. 1867 with interest thereon at the rate of ten per cent per annum payable annually. That attached to said Bond were ten Several Coupons or Interest notes of Fifty dollars each and which said coupons or interest notes were given as your Orator is also informed, and believe to secure the payment and interest annually accruing on the said Bond, and were made payable respectively to the said Company in One two three four five Six Seven Eight Nine

3 and ten years. And your Orator further shows unto your honor that to secure the payment of the said Bond Mortgage and Coupons as your Orator is informed and believes the said Philander Cooke on the said 16th day February A.D. 1859 made executed and delivered to the said Camanche, Albany and Mendota Railroad Company a Mortgage upon the said above described premises which said mortgage is now in possession of the Camanche Albany and Mendota Railroad Company or of the Illinois Grand Trunk Railway hereinafter referred to Your Orator further shows unto your honor on information and belief that the said Camanche Albany and Mendota Railroad Company was organized under and by virtue of the provisions of the act of the legislature of the State of Illinois Entitled "an act to provide for a general system of Railroad Incorporations" approved November 5th 1849. Your Orator further shows unto your honor that after the making and delivery of the said Bond Mortgage and Coupons and as your Orator is informed and believes in the month of June A.D. 1859 the said Camanche Albany and Mendota Railroad Company, consolidated their property and stock with the Joliet and Terre Haute Railroad Company under and by virtue of the provisions of the act of the legislature of the State of Illinois entitled an act to enable Railroad

Companies and Plank Road companies to consolidate their Stock "approved February 28th A.D. 1854 and that the said consolidated Company agreed to and assumed the name of Illinois Grand Trunk Railway by which name they are still known - and that Charles B. Stewart residing in Geneva in the County of Kane in said State of Illinois is as your orator is informed and believes the President of said Corporation last mentioned.

Your Orator further shows unto your Honor that the said Charles B. Stewart in conjunction with J. B. Blackstone of Chicago in said State claim to be the trustees of the firm of Oswald and Company composed of James Oswald of Stamford in Canada West and Random H. Colburn of Buffalo in the State of New York and as such trustees they claim some interest in the said Bond mortgage and Coupons all of whom your Orator prays may be made parties defendants to this your Orators Bill of Complaint

And Your Orator further shows unto your Honor that on or about the 21st day of January A.D. 1861. The said Illinois Grand trunk Railway filed the said bond and Coupons of the said Philander Cook with the County Court of the County of Bureau at the January Term of said Court A.D. 1861 as a claim against the Estate of said Philander Cook deceased, and upon the

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motion of your Orator the consideration of said claim was continued until the third day of the Febuary Term of said Court which commences on the 17 day of Febuary A.D. 1861 — Your Orator further shows unto your Honor that by the terms of the articles of association of said Camanche Albany and Mendota Railroad Company - the Road proposed to be constructed by them was to pass through the County of Bureau, and that at the time of the giving of the said Bond Mortgage and Coupons by the said Philander Cook he was the owner of Real Estate in said County and other property and also resided therein and was greatly interested in having said Road built with the expectation that the building of said Road would enhance the value of his said Real Estate and property and be a great convenience to him in the transaction of his business. That the said Philander Cook was then engaged in farming, and it was contemplated by said articles of association that the said Road would be located near the farming lands of the said Philander Cook, whereby he would be afforded facilities for getting the produce of his farm more speedily and economically to a market and your Orator says that the said Philander Cook gave the said Bond Mortgage and Coupons upon the consideration that the said Camanche Albany and Mendota Railroad

Company would proceed without delay to build the said Railroad through the County of Bureau and thus afford to him the benefits and advantages which he expected to receive therefrom, Nevertheless the said Road has not been so built, nor have the said company used proper diligence to build the same but on the contrary have now and for a year past ceased all operation in the matter of building said Road, and as your Orator is informed and believes have altogether abandoned the work of constructing the same whereby the benefits and advantages which the said Philander Cook reasonably expected to derive from the construction of said Road and its location through the County of Bureau and near his farm are wholly lost to his heirs at law and personal representatives - And your Orator charges and insists that the Officer and Agent of said company named as defendants to this bill are seeking to collect the amount of the said Bond Coupons and mortgage out of the estate of the said Philander Cook and to apply the money so collected to some object foreign to that for which it was originally subscribed and thus your orator and the estate of which he is the administrator will be greatly injured and defrauded Your orator further shows unto your Honor that the said Illinois Grand Trunk Railway threaten

7 to sell assign transfer or in some way dispose
of the said mortgage bond and coupons with a
view of avoiding the equitable defence which your
Orator as such administrator may make thereto
and your Orator fear that unless the said Illinois
Grand Trunk Railway is restrained by the Injunction
of this Court they will so assign or dispose of said
Bond mortgage and coupons and by such means
subject your Orator to great trouble and expence in
defending them if not to irreparable injury
Your orator further shows unto your Honor that
the said Camanche Albany and Mendota Rail
road Company never did obtain the requisite
amount of bona fide Stock subscriptions to enable
them to build the said Rail road as required
by the act of the legislature under which the
said Company was organized - that subscription
to a very large amount were obtained from per-
sons who had not the ability and never inten
ded to pay the same and that such subscription
were made and obtained with the fraudulent intent
on the part of the agents and Officers of said company
to deceive and injure the bona fide subscribers to
said Stock, and make it appear that the full sub
scription as required by law was obtained and
so to warrant the election of directors and authorize
them to call in and demand payment of the
said bona fide Stock subscriptions but your

8 Orator insists that by the terms of the act of Incorporation of said company the capital Stock of said company amounting to a sum sufficient to build the contemplated Rail Road must be fully subscribed in good faith before the board of directors can be elected or authorized to call in and demand the payment of all or any of the Stock subscriptions. Your Orator further charges and ~~asserts~~ insists that the said Camanche Albany & Mendota Rail road company were not authorized by the said act of incorporation to commence the construction of said Road until said Stock subscription amounting to a sum sufficient to build said Road was in good faith subscribed and that the said subscriptions should constitute the capital Stock of said Company. That they could only obtain the means to build their said Road in the manner so prescribed by the act of incorporation and the said company could not receive promissory notes or other negotiable securities or obligations payable at a future period whereon to raise money to build said road and that if the obligation so as aforementioned given by Philander Cook to the said Camanche Albany and Mendota Railroad Company are not void in toto they are void as negotiable securities payable at a time certain the said Company having no authority by law to

9 to receive the same, Your Orator further shows unto your Honor and insists that the said Bond Mortgage and Coupons upon their face make it appear that they were given to the said Comanche Albany and Mendota Railroad Company and therefore the assignees of said securities are bound to take notice of the powers of said Company, as given them by their act of incorporation, and being void in the hands or possession of the original obligees they are Equally so in the possession of the assignees Your Orator further charges and insists that the act of consolidation of the said Comanche Albany and Mendota Railroad Company with the Joliet and Terra Haute Railroad company made a fundamental change in said company and that the consolidated Company thereupon embarked in an Enterprise differing entirely from that to which the Interstate Philander Cook originally subscribed and thereby said Philander his heirs and administrators are wholly released and discharged from all liability to pay the said Stock subscriptions and upon the said Bond, Mortgage and Coupons — Your Orator further shows unto your Honor that in administering the Estate of the said Philander Cook deceased it will be necessary to make sale of the Real estate mortgage as aforesaid as aforesaid to the Comanche Albany and Mendota Railroad Company

in order to pay the debts of the said Philander Cook and that the said mortgage remains as a cloud upon the title of said land, and operates to prevent a sale thereof at its market value nevertheless the said Illinois Grand Trunk Railway refuses to surrender up to your Orator the said Bond and mortgage altho your Orator has requested them so to do in order that the same might be cancelled, all which actings and doings of the said defendants and their confederates are contrary to Equity and good Conscience.

Wherefore inasmuch as your Orator is without remedy according to the strict rules of the Common Law and can only have adequate relief in a Court of Equity where matters of this nature are properly cognizable and relievable would pray that the said defendants may answer all and singular the matter and things herein before ~~stated~~ set forth and complained of but not under oath their answer under oath being hereby expressly waived and that the said defendants and each of them, and each of their Agents Solicitors and Attorneys be restrained by Injunction from all proceedings to enforce the collection of the said bond Mortgage & Coupons or any or either of them so as aforesaid given by Philander Cook to the Camanche Albany and Mendota Railroad Company. and that they may be res-

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trained from selling assigning or in any way or manner disposing of or parting with the possession of said Bond Mortgage and Coupons or any or either of them for any purpose whatever excepting to your Orator And that upon a final hearing by the decree of this Honorable Court the said defendants may be so perpetually enjoined, and may be required to surrender up to your Orator the said Bond Mortgage and Coupons to be Cancelled, and that the same may be held to be void and of no binding force or validity And that your orator may have such other ~~and~~ or such further relief in the premises as to this Honorable Court may seem meet and as the nature of the case may require

May it please your Honor to grant unto your Orator the peoples Summons issuing out of and under the seal of this Honorable Court directed to the Illinois Grand Trunk Railway, Charles B. Stuart, T. B. Blackstone, James Aswald Lansom H. Colburn, commanding them to be and appear personally before this Honorable Court at a day therein to be named to answer all and singular the matters alleged in this Bill and to abide all and such Decrees and orders as your Honor may see fit to make therein, and that the writ of Injunction also under seal of this Honorable Court may be issued directed to the said defendants their agents Solicitors and Attorneys

restraining them as it is hereinabove prayed that they may be restrained

Peters & Winslow
Sol. for Compt

State of Illinois } ss.
County of Bureau }

Caleb Cook the above named complainant being duly sworn saith that he has heard read the forgoing bill of complaint & knows the contents thereof and that the same is true except wherein it is stated on information & belief and as to those matters, he believes it to be true

Sworn this 19th day of February A.D 1861 before me
Geo. M. Radcliffe Clk.

Caleb Cook

Upon which endorsed the following order
"Let the writ of Injunction issue in conformity to the prayer of the foregoing bill upon the complainant filing Bond in $100. conditioned according to law with Matthew Trimble as security
Feby. 19th 1861

M. Ballou Judge
23rd Circuit Ills

Copy of Precipe

State of Illinois } In Circuit Court of said County
County of Bureau } To March Term A.D 1861. In Chancery

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Caleb Cook administrator of Estate of Philander Cook deceased

vs

Illinois Grand Trunk Railway Et al.

} Injunction Bill

The Clerk will please issue summons & Injunction directed to Illinois Grand Trunk Railway, James Osrald and Ransom H. Colburn and deliver same to Sheriff of Bureau Co. also summons and Injunction directed to Charles B. Stewart to be sent to Sheriff of Kane County and Summons & Injunction directed to J. B. Blackstone and send same to Sheriff of Cook County to be served said summons & Injunction left as above

Peters & Winslow
Sols for Compt

Only issue to Bureau County Ide has agreed to enter appearance for defts

Peters

Copy of Summons

State of Illinois } ss.
Bureau County }

The People of the State of Illinois
To the Sheriff of Bureau County greeting
We command you to summon Illinois Grand Trunk Railway, C. B. Stewart, J. B. Blackstone

James Osmalde Ransom C. Colburn if they shall be found in your County to be and appear before our Circuit Court for said County on the first day of the next term thereof, to be holden at the Court House in the Town of Princeton on the second monday of March next to answer a certain bill of complaint filed in our said Circuit Court on the Chancery side thereof against them by Caleb Cook admr. Est. Philander Cook decd and further to do and receive whatever our said Court shall then and there consider in that behalf and this you shall in no wise omit. Hereof fail not and make due return of this writ with an Endorsement of the manner in which you Execute the same

Witness: George M. Radcliffe Clerk of our said Court and the seal thereof at Princeton in said County this 19th day of February in the Year of our Lord one thousand Eight hundred and Sixty one

(Seal)

Geo. M. Radcliffe Clerk
By Chas. J. Peckham Deputy

On the back of which Summons the Sheriff made the following Endorsement

"I have served this writ this 21st day of February 1861 by delivering a true & certified copy of this writ to Milo Kendall an attorney of the within named Illinois Grand Trunk Railway, also on the 27th

15 day of Febuary 1861. by delivering a true & certified copy of this writ to Elisha W. Fassett a director of the within named Illinois Grand Trunk Railway the President of said Railway not residing in my County - The other within named defendants not found in my County

D. McDonald Sheriff Bu Co
By W. C. Stacy Deputy

Copy of Writ

State of Illinois
Bureau County } ss In the Circuit Court thereof

To Illinois Grand Trunk Railway. C. B. Stewart. T. B. Blackstone. James Osmond and Ransom H. Colburn their Counsellors attorneys solicitors and agents: Greeting:

Whereas Caleb Cook administrator of the Estate of Philander Cook deceased has lately filed his certain bill of complaint in our Circuit Court within and for the County and State aforesaid on the Chancery side thereof against you the said Illinois Grand Trunk Railway. C. B. Stewart T. B. Blackstone. James Osmond, and Ransom H. Colburn which bill is still there depending wherein among other things it is alleged you the said Illinois Grand Trunk Railway

are the assignees of the Corporation formerly known as the Camanche Albany and Mendota Railroad Company that you the said E. B. Stewart are President of said corporation and also that you the said Stewart and T. B. Blackstone are the trustees of the firm of Osrald & Company composed of the said Osrald and Colburn above mentioned and that you as such corporation President Trustees and beneficiaries have possession and control of the Bond Mortgage and Coupons made Executed and delivered by the said Philander Cook since deceased to said ~~Mendota~~ Camanche Albany and Mendota Rail Road Company and by them assigned as aforesaid and it is further alleged that although requested so to do you have refused and still refuse to deliver said Bond Mortgage and Coupons to said Caleb Cook administrator that the same may be cancelled. but are about to dispose of the same to parties other than the said administrator

We therefore in consideration of the premises and of the particular matters in said Bill set forth do strictly enjoin and command you the said Illinois Grand Trunk Railway, E. B. Stewart T. B. Blackstone James Osrald and Ransom H. Colburn and all and every of the persons before mentioned and each and every of you under the penalty the law thence ensuing that

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you and Every of you do absolutely desist and re-
frain from selling assigning or in any way or
manner disposing of or parting with the Bond
Mortgage or Coupons before mentioned for any
purpose whatsoever, to any other person or persons
Except the said Complainant, until further order
of our Circuit Court to the Contrary, hereof fail
not under penalty of what the law directs

Witness my hand and the seal of
said Court at Princeton this nine-
teenth day of February in the Year
of our Lord One thousand Eight
hundred and Sixty one

Geo. M. Radcliffe Clerk
by Chas. J. Peckham Deputy

To the Sheriff of said Bureau County to Execute

On the back of said Writ is the following
Indorsement

"I have served this writ this 21st day of February
1861 by reading to the within to Milo Kendall
who is an attorney of the within named Grand
Trunk Railway also served this 27th day of
February 1861; on Elisha W. Fassett a director
of the within named Illinois Grand Trunk
Railway, the President of said Railway not resi-
ding in my County the other within named defen-
dants not found in my County

D. McDonald Sheriff Bu Co
By M. Stacy deputy

Copy of Bonds

Know all men by these presents that we Caleb Cook of Princeton in the County of Bureau administrator of the Estate of Philander Cook deceased and Matthew Trimble also of the Town of Princeton in same County are held and firmly bound unto Illinois Grand Trunk Railway Charles B. Stewart, James Oswald J. B. Blackstone and Ransom H. Colburn in the sum of One hundred dollars lawful money of the United States for the payment of which well and truly to be made and done we bind ourselves our heirs Executors and administrators Jointly and Severally firmly by these presents — Sealed with our seals and dated this 19th day of February A.D. 1861

The condition of the above obligation is such that whereas the above named Caleb Cook administrator of the Estate of Philander Cook deceased has filed his bill of complaint in the Bureau County Circuit Court before Hon. M. E. Hollister the Judge of said Court in Chancery sitting against the above named Illinois Grand Trunk Railway, Charles B. Stewart James Oswold J. B. Blackstone & Ransom H. Colburn praying an injunction staying the proceedings of the defendants therein named upon a certain Bond Mortgage and Coupons

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of said Philander Cooke to recover the amount thereof or of any part thereof and also restraining them from parting with the possession thereof or in any way disposing thereof. Now if the said Caleb Cooke shall well and truly pay to the said defendants all damages and costs which may accrue in consequence of said proceedings provided said injunction shall be dissolved then the above obligation to be void and of none effect, otherwise in full force and effect

C. Cooke (S)
M. Tumble (S)

Pleas before the Hon Madison E. Hollister judge of 9th Judicial Circuit of the State of Illinois at a term of the Circuit Court begun and held within and for the County of Bureau in said State at the Court House in Princeton in said County on the second monday in the Month of March in the Year of our Lord one thousand Eight hundred and sixty one

Present Hon. M. E. Hollister Judge
George M. Radcliffe Clerk
and Daniel McDonald Sheriff
To wit on the Chancery side of said Court

Friday morning 8 o'Clock March 22nd A.D. 1861. Court met pursuant to adjournment
Present same as Yesterday
(and as before)

Caleb Cook admr. of
Philander Cook decd.

vs Petition for Injunction

Illinois Grand Trunk Railway
C. B. Stewart, J. B. Blackstone
James Oswald & Ransom H. Colburn

And now come defendants by Kendall & Ide their Solicitors and file their demurrer to complainants bill herein as follows to wit:

State of Illinois Bureau County ss
Circuit Court March Term 1861

Caleb Cook admr. of
Philander Cook decd. Chancery

vs

Illinois Grand Trunk
Railway Et al

And said defendants come and say that the allegations in said bill contained are not sufficient for them to answer unto Wherefore they pray that they may be hence dis charged with their reasonable costs &c

Kendall & Ide
for Defts

Pleas before the Hon. M. E. Hollister Judge of the Ninth Judicial Circuit of the State of Illinois at a term of the Circuit Court begun and held at the Court House in Princeton within and for the County of Bureau in the State aforesaid on the Second monday in the month of August in the Year of our Lord One thousand Eight hundred and sixty one

Present Hon. M. E. Hollister Judge
George M. Radcliffe Clerk
and Daniel McDonald Sheriff

To wit. on the Chancery side of said Court

Caleb Cook adm. of
Philander Cook dec.
vs
Illinois Grand Trunk
Railway. E. B. Stuart
J. B. Blackstone, James
Arnold & Ransom M. Colburn

Bill for Injunction

And now come defendants by Kendall & Ide their Solicitors and file herein their demurrer to said bill in the words and figures following to wit:

State of Illinois Bureau County ss.
Circuit Court August Term 1861

12 Caleb Cook admr. of Philanda Cook decd.

vs

Illinois Grand Trunk Railway.
E. B. Stewart, T. B. Blackstone
James Oswald & Ransom H. Colburn

The joint and several demurrer of said defendants to the bill of complainants

These defendants by protestation &c. do severally and jointly demur to said bill and to such portions thereof as are hereinafter set forth, to wit,

1 That portion of said bill which relates to the reason motives & intention with which said Philander Cook gave the Bond & mortgage in question, also the charge that the Railroad have not used diligence to build the Road and have abandoned the work &c.

2 That portion of said bill which avers that the Railroad company never obtained the requisite amounts of Stock Subscriptions; that persons subscribed who had not the ability & never intended to pay &c. that Subscriptions were made fraudulently as alleged in said bill

3 That portion which alleges that the capital stock of the Company sufficient to build the road must be subscribed in good faith before board of directors can be elected or authorized to call in

23 and demand the payment of Stock Subscriptions &c

4 That portion which alleges that the said bonds & notes are void as negotiable securities & that the company had no right to receive them. Also that assignees are bound to take notice that of the powers of said Company &c. & that securities are void in the hands of such assignees

5 That portion which alleges that a fundamental change in said Co. has been made & that consolidated Co. Embarked in an Enterprise different from that to which said Philonda Cook subscribed &c.

And for causes of demurrer defendants say that said bill in case the same were true contain no matter of Equity whereon this Court can ground any decree or give complainant any relief as against these defendants. Wherefore &c. & pray that they may be hence dismissed with their costs & charges, in this behalf most wrongfully sustained

Kendall & Ide
Defts. Solicitors

Pleas before the Hon. M. E. Hollister Judge of the Ninth Judicial Circuit of the State of Illinois at a term of the Circuit Court begun and held at the Court House in Princeton within and for the County of Bureau

State aforesaid. on the second monday in the month of December in the Year of our Lord One thousand Eight hundred and Sixty one

Present George M. Radcliffe Clerk
and Daniel Mc Donald Sheriff

To wit; on the Chancery side of said Court.

And now on this the first day of said term are present as aforesaid but the Hon. M. E. Hollister Judge of said Court is not present. and thereupon according to the Statute in such case made and provided, Court stands adjourned until to morrow morning

Friday Morning 8½ Oclock December 27th A. D 1861 Court met pursuant to adjournment. Present same as Yesterday

Caleb Cook Administrator
of the Estate of Philander
Cook deceased
vs Bill for Injunction
Elmira Grand Trunk
Railway Co. B. Stewart
J. B. Blackstone, James
Oswald & Random H. Colburn

And now after argument

of Counsel the Court being fully advised in the premises orders that defendants demurrers to said bill be overruled. And afterwards to wit. on this same day come the parties hereto by their Solicitors as aforesaid and file herein their agreement as follows, to wit;

"State of Illinois Bureau County ss.

" Circuit Court Dec. Term A.D 1861

"Caleb Cook administrator of the Estate of Philander Cook deceased vs Illinois Grand Trunk Railway Et al } Injunction

It is hereby mutually agreed Stipulated by and between the above parties that this cause may be taken to the Supreme Court of the State aforesaid upon defendants demurrer to complainants bill with the understanding that a copy of the Bond and one of the Coupon notes described in said bill, and also the Special act of 1857 in relation to the Camanche Albany and Mendota Rail Road company shall be filed, form a part of the record in this cause, and be considered in said Supreme Court in connection with said bill; that if said demurrer shall be overruled that then the said cause

Shall be remanded to this Court for further proceedings, It being intended that all the legal questions arising on the face of said bill and the Exhibits filed shall be determined in said Supreme Court

Dec 26. 1861

Milton T. Peters
atty for Complt
Kendall & Ide
for defendants

Plead before the Hon. M. E. Hollister Judge of the ninth Judicial Circuit of the State of Illinois at a term of the Circuit Court begun and held at the Court House in Princeton within and for the County of Bureau State aforesaid on the second monday in the month of March. in the Year of our Lord one thousand Eight hundred and sixty two. Present Hon. Madison E. Hollister Judge
George M. Radcliffe Clerk
and Daniel Mc Donald Sheriff
To wit on the Chancery side of said Court

Tuesday morning March 18th 1862. Court met pursuant to adjournment, present same as Yesterday (and as on first day)

Caleb Cook admr. of the Estate
of Philander Cook deceased
vs
Illinois Grand trunk Railway Etal

Bill for Injunction

And now comes the parties hereto by their Solicitors aforesaid and on

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motion it is ordered that decree be entered in this cause nunc pro tunc as of the 18th day of the last December term of this Court. to wit in the words and figures following, viz:

State of Illinois. Bureau County.

Circuit Court December Term 1869

Caleb Cook admr. of Est. of Philander Cook decd.

vs

Illinois C. I. Railway Et al

This day came the above named parties by their respective Solicitors and upon due consideration it appearing to the Court that the demurrer of defendants to the complainants bill should be overruled it is considered by the Court that the same be overruled, and said defendants declining further to answer said bill it is ordered, adjudged and decreed by the Court that the injunction prayed for by said complainant in his said bill be made perpetual, that said defendants and each of them their agents solicitors and attorneys be perpetually enjoined from enforcing any proceeding to collect the Bond, mortgage or any or either of them mentioned in said Bill and from selling assigning or in any manner disposing of the same, and further that said defendants surrender up to said complainant said Bond mortgage & coupons Coupons for the purpose of cancellation; that defendants pay the costs of this suit, and further that the agreement of parties made in this cause be made a part of the record together with the exhibits therein mentioned and that said defendants have leave to file said exhibits or copies thereof with the clerk of this Court, according to the stipulations of said agreement

M. E. H.

Copy of Coupon Bond (referred to in foregoing agmt.)

For value received I Philander Cook of the County of Bureau State of Illinois, hereby bind myself to pay to the order of the Camanche Albany and Mendota Railroad Company at their Office in State aforesaid the principal sum of five hundred dollars ten years from the first day of March A.D 1857. which will be on the first day of March One thousand Eight hundred and Sixty Seven, with interest thereon at the rate of ten per centum per annum from said first day of March One thousand Eight hundred and Fifty Seven - payable annually on the first day of March in Each year after said interest begins to run - which interest is specified in, and secured by ten several interest notes (called Coupons) of Even date herewith, signed by me, and numbered in succession, from one to ten inclusive; and all made payable to the order of the said Company, at their Office aforesaid, and Each of said Coupons is for fifty dollars, The payment of this Bond is secured by a certain mortgage of Even date herewith, made by me upon Three hundred fifty four 22/100 acres of land being and lying in the County of Butler in the State of Iowa and described as follows; The North fr. half of Section No six (6) in Township No. ninety one (91) North of Range No. fifteen (15) West. containing three hundred and fifty four and 22/100 acre, in which Mortgage this Bond and said

interest notes or Coupons are described; and which Mortgage will appear of Record in the Recorders Office of the said County of Butler according to the laws of the State aforesaid

Witness my hand and Seal this Sixteenth day of February A.D. 1857

Executed in presence of } Philander Cook (Seal)
Milo Kendall }

Endorsement on Bond

Samd. Hepper Treas.
W. W. Durant Secretary

Copy of one of the Coupon notes (referred to in foregoing Agmt.)
No. 5 February 16, 1857

On the first day of March 1862 I promise to pay to the order of the Camanche Albany and Mendota Railroad Company Fifty dollars at their office in State of Illinois, for value received, being one Years interest falling due on that day on my bond of even date herewith, payable to the order of the said company at their Office as aforesaid.

Philander Cooke

On the back of the above appears the following Indorsement

Samd. Hepper
Treasurer

(Copy of Act of General Assembly of the State of Illinois referred to in foregoing Agreement)

In force Jan. 30 1857

An act approving and legalizing the construction of the Camanche Albany and Mendota Railroad

Preamble

Whereas the Camanche Albany and Mendota Rail Road Company became a body corporate and politic

on the 11th day of September 1856, by filing articles of association with the Secretary of State, in accordance with the provisions of sections One and Two of an act Entitled "An act to provide for a general System of Railroad incorporations." approved November 5, 1849; and, whereas, in the opinion of the general assembly, the construction of the road proposed in said articles of association will be of sufficient public utility to justify the taking of private property for the construction and maintenance of the same; therefore,

Section 1. Be it Enacted by the People of the State of Illinois, represented in the General Assembly, That said Company may commence and construct their Road, from such point as may be deemed Expedient, in the Town of Mendota, in the County of Lasalle, through the Counties of La Salle, Bureau, Lee and Whiteside, via Prophetstown to such point as may be deemed Expedient, in the Town of Albany in said County of Whiteside.

where commence construct

§2. Said Company may take and give Bonds, bearing any rate of interest, not Exceeding ten per cent, per annum, and shall have and may Exercise any and all powers and be Entitled to any and all immunities which are conferred by "An act to provide for a general System of rail road incorporations." approved November 5, 1849.

May take and give bonds

§3. All the acts done and contracts Entered into by said company prior to the passage of this act, are

ized

hereby sanctioned and legalized.

§ 4. This act to take effect from and after its passage

Approved Jan. 30, 1857.

State of Illinois, Bureau County, Ss.

I, George M. Radcliffe, Clerk of the Circuit Court of said County do hereby certify that the foregoing is a true and perfect copy from the records and files of said Court of all the proceedings had therein in the foregoing entitled cause.

Witness my hand and the Seal of said Court at Princeton in said County this 21st day of March A.D. 1862.

Geo. M. Radcliffe, Clk.
pr. Chas. J. Peckham Depy.

BUREAU COUNTY 1857

Clk's fees on record $8.10 — Paid by defts. Attys.

Errors assigned

1st The court erred in overruling defendants demurrer

2d The court erred in overruling the motion of defendants for a new trial

3d The said court did not err & its judgment should be affirmed

William H. Peters
Atty for Defendants

Filed March 27, 1862
J. Gilman
Clerk

Trust
vs
Trustees
Record