No. 14818

Supreme Court of Illinois

Chase

vs.

Sycamore & Courtland R.R. Co.

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STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 102

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

Chase
vs
Sycamore &
Cortland R.R.Co.

365

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1865.

CHARLES M. CHASE,
Plaintiff in Error,
vs.
SYCAMORE & CORTLAND RAIL ROAD COMPANY,
Defendants in Error.
} *Error to De Kalb.*

BRIEF FOR PLAINTIFF IN ERROR

BY

LELAND & BLANCHARD.

STATEMENT OF THE CASE.

This action was originally commenced before a Justice of the Peace of De Kalb County, May 26th, 1864, to recover an alleged conditional subscription of one half share, valued at $50, to Sycamore and Cortland R. R. Co. Judgment for defendant in error for $61. Plaintiff in error appealed to De Kalb Circuit Court, where a trial was had *de novo*, and judgment for defendant in error, amount $50. Plaintiff in error brings the cause to this court on writ of error.

ARGUMENT.

The first inquiry is, what was the contract of plaintiff in error? He subscribed for one half share, valued at $50. When was the $50 to become due and payable? In the language of the subscription, "No part shall become due and payable at any "time unless the sum of five thousand dollars shall be raised "by subscription, loan, donation or otherwise, to purchase and "put upon the track of said road a locomotive engine for doing "the business of said company, for which purpose the money "derived from the subscription is to be specifically devoted, so "far as the same is necessary for that purpose." According to the express terms of the subscription $5,000 must be raised by subscription, loan or donation before plaintiff in error was legally bound to pay his $50. There is no evidence of a loan or donation. Is there evidence of $5,000 being raised by subscription before the commencement of this suit?

An original subscription list was in evidence, containing the names of O. M. Chase (not Charles) and six others, as subscribers for one half share each, amounting to three hundred and fifty dollars only. This was the only original subscription, signed by the subscribers themselves, that was offered or read in evidence.

A supposed foundation for the introduction of certain entries contained in the books of the defendant was laid, and the entries read in evidence under objection—which entries purport to be subscriptions to the stock of said company by various parties for various amounts, in the aggregate $5,025. The entries in the book are not in the hand writing of the apparent subscribers, but according to the evidence were made by William H. Douglass, formerly treasurer of the company, and John C. Waterman, not an officer of the company, so far as the evidence shows.

Now it was incumbent upon the plaintiffs below to show, as

a condition precedent to a right of recovery, $5,000, raised by a *bona fide* subscription. How is this to be done? Clearly not by introducing the books of the plaintiff below, or certain entries therein purporting to be subscriptions by various parties, all in the hand writing of some party other than the supposed subscribers. If William H. Douglas or John C. Waterman were authorized by subscribers to write contracts of subscription for them in said book, such authority should be proven.

We insist a *bona fide* subscription of $5,000 must be shown, and we insist further that the original subscription, in the hand writing of the subscriber, or his duly authorized agent, must be produced.

Again, allowing the entries in the books to be competent evidence upon the question of subscription, then the case is not made out, for the entries made by William H. Douglass, former treasurer, amount only to $4,850. To make the $5,000 must be added the entries made by John C. Waterman, without authority, so far as appears in evidence, amounting to $175.

There is another point that is decisive of the cause at bar: plaintiffs below should have notified plaintiff in error that the $5,000 was raised before commencing suit.

"When the fact or circumstance upon which the performance "depends lies more particularly in the knowledge of the prom- "isee than the promisor, the former must give the latter no- "tice."

Wear v. *Jacksonville & Savannaa R. C.*, 24 *Ill.*, 596.
Chitty on Contracts, 556.

In this case the time when $5,000 was subscribed lay particularly in the knowledge of defendants in error, and notice should have been given to plaintiff in error before suit.

24 *Ill*, ~~596~~ 596

Spangler v. *Indiana & I. C. R. Co.*, 21 " 277.

Barrett v *Alton & S. R. R. Co.*, 13 " 504—513

The Court will bear in mind that the subscription list read in evidence has not upon it the name of Charles M. Chase, plaintiff in error. There is a subscription by C. M. Chase, but there is no evidence that C. M. Chase was Charles M. Chase, the plaintiff in error, or that Charles M. Chase subscribed by the name of C. M. Chase. Want of such proof is fatal to a recovery.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

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A supposed foundation for the introduction of certain entries contained in the books of the defendant was laid, and the entries read in evidence under objection—which entries purport to be subscriptions to the stock of said company by various parties for various amounts, in the aggregate $5,025. The entries in the book are not in the hand writing of the apparent subscribers, but according to the evidence were made by William H. Douglass, formerly treasurer of the company, and John C. Waterman, not an officer of the company, so far as the evidence shows.

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SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1865.

CHARLES M. CHASE

vs.

SYCAMORE AND COURTLAND RALROAD COMP'Y.

ERROR TO DE KALB.

ABSTRACT OF RECORD.

1 Assumpsit commenced before Justice by Defendant in Error *vs.* Plaintiff in Error, for an alleged subscription for stock.

3 Judgment *vs.* Plaintiff in Error for $61.00.

Appeal to Circuit Court.

7 February Term, 1865, Jury waived trial by court.

Bill of Exceptions. Evidence introduced by Defendant in Error.

8 Stock Subscription List of the Sycamore & Cortland Railroad Co.:

We the undersigned agree to take the number of shares of the capital stock of the Sycamore & Cortland Railroad Company set opposite to our respective names, and to pay therefor to the Treasurer, or to such other officer of said company as the Board of Directors may direct, the sum of One Hundred Dollars for each and every share so agreed to be taken in the following manner, to-wit: By note payable on the 1st day of October, 1860, drawing interest at six per cent. per annum, provided that no part of the amount so subscribed by us shall become due and payable at any time unless the sum of Five Thousand Dollars shall be raised by subscription, loan, donation or otherwise, to purchase and put upon the track of said road a locomotive engine for doing the business of said company, for which purpose the money derived from the subscription is to be specifically devoted so far as the same is necessary for that purpose. This was signed by C M Chase & Others,

9 Plaintiff called Richard E. Tucker as a witness who testified that the entries on two pages of a certain book then and there shown to him were in the handwriting of William H. Douglas, except the entries below the footing on the last page of said entries and below the words and figures,

"John A. Waterman,"	"1-2" / "48½"	"50" / "4850"

That said last mentioned entries underneath the footings and the figures last aforesaid were in the handwriting of John C. Waterman. Witness did not know whether John C. Waterman was an officer of said railroad company or not; that said Douglass was formerly Treasurer of said company, and as such Treasurer, had the custody of said book, but was now deceased. The said book was admitted by the defendant to be a book of said company. The said plaintiff then offered in evidence the said entries upon the said two pages of said book, which said entries were in words and figures as follows:

(1ST PAGE OF SAID ENTRIES.)

"*Special Stock Due October 1st, 1860, with Interest at Six per Cent.*"

	"NAMES."	"SHARES."	"AMOUNT."
9	"James Marks,	1	$ 100"
	"Agrippa Dow,	½	50"
	"Curtis Smith,	½	50"
	"Cushman & Tucker,	1	100"
	"N. Dennis,	1	100"
10	"Moore & Hills,	1	100"
	"Roswell Dow,	1	100"
	"Wills, Lott & Co.	1	100"
	"Carlus Luttin,	1	100"
	"E. D. Call,	1	100"
	"J. N. Maxfield,	1	100"
	"E. P. White,	1	100"
	"H. N. Perkins,	1	100"
	"G. A. Maxfield,	1	100"
	"H. T. White,	½	50"
	"A. B. Green,	½	50"
	"Amos Story,	½	50"
	"Henry Wood,	1	100"
	"Chas. O. Boynton,	1	100"
	"Geo. W. Dennis,	½	50"
	"Chas. Townsand,	½	50"
	"Stephen Townsand,	½	50"
	"D. B. Westlake,	½	50"
	"Jas. M. Livight,	½	50"
	"O. S. Webster,	½	50"
	"C. M. Chase,	½	50"
	"David Wood,	½	50"
	"James Wyman,	1	100"
	"Fleming Holcomb,	½	50"
	"Norman Peters,	½	50".
	"Ralph Wyman,	1	100"
	"Chas. Beers,	½	50"
	"H. Safford, (donation)	1	100"
	"Hamlin & Hunt,	5	500"
	"Wateman & Elwood,	5	500"
	"J. S. Waterman,	2	200"
	"John S. Hanoun,	1	100"
	"Bryan, Hoskness & Co.	1	100"
	"A. & R. Ellwood,	1	100"
	"Evans Whany,	1	100"
	"Ellwood & Dustin,	1	100"
	"David West,	½	50"
	"Hannah Miller,	1	100"
		"48½"	$4450"

11 (2D PAGE OF SAID ENTRIES IMMEDIATELY SUCCEEDING SAID 1ST PAGE.)

"*Special Stock Due October 1st, 1860, with Interest at Six per Cent.*"

"NAMES."	"SHARES."	"AMOUNT."
"Am't Bro't up,	44½	$4450"
"Samuel Alden,	½	50"
"Charles Merritt,	½	50"
"Harvey Maxfield,	½	50"
"Nelson McLayan,	½	50"
"Alex. M. McLayan,	½	50"
"Henry Dutton,	½	50"
"Norman C. Warren,	½	50"
"John A. Waterman,	½	50"
	48½	$4850"
"David Pierce,(donation)	1	100"
"N. McLayan, (priviso)	½	
"And S. Smith,	¼	25"
"Jervet & Butler,	½	50"
	50¾	

12 To the introduction of which said entries in evidence the said defendant then and there objected. Objection overruled by the court.

Said entries admitted to be read in evidence, to which said ruling of the court defendant excepts.

Plaintiff also then and there offered in evidence a written instrument purporting to be a certified transcript of the articles of association of the Sycamore and Cortland Railroad Company, filed in the office of the Secretary of State.

17 To the introduction of which said written instrument and transcript the said defendant objected. Objection overruled—the said defendant excepts.

The above is all the evidence offered or received upon the trial. Judgment for the plaintiff for the sum of fifty dollars damages, to which finding the said defendant then and there excepted.

17–19 The said defendant then moved to set aside said judgment, and for new trial.

Motion overruled and the said defendant excepts.

ERRORS ASSIGNED.

Admitting improper testimony.

In rendering judgment in manner and form as the same was rendered.

In overruling motion for new trial.

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Charles Mc. Chase

vs

Lycoming Co. R. R. Co

Abstracts

Filed March 5, 1866

L Leland Mc

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1865.

CHARLES M. CHASE,
vs.
SYCAMORE & CORTLAND RAILROAD COMPANY.

ERROR TO DEKALB.

BRIEF OF DEFENDANTS IN ERROR.

This suit was originally brought upon a subscription to the stock of defendants Railroad, duly signed by the plaintiff in error, (see abstract, pp. 1). The stock subscribed for, was special stock, and the payment of the subscription depended upon a condition "that $5,000 should be raised by subscription, loan, donation or otherwise." The question in the case is whether the condition has been complied with, and sufficiently proved.

The original subscription list with the name of plaintiff in error upon it, signed by himself, was put in evidence. By that contract, made with the Railroad Company, Chase became a member of the Company, and the Books of the Company were *prima facie* evidence against him. The plaintiff in error admitted that the book offered in evidence was the book of the Company, thereby obviating the necessity of making any proof that the book was kept, and the entries made by the proper officer, or laying any foundation for its introduction. The admission included all this.

In *Hurd* vs. *Haggerty*, 24 Ill., pp. 174: This Court hold that a silent partner is presumed to have notice of what the partnership books contain and they are regarded as his books.

The books of the Company are like partners books between themselves.

Heart vs. *Corning*, 3, pp. 556.

Fletcher vs. *Pollard*, 2. Hen. & Munf. 544.

Brickhouse vs. *Hunter*, 4, ib. 363.

Reno vs. *Crane*, 2, Blackf. 217.

As one of the Company, he has the advantage of these entries, and ought not to be permitted to deny them.

The plaintiff in error should have objected specifically that the book was not shown to be a copy of the original subscription.

As to the point made by plaintiff in error that no evidence was offered to show that C. M. Chase and Charles M. Chase were the same persons, it is sufficient to say that no objection was made in the Court below to the introduction of the "stock subscription list," on that ground or on any other ground.

The plaintiff in error makes the point that notice should have been given to him that $5,000 had been raised before suit was brought. This proposition is not supported by the authorities cited by plaintiff. In all those cases the subscription was payable on call of the Company, and the Court simply hold that notice of the call must be given before suit.

CHAS. KELLUM,

Atty. for Defen's in Error.

102

6 McChase

vs

S & C R R Co

Defts Brief

Filed April 13. 1868

J. Leland Clk

Supreme Court of Illinois

Third Grand Division

April Term A.D. 1865

Charles M. Chase

Plaintiff in Error

vs

Sycamore and Cortland Rail Road Company

Defendant in Error—

Argument for Plaintiff in Error by R. L. Divine

The original contract, a stock subscription on which suit was brot against plaintiff in error, was not absolute, but conditional—

Plaintiff in error agreed to take one half share of the Capital Stock of the said Sycamore and Cortland Railroad Company, and to pay therefor to the Treasurer, or "such other officer of said Company as the "Board of Directors may direct" the sum of fifty dollars— but provided, "that "no part of the amount so subscribed "by him should become due and payable "at any time, unless the sum of five thou- "sand Dollars should be raised by Subscrip-

"tion, Loan, Donation or otherwise, to
"purchase and put upon the Track of said
"Road a Locomotive Engine for doing the busi-
"ness of said Company, for which purpose the
"money derived from the Subscription was to be
"specifically devoted, so far as the sum was
"necessary for that purpose"

By the terms of the subscription, plaintiff in error's undertaking to pay, was upon the express condition that Five Thousand "Dollars should be raised" for the purpose expressed on the face of the contract, and not otherwise. Unless, then, Five Thousand Dollars was raised, for the purpose, and in the manner, indicated, and Chase was duly notified of that fact, the action against him could not be maintained.

It was incumbent on the defendant in error to show, that the said Company, had collected and actually obtained, the said sum of $5000-; the term "raised" as employed in this contract can mean nothing else -

The 25th definition of the transitive verb 'raise' as given by Webster is "To collect; to obtain; to bring into a sum "or fund. Government raises money

"by taxes, excise and imposts. Private per-
"sons and companies raise money for their
"enterprises."

This is obviously in the sense of "to collect;
"to obtain; to bring into a sum or fund," than
the term is used in this contract.

This interpretation of "raised" is support-
ed moreover, by the fact, that the terms
"subscription" "loan" and "donation"
are all used in the same connection and
bear the same relation to the word "raised;"
And it is impossible to conceive of mon-
ey's being "raised" by loan or donation,
except by the actual collection or receipt
of it.

The contract means that if $5000. shall be
first raised, then the subscribers will pay
their subscriptions -- Otherwise it stands
would import, that after $5000, including
their subscriptions, had been raised, they,
the subscribers, would pay their subscriptions,
which is, in itself an absurdity = They could
not mean that they would pay their sub-
scriptions, after their subscriptions,
together with loans and donations to the
aggregate amount of $5000 had been
already raised!

The above construction of the contract

is reasonable in itself, the intention of Chase, and the other subscribers, as evidenced thereby, being, that if $5000. was first made available for the purpose expressed in the subscription, then they, the subscribers would undertake to pay on their subscriptions, with a view to make up the balance necessary to buy the engine, which might cost two or three times that amount — The subscribers exacted the condition that $5000. should be first raised, as an assurance that their money when paid, should be appropriated to, and be available for, the purpose contemplated by them, to wit, the purchase of a Locomotive, suited to the wants of the R.R. company and the public.

If the position above taken be correct, then the proof given on the part of defendant in error, in the Court below, was insufficient to support a finding in his favor. It was not shown, nor was there any attempt to show, that any money whatever, even to the amount of one dollar, was ever collected or received from any source, by defendant in error, "to purchase and put upon the Track of said Road a "Locomotive Engine".

The entries in the book offered in evi-

dence merely purported to show "Special Stock Div Act 1. 1880 &c" and not money paid as stock at that or any other date —

Secondly. But assuming, for the purposes of the argument as appears to have been erroneously done by the Court below in the determination of the case, that something less than the actual receipt of $5000 by the R.R. Company might be shown by way of performance or fulfillment of the condition contained in the subscription, and the proof is still manifestly insufficient to support the finding.

On the trial in the Court below, the only proof offered or received, to show that $5000 had been "paid to purchase and put "upon the Track of said Road a Locomotive "Engine" were the entries in the book headed "Special Stock Due Oct 1st 52" &c
This book was improperly admitted in evidence

1st Because plaintiff in error, Chase, was not shown to be a member of the corporation, and corporate books, like the one offered, are never competent on the part of the corporation to establish rights against third persons

Angell & Ames on Corporations p 606 (3. ed.)
1 Greenleaf on Evd. Sec. 493
Jackson vs Walsh 3 John. 226.

"The general rule is, that corporate books
"are evidence in disputes between members
"but not against strangers."
. 2 Phil. Evd. 295-6 (Am. ed.) & Cases there cited

If merely subscribing for stock, no part of the subscription having been paid, and no certificate issued therefor, of itself makes such subscriber a member of the corporation, mischievous consequences must follow. Such subscriber is a member of the corporation for one purpose, must be for all; and if person having neither the inclination or ability to pay his subscription, might subscribe for a majority of the capital stock of a corporation, and by that simple act entitle and empower himself to control the general action and organization of the corporation itself.
Upon principle, a party who in a case like the present has paid no part of his subscription, has received no certificate of stock, and is in no wise entitled to share in the profits of the undertaking, ought not to be considered or treated as a member

of the corporation -

But again, Chase is not even to be treated as a subscriber for stock - His undertaking to pay $50 for one-half share was conditional, and contingent upon the raising of $5000 by Subscription Loan Donation or otherwise" to purchase an engine - Until that $500 is so raised there is no obligation resting upon him to pay for one-half share of stock; and until his liability to take the one half share and pay therefor is created or fixed, he is not to be treated as a subscriber - Fulfillment of the condition by the Company, must precede any liability on the part of Chase as a subscriber for stock. See on this point Fort Miller & Fort Edward Plank Road Co. vs Payne, 17 Barb. 579 -

This R.R. Co. was first organized under the general railroad law, Scales' Comp. p 937, which provides Secs. 1, 2 & 4, that articles of association shall not be filed in the office of the Secretary of State, until ten per cent of the capital stock shall

subscribed shall be in good faith paid in, and until such articles of association are filed, the stockholders are not constituted a corporation — The special charter subsequently granted to the company, Private Laws of 1859 p. 514, provides no other mode by which subscribers for stock may become members of the corporation — Those was not an original corporator or stockholder, and as in construction of the two acts would require that at least ten percent of his subscription should be paid before he could become, & could be treated as a member of the corporation —

2nd - The entries in the book were not shown to be identical with, or a transcript of the subscription to which it is alleged Chase affixed his signature - The entries in the book are headed "Special Stock Due" &c — The subscription list offered in evidence was headed "Stock Subscription List of the Sycamore & Cortland Railroad Company"

"Stock" and "Special Stock" in the same company do not import the same thing and there was no proof to show that they meant the same thing in this case -

3rd. The book has marks of suspicion on its face, and the requisite preliminary proof was not made -

"the books and minutes of a corporation
"if there is nothing to render them
"suspicious, may be referred to, in or-
"der to show the regularity and legality
"of corporate proceedings" &c Angell & Ames on Corporations (3rd ed.) p 686

"when evidence, if there is nothing on
"their face to raise a suspicion that
"the corporate proceedings have been ir-
"regular, they will be treated and referred
"to as evidencing the legality of the pro-
"ceedings." 2 Phil. Evd. (4th ed) p 295 -

The authorities show great strictness
required in the preliminary proof for
the introduction of such books -
"It is not enough that the book is in
"the handwriting of a person stated
"therein to be secretary, and that the wit-
"ness producing it received it from
"such person.
"Nor is it sufficient merely that
"the book is proved by a former secre-
"tary or clerk to have been handed
"down to him as the corporation book."
2 Phil. Evd. (4th ed) p 297, citing Highland
Turnpike Co. vs M. Kean 10 John 54; Martin
vs Zuby 2 Hawk. & John 248 -

"It must be shown that the book was
"kept and the entries made by the proper of-
"ficer or some other person in his nec-
"essary absence". 2 Phil Evd 297

In the case above, the book was admitted to be the book of the corporation, but it was not admitted to be the book in which such entries were ordinarily and properly kept, and there was no proof of that fact —

A part of the entries received in evidence were shown to be in the handwriting of John C. Waterman, who does not appear to be an officer of the company, or in any way authorized to make such entries —
Under the authorities cited above, and all the authorities, it is believed bearing upon this question, this was a fatal objection to the introduction of the book in evidence —
If not, then any interested person, who should, surreptitiously, or otherwise, obtain possession of such a books, might make entries therein, seriously affecting the rights of every member of the corporation

Again. The entries made by Waterman were underneath previous footings of

the number of shares taken and the amount subscribed, donated &c., and were necessary to make an aggregate of $65000 in subscriptions donations &c. They were probably made after the commencement of this suit, and with a direct view to the manufacture of testimony upon the trial — But whether so or not, they were at all events irregularly and improperly made, by a person not authorized to make them, and should for that reason have been excluded — Their suspicious character was as well known to the plaintiffs below, as to any one, and it is but reasonable to infer, that had they been susceptible of explanation, they would have been explained.

As to the balance of the entries, which the witness testified were in the handwriting of Douglas, "a former Treasurer of the Company", it does not appear that they were made while Douglas was Treasurer, nor is it shown when he was Treasurer, or how long, or who

preceded or succeeded him in
that office — The proof then,
as to the entries in the handwri-
ting of Douglass, under the rule that
"it must be shown that the book
"was kept, and the entries made by
"the proper officer or some other per-
"son in his necessary absence" is
manifestly insufficient —

But, aside from any of the foregoing considerations, and even admitting that defendant in error sufficiently proved on the trial in the court below, performance or fulfillment of the condition contained in the subscription, to wit, that $5,000. had been raised by subscription, Loan, Donation or otherwise to purchase and put "upon the Track of said Road a "Locomotive Engine for doing "the business of said Company" still, it, defendant in error, did not prove, or attempt to prove, that Chase, before the commencement of this suit, had been notified of the fulfillment of that condition, and required to pay his subscription - And upon this ground alone it is clear that the action must fail -

"Generally, where anything is to be done "by one party, on the performance of "some act by the other, this other "must give notice of such act, "unless it be one that carries "notice of itself. And it is the thing

"is to be done on the happening of an
"event not to be caused by either
"party, he who is to have the benefit
"of the thing, should give notice
"to him who is to do it, that the
"event has occured, unless from its
"own nature it must become known
"to that party when it happens"
2 Parsons on Cont. (3rd ed) pp 182-4

The cases of Wear vs Jacksonville and Savannah R.R. Co. 24 Ills 593, and Spangler vs Indiana and Illinois Central Railroad Co. 21 Ills 277 are full to this point, and decisive of the case at bar upon this ground.

In the case of Wear vs J. & S.R.R. Co. above referred to a subscription to the capital stock of said Company was conditioned "to pay to the order of the Directors
"of said Jacksonville and Savannah
"Railroad Company, the installments here-
"after assessed thereon as they respectively
"become due, and to be governed by the
"charter and by-laws of said Company."
And it was held, because the evidence
failed to show that the subscriber
had been notified, otherwise than

before suit brought, of the assessments upon his stock, that an action could not be maintained against him for such assessments, and this too, although it was proved by the books of the company, that an order had been made by the board of Directors, fixing the time and place of payment of such assessments -

This court says, "when the payee or obligee by the terms of the contract, has the "right to determine the time of the payment or performance by the payor or "obligor, it is necessary that he should "have notice of the time, before an action can be maintained to recover "on the contract. When the fact or circumstance upon which the performance "depends lies more particularly in the knowledge of the promisee than the promisor, "the former must give the latter "notice. In this case, the times when "and the amounts in which this subscription was to be paid, depended on "upon the action of the payees, and the "evidence of their determination, fixing the amounts and times of payment, was recorded in their books

"under their contract and in their
"possession and therefore lay par-
"ticularly in their knowledge, and they
"should have given notice to the ap-
"pellant."

In the case at bar, plaintiff in er-
ror was to pay, when "$500 should
"be raised by Subscription, Loan, Do-
"nation or otherwise," for a specific
purpose, by defendant in error, and
not before. The fact or circumstance
upon which payment by Chase
depended, lay particularly in the knowl-
edge of the Company, and depended
solely upon their action. — They
might employ much or little time,
in raising $500. in the manner
indicated. They might prosecute
with vigor, or wholly abandon
the scheme of raising it in that
way. They might at once raise by
loan the greater part of the sum
stipulated to be raised, or they
might rely entirely upon subscriptions
& be necessarily engaged many weeks
and or months in raising it.
And in any event Chase could have
no knowledge of the happening of the
contingency upon which pay-

ment by him was to be made, except as he derived it from the Company.

There was no proof whatever of notice to him of the happening of that contingy, and the case falls clearly within the letter and spirit of the rule laid down in the cases of Kear vs. Jacksonville & Savannah Railroad Company, and Spangler vs. Indiana & Illinois Central Railroad Company, cited above —

102 - 98

Charles Mc. Chase

vs

Sycamore &c. R. R. Co

Argument of
Pltff in Error

Filed A/. 6. 1861

L Selman Clk

1

United States of America
State of Illinois De Kalb County } ss.

Pleas before the Hon Theodore D. Murphy, Judge of the Thirteenth Judicial Circuit in the State of Illinois, at the September Term of the De Kalb County Circuit Court begun and held at the Court House in Sycamore, in said De Kalb County on the Second Monday (the same being the twelfth day) of September in the year of our Lord One thousand Eight hundred and fifty four and of the Independence of the United States the Eighty ninth.

Present the Hon Theodore D. Murphy Judge
" Henry Safford Sheriff
C M Brown Clk

Attest Caleb M Brown Clerk

Court opened by Proclamation

"State of Illinois
De Kalb County } ss

The People of the State of Illinois to any Constable of said County Greeting

You are hereby commanded to Summon Charles M Chase to appear before me at my office in Sycamore on the 3d

Summons issued by G. T. Bonnell P.M.

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day of May A.D. 1864 at 10 o'clock A. M. to answer the complaint of Sycamore and Cortland Rail Road Company for a failure to pay them a certain sum not exceeding one hundred dollars, and have of make due return as the law directs. Given under my hand and seal this 26th day of May A D 1864. I. K. Waite [L.S.]

Justice of the Peace"

On which said Summons is endorsed as follows "Sycamore & Cortland Rail Road Company vs Charles M Chase"

"Demand "$100.00

Costs $ .80"

I K Waite J P"

"I have served the within notice by Reading the same to the within named Charles M Chase this 28th day of May 1864

Service $ 25

Mileage .05

Constables cost 30"

"H A Joslyn Constable"

"Filed this 15 day of June 1864

C M Brown Clk"

"State of Illinois } In Justices court before
De Kalb County } ss I. K. Waite J P.

Sycamore & Cortland Rail Road Company } Plaintiffs Demand $100.00
vs
Charles M Chase } 1864 May 26 Summons issued

Transcript J P

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returnable on the 31st day of May instant at ten o'clock A.M. delivered to Constable H A Goslyn to serve. May 31st " Summons returned by Constable Goslyn personally served by reading to the dependent on the 28th " day of May AD 1864. Constables fees 30 cents May 31st " 1864 suit called, Parties appeared. The defendant plead General issue Nul tiel corporation Payment Set off. Reuben Ellwood sworn on part of plaintiff After hearing the evidence it is considered by the Court that the plaintiff have and recover of the dependent the sum of Sixty one dollars with costs of suit to be taxed —

Costs	
Sum	25
Doc	20
Judgd	35
Bond	25
Sec	25
Entg ap	25
Trans	25
Certif	25
	2.05

Const fees
Sums $1,30

1864 June 14th " This day appeared Charles W. Chase the above named dependent with Richard S Divine as his security and filed his bond for an appeal to the Circuit Court in said County which bond was approved by me and appeal granted

State of Illinois
De Kalb County ss I. I. K. Waite a Justice of the Peace in and for said County hereby certify that the foregoing Transcript is truly copied from my docket and that the costs

herewith enclosed are all the papers & documents belonging to the said suit. Given under my hand & seal at Sycamore this 14th day of June AD 1864

J K Waite Seal

Justice of the Peace

On which Transcript is endorsed as follows

"Filed June 15 1864"

"C. M. Pr, Brown Clk"

Know all men by these Presents, That we Charles M Chase and Richard L Divine of the County of De Kalb in the State of Illinois, are held and firmly bound unto the Sycamore and Cortland Rail Road Company in the penal sum of One hundred and thirty Dollars lawful money of the united States, for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents. Witness our hands and seals this fourteenth day of June A.D. 1864

The condition of the above obligation is such That whereas the said Sycamore and Cortland Rail Road Company did on the Thirty First day of May AD 1864 before J. K. Waite Esqr a Justice of the Peace for said County of De Kalb recover a judgment against the above bounden Charles M Chase for the

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sum of Sixty one Dollars and costs of suit from which judgment the said Charles M Chase has taken appeal to the circuit Court of the County of De Kalb aforesaid and State of Illinois, Now if the said Charles M Chase shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above obligation to be void; otherwise to remain in full ~~in full~~ force and effect."

Approved by me as my office this 14 day of June 1864
J K Waite
Justice of the Peace

Charles M. Chase (Seal)
Richard L Divine (Seal)
Rev Stamp
for 50 cts
Cancled

On which said appeal Bond is endorsed as follows "Filed June 15 1864"
"C M Brown Clk"

State of Illinois
De Kalb County } ss.

The People of the State of Illinois to the Sheriff of said County, — Greeting:

We command You, that you Summon Sycamore and Cortland Rail Road Company if they shall be found in your County personally to be and appear before the Circuit Court of said County on the Second Monday of September next to abide by and perform the Judgment of

Appeal Bond & Sheffs Ret

said Court on a certain appeal at the suit of Sycamore & Cortland Rail Road Company against Charles M Chase.

And have you then and there this Writ with an endorsement thereon, in what manner you executed the same.

Witness Caleb M Brown Clerk of our said Court and the Seal thereof at Sycamore this 29th day of July AD 1864

C M Brown Clerk

On which appeal Summons is endorsed as follows "Filed Sept 12. 1864

C M Brown Clerk"

Also "I have served this Writ on the Sycamore and Cortland Company by reading the same to James H Beveridge the 18th day of August AD 1864 Henry Safford, Sheriff

Fees Service 50
Mileage 05
Return 10
.65

State of Illinois } In the Circuit Court
De Kalb County } February Term A.D. 1865

Sycamore and Cortland Rail Road Company
vs
Charles M Chase } Bill of Exceptions

Bill of Exceptions

7

Be it remembered that on the trial of this cause by the Court a Jury being waived by agreement of parties at the February Term 1865 of the said Circuit Court the said plaintiff to maintain the issue on his part offered in evidence a certain Subscription List which was and is in words and figures as follows

Stock Subscription List
of the
Sycamore Cortland Rail Road Company.

We the undersigned agree to take the number of shares of the Capital Stock of the Sycamore Cortland Rail Road Company set opposite to our respective names, and to pay therefor to the Treasurer, or such other officer of said Company as the Board of Directors may direct, the sum of One Hundred Dollars for each and every share so agreed to be taken in the following manner, as follows: By note, payable on the 1st day of October 1860 drawing interest at six per cent per annum; provided that no part of the amount so subscribed by us shall become due and payable at any time unless the sum of Five Thousand Dollars shall be raised by Subscription, Loan, Donation or otherwise to purchase and put upon the Track

of Said Road a Locomotive Engine for doing the business of said Company. for which purpose the money derived from the Subscription is to be specifically devoted so far as the same is necessary for that purpose.

Names	No. Shares	Names	No. Shares
Geo. H. Dennis	1/2	Canceled by Note	
Charles Townsend	1/2	Canceled by Note	
Stephen Townsend	1/2	Canceled by Note	
D. B. Westlake	1/2	Canceled by Note	
James M. Dwight	1/2	Canceled by Note	
O. S. Webster	1/2	Canceled by Note	
C. M. Chase	1/2		

I qL I I

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The said plaintiff to further support the issues on his part called Richard E Tucker as a witness who being sworn testified that the entries on two pages of a certain book then and there shown to him were in the handwriting of William H Douglas except the entries below the footing on the last page of said entries and below the words and figures.

"1/2"	"50"
"248 1/2"	"4880"

"John A. Waterman"

that said last mentioned entries underneath the footings & the figures last aforesaid were in the hand writing of John C. Waterman, witness did not know whether John C. Waterman was an officer of said Rail Road company or not - that said Douglas was formerly treasurer of said company and as such Treasurer had the custody of said book but was now deceased - the said book was admitted by defendant to be a book of said company - The said plaintiff then offered in evidence the said entries upon the said two pages of said book which said entries were in words and figures as follows - (1st page of said entries)

"Special Stock Due October 1st 1860 with Interest at 6 per cent"

"Names"	"Shares"	"Amt."
"James Marks	1	100"
"Agrippa Daw	1/2	50"
"Curtis Smith	1/2	50"
"Cushman & Tucker	1	100"
"N Dennis	1	100"
"		

	" Moore & Mills	1	100"
10	" Roswell Dow	1	100"
	" Charles Kellum	1	100"
	" Willis Lott & Co.	1	100"
	" Carlos Lattin	1	100"
	" E. D. Call	1	100"
	" J. N. Maxfield	1	100"
	" E. P. White	1	100"
	" H. N. Perkins	1	100"
	" G. A. Maxfield	1	100"
	" H. T. White	1/2	50"
	" A. B. Green	1/2	50"
	" Amos Story	1/2	50"
	" Henry Wood	1	100"
	" Chas C. Boynton	1	100"
	" Geo. W. Dennis	1/2	50"
	" Chas Townsend	1/2	50"
	" Stephen Townsend	1/2	50"
	" D. B. Westlake	1/2	50"
	" Jas. McLeight	1/2	50"
	" C. S. Webster	1/2	50"
	" C. M. Chase	1/2	50"
	" David Wood	1/2	50"
	" James Wyman	1	100"
	" Fleming Holcomb	1/2	50"
	" Norman Peters	1/2	50"
	" Ralph Wyman	1	100"
	" Chas. Bers	1/2	50"
	" Henry Safford (Donation)	1	100"

1 1 1 1

11	" Hamlin & Hunt	3	300"
	" Waterman & Ellwood	3	300"
	" J. S. Waterman	2	200"
	" John S Harrow	1	100"
	" Bryan Harkness & Co	1	100"
	" A & R Ellwood	1	100"
	" Evans Wharry	1	100"
	" Ellwood & Dustin	1	100"
	" David Crist	1/2	50"
	" Hannah Miller	1	100"
		"44 1/2"	"4450"

(2nd page of paid entries immediately preceding paid 1st page)

"Special Stock Due October 1st 1860 with interest at 6 per cent.

Names	Shares	Amt.
Amt. Brot. up.	44 1/2	4450
Samuel Alden	1/2	50
Charles Merritt	1/2	50
Harvey Mayfield	1/2	50
Nelson McLagan	1/2	50
Alex. McLagan	1/2	50
Henry Dutton	1/2	50
Norman C. Warren	1/2	50
John A Waterman	1/2	50
	48 1/2	4850
Daniel Pierce donation	1	100
Nelson McLagan Proviso $50.	1/2	
and S Smith	1/4	25
Jewet & Butler	1/2	50
	50 3/4	

to the introduction of which said entries in
12 evidence the said defendant then and there objected
but the court overruled said objection and ad-
-mitted the said entries to be read in evidence
to which said ruling of the court in overruling said
objection and admitting the said entries to be
read in evidence the said defendant then and
there excepted.

The said plaintiff to further
maintain the issue on its part also then and
there offered in evidence a written instrument
purporting to be a certified transcript of the
articles of association of the Sycamore and
Cortland Rail Road Company which said
transcript was in words and figures as
follows to wit.

We whose names are hereunto
subscribed do hereby associate ourselves together
as a Rail Road Company for the purpose of
constructing and operating a Rail Road from
Sycamore in the County of DeKalb and State of
Illinois to Cortland in said County. That
the name of said Company shall be: The
Sycamore and Cortland Rail Road Company
That said Company shall continue fifty years
from the twenty third day of June A.D. 1858:
That the amount of the Capital Stock of said Comp-
-any shall be Fifty Thousand dollars. That said
Capital Stock shall consist of Five hundred

13 shares of One hundred dollars each. That the following named thirtun persons by us duly elected shall be the Directors to manage the concerns of our said association to wit: Reuben Ellwood, Henry L Bois, Orlando Mc Bryan. Enas L Cheasbro Jr. Benjamin Page. Harmon Paine. John C. Waterman. William J. Hunt Horatio F. Page. Daniel B. James. Timothy Wells. Morris Walrod and Edward L Mayo. That said Road shall be constructed from Sycamore in said County of De Kalb to Kirtland in said County. a distance of about four and one half miles. and run wholly in said county; and that the following named persons be fine commissionus to open books of Subscription to the Stock of our said Company to wit: James C Waterman Orlando Mc Bryan. Alonzo Ellwood. Henry L. Bois and Edward L Mayo.

In Testimony whereof we hereunto set our hands. Done at Sycamore in said County of De Kalb this 23d day of June A.D. 1858

Edward L. Mayo	Sycamore Two Shares
John C. Waterman	Sycamore Two Shares
Henry L Bois	Sycamore Two Shares
E. L. Cheasbro Jr.	Pampas One share
William J. Hunt	Sycamore One Share
T Wells	Sycamore Two Shares

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A & R. Ellwood	Sycamore	Two Shares
Benj. Page	Sycamore	One Share
Harvey Mayfield	Sycamore	One Share
Rodgers. Wild & Smith	Sycamore	One Share
Mc. S. Marsha & Co.	Sycamore	One Share
N. C. Warren	Sycamore	One Share
Alex^r McLagan	Sycamore	One Share
H. Paine	do	One Share
Rosnell Dow	Sycamore	One Share
Jas. A. Brumley	Sycamore	One Share
Timothy T. Peck.	Sycamore	One Share
William H. Beavers	Sycamore	One Share
Evans Wharry	Sycamore	One Share
J. S. Waterman	Sycamore	Two Shares
C. Mc. Brown	Sycamore	One Share
Chas. Kellum	Sycamore	One Share
C. O. Dayton	Sycamore	One Share
Jacob A. Simons	Sycamore	One Share
Ralph Wyman	Sycamore	One Share
Marshall Stark	Sycamore	One Share
John Quinn	Sycamore	One Share
Darius Williams	Sycamore	One Share
T. H. Beavers	Sycamore	One Share
A. C. Allen	Sycamore	One Share
T. B. Mayo	Sycamore	One Share
D. B. Gaines	Sycamore	Two Shares
J. E. Ellwood & Co	Sycamore	One Share
Horace Doak	Sycamore	One Share
C. Mc. Bryan	Sycamore	One Share

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M. Walrod
H. F. Page
Carlos Tatlin

Sycamore Churchard
Sycamore Churchard
Sycamore Churchard

State of Illinois
De Kalb County } ss Reuben Ellwood. Norman L. Bois. and Timothy Wells being first duly sworn doth depose and say that they are three of the directors of the Sycamore and Cortland Rail Road Company having been duly elected as such by the stock Holders of said Company. That one thousand dollars of the Capital Stock of said Company for each mile of said road has been in good faith subscribed and that ten per cent on a thousand dollars for each mile of the road intended to be built by said Company has actually and in good faith been paid in cash to the directors of said company. and named in the within Articles of Association.

Subscribed and Sworn to before me this 28th day of June of A.D. 1848.
Chas. M. Chase.
Police Justice.

Reuben Ellwood
T. Wells
N. L. Bois

State of Illinois
De Kalb County } ss. I Aaron K. Stiles Clerk of the County Court in and for

said County in the State aforesaid do hereby certify that Chas. M. Chase Esq. whose name is subscribed to the above Jurat was at the time of administering said oath, and signing the Certificate of the same, an acting Police Justice in and for the Town of Sycamore in said County duly commissioned and sworn according to law, and I further certify that I am well acquainted with his hand writing and verily believe that his signature thereto is genuine.

In Testimony whereof I have hereunto set my hand and the seal of said County this 28th day of June A.D. 1858

Aaron K. Stiles
Clk.

United States of America
State of Illinois } ss. I Sharon Tyndale Secretary of State of the State of Illinois do hereby certify that the foregoing is a true copy of the articles of Association of the Sycamore and Cortland Rail Road Company now on file in my office.

In witness whereof I have hereunto set my hand, and affixed the Great Seal of State at the City of Springfield this 28th day of January A.D. 1865

Rec. Stamp 3 cts. Internal Revenue

Sharon Tyndale
Secretary of State

17 To the introduction of which said written
instrument or transcript the said defendant
then and there objected but the court then and
there overruled said objection and admitted
the said transcript to be read in evidence
to which said ruling of the Court in overruling
said objection and admitting the said tran-
script in evidence the said defendant then and
there excepted.

The above and foregoing was
all the evidence either offered or received
upon the trial of the above entitled cause-
whereupon the court found the issue for the
plaintiff and gave judgment for the plaintiff
for the sum of fifty dollars damages to which
finding and judgment of the court the said
defendant then and there excepted-
The said defendant then and there moved the
Court to set aside said finding and judgment
of the court and for a new trial - upon the
ground that the court admitted improper
testimony upon the trial of said cause.
and upon the ground also that said finding
and judgment of the court was contrary
to the law and the evidence. But the
Court then and there overruled said last
mentioned motion to which ruling of the
Court in overruling said motion to set
aside said judgment and grant a new

trial the said defendant thus and thus excepted. And inasmuch as the matters aforesaid do not appear of record the defendant presents this bill of exceptions and prays that the same may be signed and sealed by the Court and made part of the record in said cause: and it is done accordingly—

I. D. Murphy Seal
Judge

Be it remembered that on the 21st day of September A.D. 1864, said day being one of the days of the September term of the DeKalb County Circuit Court in the aforesaid year, the following among other proceedings in said Court was had and entered of record in said, to wit:

"Sycamore & Cortland Rail Road Company
vs
Charles M Chase
} Appeal.

This day came the plaintiffs by Killum their attorney and the defendant by Divine his attorney also come and the parties waive a jury and for trial submit this cause to the Court.

And Be it further remembered that on the 2d day of March AD 1865 said day being one of the days of the Febuary Term of the DeKalb County Circuit Court for the year last aforesaid the following among other proceedings in said Court was had and entered of record in said Court, to wit:

"Sycamore & Cortland Rail Road Company vs Charles M Chase } Appeal.

This day came the plaintiff by Chas Kellum its attorney and the defendant by R L Divine his attorney also comes and a Jury having been waived and this cause having been submitted to the Court for trial at the September Term thereof AD 1864, the Court proceeded to hear the evidence and remarks of Counsel and being fully advised finds the issue for the plaintiff and assesses the damages of the said plaintiff at the sum of Fifty Dollars: And thereupon the defendant moves the Court for a new trial which said motion is denied by the Court. It is therefore considered by the Court that the plaintiff have and recover of the defendant Fifty dollars its

2 0 damages in form as aforesaid assessed together with its costs herein expended, as well in the Court below as in this Court, and that it have execution therefor.

State of Illinois
De Kalb County ss I, Frederick W. Partridge Clerk of the Circuit Court within and for said County in the State aforesaid do hereby certify that the above and foregoing Transcript contains full and complete copies of the Justice's Summons, Justice's Transcript, Appeal bond Appeal Summons, Bill of Exceptions and all orders and the judgement of the Court in a certain Suit lately pending in said Court wherein Sycamore & Cortland Rail Road Company is Plaintiff and Charles M Chase is defendant as the same appears of Record and on file now remaining in my Office.

Witness my hand & the seal of said Court at Sycamore in said County & State this 18th day of March AD 1865

Frederick W. Partridge Clerk

Clerk 18.1865 $1.00

State of Illinois
Third Grand Division
Supreme Court April Term
thereof A.D. 1863

Charles Mc. Chase
vs
Sycamore and Cortland
Rail Road Company
} Error to
DeKalb

And now comes said Plaintiff in
Error by R. L. Irvine and Leland and
Blanchard his attorneys and says
that in the foregoing record and
proceedings there is manifest Error
in this to wit
1st The court Erred in admitting
improper testimony
2nd The court erred in rendering judg-
ment in manner and form as the
same was rendered
3rd The court Erred in overruling Motion
of Plaintiff in Error for new trial
and in arrest of judgment. And for
other errors and insufficiencies mani-
fest on the face of said record
Wherefore Plaintiff in Error prays a
reversal of said proceedings and judg-

ment

R. L. Divine and
Edward Blanchard
for Plaintiff in Error

And now comes the said defendant in Error and says there is not any error in the foregoing record & proceedings whereof it prays that the same may be affirmed &c

Charles Kellum
Atty for defendant
By Brief

~~S~~ 102 88

C. 80

Charles M. Chase
vs
Sycamore & Cortland
Rail R. Co

Filed March. 28. 1865.
L. Leland
Clk.