

14478

No. \_\_\_\_\_

# Supreme Court of Illinois


Reynolds et al

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vs.

Goodrich

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 176

*Goddard*  
*75*  
*Raymond*  
1863

14478

Of the 9 Errors assigned on these  
Records only the 1<sup>st</sup> and 7<sup>th</sup>  
which amount to the same thing <sup>and</sup> the  
8<sup>th</sup> and 9<sup>th</sup> are the only ones that  
in fact arise in these cases —  
The 1<sup>st</sup> and 7<sup>th</sup> assigning the decision  
on the Demurrer to the Special Pleas  
<sup>for error-</sup> is argued further along —

As to the 8<sup>th</sup> Error assigned  
It cannot arise on this Record —  
for the Reason that the Affidavit  
which was the basis of the motion  
is not brought to the notice of this  
Court by Bill of Exceptions as is nec-  
essary — 24 Ill 598

Also in the cases of *Hulcher v. Thompson*  
and *Baker v. Williams* there is no  
Affidavit for continuance in the  
Record at all —

As to the 9<sup>th</sup> Error assigned the  
Abstract will & does show that  
there was no evidence offered in  
this case but that judgment was  
rendered on the Demurrer to the Pleas

The Abstract does not show the  
construction of the Pleas very fully  
but the Court will see by an

spectum of the record that the pleader  
only proposes to plead to the special  
court leaving the common count  
unassumed. It is true there is a  
stipulation that the note is the  
only cause of action but I think that  
does not do away with the necessity  
of pleading to the common count.

I also desire to call the attention  
of the court to the fact that there  
are about 450,000 of notes of this  
some kind and character in Rock  
Island County, all drawn in precisely  
the same language and payable to the  
same company and that these notes  
~~and upon in these suits~~ will in  
a great measure determine the  
character of all of such notes.  
I therefore bespeak for these cases  
a careful review on the part of the  
court.

Argument for Appellees

Calvin Goodrich

vs

Reynolds Wilder

for the use of

Wagon of Adams

Amos Halden

vs

Charles M. Wood

Rudolphus J. Baker

vs

Charles Williams

In the Supreme  
Court at Wetmore  
April Term  
A.D. 1868

The only question in these cases  
arises on the validity of the Appellants  
Pleas filed in the Court below.

The Pleas are the same in all the  
cases - a Demurrer was sustained  
to all the Pleas in that Court and  
that decision is assigned pre-  
ter-

On the part of the Appellees it is  
claimed that the Pleas were all bad  
and that the Demurrer was sustained  
properly - because they all profess  
to answer the whole declaration  
or the whole cause of action while  
in fact they only answer a part of it  
being Pleas to the parts mentioned in

the first count leaving the common  
counts wholly unanswered  
No principle of Pleading is better  
established than that a Plea which  
professes to answer the whole does  
& in fact only answers a part of  
it is bad on demurrer—

4 Gilman 532—

22 Ill 40 & 813—

The 2<sup>nd</sup> Plea is bad for the reasons  
already stated and because it only  
amounts to the General Issue— The  
demurrer was therefore properly sus-  
tained— 25 Ill 321

As to its merits it does not  
allege fraud nor does it impede  
the consideration of the note but  
simply ~~states~~ simply says that the  
making of the note is contrary to  
the laws of the land and of the  
Rail Road charter and is fraudulent  
& void in law— There certainly is no  
law that is violated by the making  
of the note in question— It seems  
the Plea only amounts to the General  
Issue— It is probably however the  
intention to raise the question of  
the power of the Company to take  
notes and security for subscriptions  
for Stock— This Court has already

said. "That a Rail Road Company  
can take a promissory note and  
negotiate it in the ordinary course  
of <sup>their</sup> business cannot be questioned. It  
is a power inherent to all such  
"corporations" 24 2/11/87

There certainly can be no good  
reason why they cannot take a  
promissory note a security in payment  
for Subscriptions for Stock as well  
as for other purposes. By the  
General Act under which this  
Co was first organized the Stock  
Subscriptions are payable in cash  
at the call of the Co - What objec-  
ion can there be to calling for the  
entire amount at the end of five  
years and taking a note therefor

Also this Co by its amended  
charter passed in 1859 have ten  
years within which to build and  
equip the road. What objection  
therefore can there be to the Co's  
giving a credit of 5 years on Stock  
Subscriptions

Will not this Court also examine  
into the nature & character of  
the defenses here set up - The  
appellants are seeking to take ad-  
vantage of the indulgence extended

to them by the Co in giving them  
a credit of Five Years upon their  
Subscriptions to enable them to  
repudiate their obligations, in the  
hands of third parties In the case  
of the Ill Miner N K Co vs Zimmer  
1922 657 where the question was  
whether the Stock Subscribers were  
not released from their subscrip-  
tions because they were not required  
to pay a certain 10 percent installment  
at <sup>the time</sup> the Subscriptions were made  
but were allowed a credit therefor  
this Court has said -

"If the company violated its strict  
" duty in giving them time on the  
" first payment they could not be  
" allowed to take advantage of that  
" wrong and refuse the subscribers the  
" benefit of the Stock when they should  
" offer to pay for it - So on the other  
" hand the defendant cannot be allowed  
" to take advantage of the indulgence  
" extended to them when they made their  
" subscriptions for the purpose of repudiat-  
" ing them - This indulgence is a most  
" ungenerous defense which should  
" not be allowed unless it is strictly  
" required by some inflexible rule of  
" law" see 1922 657 case cited

The case above cited was a direct suit by the Co on the Stock Subscribers while this is between a third party and the Subscribers and on a note admitted in the Plea to be given in payment for the stocks.

The 3<sup>rd</sup> Plea sets up that the amount of capital stock required with \$600,000.00 has not been subscribed and that that was the amount required for the work.

In the case of Rice in the Rock Island and Altam Rail Road Company 21 Ill 95 and in the case above cited 19 Ill 57 Pleas of this same character were held bad on demurrer by this Court.

In the 21 Ill The court say "The party sought not to be ~~compelled~~ permitted in this collateral way to question the regularity of the organization of the Company" And both of the above cases are between the Company & the Subscribers.

The 4<sup>th</sup> Plea corresponds with ~~with~~ the 3<sup>rd</sup> except as to amount of Capital Stock supposed to be required and is bad for the same reasons.

The 5<sup>th</sup> Plea is the same as the 3<sup>rd</sup> & 4<sup>th</sup> but owns that the Amendment

\* The Amendment was  
not made till long  
after the receipt of  
the notes in currency

to the Charter requires a Capital Stock  
to be subscribed of \$50,000. Such  
does not appear to be the nature of  
the Amendment. See Secs 185 & 187.  
The Plea is bad for the same rea-  
sons above stated.

\* The 6<sup>th</sup> Plea is in substance the  
same as the ~~6<sup>th</sup>~~ <sup>5<sup>th</sup></sup> and is bad for  
the same reasons.

The 7<sup>th</sup> Plea alleges that the said  
Miles & Henry had no authority to  
take and negotiate the note under  
the Charter of the Co or from the Direc-  
tors - In 24 Ill 181 where the  
note in suit is assigned in pre-  
cisely the same way as in this  
case this court has said - "The  
assignment by the company was  
" prima facie their act through their  
" authorized officers. If it was not  
" their act it should have been  
" denied by affidavit"

See also 5 Gilbo - 25 Ill 212  
26 Ill 44

The 8<sup>th</sup> Plea appears to be a Plea of  
Traverse - It is bad as purporting to  
answer the whole issue and in fact  
~~is~~ only answering a part of it - It is  
also bad in that it contains  
no Scienter without which a Plea of

Found is not good - 28 Ill 482 -  
In substance also it is bad as  
not showing fraud - It sets up the  
the consideration of the note was  
two or more shares of stock in the  
N A Co. which were subscribed for  
long before the note was executed  
which were in payment for the stock  
The representations about the time  
within which the road was to be built  
& equipped, were merely matters of opinion  
& not of warranty, which could be  
judged of as well by one party as an-  
other - and could only relate to the  
value of the stock and as the plea  
admits that the stock was long before  
subscribed for, the appellants were  
bound to pay for it. What does it  
matter therefore what representations  
were made after the subscriptions  
were made - And as above stated  
there is no overment that the defendants  
authorized the making of these repre-  
sentations or that they were known  
to be false -

The plea does not show such fraud  
& circumvention in the obtaining of  
the execution of the note as would  
viciate it -

26 Ill 494 -

21 " 228 -

The 9<sup>th</sup> Plea is a plea of entire failure of consideration - It is bad as purporting to answer the whole issue and only answering a part - the 1<sup>st</sup> Count - also as setting up an entire failure when it is evident that if there has been any failure it has been only in part, also in substance for the same reasons as the 8<sup>th</sup> Plea.

The 10<sup>th</sup> Plea sets up Fraud and circumvention - It is bad as purporting to answer the whole claim and in fact only answering the special count. Also in failing to allege a Security and in that it does not show wherein the note was obtained by fraud & circumvention.

The 11<sup>th</sup> Plea is bad for the same reasons as the 10<sup>th</sup>.

The 12<sup>th</sup> Plea is bad for the reasons above stated & because it shows no defense on the merits, it also only amounts to the general issue.

It is by no means necessary that the Appellant should ever receive any valuable consideration for said note - The same defense might be made in every case of a Security Debt.

The 13<sup>th</sup> Plea was withdrawn.

The 14<sup>th</sup> Plea is bad for the same

reasons above stated, & because it  
shows no defense whatever,  
The 15<sup>th</sup> Plea is bad for the rea-  
sons above stated because it shows  
no defense - There can be no question  
of the right to make intent payable  
at the pleasure of the parties as to  
reserve it in advance.

48 Can It and  
cases there cited

Al Webster  
Att'y for Appellants

Since preparing the foregoing I have  
examined the Opinions of this  
Court in the case of The Ill Grand  
Trunk Railway vs Caledon Co. as  
recited in Volume 12 of Opinions  
at page 26 of the Record of the  
Third Division at Ottawa which  
in substance determines all of the  
important questions in this case  
see the Opinions

AW

Goodrich 176-8  
<sup>vs</sup>  
Reynolds Willards

Argument for the  
Appellees

No 176

Filed Apl. 29. 1863.  
L. Seland  
Clerk.

STATE OF ILLINOIS.

*Supreme Court at Ottawa, April Term, A. D. 1863.*

**Appealed from Rock Island County.**

ELISHA P. REYNOLDS, STEPHEN L. WILDER AND W. M. MARSHALL, JR.,  
LATE PARTNERS UNDER THE STYLE OF REYNOLDS, WILDER & Co.,  
FOR THE USE OF ALFRED A. ADAMS.—vs.—CALVIN GOODRICH, AP-  
PELLANT.

- RECORD. This suit was brought upon a note given by the Defendant
- Page 5. to the Sterling & Rock Island Rail Road Company, for Five  
Hundred Dollars, payable five years from 1st day of Septem-  
ber, 1857, interest payable semi-annually at ten per cent., da-  
ted August 12th, 1857, endorsed, "Pay Reynolds, Wilder &  
Page 5. Co., or order, "Sterling & Rock Island Rail Road," Per M.  
S. Henry, President."
- Page 5. "Also, "We hereby guarantee the payment of the within note  
and interest." "William Marshall Jr."  
"C. B. Marshall."
- Page 3. Declaration; Special count upon said note; and common  
counts.
- Page 5. It is agreed the only cause of action is, said note. A.  
Webster, Plaintiffs Attorney.
- Page 7. The Defendant filed plea of general issue, and fourteen  
special pleas.

## ERRORS.

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- 1st. The Court erred in sustaining the demurrer to the Special Pleas.
- 2d. The note is void, for want of power in the Company to make the contract by which it received said note.
- 3d. There was no consideration for said note.
- 4th. The note was obtained by fraud.
- 5th. The Company had no power to receive, transfer and endorse said note, under and by virtue of any law of the State.
- 6th. The contract to pay the interest semi-annually, is against the policy of the law, and therefore void.
- 7th. The Court erred in not overruling the demurrer.
- 8th. The Court erred in overruling the motion for a continuance.
- 9th. The judgment is manifestly against the law and the evidence and the facts in the case.

176-6-7-48

Goodrich

vs

Reynolds

Abstracts &  
Bonds

Filed April 22, 1863

G. Leland  
Clerk

II I II I

I.

I.

I.

I.

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The first question is, what powers are given to the Company under the *charter*? The company organized under the general Railroad act. Cook's statutes, page 937, sec. 1st, says: "Any number of persons not less than twenty-five, being subscribers to the stock to any contemplated Railroad, may be formed into a corporation for the purpose of constructing and building said Railroad, by *complying* with the following requirements: when stock to the amount of at least one thousand dollars per mile of said road, shall be in good faith subscribed, and ten per cent paid therein, then said subscribers may commence forming a permanent organization to build said Railroad, and not before.— They shall severally subscribe articles of association, in which shall be set forth the name of the *corporation*, the number of years it shall continue, which shall not exceed fifty.

The amount of the capital stock of the company which shall be the actual cost of constructing the road together with the cost of right of way, motive power, and every other appurtenance for completing and running said road as nearly as can be estimated by competent engineers, the number of shares of which said stock shall consist, the number of directors and their names, the place from and to which the proposed road is to be constructed and the counties through which said road is to pass, and its length as near as may be, and the names of five commissioners to open books of subscription to the capital stock; each subscriber shall subscribe his name to said articles of association, his place of residence, the number of shares of stock taken by him in said company.

Section 2d states that such articles of association shall not be filed in the office of the Secretary of State until ten per cent. on the amount of the stock subscribed shall actually and in good faith be paid in, in *cash*, to the directors named in the articles of association.

Section 5th states that the commissioners for opening books of subscription shall from time to time after the company shall be incorporated, open books of subscription to the capital stock of said company, which shall be kept open until *all the Capital Stock shall be subscribed*, if the company shall so long exist, and in case a greater amount of stock shall be subscribed than the whole capital required by said estimate, then the commissioner shall distribute said capital stock among the subscribers equally, said commissioners to open books of subscription to the the capital stock of said company. The words *capital stock*, are used for the first time in the fifth section, and "when the capital stock shall all be subscribed for and distributed" &c., then the sixth section says, as *soon as practicable* after such capital stock shall have been subscribed and distributed as aforesaid, the commissioners (not the directors) shall appoint a time and place for the meeting of the stockholders to elect directors, and shall give notice thereof at least twenty days, of the time and place of such election; thirteen directors shall be elected.

Section 7th says that the commissioners shall be inspectors of the *first election of directors*, and shall declare the result thereof, and shall file a certificate of said election in the office of the Secretary of State, and with the Clerks of the different counties through which said road

is to run, and shall also deliver to the Treasurer all the moneys by them received on subscriptions to the capital stock of said company, and shall deliver over all books and papers belonging to said company, and all subsequent elections shall be governed by the by-laws of the company. Now the commissioners leave. The permanent organization of the company is completed. 15th Ill. Report, page 400; Smith—vs.—Bangs.

Section 11th says that it shall be lawful for the directors to call in and demand from the stockholders respectively, all sums of money by them subscribed, at such time and in such instalments as the directors may deem proper, giving the necessary notice thereof.

The directors authorized to call in and collect the capital stock could not be elected until after the capital stock was all subscribed for, that is a condition precedent, for the 6th sec. says, as soon as practicable after such Capital Stock shall have been subscribed and distributed, &c., the commissioner shall appoint the time and place of election at which said directors shall be elected.

Section 7th says the commissioners shall be inspectors of the first election of the directors which are authorized to demand and collect in the capital stock of said company, are not the same directors mentioned in the first section of the charter, because the directors mentioned in the first section were appointed by those who subscribed stock to the amount of one thousand dollars per mile; in the first instance the commissioners were at the same time appointed, and after which the articles of association were drawn up and the names of the directors and commissioners were included in said articles of association, which clearly shows that the Legislature when it passed the charter only intended to give to such preliminary organizations such powers as were necessary to get the necessary amount of capital stock subscribed to build and equip said road.

The commissioners had no power call an election to elect directors until all the capital had been subscribed for, therefore no directors, possessing the power to collect the capital stock can legally exist until after the capital stock is all taken; consequently no person had the authority to demand the money and receive the notes in payment thereof, by virtue of the charter. The commissioners have the control of the Books and Stock until after all the capital stock is subscribed for and the directors elected, and they had no power to take notes in payment of stock from the subscribers; for, the taking of all the Capital Stock is a condition precedent, expressly so made in the 6th section of the charter. Also see Redfield on Railways, page 77, sec. 1, and page 79, and notes. In the case of Atlantic Cotton Mills—vs.—Abbott, 9th Cush. Reports, 423, where it was inserted in a subscription for stock, that the capital stock of the company should be not less than \$1,500,000, it was held to be a condition precedent to making calls.

There is a good reason for it. Suppose a project to cost three millions of dollars and the parties got one fourth subscribed, that would be all lost if the balance could not be subscribed—it would be a great fraud on those who subscribed if their subscriptions could be collected when they supposed and had a right to suppose they would not be cal-

ed upon to pay, unless the balance of the *capital stock* was subscribed for to complete the work, and thereby give value to the Stock.

The 1st section of the charter says: "That any number of persons not less than *twenty-five* who being subscribers of any contemplated Railroad, may be formed into a corporation, &c." Suppose that ten persons only who being subscribers to the stock of a contemplated Railroad, should subscribe stock to the amount of a thousand dollars per mile should make the necessary estimate of its cost, appoint directors, also commissioners to open Books and solicit capital stock, and pay ten per cent in *cash* and file the articles of association in the office of the Secretary of State and get the same recorded; and the commissioners should get a small portion of the capital stock subscribed and should call an election and directors should be elected and the commissioners certify to their election and should then hand over to the Treasurer of said company the books, money and papers. Could the company collect the amount of *capital stock* thus subscribed for? We think not. No legal corporation would exist in such a case, the charter requiring at least twenty-five members before they could become incorporated, when in fact they had but ten, and by the same parity of reasoning under the 6th section of the charter the whole amount of capital stock must be subscribed for, before the commissioners can call an election to elect the first directors of said company; such directors are the only persons under the charter that have the authority or power to make an assessment or collect the amount of capital stock subscribed from said stockholders. The charter is a part of the contract, and the party having the right to and in fact does examine it, and upon such examination concludes to become a party to it, and subscribes for stock in it. Now what is the contract if all written out in full at the time the defendant signed it? It is this: "I, Calvin Goodrich, do hereby agree to take five shares of the capital stock of the Sterling & Rock Island Rail Road Company, at one hundred dollars each, which I hereby agree to pay therefor to said company five hundred dollars, at such times and in such instalments as the directors that have been elected by all the stockholders shall direct, they giving the required notice—provided all the capital stock required to build and equip said Railroad shall be subscribed for according to the estimate made." If the contract had been thus written out could the money be collected on the subscription until the whole of the capital stock had been taken? I think not; it is a condition *precedent*. We must take the charter, the books of subscription, articles of Association, and the estimates of the cost of building said road, and put them together, in order to ascertain what the contract really was.

When the organization of the company is perfected for the purpose of building said Road, the company owns no stock, it cannot have any; it must have been all subscribed and taken and owned by its members in their individual right, before the commissioners can call an election to elect directors to build said Road, and when all the capital stock is subscribed for, it may be and would be and should be represented at the first election of directors, which was clearly the design of the Legislature. In the case of Walker—vs.—DeVereaux, *et. al.*, 4th Paige's Report, page 228. 2d Vol. Rail Road cases, page 520.

The act as set forth in that case, creating the Utica & Schenectady Railroad requires the capital stock to be all subscribed for and that the commissioners appointed to open the books for stock subscriptions should in case of an excess of stock subscriptions apportion the stock among the subscribers; the Court says no person can be a stockholder of the corporation, neither does any corporation exist, nor has any person any interest in stock as the legal owner thereof so as to authorize him to vote upon it or transfer it as stock, nor can an election be held until the commissioners apportion the stock. In the case of Crocker & Williams—vs.—Crane, 23 Wendall's Reports, page 211. 2 Vol. Railroad cases, page 184, the Court says that when the charter provides for a distribution of the stock among the stockholders no corporation exists before the distribution is made: the Court says it is a *condition precedent*. The 6th section of the charter in this case, requires the commissioners to apportion the stock among the subscribers after it is all taken, and before they call an election, for it could not be distributed if it had not been subscribed. Therefore, the subscribing for all the *capital stock* is a *condition precedent*. It seems to us that it was the intention of the legislature in making the subscription for all capital stock of said company a *condition precedent* to prevent fraud from being practiced upon those who might first subscribe for capital stock on said books. There is not the twentieth part of the stock taken of said company, and the presumption is, it never will be taken; the road is not built, and in all human probability never will be built. Where the charter prescribes the particular mode in which a corporation shall make and execute its contracts, that mode must be followed. Angel & Ames on Corporations, page 268, sec. 253. In the case of Head and Amony—vs.—The Providence Insurance Company, 2 Cranch, page 127, Condensed reports, 371, the Court say, that a corporation can *only act in the manner prescribed by its charter*.

The charter in this case provides that the directors shall make estimates, give notice when the estimate must be paid, and a fair construction of the charter is, that the estimate shall be made at such times and in such amounts as will be required to pay for the work as it progresses, and no faster.

A corporation is a mere creature of law, and has no power nor rights except such as are expressly given it by the charter. Trustees, &c.—vs.—McConnel, 12th Ill. report, page 138 to 140. Angel & Ames on Corporation, page 276, sec. 257, same, page 279, sec. 260, same, page 103, sec. 111. It was undoubtedly the intention of the Legislature in passing the act under which this company claims to be incorporated, to permit any number of persons not less than twenty-five, who were desirous to build a Railroad between given points, to be incorporated for that purpose. The Road could only be built by a solid capital of a large amount, to be created by voluntary subscription of individuals in the form of stock, and to be paid from time to time as the work progressed, and in order to protect the stockholders from frauds and impositions as well as the public, the Statute points out the method how the amount of capital stock required to build and equip said Road should be ascertained. In the case of Newel—vs.—The Galena &

Chicago Union Railroad Co., 14 Ill. reports, page 273, the Court says that they fully recognize the propriety and even necessity of applying the rule of strict construction to the powers granted in these Railroad charters. But the rule can only be applied in cases of ambiguity, or when a power is claimed by inference or implication, and is not expressly given by the charter.

Apply the above well to the charter in this case, and the notes and bonds are void for the want of power in the Company to make the contract by which it received them. There is no ambiguity in the charter; it provides how the capital stock to build and equip the Road shall be raised, and how and by whom it should be collected. The 11th section requires the directors to collect the amount of stock subscribed at such time and in such instalments as they may deem proper.

The company has not the power to take a *note* in payment of subscription to the capital stock, due five, ten, or twenty years after its date, with or without interest. Such a note is not the capital intended by the Legislature that the company should raise to build the road with. If the interest should be collected as it becomes due and expended on the work, it would rot down before the money became due on the note, so as to complete the road. It may be said that the company may throw the note into the market and sell it. If the company has the power to do so, it can sell it for what it can get for it. Suppose it sold for four hundred dollars; the party who gave the note would own five hundred dollars of the capital stock, and draw his dividends on it, and the party who actually paid in his five hundred dollars would own but five hundred dollars. It would be a fraud upon the other stockholders, and one that the Legislature intended to prevent by prescribing the manner by which the capital stock should be raised and collected. As well might the company take the pay for the stock thus subscribed for in a *flock of sheep* or in *patent rights*. The company has undertaken to do a species of banking, using the stock as the capital, taking notes in payment of its stock, payable in five, ten and twenty years after their date, with interest at ten per cent., payable semi-annually and annually. The road cannot be built with such a capital, it is impossible. It never was intended by the Legislature that it should be. Such trading and trafficking is foreign to the object for which the company was incorporated, and the *note* is therefore *void*.—There is a difference between an incorporation organized to trade, and one to build and run a Railroad. *Angel & Ames on Corporations*, page 292 and 293, sec. 271; 5th Conn. Reports, page 560, *New York Fire Insurance Co.—vs.—Ely*. The case of *Hood and Arnory—vs.—The Providence Insurance Co.*; 2d Cranch Reports, page 127, Condensed, page 371. The court says it is the rule that a corporation can only act in the manner prescribed by law, in its corporate capacity, it is the mere creature of the act to which its existence. It may be said to be precisely what the incorporating act has made it—to derive all its powers from that act and to be capable of exerting its faculties only in the manner which that act authorizes. In the case of *Head—vs.—The Providence Ins. Co.*, 2d Cranch reports, page 127, in delivering the opinions of the Court, Chief Justice Marshall said: “The act of incorporation is to them an enabling act; it gives them all the power they

possess; it enables them to contract, and when it *prescribes to them a mode of contracting they must observe that mode*, or the instrument no more creates a contract than if the body had never been incorporated." So in this case the charter prescribes how the stock shall be subscribed for and how it shall be paid and collected. In the case of *Stearns and Brother—vs.—The Eagle Insurance Company of Cincinnati*, 5th Ohio State Reports, page 59, was an action brought by the plaintiffs against the Company, to recover the amount due them on a policy issued by the Company to them, insuring them against a loss by fire on a stock of goods; the company bought some notes and attempted to file them as an offset, and the real question was, whether the company had the power to buy the notes to file as an offset. The 6th section of the charter was the one relied upon for such authority, which reads as follows: "It shall be lawful for such company to invest all or any part of their capital stock, money, funds or other property in such a way as the directors may deem best for the safety of capital and interest of the stockholders, and may therefore sell and dispose of all interest which the company may have acquired by such investment." The Court says "the contract of indorsement, like every other, must have parties. Without two parties competent to contract, there can be no agreement by which the one can loose and the other acquire the title to negotiable paper. The powers and capacities of a corporation must be derived from the law of its creation, or they do not exist. If a fair construction of its charter does not confer the power, it is incompetent to become a party to the contract of endorsement, and without capacity to take or hold the title. As well might a dead man by the mere act of the endorser be invested with the legal interest, as a corporation, which only lives for the purposes and objects intended by the Legislature. Beyond these limits it has no existence, and its acts are neither more nor less than a nullity," held that the company had no power to buy the notes; therefore, they could not offset them against the plaintiff's claim. *The People upon the Rel. of the Peoria & Aquaka Railroad Co.—vs.—The County of Tazewell*; 22 Ill. reports, page 147; 8 Ohio reports, page 285; *Chillicothe Bank—vs.—Noah H. Swayne*; 2 Peters' reports, page 527; *U. S. Bank—vs.—Owen, et. al.* 8 Wheaton's Con. reports, *Bank of U. S.—vs.—Dandridge*, page 443; *J. R.* page 1.

In the case of *Crocker & Williams—vs.—Crane*, 23 Wendell's Rep. 2d Vol. Railroad cases, page 485. The defendant, Crane, subscribed for 143 shares of stock to the Buffalo & Erie Railroad Company, the shares being fifty dollars each, and the act of corporation required the payment of two dollars on each share at the time of subscribing. A check was given and received in payment of and for said instalments. The court said that the check was void, it being contrary to the policy of the charter or statute. *The New York Fire Insurance Co.—vs.—Ely*, before referred to; *McCullough—vs.—Moss*, 5th Denio reports, page 567; same, page 570.

The case of the *Vermont Central Railroad Co.—vs.—George Coyes*, 21 Vermont Reports, page 30; 1st Vol. Railroad cases, page 226. In this case the defendant subscribed for fifty shares of the stock of said company, the *note* in suit was given for the first five dollars payable on

each share, which was required to be paid by the charter at the time of subscribing. The note was payable on demand. It was claimed that there was no consideration for the note, but the Court held it raised a mutuality in the contract and gave efficiency to the subscription. This case differs very materially from the one at bar. The party gave his contract to pay when they required it as if they ascertained the amount by computation, and the party gave his due bill, to be paid when called for, and the money was really then to be used as a part of capital to build the road; in effect the relation of the parties was not different from the one contemplated by the charter. Not so in the case at bar; a credit has been given to the defendant for more than five years to pay his stock; there is no authority for such a contract given by the charter.

The general Railroad Law, passed November 5th, 1849, and an amendatory act thereto, passed November 6th, 1849. The 3d section of the Amendatory act authorized the Railroad Company to receive in payment for stock subscriptions the bonds of any county or city. If the general law authorizes the Company to take notes in payment of stock, payable on time, why pass the amendatory act. Cook's Statutes, page 950, Sec. 3.

The special act for the more perfect organization of the Sterling & Rock Island Railroad Company, passed Feb. 19, 1859. Laws of Illinois, page 512, does not affect the question made in this case. That act only declares that said Company is a subsisting corporation, duly organized under the act to provide for a general system of Railroads, passed Nov. 5th, 1849. The company having filed their certificates in the office of the Secretary of State, they were incorporated for certain purposes and authorized to do certain acts before this special act was passed, and the act has given them no additional powers with reference to any question raised. The 3d section says, that capital stock shall be \$256,000, with power to increase the capital stock, which increased stock may hereafter be subscribed for, but has no reference to the original stock.

The Legislature, if it had attempted to do so, has now power to make a contract that was valid in its inception, void; nor has it power to make a void one valid. The note in question was given Aug. 27th, 1857, if it was void then, the Legislature had not the power to make it binding in 1859. Lessee Y. Good.—vs.—Zercher, 12th Ohio Reports page 364. Sillimans,—vs.—Cummins & Cummins, 13th Ohio Reports, page 116. Redfield on Railways, page 80, and notes. The Legislature has no right to pass a Law impairing the right of contract. Article 3d, State Constitution Sec. 17; Section 10 of first article of Federal constitution; Story on Constitutions, page 502-3-4.

The parties may contract that ten per cent per annum, or a less sum of interest may be paid; if more is agreed to be paid, it is usury, and the interest is forfeited; Cook's Statute, page 600. The statute has made each year the period for rests in the computation of interest, it is the natural division of time, and any contract entered into by parties or any method of computing interest adopted by parties which shall give a greater profit or rate of interest for the use of one dollar for the whole period of one year, than 10 per cent., is usury. So a mistake in construing a statute, if it gave a party a greater interest, is usurious.

... are substance and effect of the contract that the courts look at, and not the words; Blydenburgh on usury, page 32, 59, 60, 68, 69, 70 and 71. To take a note for \$1000, payable in five years, calling for ten per cent interest, to be paid semiannually, is a species of compound interest not authorized by the statutes. For instance, the party desires to loan one thousand dollars for a year, and agrees to pay for the use of it ten per cent, or *one hundred* dollars semi annually: therefore fifty dollars must be paid in six months, and the remaining fifty dollars at the end of the year. Now, in fact, the party had the use of only nine hundred and fifty dollars for six months of the year, yet the lender received his hundred dollars interest. Such a contract in fact gives the lender the use of fifty dollars of the money for six months of that year, and the longer such a contract has to run the greater will be the amount of the usury. The Statute contemplates that the borrower should have the use of the thousand dollars for the whole year. Contracts that have a less time to run than one year, are not analogous, for the reason that the interest is but an incident to the principal, and when the principal is due and paid, the interest being an incident to the principal must cease. Not so with a contract that has a term of years to run. It is not usury to take interest in advance, if the paper is payable in a short time; but it would be if the paper had to run five or ten years; Blydenburgh, page 232, and 233. *New York Fire Insurance Company, vs. Ely and Parsons*, 2d Cowens' Reports, page 678; 8th Cowens' Reports, page 398. In Blydenburgh on Usury, page 128, is a case where five hundred pounds were lent to the borrower for five years, at the rate of five per cent *per annum*; fifty pounds were returned at the time of the loan, yet the party paid the interest on the sum of five hundred pounds. The Court said it was usurious—that in fact the party had the use of only four hundred and fifty pounds, the other being returned. So in this case the party pays interest on fifty dollars in each year the note has to run, that he does not have the use of if the note had been given for money loaned. It makes no difference what the consideration of the note was, the party would have the use of the fifty dollars for six months in each year, the interest on the note was payable semi-annually.

There is no good reason why each fifty dollars when it becomes due, at the end of every six months, should not draw interest under the general Statute. Many of the States hold that interest payable annually, if not paid when due, will draw interest, and by the same parity of reasoning the amount of interest due each six months would draw interest if not paid. If the contract be a binding one, the party could sue and recover his judgment for the interest, each six months the judgment would draw interest.

The contract being an executory one, the Court will not interpose to enforce it. The note upon which this suit is brought, called for one thousand dollars, and is payable to the Sterling & Rock Island Railroad Company five years after date, with interest at ten per cent, the interest payable semi-annually. This note conveys to the world upon its face its extraordinary character; therefore every person who purchased and received it, was put upon his inquiry as to the power of the Company to take, receive and dispose of it. It was given to a Railroad Company whose business it is to build and equip it, move

and transport passengers and freight upon it. The very name shows it was not incorporated for trading purposes like that of a banking institution. A note payable five years after date, to a Railroad Company, with interest payable semi-annually, is sufficient to put any prudent man on his inquiry, not only as to the powers of the company under its charter to take, and receive, and dispose of such notes, but would put him on inquiry as to the manner in which the company received it, the consideration and every other circumstance that attended it; Story on Promissory notes, page 229, Sec. 179. Crane—vs.—Baldwin, 12 Pickering Reports 545; Hall—vs.—Hall 8 Conn. Rep. 336.

All persons who deal with a Corporation are bound to take notice of the powers given by the act of Incorporation. Angel—vs.—Ames on Incorporations, page 284; Root—vs.—Goddard, 3 McLean's Circuit Court Report, page 102.

The case of the Illinois River Railroad Co.—vs.—Zimmer, 20th Ill. Reports, page 654, does not conflict with the principles urged in the defence in this case. We claim that the subscription to the whole capital stock is made a condition precedent, by the 6th section of the charter. The statute is imperative. It is said that fraud contaminates everything it comes in contact with. A perfect system of frauds was practiced upon the people along the line where this imaginary road was to run, in order to obtain these notes and mortgages, which is averred in the pleas and admitted by the demurrer. The road is not built and never will be in all human probability. If these notes are held valid and collectable, it will substantially bankrupt all that portion of the country through which said road was to run.

The general issue puts in issue the existence of the corporation, and the corporation is bound to prove that they are incorporated. Bell—vs.—Great Western Turnpike Company, 14th Johnson's Reports, page 415. General plea avers the fact that the instrument was obtained by fraud, and circumvention is sufficient; 2d vol. Swan's Practice and Precedents, page 742; Ohio Forms & Practice, by Wilcox, page 136, and 241; 1 Chitty's Pleadings, page 136; Marginal, 536, and 538, also 581; Marginal, 582.

The agreement entered into by the parties as appears on the record "stating that the note, was the only cause of action," has the effect to nolle all other counts in the declaration, except such as the notes may be given in evidence under, and the counts so abandoned are considered as stricken out of the declaration: 2 Swan's Practice, page 900, and authorities there cited. The pleas profess to answer any and all counts under which the note may be given in evidence at the commencement and in the body and conclusion, and no more. It makes no difference under what plea the note is introduced, the plea meets it by showing that the plaintiff ought not to recover on the note; and the plaintiff says he has no other cause of action, therefore the pleas fully answer the declaration. The other counts being abandoned, are so far as this trial is concerned, as if they had never existed. Again, the plaintiff should have demurred specially, if the pleas do not answer the whole declaration, when they assume to do so; 2 vol. Swan's Practice, page 630, and authorities there cited. The demurrer in this case is a ~~special~~ demurrer and ought to be overruled.

*Samuel* SAMUEL STRAWDER, Def't's. Atty.

176.

Goodrich

vs

Reynolds

Abstract & Brief

Filed April 22,  
1843

J. Seland  
clerk

STATE OF ILLINOIS.

Supreme Court at Ottawa, April Term, A. D. 1863.

Appealed from Rock Island County.

ELISHA P. REYNOLDS, STEPHEN L. WILDER AND WM. MARSHALL, JR.,  
LATE PARTNERS UNDER THE STYLE OF REYNOLDS, WILDER & Co.,  
FOR THE USE OF ALFRED A. ADAMS.—vs.—CALVIN GOODRICH, AP-  
PELLANT.

- RECORD. This suit was brought upon a note given by the Defendant  
Page 5. to the Sterling & Rock Island Rail Road Company, for Five  
Hundred Dollars, payable five years from 1st day of Septem-  
ber, 1857, interest payable semi-annually at ten per cent., da-  
ted August 12th, 1857, endorsed, "Pay Reynolds, Wilder &  
Page 5. Co., or order, "Sterling & Rock Island Rail Road," Per M.  
S. Henry, President."  
Page 5. "Also, "We hereby guarantee the payment of the within note  
and interest." "William Marshall Jr."  
"C. B. Marshall."  
Page 3. Declaration; Special count upon said note; and common  
counts.  
Page 5. It is agreed the only cause of action is, said note. A.  
Webster, Plaintiffs Attorney.  
Page 7. The Defendant filed plea of general issue, and fourteen  
special pleas.  
Page 7. 1st Special Plea, avers that said note was given in payment  
of five shares of the Capital Stock of said Company, which  
Page 8. defendant had theretofore subscribed for, being \$100 per  
share. And that there was no other consideration for said  
note; and further avers that said Company had no power un-  
Page 9. der its charter to make said contract by virtue of which it re-  
ceived said note, and that said note is void, because the said  
Page 10. Company had no power to receive said note in payment of  
Page 11. their Capital Stock, all of which the plaintiffs well knew at  
the time of receiving said note.  
The 2d Special Plea, avers that said note was given in pay-  
ment of five shares of the Capital Stock that the defendant  
Page 11. had theretofore subscribed for. That the amount of the Cap-  
ital Stock required to build and equip said Road was \$600,-  
000, as appears by the Articles of Association on file in the  
Office of the Secretary of State at Springfield. Said Capital  
Page 12. Stock has not been subscribed for, nor has it been taken; all  
of which the Plaintiffs well knew at the time of receiving said  
note.

Page 13. The 3d Special Plea, avers that the said note was given in payment of five shares of the Capital Stock of said Company, which the defendant had previously subscribed for. And that the \$250,000 of the Capital Stock of said Company as required by the amendments to said Charter, had not been subscribed for nor taken; all of which the Plaintiffs well knew at the time they received said note.

Page 14. The 4th Special Plea, avers that the said note was given in payment of five shares of the Capital Stock that the defendant had previously subscribed for to said Company, and that the \$250,000 of Capital Stock has not been subscribed for nor taken; and that the work on said Road has been suspended, and the project of building said road has been abandoned; all of which the plaintiffs well knew at the time they received said note.

Page 15. The 5th Special Plea, avers that the said note was given in payment of five shares of the Capital Stock, that the defendant had previously subscribed for to said Company; and further avers that said Company had no power under its Charter and the laws of the land, to receive, transfer and endorse said note. And that the said note and the endorsements thereon are in violation of the laws of the land, and are therefore null and void. All of which the said plaintiffs knew well at the time they received said note.

Page 16. The 6th Special Plea, avers that the said note was given in payment of five shares of the Capital Stock that the defendant had previously subscribed for to said Company; and further avers that said Miles S. Henry had no power or authority under the Charter of said Company or any amendments thereto, or by virtue of the laws of the State—nor had the said Miles S. Henry any authority from said Company as President or otherwise, nor had he any authority from the Board of Directors of said Company, to transfer and endorse said note, as alleged in the Plaintiffs Declaration. The plea further avers that the transferring and endorsing of said note was fraudulent and in violation of the laws of the State, and is therefore void. All of which the Plaintiffs knew well at the time of receiving said note.

Page 17. The 7th Special Plea, avers that the said note was given in payment of five shares of the Capital Stock, that the defendant had previously subscribed for to said Company; and further avers that the defendant was induced to make, execute and deliver said note to said Company, by the false and fraudulent representations of said Company, its officers and agents, in this, to-wit: That before and at the time of the giving of said note, the said Company, its officers and agents, falsely and fraudulently represented to this defendant, that all the capital stock required to build and equip said road had been subscribed for and in good faith taken; and that the said company was going to build and equip said Road imme-

*Grant*

Page 19. diately; and that the cars would run through from Sterling to Rock Island within eighteen months or less from the date of said note. And the defendant relying upon said representations, did make and deliver said note to said Company.—

Page 19. And further avers that the said Capital Stock has not been subscribed for, nor has the Road been built, but the work on said road has been abandoned; and that said note was thus obtained by fraud from the defendant; all of which the Plaintiffs well knew at the time they received said note.

Page 20. The 8th Special Plea, avers that the said note was given in payment of five shares of the Capital Stock that the defendant had previously subscribed for to said Company; and further avers that the defendant was induced to make and deliver said note to said Company, by the false and fraudulent representations of said Company, its officers and agents, in stating that all the Capital Stock required to build, construct and procure the right of way and buy the

Page 20. motive power and every other equipment necessary to build and complete said Road, had been subscribed for, and in good faith taken; and that the Company would build an

Page 21. equip said Road immediately, and that the cars would run through from Sterling to Rock Island within eighteen months or less from the date of said note; that he relied upon said representations as being true, and therefore was induced to, and did give said note. That said representations are untrue—that all of the Capital Stock has not been subscribed for, and that the said road has not been built, and that the Company actually refuses to build said Road; therefore the consideration for said note has entire-

Page 21. ly failed; all of which the plaintiffs well knew at the time they received said note.

Page 22. The 9th Special Plea, avers that said Company obtained said note from the defendant by means of fraud and circumvention, and by false and fraudulent representations made by said Company, its officers and agents, to the defendant at the time said note was given; all of which the Plaintiffs well knew at the time they received said note.

Page 22. The 10th Special Plea, avers that said note was obtained from the defendant by fraud, covin and misrepresentation of the Company, its officers and agents; all of which said  
Page 23. plaintiffs well knew at the time they received said note.

Page 23. The 11th Special Plea, avers that the defendant never received any consideration whatever for said note; all of which said plaintiffs well knew at the time they received said note.

Page 24. The 12th Special Plea, avers that there is no such corporation in existence, nor was there ever any such corporation; which fact the plaintiffs well knew at the time of receiving said note.

Page 23. The 13th Special Plea, avers that the Directors of said

Company never demanded of the defendant the amount of the Capital Stock by him subscribed; all of which the  
 Page 25. plaintiffs well knew at the time they received said note.

The 14th Special Plea, avers that the contract for the  
 “ 25. payment of interest on said note semi-annually, gives to  
 the holder thereof a greater amount of interest or profit than  
 “ 26. ten cents, for the use of each and every dollar for each and  
 “ 27. every year, and is therefore contrary to the the laws of the  
 “ 28. State, wherefore such contract for the payment of such in-  
 “ 29. terest is void; all of which the plaintiffs well knew at the  
 “ 30. time they received said note.

Each and every of the pleas, aver that the plaintiffs and all under whom they claim well knew at the time, they and each and every of them received said note, of all the facts set forth in each and every of said pleas.

The plaintiffs by their Attorney, filed their replication to  
 Page 31. the plea of *nul tiel* corporation, and demurred to all the oth-  
 “ 31. er pleas except the general issue.

A motion was filed for a continuance of the case by the  
 “ 5. defendant, which was overruled, when it was agreed that the note mentioned in the first count of the Plaintiffs, declaration was the only cause of action in this suit.

“ 38. At the January Term of said Circuit Court, in and for the County of Rock Island, A. D. 1863, said cause came on to be heard upon the demurrer to the special pleas, and the Court sustained the demurrer, whereupon the defendant enters *not pros* as to the pleas of the general issue and *nul tiel*

Page 38. corporations, and abides by the remainder of his pleas; and thereupon the Court render judgment upon the demurrer, that it appearing to the Court that the suit was brought upon a note for the payment of money, and that the damages rested in computation merely, the Court ordered the Clerk to assess and report the damages; and the Clerk re-  
 Page 38. ported \$720, which report was approved, and judgment rendered accordingly.

Whereupon the defendant by his Attorney, prayed an  
 Page 38. appeal, which the Court allowed, upon filing a bond in the  
 “ 39. sum of Fourteen Hundred Dollars, within thirty days to be  
 “ 39. approved by the Clerk by agreement; which was accordingly done.

The first question is, what powers are given to the Company under the *charter*? The company organized under the general Railroad act. Cook's statutes, page 937, sec. 1st, says: "Any number of persons not less than twenty-five, being subscribers to the stock to any contemplated Railroad, may be formed into a corporation for the purpose of constructing and building said Railroad, by *complying* with the following requirements: when stock to the amount of at least one thousand dollars per mile of said road, shall be in good faith subscribed, and ten per cent paid therein, then said subscribers may commence forming a permanent organization to build said Railroad, and not before.— They shall severally subscribe articles of association, in which shall be set forth the name of the *corporation*, the number of years it shall continue, which shall not exceed fifty.

The amount of the capital stock of the company which shall be the actual cost of constructing the road together with the cost of right of way, motive power, and every other appurtenance for completing and running said road as nearly as can be estimated by competent engineers, the number of shares of which said stock shall consist, the number of directors and their names, the place from and to which the proposed road is to be constructed and the counties through which said road is to pass, and its length as near as may be, and the names of five commissioners to open books of subscription to the capital stock; each subscriber shall subscribe his name to said articles of association, his place of residence, the number of shares of stock taken by him in said company.

Section 2d states that such articles of association shall not be filed in the office of the Secretary of State until ten per cent. on the amount of the stock subscribed shall actually and in good faith be paid in, *in cash*, to the directors named in the articles of association.

Section 5th states that the commissioners for opening books of subscription shall from time to time after the company shall be incorporated, open books of subscription to the capital stock of said company, which shall be kept open until *all the Capital Stock shall be subscribed*, if the company shall so long exist, and in case a greater amount of stock shall be subscribed than the whole capital required by said estimate, then the commissioner shall distribute said capital stock among the subscribers equally, said commissioners to open books of subscription to the capital stock of said company. The words *capital stock*, are used for the first time in the fifth section, and "when the capital stock shall all be subscribed for and distributed" &c., then the sixth section says, as *soon as practicable* after such capital stock shall have been subscribed and distributed as aforesaid, the commissioners (not the directors) shall appoint a time and place for the meeting of the stockholders to elect directors, and shall give notice thereof at least twenty days, of the time and place of such election; thirteen directors shall be elected.

Section 7th says that the commissioners shall be inspectors of the *first election of directors*, and shall declare the result thereof, and shall file a certificate of said election in the office of the Secretary of State, and with the Clerks of the different counties through which said road

is to run, and shall also deliver to the Treasurer all the moneys by them received on subscriptions to the capital stock of said company, and shall deliver over all books and papers belonging to said company, and all subsequent elections shall be governed by the by-laws of the company. Now the commissioners leave. The permanent organization of the company is completed. 15th Ill. Report, page 400; Smith—vs.—Bangs.

Section 11th says that it shall be lawful for the directors to call in and demand from the stockholders respectively, all sums of money by them subscribed, at such time and in such instalments as the directors may deem proper, giving the necessary notice thereof.

The directors authorized to call in and collect the capital stock could not be elected until after the capital stock was all subscribed for, that is a condition *precedent*, for the 6th sec. says, as soon as *practicable after such Capital Stock shall have been subscribed and distributed, &c.*, the commissioner shall appoint the time and place of election at which said directors shall be elected.

Section 7th says the commissioners shall be inspectors of the first election of the directors which are authorized to demand and collect in the capital stock of said company, are not the same directors mentioned in the first section of the charter, because the directors mentioned in the first section were appointed by those who subscribed stock to the amount of one thousand dollars per mile; in the first instance the commissioners were at the same time appointed, and after which the articles of association were drawn up and the names of the directors and commissioners were included in said articles of association, which clearly shows that the Legislature when it passed the charter only intended to give to such preliminary organizations such powers as were necessary to get the necessary amount of capital stock subscribed to build and equip said road.

The commissioners had no power call an election to elect directors until *all* the capital had been subscribed for, therefore no directors, possessing the power to collect the capital stock can legally exist until after the capital stock is all taken; consequently no person had the authority to demand the money and receive the notes in payment thereof, by virtue of the charter. The commissioners have the control of the Books and Stock until after all the capital stock is subscribed for and the directors elected, and they had no power to take notes in payment of stock from the subscribers; for, the taking of all the *Capital Stock* is a condition precedent, expressly so made in the 6th section of the charter. Also see Redfield on Railways, page 77, sec. 1, and page 79, and notes. In the case of Atlantic Cotton Mills—vs.—Abbott, 9th Cush. Reports, 423, where it was inserted in a subscription for stock, that the capital stock of the company should be not less than \$1,500,000, it was held to be a condition precedent to making calls.

There is a good reason for it. Suppose a project to cost three millions of dollars and the parties got one fourth subscribed, that would be all lost if the balance could not be subscribed—it would be a great fraud on those who subscribed if their subscriptions could be collected when they supposed and had a right to suppose they would not be cal-

ed upon to pay, unless the balance of the *capital stock* was subscribed for to complete the work, and thereby give value to the Stock.

The 1st section of the charter says: "That any number of persons not less than *twenty-five* who being subscribers of any contemplated Railroad, may be formed into a corporation, &c." Suppose that ten persons only who being subscribers to the stock of a contemplated Railroad, should subscribe stock to the amount of a thousand dollars per mile should make the necessary estimate of its cost, appoint directors, also commissioners to open Books and solicit capital stock, and pay ten per cent in *cash* and file the articles of association in the office of the Secretary of State and get the same recorded; and the commissioners should get a small portion of the capital stock subscribed and should call an election and directors should be elected and the commissioners certify to their election and should then hand over to the Treasurer of said company the books, money and papers. Could the company collect the amount of *capital stock* thus subscribed for? We think not. No legal corporation would exist in such a case, the charter requiring at least twenty-five members before they could become incorporated, when in fact they had but ten, and by the same parity of reasoning under the 6th section of the charter the whole amount of capital stock must be subscribed for, before the commissioners can call an election to elect the first directors of said company; such directors are the only persons under the charter that have the authority or power to make an assessment or collect the amount of capital stock subscribed from said stockholders. The charter is a part of the contract, and the party having the right to and in fact does examine it, and upon such examination concludes to become a party to it, and subscribes for stock in it. Now what is the contract if all written out in full at the time the defendant signed it? It is this: "I, Calvin Goodrich, do hereby agree to take five shares of the capital stock of the Sterling & Rock Island Rail Road Company, at one hundred dollars each, which I hereby agree to pay therefor to said company five hundred dollars, at such times and in such instalments as the directors that have been elected by all the stockholders shall direct, they giving the required notice—provided all the capital stock required to build and equip said Railroad shall be subscribed for according to the estimate made." If the contract had been thus written out could the money be collected on the subscription until the whole of the capital stock had been taken? I think not; it is a condition *precedent*. We must take the charter, the books of subscription, articles of Association, and the estimates of the cost of building said road, and put them together, in order to ascertain what the contract really was.

When the organization of the company is perfected for the purpose of building said Road, the company owns no stock, it cannot have any; it must have been all subscribed and taken and owned by its members in their individual right, before the commissioners can call an election to elect directors to build said Road, and when all the capital stock is subscribed for, it may be and would be and should be represented at the first election of directors, which was clearly the design of the Legislature. In the case of Walker—vs.—DeVereaux, *et. al.*, 4th Paige's Report, page 228. 2d Vol. Rail Road cases, page 529.

The act as set forth in that case, creating the Utica & Schenectady Railroad requires the capital stock to be all subscribed for and that the commissioners appointed to open the books for stock subscriptions should in case of an excess of stock subscriptions apportion the stock among the subscribers; the Court says no person can be a stockholder of the corporation, neither does any corporation exist, nor has any person any interest in stock as the legal owner thereof so as to authorize him to vote upon it or transfer it as stock, nor can an election be held until the commissioners apportion the stock. In the case of Crocker & Williams—vs.—Crane, 23 Wendall's Reports, page 211. 2 Vol. Railroad cases, page 184, the Court says that when the charter provides for a distribution of the stock among the stockholders no corporation exists before the distribution is made; the Court says it is a *condition precedent*. The 6th section of the charter in this case, requires the commissioners to apportion the stock among the subscribers after it is all taken, and before they call an election, for it could not be distributed if it had not been subscribed. Therefore, the subscribing for all the *capital stock* is a *condition precedent*. It seems to us that it was the intention of the legislature in making the subscription for all capital stock of said company a *condition precedent* to prevent fraud from being practiced upon those who might first subscribe for capital stock on said books. There is not the twentieth part of the stock taken of said company, and the presumption is, it never will be taken; the road is not built, and in all human probability never will be built. Where the charter prescribes the particular mode in which a corporation shall make and execute its contracts, that mode must be followed. Angel & Ames on Corporations, page 268, sec. 253. In the case of Head and Amony—vs.—The Providence Insurance Company, 2 Cranch, page 127, Condensed reports, 371, the Court say, that a corporation can *only act in the manner prescribed by its charter*.

The charter in this case provides that the directors shall make estimates, give notice when the estimate must be paid, and a fair construction of the charter is, that the estimate shall be made at such times and in such amounts as will be required to pay for the work as it progresses, and no faster.

A corporation is a mere creature of law, and has no power nor rights except such as are expressly given it by the charter. Trustees, &c.—vs.—McConnel, 12th Ill. report, page 138 to 140. Angel & Ames on Corporation, page 278, sec. 257, same, page 279, sec. 260, same, page 103, sec. 111. It was undoubtedly the intention of the Legislature in passing the act under which this company claims to be incorporated, to permit any number of persons not less than twenty-five, who were desirous to build a Railroad between given points, to be incorporated for that purpose. The Road could only be built by a solid capital of a large amount, to be created by voluntary subscription of individuals in the form of stock, and to be paid from time to time as the work progressed, and in order to protect the stockholders from frauds and impositions as well as the public, the Statute points out the method how the amount of capital stock required to build and equip said Road should be ascertained. In the case of Newel—vs.—The Galena &

Chicago Union Railroad Co., 14 Ill. reports, page 273, the Court says that they fully recognize the propriety and even necessity of applying the rule of strict construction to the powers granted in these Railroad charters. But the rule can only be applied in cases of ambiguity, or when a power is claimed by inference or implication, and is not expressly given by the charter.

Apply the above well to the charter in this case, and the notes and bonds are void for the want of power in the Company to make the contract by which it received them. There is no ambiguity in the charter; it provides how the capital stock to build and equip the Road shall be raised, and how and by whom it should be collected. The 11th section requires the directors to collect the amount of stock subscribed at such time and in such instalments as they may deem proper.

The company has not the power to take a note in payment of subscription to the capital stock, due five, ten, or twenty years after its date, with or without interest. Such a note is not the capital intended by the Legislature that the company should raise to build the road with. If the interest should be collected as it becomes due and expended on the work, it would rot down before the money became due on the note, so as to complete the road. It may be said that the company may throw the note into the market and sell it. If the company has the power to do so, it can sell it for what it can get for it. Suppose it sold for four hundred dollars; the party who gave the note would own five hundred dollars of the capital stock, and draw his dividends on it, and the party who actually paid in his five hundred dollars would own but five hundred dollars. It would be a fraud upon the other stockholders, and one that the Legislature intended to prevent by prescribing the manner by which the capital stock should be raised and collected. As well might the company take the pay for the stock thus subscribed for in a *flock of sheep* or in *patent rights*. The company has undertaken to do a species of banking, using the stock as the capital, taking notes in payment of its stock, payable in five, ten and twenty years after their date, with interest at ten per cent., payable semi-annually and annually. The road cannot be built with such a capital, it is impossible. It never was intended by the Legislature that it should be. Such trading and trafficking is foreign to the object for which the company was incorporated, and the note is therefore *void*.—There is a difference between an incorporation organized to trade, and one to build and run a Railroad. Angel & Ames on Corporations, page 292 and 293, sec. 271; 5th Conn. Reports, page 560, New York Fire Insurance Co.—vs.—Ely. The case of Hood and Armory—vs.—The Providence Insurance Co.; 2d Cranch Reports, page 127, Condensed, page 371. The court says it is the rule that a corporation can only act in the manner prescribed by law, in its corporate capacity, it is the mere creature of the act to which it owes its existence. It may be said to be precisely what the incorporating act has made it—to derive all its powers from that act and to be capable of exerting its faculties only in the manner which that act authorizes. In the case of Head—vs.—The Providence Ins. Co., 2d Cranch reports, page 127, in delivering the opinions of the Court, Chief Justice Marshall said: “The act of incorporation is to them an enabling act; it gives them all the power they

possess; it enables them to contract, and when it *prescribes to them a mode of contracting they must observe that mode*, or the instrument no more creates a contract than if the body had never been incorporated." So in this case the charter prescribes how the stock shall be subscribed for and how it shall be paid and collected. In the case of *Stearns and Brother—vs.—The Eagle Insurance Company of Cincinnati*, 5th Ohio State Reports, page 59, was an action brought by the plaintiffs against the Company, to recover the amount due them on a policy issued by the Company to them, insuring them against a loss by fire on a stock of goods; the company bought some notes and attempted to file them as an offset, and the real question was, whether the company had the power to buy the notes to file as an offset. The 6th section of the charter was the one relied upon for such authority, which reads as follows: "It shall be lawful for such company to invest all or any part of their capital stock, money, funds or other property in such a way as the directors may deem best for the safety of capital and interest of the stockholders, and may therefore sell and dispose of all interest which the company may have acquired by such investment." The Court says "the contract of indorsement, like every other, must have parties. Without two parties competent to contract, there can be no agreement by which the one can loose and the other acquire the title to negotiable paper. The powers and capacities of a corporation must be derived from the law of its creation, or they do not exist. If a fair construction of its charter does not confer the power, it is incompetent to become a party to the contract of endorsement, and without capacity to take or hold the title. As well might a dead man by the mere act of the endorser be invested with the legal interest, as a corporation, which only lives for the purposes and objects intended by the Legislature. Beyond these limits it has no existence, and its acts are neither more nor less than a nullity," held that the company had no power to buy the notes; therefore, they could not offset them against the plaintiff's claim. *The People upon the Rel. of the Peoria & Aquaka Railroad Co.—vs.—The County of Tazewell*; 22 Ill. reports, page 147; 8 Ohio reports, page 285; *Chillicothe Bank—vs.—Noah H. Swayne*; 2 Peters' reports, page 527; *U. S. Bank—vs.—Owen, et. al.* 6 Wheaton's Con. reports, *Bank of U. S.—vs.—Dandridge*, page 443; J. R. page 1.

In the case of *Crocker & Williams—vs.—Crane*, 23 Wendell's Rep. 2d Vol. Railroad cases, page 485. The defendant, Crane, subscribed for 143 shares of stock to the Buffalo & Erie Railroad Company, the shares being fifty dollars each, and the act of corporation required the payment of two dollars on each share at the time of subscribing. A check was given and received in payment of and for said instalments. The court said that the check was void, it being contrary to the policy of the charter or statute. *The New York Fire Insurance Co.—vs.—Ely*, before referred to; *McCullough—vs.—Moss*, 5th Denio reports, page 567; same, page 579.

The case of the *Vermont Central Railroad Co.—vs.—George Coyes*, 21 Vermont Reports, page 30; 1st Vol. Railroad cases, page 226. In this case the defendant subscribed for fifty shares of the stock of said company, the note in suit was given for the first five dollars payable on

each share, which was required to be paid by the charter at the time of subscribing. The note was payable on demand. It was claimed that there was no consideration for the note, but the Court held it raised a mutuality in the contract and gave efficiency to the subscription. This case differs very materially from the one at bar. The party gave his contract to pay when they required it as if they ascertained the amount by computation, and the party gave his due bill, to be paid when called for, and the money was really then to be used as a part of capital to build the road; in effect the relation of the parties was not different from the one contemplated by the charter. Not so in the case at bar; a credit has been given to the defendant for more than five years to pay his stock; there is no authority for such a contract given by the charter.

The general Railroad Law, passed November 5th, 1849, and an amendatory act thereto, passed November 6th, 1849. The 3d section of the Amendatory act authorized the Railroad Company to receive in payment for stock subscriptions the bonds of any county or city. If the general law authorizes the Company to take notes in payment of stock, payable on time, why pass the amendatory act. Cook's Statutes, page 950, Sec. 3.

The special act for the more perfect organization of the Sterling & Rock Island Railroad Company, passed Feb. 19, 1859. Laws of Illinois, page 512, does not affect the question made in this case. That act only declares that said Company is a subsisting corporation, duly organized under the act to provide for a general system of Railroads, passed Nov. 5th, 1849. The company having filed their certificates in the office of the Secretary of State, they were incorporated for certain purposes and authorized to do certain acts before this special act was passed, and the act has given them no additional powers with reference to any question raised. The 3d section says, that capital stock shall be \$256,000, with power to increase the capital stock, which increased stock may hereafter be subscribed for, but has no reference to the original stock.

The Legislature, if it had attempted to do so, has now power to make a contract that was valid in its inception, void; nor has it power to make a void one valid. The note in question was given Aug. 27th, 1857, if it was void then, the Legislature had not the power to make it binding in 1859. Lessee Y. Good.—vs.—Zercher, 12th Ohio Reports page 364. Sillimans,—vs.—Cummins & Cummins, 13th Ohio Reports, page 116. Redfield on Railways, page 80, and notes. The Legislature has no right to pass a Law impairing the right of contract. Article 3d, State Constitution Sec. 17; Section 10 of first article of Federal constitution; Story on Constitutions, page 502-3-4.

The parties may contract that ten per cent per annum, or a less sum of interest may be paid; if more is agreed to be paid, it is usury, and the interest is forfeited; Cook's Statute, page 600. The statute has made each year the period for rests in the computation of interest, it is the natural division of time, and any contract entered into by parties or any method of computing interest adopted by parties which shall give a greater profit or rate of interest for the use of one dollar for the whole period of one year, than 10 per cent., is usury. So a mistake in construing a statute, if it gave a party a greater interest, is usurious.

It is the substance and effect of the contract that the courts look at, and not the words; Blydenburgh on usury, page 32, 59, 60, 68, 69, 70 and 71. To take a note for \$1000, payable in five years, calling for ten per cent interest, to be paid semiannually, is a species of compound interest not authorized by the statutes. For instance, the party desires to loan one thousand dollars for a year, and agrees to pay for the use of it ten per cent, or *one hundred* dollars semi annually: therefore fifty dollars must be paid in six months, and the remaining fifty dollars at the end of the year. Now, in fact, the party had the use of only nine hundred and fifty dollars for six months of the year, yet the lender received his hundred dollars interest. Such a contract in fact gives the lender the use of fifty dollars of the money for six months of that year, and the longer such a contract has to run the greater will be the amount of the usury. The Statute contemplates that the borrower should have the use of the thousand dollars for the whole year. Contracts that have a less time to run than one year, are not analogous, for the reason that the interest is but an incident to the principal, and when the principal is due and paid, the interest being an incident to the principal must cease. Not so with a contract that has a term of years to run. It is not usury to take interest in advance, if the paper is payable in a short time; but it would be if the paper had to run five or ten years; Blydenburgh, page 232, and 233. New York Fire Insurance Company,—vs.—Ely and Parsons, 2d Cowens' Reports, page 678; 8th Cowens' Reports, page 398. In Blydenburgh on Usury, page 128, is a case where five hundred pounds were lent to the borrower for five years, at the rate of five per cent per annum; fifty pounds were returned at the time of the loan, yet the party paid the interest on the sum of five hundred pounds. The Court said it was usurious—that in fact the party had the use of only four hundred and fifty pounds, the other being returned. So in this case the party pays interest on fifty dollars in each year the note has to run, that he does not have the use of if the note had been given for money loaned. It makes no difference what the consideration of the note was, the party would have the use of the fifty dollars for six months in each year, the interest on the note was payable semi-annually.

There is no good reason why each fifty dollars when it becomes due, at the end of every six months, should not draw interest under the general Statute. Many of the States hold that interest payable annually, if not paid when due, will draw interest, and by the same parity of reasoning the amount of interest due each six months would draw interest if not paid. If the contract be a binding one, the party could sue and recover his judgment for the interest, each six months the judgment would draw interest.

The contract being an excentory one, the Court will not interpose to enforce it. The note upon which this suit is brought, called for one thousand dollars, and is payable to the Sterling & Rock Island Railroad Company five years after date, with interest at ten per cent, the interest payable semi-annually. This note conveys to the world upon its face its extraordinary character; therefore every person who purchased and received it, was put upon his inquiry as to the power of the Company to take, receive and dispose of it. It was given to a Railroad Company whose business it is to build and equip it. move

and transport passengers and freight upon it. The very name shows it was not incorporated for trading purposes like that of a banking institution. A note payable five years after date, to a Railroad Company, with interest payable semi-annually, is sufficient to put any prudent man on his inquiry, not only as to the powers of the company under its charter to take, and receive, and dispose of such notes, but would put him on inquiry as to the manner in which the company received it, the consideration and every other circumstance that attended it; Story on Promisory notes, page 229, Sec. 179. Crane—vs—Baldwin, 12 Pickering Reports 545; Hall—vs—Hall 8 Conn. Rep. 336.

All persons who deal with a Corporation are bound to take notice of the powers given by the act of Incorporation. Angel—vs.—Ames on Incorporations, page 284; Root—vs.—Goddard, 3 McLean's Circuit Court Report, page 102.

The case of the Illinois River Railroad Co.—vs.—Zimmer, 20th Ill. Reports, page 654, does not conflict with the principles urged in the defence in this case. We claim that the subscription to the whole capital stock is made a condition precedent, by the 6th section of the charter. The statute is imperative. It is said that fraud contaminates everything it comes in contact with. A perfect system of frauds was practiced upon the people along the line where this imaginary road was to run, in order to obtain these notes and mortgages, which is averred in the pleas and admitted by the demurrer. The road is not built and never will be in all human probability. If these notes are held valid and collectable, it will substantially bankrupt all that portion of the country through which said road was to run.

The general issue puts in issue the existence of the corporation, and the corporation is bound to prove that they are incorporated. Bell—vs.—Great Western Turnpike Company, 14th Johnson's Reports, page 415. General plea avers the fact that the instrument was obtained by fraud, and circumvention is sufficient; 2d vol. Swan's Practice and Precedents, page 742; Ohio Forms & Practice, by Wilcox, page 136, and 241; 1 Chitty's Pleadings, page 136; Marginal, 536, and 538, also 581; Marginal, 582.

The agreement entered into by the parties as appears on the record "stating that the note was the only cause of action," has the effect to nolle all other counts in the declaration, except such as the notes may be given in evidence under, and the counts so abandoned are considered as stricken out of the declaration: 2 Swan's Practice, page 900, and authorities there cited. The pleas profess to answer any and all counts under which the note may be given in evidence at the commencement and in the body and conclusion, and no more. It makes no difference under what plea the note is introduced, the plea meets it by showing that the plaintiff ought not to recover on the note; and the plaintiff says he has no other cause of action, therefore the pleas fully answer the declaration. The other counts being abandoned, are so far as this trial is concerned, as if they had never existed. Again, the plaintiff should have demurred specially, if the pleas do not answer the whole declaration, when they assume to do so; 2 vol. Swan's Practice, page 630, and authorities there cited. The demurrer in this case is a ~~general~~ demurrer and ought to be overruled.

*General*

SAMUEL STRAWDER, Def't's. Atty.

176-6-748

Goodrich

as

Reynolds

Abstract of  
Bumps

Printed April 22, 1863

L. S. Lacey  
M<sup>r</sup>

## E R R O R S .

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1st. The Court erred in sustaining the demurrer to the Special Pleas.

2d. The note is void, for want of power in the Company to make the contract by which it received said note.

3d. There was no consideration for said note.

4th. The note was obtained by fraud.

5th. The Company had no power to receive, transfer and endorse said note, under and by virtue of any law of the State.

6th. The contract to pay the interest semi-annually, is against the policy of the law, and therefore void.

7th. The Court erred in not overruling the demurrer.

8th. The Court erred in overruling the motion for a continuance.

9th. The judgment is manifestly against the law and the evidence and the facts in the case.

176-6-7-8

Goodrich

vs

Reynolds

Abstract &

— Brits

Filed April  
22, 1863

J. Selman  
cM

Pleas before the Hon Ira Wilkinson Judge of the 2<sup>nd</sup> the Judicial  
District of the State of Illinois at a term of the Circuit  
Court begun and held at the Court House within  
and for the County of Rock Island on the second Monday  
the Twelfth day of January in the year of our  
Lord one thousand eight hundred & 63  
Presently  
Hon<sup>ble</sup> Ira Wilkinson - Judge  
" Chas. A McLaughlin, Sheriff  
Edward W Bowman, Clerk

Be it remembered that on the Twelfth day of  
December AD 1862 there issued forth of the Office  
of the Clerk of said Court in the City of Rock Island  
in the County of Rock Island and State of Illinois a writ  
of summons which is in words and figures  
as follows to wit  
State of Illinois }  
The People of the State of Illinois }  
} by the Sheriff of Rock Island County }  
Rock Island County }

We Command you to summon Edwin Goodrich  
if to be found in your County personally to be and appear before the  
Circuit Court of said County of Rock Island on the  
first day of the next term thereof to be holden at the  
Court House in Rock Island on the second Monday  
of January next then and there to answer unto Elisha  
P Reynolds, Stephen L Wilder & William Marshall for  
late partners as Reynolds Wilder & Co who sue  
for the use of Alfred A Adams of a plea of  
Writpass on the case upon promises to them  
damages in the sum of One thousand dollars  
as they say and have you then and there to show

and make due return thereon in what manner  
you execute the same

Reynolds

Amey

Witness Edward H Bowman Clerk of  
our Circuit Court and the seal thereof  
affixed at Rock Island this 12<sup>th</sup> day of December  
in the year of our Lords one thousand eight  
hundred and sixty two

Edward H Bowman Clerk

On the back of which writ the Sheriff of Rock Island  
County to whom said writ was directed made  
the return thereon which is in the words and figures  
following to wit "I have served the within writ  
by reading the same to the within named defendant  
Calvin Goodrich this 26<sup>th</sup> day of December  
AD 1862 C A McLaughlin

Sheriff of Rock Island County

By David Howes Dep. Sheriff

And afterwards on the same day to wit on  
the Twelfth day of December AD 1863  
there was filed in the Office of the Clerk of  
the Circuit Court in Rock Island in the County  
of Rock Island State of Illinois a Declaration by  
said Reynolds Wilder and Co for the use of Alfred A  
Adams against the said Calvin Goodrich in words  
and figures as follows to wit  
State of Illinois) Of the January term AD 1863 of the  
Rock Island County) Circuit Court of said County

Olisha P Reynolds Stephen L Wilder and  
William Marshall Jr Late partners under the

1 1 1 1

style of Reynolds Wilder & Co who sue for  
the use of Alfred A Adams plaintiff in this suit  
by A Webster their attorney complains of  
Calvin Goodrich Defendant in this suit sum-  
moned & of a plea of trespass on the case on promises  
For that the defendant on the 12<sup>th</sup> day of August  
AD 1857 at Canoe Creek to wit at the County  
of Rock Island State of Illinois by his promissory note of  
that date for value received promised to pay at  
the expiration of Five years from the 1<sup>st</sup> day  
of September AD 1857 to the Sterling and Rock Island  
Railroad Company (by the style of Sterling and  
Rock Island Railroad Co) or order the sum of  
Five hundred Dollars with interest thereon at  
the rate of ten per cent per annum payable semi-  
annually in each year on the first day of  
March and September Principal and Interest  
payable at the Office of said Company at Sterling  
in the County of Whiteside and State of Illinois  
And afterwards to wit on the day and year last aforesaid  
at the County aforesaid the said Company endorsed  
the said note on the back thereof as Sterling and  
Rock Island Railroad, per M S Henry President  
and assigned the same and ordered it to be  
paid to the plaintiff of all of which the said Def-  
endant then and there had notice By reason  
whereof the said defendant became liable & then  
and there in consideration of the promises promised

4  
the plaintiffs, to pay them the amount of \$ and note  
according to the tenor and effect thereof

And also for that whereas the defendant on the  
1<sup>st</sup> day of December in the year of our Lord one  
thousand eight hundred and eighty two at the County  
of Rock Island aforesaid was indebted to the Plaintiffs  
in one thousand Dollars for goods bargained  
and sold by the Plaintiffs to the Defendant  
at his request And in one thousand dollars for work  
done and materials for the same <sup>provided</sup> furnished by the Plaintiffs  
for the defendant at his request And in one thousand  
dollars for money paid by the Plaintiffs for the use of the def-  
endant at his request And in one thousand dollars  
for money received by defendant for the use of  
the Plaintiffs And in one thousand dollars for  
money due from the defendant to the Plaintiffs  
on an account stated between them

And whereas the defendant afterwards to wit on  
the day and year of aforesaid in consideration of  
of the premises respectively promised the Plaintiffs  
to pay them the said last mentioned several moneys  
respectively on request Yet the defendant has  
disregarded his promises and has not paid to the  
plaintiffs any of the aforesaid moneys on any  
part thereof to the plaintiffs damage of one  
Thousand Dollars and thereupon they bring  
suit

A. W. Webster  
Plaintiff's Attorney

\$5000

Leaves Creek Land Co

August 12<sup>th</sup> 1867

For value received I promise to pay to the Sterling and Rock Island Rail Road Co or order the sum of five Hundred Dollars at the expiration of Five years from the first day of September AD 1867 with interest thereon at the rate of ten per cent per annum payable semi annually in each year on the first day of March and September principal and interest pay due at the Office of said Company at Sterling in the County of Whiteside and state of Illinois

Olloin Goodrich

Endorsed

"Interest cancelled to Sept 1st 1868"

"pay Reynolds Willard Co on order"

"Sterling & Rock Island Rail Road"

"Per M & Henry President"

Also we hereby guarantee the payment of the within note and interest

William Marshall Jr  
W. B. Marshall

The note of which the above is a copy is the only cause of action in this case

A Webster

Olloin City

Together with which declaration and foregoing copy of note and endorsements there are also

6  
on the 26<sup>th</sup> Day of January AD 1863 filed in  
the office of the Clerk of the Circuit Court of  
the County of Rock Island and State of Illinois  
a promissory note in words and figures as  
follows to wit

\$500<sup>00</sup> Canoe Creek August 12<sup>th</sup> 1857

For value received I promise to pay to the Sterling  
and Rock Island Rail Road Co or order  
the sum of Five Hundred Dollars at the expi-  
ration of Five years from the first day of September  
AD 1857 with interest thereon at the rate of Ten  
per cent per annum payable semiannually  
in each year, on the first day of March and  
September. Principal and Interest payable at the  
Office of said Company at Sterling in the county  
of Whitesides and State of Illinois

Olavin Goodrich

Upon the back of which note are the following endorsements  
in words and figures as follows to wit

Interest cancelled to Sept 1st 1858

By Reynolds Wilder Co or order

Sterling and Rock Island Rail Road

per M J Henry  
President

we hereby guarantee the payment of the within note  
and interest

William Marshall Jr  
C B Marshall

And be it remembered <sup>that</sup> afterwards to wit on  
on the 15<sup>th</sup> Day of January AD 1868 there was  
filed in the Office of the Clerk of the Circuit  
Court at Rock Island in the County of  
Rock Island State of Illinois the following  
Plea to the foregoing declaration in words and  
figures to wit

State of Illinois }  
Rock Island County } In the Circuit Court  
Calvin Goodrich

at  
Elisha P Reynolds

Stephen L Wilder &

William Marshall for Late

partners under the style of Reynolds Wilder & Co for  
the use of Alfred A Adams

And now comes the said

1 defendant Calvin Goodrich by Samuel Strawder and  
Samuel R Allen his Attorneys and defends the wrong and  
injury to him ~~to~~ and says that he did not assume  
and promise and undertake in manner and form  
as the said plaintiffs hath thereof in their said declara-  
tion complained against him and of this he puts  
himself upon the Country Samuel Strawder  
And this said Plea is doth the likes  
By A. M. Water & J. P. G. 3 Samuel R Allen  
D. J. G. 3

2 and for a further plea in this behalf by leave of the Court first  
had and obtained for that purpose the said defendant  
says that the said plaintiffs ought not to have

maintain their said action aforesaid  
against him because he says that heretofore  
to wit on the <sup>(25)</sup> Twenty fifth Day of June AD 1857  
the said Sterling and Rock Island Railroad  
Company by its officers and agents pretended  
to be an incorporated Company legally and  
lawfully organized ~~under~~ and by virtue of  
+ the laws of the said  
under a general Statute of the State known as an  
act to provide for a general system of  
Railroad incorporations and the amendatory  
acts thereto and as such a company under  
the name and style of Sterling and Rock Island  
Rail Road Company by its officers and agents  
requested this defendant to subscribe for and take  
five shares of the Capital Stock of said Company  
each share being one hundred Dollars  
the five shares amounting to the sum of five  
hundred dollars and this defendant says  
that upon the solicitation of said Company by  
its officers and agents he did to wit on the  
day and year last aforesaid upon the stock  
Books of subscriptions of said Company  
subscribe for and did <sup>(agree to and did)</sup> take five shares of the  
Capital Stock of said Company and did  
then and there agree to pay to the said Company  
for said five shares of the Capital Stock of said  
Company the said sum of five hundred dollars  
to be paid at such times and in such

9  
installments as the Board of Directors  
of said Company might from time to time direct they  
the said <sup>(Board)</sup> Directors giving the lawful notice of the time  
and place of paying the same and the defendant  
says that after he had subscribed for the five  
shares of the Capital Stock of the said Company  
upon the Stock books of said Company as  
aforesaid the said Company by its Officers  
and agents requested this defendant to make  
execute and deliver to the said Company his  
this defendant's promissory note payable at  
the expiration of five years from the first day of  
September A D 1867 for said sum of five  
hundred dollars with interest thereon at the  
rate of ten percent per annum or ten cents  
on each and every dollar in said note  
mentioned for each and every year that said  
note is to run before it becomes due which said  
interest money in said note mentioned is to be  
paid semi annually in each year that is  
to say on the first day of March and the first day  
of September in each year and thereupon and  
in pursuance of the said request of the said Company  
the said defendant did to wit on the Twelfth day  
of August in the year of our Lord One thousand  
eight hundred and fifty seven to wit at  
Cordova in said County make execute and  
deliver to the said Company his this defendant's

promissory note calling for the sum of five hundred Dollars to be paid five years from and after the the first day of September in the year of our Lord one thousand eight hundred and fifty seven with interest at the rate of ten percent per annum or ten cents on each and every Dollar mentioned in said note for each and every year that said note had to run before it became due which interest on said note is to be paid Semi Annually to wit on the first day of March and the first day of September in each and every year and which is the same note mentioned in the Plaintiffs declaration and the defendant avers and says that the said Company did to wit on the Twelfth day of August in the year of our Lord one thousand eight hundred and fifty seven to wit at the said County of Rock Island demand of and receive of and from this defendant the said promissory note mentioned in the plaintiffs declaration in consideration of and in full payment of and for the said five shares of the Capital Stock of said Company which this defendant had subscribed for as aforesaid and which said five shares of Capital Stock aforesaid was the sole and only consideration given or received for said note

11  
And that there was no other or different  
consideration for said note and the  
defendant avers and says that the  
requesting and receiving of the said note  
by <sup>the</sup> said Company in manner and form  
as aforesaid was and is in violation of the  
laws of the land and of the articles of  
the said Sterling and Rock Island Railroad  
Company Corporation and that the  
said note is fraudulent and void in law  
all of which the said plaintiffs and all  
who claim any interest in said note well  
knew at the time they and each and every  
of them received said note and this the  
defendant is ready to verify wherefore  
he prays judgment &c

Samuel Strawder  
Samuel R Allen  
defendants attys

3 And for a further plea in this behalf  
by leave of the Court first had and ob-  
tained the defendant says actio non  
because he says that the note mentioned  
in the Plaintiffs declaration was given  
in payment of five shares of the capital  
stock of said Sterling & Rock Island

Rail Road Company and that was the only  
 and all the consideration given or received  
 for said note and that the said five shares  
 of said Capital Stock had been subscribed  
 for by the defendant previous to giving said  
 note and that the amount of the Capital  
 Stock required to construct and pro-  
 cure the right of way and motive  
 power and every other appurtenance for the  
 completion and running of the said  
 Stettin & Rock Island Rail Road has not  
 been subscribed for nor has it been  
 taken to wit the sum of six hundred  
 thousand dollars that being the amount re-  
 quired as estimated by competent engineers  
 as appears in the articles of association  
 of said company which articles of association  
 are now on file in the office of Secretary  
 of State in Springfield in the State  
 of Illinois all of which the plaintiff  
 and all persons that claim any  
 interest in or to said note well  
 knew at the time that they and each of  
 them received said note and that  
 the defendant is ready to verify and where  
 fore he prays judgment re.

Samuel Strawder  
 Samuel R. Allen depositee

4 B

And for a further plea in this behalf by leave of the Court first had and obtained the said defendant says Actio non because he says that the note mentioned in the Plaintiffs declaration was given in payment of five shares of the Capital Stock of said Sterling & Rock Island Rail Road <sup>Company</sup> and that it was the only and all the consideration either given or received for said note and the defendant avers that he had subscribed <sup>for</sup> five shares of the Capital Stock previous to giving said note and the defendant avers that the amount of the Capital Stock required to construct build and procure the right of way and motive power and every other appurtenance for completing and running the said Sterling and Rock Island Rail Road by its Charter and the amendments to said Charter of said Company has not been subscribed for nor has it been taken to wit the sum of two hundred and fifty thousand dollars all of which the Plaintiffs and all that claim any interest in said note well knew at the time they each and every of them received said note and this the defendant is ready to verify wherefore he prays judgment &c  
Amuel Strawder  
Amuel R Allen Defts attys

5 And for a further plea in this behalf by leave of the Court first had and obtained the said defendant says actio own because he says that the note mentioned in the Plaintiff declaration was given in payment of five shares of the Capital Stock of the said Sterling & Rock Island Rail Road Company and that it was all and the only consideration either given or received for said note and the defendant avers that he had subscribed for said five shares of the Capital Stock of said Company previous to the giving of said note And the defendant avers that the Capital Stock required to construct build and procure the right of way and motive power and every other appurtenance for the completing and running the said Sterling & Rock Island Rail Road by its Charter and the amendments to its Charter has not been subscribed for nor has it been taken to wit the sum of two hundred and fifty thousand dollars the amount required by the amendment to the original Charter of said Sterling and Rock Island Rail Road Company and that the work on said Sterling and Rock Island

15  
\*Rail Road by its Charter and the amendments to its said Charter has not been subscribed for nor has it been taken to wit the sum of two hundred and fifty thousand dollars the amount required by the amendment to the original Charter of said Sterling and Rock Island Rail Road Company and that the work on said Sterling and Rock Island Rail Road is now and has been for some time suspended and indeed the project of building said Sterling and Rock Island Rail Road is abandoned all of which the Plaintiffs and all who claim an interest in said note well knew at the time they and each of them received said note and this the defendant is ready to verify wherefore he prays judgment if the plaintiff ought to have or maintain there aforesaid action against him

Samuel Strawder

Samuel B Allen

Defendants Attys

6<sup>th</sup>

And for a further plea in this behalf by leave of the court first had and obtained the defendant says acted now because he says that the note mentioned in the plaintiffs declaration was given in payment of five shares of the Capital Stock of the Sterling and Rock Island Rail Road Company and that it

was all and the only consideration either given or received for said note and the defendant avers that he had subscribed for said five shares of said stock previous to giving said note and he avers that the said Rail Road Company had no power or authority under its said Charter and the laws of the land to receive and endorse and transfer said note in manner and form as the said plaintiff hath in their said declaration alleged but the defendant avers and says that the receiving and transferring and endorsing said note in manner and form as aforesaid is in violation of the laws of the land and the articles of the said Stealing & Rock Island Rail Road Company Corporation and that the transfer and endorsement of said note in manner and form aforesaid is fraudulent and void in law all of which the plaintiff and all ~~them~~ claiming any interest in said note well knew at the time they and each of them received the said note and this the defendant is ready to verify wherefore he prays judgment for

Samuel Strawder  
 Samuel R Allen  
 Defendants Attys

7

And for a farther plea in this behalf by law of the Court first had and obtained the said defendant says actio non because he says that the note mentioned in the plaintiffs declaration was given in payment of five shares of the Capital Stock of the said

17  
Stirling & Rock Island Rail Road  
Company which the defendant had  
previous to giving said note subscribed  
for and. And that was all and the only  
consideration given or received for said  
note and the defendant avers that the said  
Miles S. Keeny had no power or authority  
under the charter of said Company or  
any amendment to said Charter  
or by virtue of the laws of the State  
nor had the said Miles S. Keeny  
had any authority from said Com-  
pany as President or otherwise to  
transfer and endorse said note in  
the manner and form as the said  
declaration, <sup>avers</sup> but the defendant avers  
and says that the said note was trans-  
ferred and endorsed without any authority  
whatever from the said Company or  
the Board of directors of said Company  
and said transferring and endorsing  
said note is therefore fraudulent and  
void in law all of which the plaintiffs  
and all claiming any interest in said  
note well knew at the time they or  
either of them received said note and  
this the defendant is ready to verify where-  
fore he prays judgment &c.

Samuel Strawder  
Samuel R. Allen Deft's atty

8  
And for a further plea in this behalf  
by leave of the Court first had and ob-  
tained the defendant says actio non he  
cause he says that the note mentioned in

18  
The Plaintiff's declaration was given in  
payment of five shares of the Capital  
Stock of the said Sterling & Rock Island  
Rail Road Company which the defendant  
had previous to giving said note sub-  
scribed for and that it was all  
and the only consideration either  
given or received for said note  
and the defendant avers and says that  
he was induced to make execute and de-  
-liver the said note in the Plaintiff's  
declaration mentioned to the said  
Sterling and Rock Island Rail Road  
Company by means of the false  
and fraudulent representation of the said  
Sterling and Rock Island Rail Road  
Company its officers and Agents in  
this to wit the defendant avers that  
at the time and before he executed  
and delivered said note to the  
said Sterling and Rock Island  
Rail Road Company the said  
Company and its officers and  
Agents falsely and fraudulently  
represented to this defendant that  
all the Capital stock required to  
build construct and procure the right  
of way and procure and buy the motive  
power and every other equipment ne-  
-cessary to build and run said Rail Road  
had been subscribed for and in good  
faith taken and that the company  
was going to build and equip the  
said Rail Road immediately and

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and that the cars would run through  
from Sterling to Rock Island within  
Eighteen Months or less from the date  
of said note and the defendant says  
that he relied on said representations as  
being true and so relying upon said  
representations as being true and in  
consideration thereof he was induced  
to and did make execute and  
deliver said note to the said Com-  
pany and by the means thereof  
the said Company proceed and ob-  
tained said note and the de-  
fendant avers that the aforesaid  
representations are false and  
untrue that the amount of capital  
stock required to build construct  
and procure the motive power  
of said Rail Road has not  
been subscribed for nor  
has it been taken nor has the  
said Sterling and Rock Island  
Rail Road been built although it  
is more than eighteen months since  
note was given but on the contrary  
the work on said Rail road  
has been suspended and in  
fact really abandoned all of  
which the plaintiff and all who  
claim an interest in said note  
well knew at the time they and  
each of them received said note  
and this the defendant is ready to verify  
wherefore he prays judgment  
James L. Strawn & Samuel R. Allen vs. Defendant

9  
0  
And for a further plea in this behalf by leave of the Court first had, and obtained the defendant says -  
Actio non because he says that the note mentioned in the Plaintiffs declaration was given in payment of five shares of the Capital Stock of the <sup>sd</sup> Sterling & Rock Island Rail Road Company that the defendant had previously subscribed for and that was all and the only consideration either given or received for said note and the defendant avers that he was induced to make execute and deliver said note to the said Sterling & Rock Island Rail Road Company by means of fraudulent and false representations of the said Sterling & Rock Island Rail Road Company its officers and agents in stating that all the capital stock required to build construct and procure the right of way and buy the motive power and every other equipment necessary to build said Rail Road had been subscribed for and in good faith taken and that the Company was going to build and equip said Rail Road immediately and that the cars would run through from said Sterling to Rock Island within Eighteen

21  
months or less from the date of said note and the defendant says that he relied upon said representations as being true and so relying upon said representations as being true at the time he executed and delivered said note to the said Company he thereby was induced by said false and fraudulent representations aforesaid to make and deliver said note to the said Rail Road Company and by means thereof the said Company procured and obtained said note. The defendant avers and says that the aforesaid representations are fraudulent false and untrue and that the amount of Capital Stock required to construct build & procure the right of way and procure and buy the motive power and the other necessary equipments for said Rail Road has not been subscribed for and taken and that the said Rail Road has not been built and that the work thereon has been suspended and that the said Company has abandoned the work on said Rail Road and will not build said Rail Road from the city of Sterling Whiteside County in the State of Illinois to Rock Island in Rock Island County and State aforesaid according to the articles of association or <sup>was no</sup> incorporation of said Company therefore ~~there~~ consideration for said note whatever all of which the plaintiffs and all claiming any interest in said note well knew at the time they and each of them received said note and this the defendant is ready to verify wherefore he prays judgment &c

Samuel Strawder  
 Samuel R Allen

Defendants Attys

10

And for a further plea in this behalf by leave of the Court first had and obtained the defendant says actio non because he says that he was induced to make execute and deliver the said note mentioned in the plaintiffs declaration to the said Stetson and Rock Island Rail Road Company by means of the false and fraudulent representations of said Company and its officers and Agents made to this defendant before and at the time said note was executed and delivered to said Company and that the said note was procured and obtained by the said Stetson & Rock Island Rail Road Company from this defendant by fraud and circumvention practiced upon this defendant by fraud said Company its Officers and Agents, all of which the plaintiffs well knew and all others that claim any interest in said note at the time they and each of them received said note and this the defendant is ready to verify wherefore he prays judgment &c.

Samuel Strawder

Samuel R Allen defts attys

11

And for a further plea in this behalf by leave of the Court first had and obtained the defendant says actio non because

23  
IX  
He says that he ought not to be charged with the said debt or claim by virtue of the said supposed writing obligatory because he says that the said supposed note or writing obligatory was obtained from him by the said Sterling and Rock Island Rail Road Company and its officers and agents by fraud and misrepresentation all of which the plaintiffs and all others claiming any interest in said note well knew at the time they and each of them received said note wherefore he prays judgment if he ought to be charged with said debt or claim by virtue of said note or writing obligatory

Samuel Strawder  
Samuel R. Allen *depts attys*

19  
And for a further plea in this behalf by leave of the Court first had and obtained the defendant says aliter now because he says that he never received any valuable or legal lawful consideration for said note whatever all of which the plaintiffs and all persons claiming under them well knew at the time they and each of them received said note and this the defendant is ready to verify wherefore the defendant prays judgment &c

Samuel Strawder  
Samuel R. Allen *depts attys*

24  
 And for a further plea in this behalf by leave of the Court first had and obtained the defendant says actio non because he says that there is not nor on the day of the commencement of this suit nor ever since was there in existence any such corporation called the Sterling and Rock Island Rail Road Company as by the note mentioned in the plaintiffs declaration is supposed all of which the plaintiffs and all claiming under them well knew at the time they and each of them received said note and this the aforesaid defendant is ready to verify therefore he prays judgment if the said plaintiffs ought to maintain their aforesaid action against him &c.

Samuel Strawder

Samuel R. Allen Deft City

14  
 And for a further plea in this behalf by leave of the Court first had and obtained the said defendant says actio non because he says that the said Board of Directors of the said Sterling and Rock Island Rail Road Company and <sup>did</sup> not previous to the making and delivery of said note mentioned in said plaintiffs declaration nor have

25  
The said Company ever demanded  
of this defendant the full sum of  
the said Capital Stock that he  
subscribed for to the said Sterling  
and Rock Island Rail Road Company  
as aforesaid all of which the plaintiffs  
and all who claim any interest in  
said note under them well knew  
at the time they and each of them  
received said note and this  
the defendant is ready to verify  
Wherefore he prays judgment &c

Samuel Strawder

Samuel R. Allen *defto atty*

15  
And for a further plea in this  
behalf by leave of the Court first had  
and obtained this defendant says Actio  
Pro, Because he says that heretofore  
to wit on the day of

AD 11 the said Sterling &  
Rock Island Rail Road Company  
by its Officers and Agents requested  
this defendant to subscribe for  
and take five shares of the Capital  
Stock of the said Company each  
share being one hundred dollars  
the said five share amounting  
in all to the sum of five hundred  
dollars, and this defendant avers that  
upon the solicitation of the said  
Sterling and Rock Island Rail  
Road Company its officers and  
Agents he did heretofore to wit on  
the day of AD 18

26  
upon the Stock Books of subscription  
of said Rail Road Company sub-  
scribe for and did agree to and  
did take five shares of the Capital  
Stock of said Sterling and Rock  
Island Rail Road Company and  
did agree to pay to the said Sterling  
and Rock Island Rail Road Company  
for said five shares of the Capital of  
the said Company the said sum  
of five hundred dollars to be  
paid in such manner and proportions  
and at such times as the Board  
of Directors of said Sterling &  
Rock Island Rail Road Company  
may from time to time direct  
and this defendant avers that after  
he had subscribed for said  
five shares of the Capital Stock  
of the said Sterling and Rock  
Island Rail Road Company upon  
the Stock Subscription books  
of the said Rail Road Company  
as aforesaid the said Sterling &  
Rock Island Rail Road Company  
by its officers and agents requested  
this defendant to make execute  
and deliver to them the said Sterling  
& Rock Island Rail Road Company  
his the defendants Promissory note  
payable at the expiration of five  
years from the first day of  
September AD One thousand Eight

27  
hundred and fifty seven for said  
sum of five hundred dollars  
with interest thereon at the rate  
of ten per cent per annum that  
is to say that the said defendant  
should as interest on said note  
pay ten cents on each and every  
dollar for each and every year  
for the said five years that said  
note is to run before it becomes due  
to wit from the first day of September  
AD 1857 and thereupon this defendant  
averts that it was then and there to  
wit at the said County of Rock  
Island unlawfully usurious and  
corruptly agreed by and between  
this defendant and the said Sterling  
& Rock Island Rail Road Company  
that this defendant should make and  
deliver his said promissory note to  
the said Sterling and Rock Island  
Rail Road Company for the said  
sum of five hundred dollars  
which said sum of five hundred  
dollars was for and in consideration  
of the five shares of the capital stock  
of said Rail Road Company ac-  
cording to the request of the said  
Rail Road Company as aforesaid  
and this defendant avers that after-  
wards to wit on the twelfth day of  
August in the year of our Lord  
one thousand eight hundred and  
fifty seven the said defendant

did in pursuance of said unlawful  
conspirious and corrupt agreement  
aforesaid to wit at the County of  
Rock Island make execute and  
deliver to the said Sterling and  
Rock Island Rail Road Company  
his said promissory note for the  
sum of five hundred dollars  
payable at the expiration of  
five years from the first day of  
September A.D. one thousand eight  
hundred and fifty seven with interest  
thereon at the rate of ten per cent  
per annum which said interest is to  
be paid semi annually in each  
year to wit on the first day of  
March and the first day of September  
in each and every year, interest &  
principal to be paid at the office  
of said Rail Road Corporation  
at Sterling in said County of  
White side and State of Illinois afoe  
-said and this defendunt avers that  
the said note is the same note  
mentioned in the plaintiffs declar-  
-ation and the said defendunt avers  
that the interest or profit agreed to  
be paid by the terms of said contract  
as stated in said note is more than  
ten per cent interest on each and  
every year that said note is to run  
before it becomes due and this de-  
-fendunt avers that the paying the

29  
interest on said note semi annually as  
is required by the terms of the said contract  
in said note gives to the holder of said  
note one dollar and twenty five  
cents more profits or interest on the  
amount said note calls for each  
year, the said one dollar and  
twenty five cents being the amount  
of interest that the twenty five dollars  
would require or draw for the six  
months of each year and this  
defendant avers that the sole  
and only consideration of and  
for said note was the said five  
shares of the Capital Stock of the  
said Sterling and Rock Island Rail  
Road Company so subscribed for  
and taken by this defendant as  
aforesaid and that there was no  
other or different consideration of  
or for said note and the defendant  
avers that the demanding and receiving said  
note by the said Sterling and Rock Island  
Rail Road Company in manner and form as  
aforesaid was and is in violation of the  
laws of the land and of the articles of  
the said Sterling and Rock Island Rail  
Road Company's Corporation and that  
the said contract requiring this defendant  
to pay the interest semi annually that  
is to say on the first day of March  
and the first day of September in each  
and every year as mentioned in said  
note is usurious and void and that

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and that the plaintiffs are not entitled to recover any interest on said note whatever all of which the plaintiffs knew at the time they received said note and this the defendant is ready to verify Wherefore he prays judgment whether the said plaintiffs ought to have or maintain their action aforesaid against him

Samuel Strawder  
Samuel B Allen Defts atty

Be it further Remembered that on the 20<sup>th</sup> day of January AD 1863 the Plaintiff by A Webster his attorney filed in the Office of the said Circuit Clerk County and State aforesaid his demurrer, Replication to the pleas heretofore set forth by the defendants attorneys which is in the words and figures following to wit

State of Illinois }  
Rock Island County } sp. Of the January term AD 1863 of the Circuit Court of said County

Reynold Wilder & Co  
per use of  
Alfred A Adams  
vs  
Calvin Goodrich

And now came the said Plffs by their atty and as to said

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in the above entitled suit and as to said  
pleas in this behalf pleaded (except the  
pleas by him firstly & thirteenthly above  
pleaded) says that said pleas and  
each of them are not sufficient in law  
to be replied unto. And therefore the  
said Plffs pray Judgment

By A Webster  
Plffs Atty

And now come the said Plffs by their  
Atty and as to said 8th & thirteenth  
plea by him above pleaded says  
precludi non because he says that  
on the day of the commencement of this  
suit there was in existence a corporation  
called the Sterling and Rock Island  
Rail Road Company as by the note  
mentioned in the Plffs declaration  
is supposed - And this the said Plffs  
pray may be enquired of by the  
Court &c.

By A Webster  
Plffs Atty

And Be it further remembered that on the  
17<sup>th</sup> day of January AD 1868 The Defendant  
by his Attorneys filed in the Office of the  
Clerk of the Circuit Court in the  
County of Rock Island & State of Illinois  
a motion for continuance in this behalf  
of which, <sup>is in</sup> the words and figures following  
to wit:

The State of Illinois

Rock Island County

} In the Circuit Court  
of said County

Elisha P. Reynolds  
 Stephen S. Fuller and  
 William Marshall &  
 late partners under the  
 style of Reynolds, Fuller & Co  
 For the use of Alfred <sup>A</sup> Andrews  
 vs  
 Calvin Goodrich

And now  
 comes the said defendant  
 and moves the Court to continue  
 the case as per cause stated,  
 That the said suit is brought on  
 a promissory note given by the  
 defendant to the Sterling Rock Island  
 Rail Road Company in payment  
 of five shares of the Capital Stock  
 that the defendant had previously  
 subscribed for to said Company.  
 Defendant further states that he  
 is informed and believes that the  
 said Company had no authority or  
 power to take said note as charged  
 in Plaintiffs declaration and he  
 further says that he is informed and  
 believes that the said Company  
 never authorized its officers or  
 agents to make the contract  
 by virtue of which said note was  
 given and he further states  
 that he is informed and believes  
 that the said Company did not

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Nor did the Board of Directors of said Company ever authorize the receiving said note in promise of said subscription for said stock or transferring or endorsing the same to the said Reynolds Wilder & Co as stated in the Plaintiffs declaration and that the said Reynolds Wilder & Co knew it at the time they received said note all of the facts above stated.

The defendant says that he expects to be able to prove by Miles S. Henry who is now an acting Pay Master in the Army of the United States but at what point or in what state the said Henry is now stationed this defendant says he is not able to state but he is not in this state at this time so he is informed and believes nor has he been in this state since this suit was commenced and the defendant further says that the said Miles S. Henry was the president of said Company when said note was taken and transferred and he knows of no person by whom he can prove the above facts by as well as he can by the said Henry.

The defendant says that he is informed and believes that there are two sets of directors and other officers each of which claim to be real officers of said company at this time and each claim the possession of the books and other property of said Company and through the quarrel between

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different Board of Directors and other  
Officers of said Company the Books have  
been separated each set officers have  
pursued the possession of a portion  
of said Books but where they are or  
in whose possession the said Books are  
at this time the Defendant is unable to  
state and he further says that he has not  
had time since this suit commenced  
to ascertain where said Books are  
he says he has been informed and  
believes that a portion of said Books  
are in Chicago and a portion in  
Ottawa this State and a portion in  
Sterling Whitesell County but what  
portions are at each place this defendant  
does not know nor has he been able  
to ascertain nor does he know in whose  
hands the said Books are in he further  
says that he has been informed and be-  
lieves he cannot safely go to trial in  
this cause without having said Books  
to use as evidence in this trial, he  
says he expects to be able to show by  
said Books that the amount of  
Capital Stock that was required to  
build & equip said Books according  
to estimate made & stated in the  
Articles of association of said Company  
which articles of association were filed  
in the office of the State Secretary at  
Springfield in this State has not been  
subscribed for nor has it been taken

35  
nor has the amount of the Capital Stock  
as required by the amendment to the  
Charter of said Company been sub-  
-sided for and taken and he expects  
to prove by said Books that there is no  
order <sup>resolutions</sup> or instruction whatever on  
said Books authorizing the taking of  
the said note in payment of said subscription  
of this defendant for said five shares of stock  
of said Company he expects to prove by said  
Books that there is no order or resolution  
on said Books authorizing the taking said  
note by said Company or endorsing and  
transferring the same and he also  
states that he does not know of any  
witness by whom he can prove that there  
is no order or resolution on said Books  
authorizing the taking and endorsing and  
transferring said note because he says  
he does not know who has the possession  
of said Books therefore he cannot have  
them examined and the party swears as  
to the result of the examination all the points  
he further says that he does not know  
how much more he can prove by said  
Books that will be material to his de-  
-fense in this case but he says that  
he is informed and believes that he  
can prove much more than he  
has stated, Defendant further says  
that he expects to be able to gain access  
to said Books so as to have them at  
the trial of this cause by the next  
term of this Court to use as evidence.

36  
in this case but that he has been unable although he has done all in his power since this suit was commenced to obtain them and the defendant says that the said Rail Road Company by its officers and agents represented to the defendant that all the Capital Stock had been subscribed for and taken to build & equip said Sterling & Rock Island Rail Road at the time and before said note was given by the defendant and he further says that the said Company by its officers and agents stated to the defendant that the said note should not be sold but that the same should be deposited with the trustee or treasurer of said Company and by having said notes the Company could loan the money to build said Road and the defendant further says that the said Company has suspended the work on said Railroad and the prospect of building said Road from Sterling to Rock Island is abandoned. The defendant says that he believes he can prove the above facts by Mills S'Heeny and a Mr David Levitt who are both now in the Army of the United States and have been ever since this suit was commenced and out of the State therefore he has been unable to

37  
obtain either of the witnesses at this term of the Court but he expects to be able to obtain this testimony by the next term of the Court and he further says that he knows of no other witnesses by whom he can prove the above last mentioned facts by the said Henry & Levett or he can not prove them as well by any body else as by them they both being officers of said Company at the time knows more about the matter than any other the one being an engineer of said Company and acting secretary or acted as such and the other the President of said Company at the time and before said note was given & transferred as aforesaid. This defendant says that the affidavit is not made for delay merely but for substantial justice  
Calvin Goodrich

I Samuel R Allen a Notary Public in for said County certify that Calvin Goodrich appeared before me this 15<sup>th</sup> day of January A.D. 1863 and subscribed and sworn to the above affidavit for Contumacia

Samuel R Allen  
Notary Public



38  
And be it further Remembered that  
on the 26<sup>th</sup> day of January AD 1863  
Came the Plaintiff by his attorney  
A Webster & takes issue as to the pleas  
of general issue & nul tcel corporation  
& the Demander filed on the 20<sup>th</sup> instant  
to all other pleas having been argued  
It is ordered by the Court that said  
Demander be sustained and the  
Defendant by his attorney moves the  
Court for a Continuance which  
the Court overrules & therefore the  
Defendant enters non prosequitur to  
the pleas of general issue & nul tcel  
Corporations and abides by the remaining  
pleas. It is therefore considered by the  
Court that the Plaintiff have and  
recover judgment on demurrer and  
his damages by him sustained herein.  
And it appearing to the Court that  
this suit is brought upon a note  
for payment of money & that the  
Damages rests in computation merely  
It is ordered that the clerk assess  
the same thereupon the clerk  
assessed and reported the damages  
at the sum of \$700, which report is  
accepted by the Court - It is therefore  
Ordered by the Court that the Plaintiff  
have and recover from the  
Defendant the said sum of  
\$700 - Damages assessed  
as aforesaid together with his

39  
costs & that he have ~~together~~ execution  
therefor. And thereupon the said  
Defendant by his said Attorneys pay  
an appeal which the Court allows  
on Defendants filing a bond in  
30 days in the sum of \$1400.  
Security to be approved by the Clerk  
by agreement

Be it further Remembered  
that in Compliance with the fore-  
going order the defendant by  
his Attorneys Counsel filed on  
the 16<sup>th</sup> day of February A.D. 1868 in the  
office of the Clerk of Circuit Court  
in the County of Cook Island & State  
of Illinois an appeal Bond approved  
by the said Clerk of said Court  
which is in the words & figures following  
to wit:

I know all men by these presents  
that Calvin Goodrich as principal and  
Nathaniel Torrance Roger Bell &  
Deese Maxwell as security are held  
and firmly bound unto Elisha Reynolds  
Stephen L. Wilder & William Marshall  
late partners as Reynolds Wilder & Co  
for the use of Alfred A. Adams in the  
penal sum of one thousand four  
hundred Dollars good and lawful  
Money of the United States for the pay-  
ment of which well and truly to be made  
the said Goodrich Torrance Bell  
& Maxwell bind themselves their  
heirs executors and administrators

40  
jointly severally and firmly by these  
presents - Witness their hands and  
seals this fourteenth day of February  
AD 1863. The condition of the  
above obligation is such that whereas  
the said Elisha P Reynolds Stephen  
L. Wilder & William Marshall or  
late partners as above named  
Reynolds Wilder & Co for the use  
of Alfred A Adams did at the  
January Term of the Circuit Court  
held in and for the County of Rock  
Island State of Illinois AD 1863  
recover judgment against the above  
founden Calvin Goodrich for the  
sum of seven hundred and  
Twenty Dollars as also for his costs  
in that behalf expended said Calvin  
Goodrich has prayed an appeal from  
this said Circuit Court to the Supreme  
Court within and for the Third Grand  
Division of said State. Now if  
the said Calvin Goodrich shall  
duly prosecute said appeal and pay  
or cause to be paid the amount of  
said judgment and all judgments costs  
interest and damages which said  
Supreme Court shall adjudge against  
him in case the judgment of said  
Circuit Court shall be affirmed and abide  
the order and judgment of the said Supreme  
Court in this behalf then this obligation is  
to be void otherwise to remain in full force  
and effect.

Calvin Goodrich  
Nathaniel Bonar  
Roger Bell  
Jesse Maxwell

State of Illinois 38

Rock Island County

I, Edward H. Bowman  
Clerk of the Circuit Court

within and for said County and State aforesaid  
hereby certify that the foregoing is a true full  
and complete transcript of the Record of  
proceedings had in such cause in said Circuit  
Court, as also a full complete and true copy  
of the several original papers on file  
therein as entire as the same now remains  
of Record or on file in my Office.

In testimony whereof I have  
hereunto set my hand & affixed  
the Seal of said Circuit Court  
at Rock Island this 19<sup>th</sup> day  
of March 1863.

Edward H. Bowman  
Clerk

Fees for Transcript of Record paid by  
S. Strawder Defts Atty \$12,73

State of Illinois }  
Rock Island County } } To the Supreme  
Court at Ottawa

Calvin Goodrich Appellant Errors  
vs

Elisha P. Mayhew & Stephen L. Miller  
& William Marshall & Co. Late partners  
under the style of Reynolds Miller & Co  
for the use of Alfred A. Adams  
Appellees - - - - -

And the said Calvin  
Goodrich now comes and says that  
in the Record and proceedings aforesaid  
there is manifest error in this writ.

<sup>12<sup>th</sup></sup>/<sub>11</sub>  
The Court erred in sus-  
taining the demurrer to the Special  
Pleas

2

The note is void for  
want of power in the company to  
make the contract by which it received  
said note.

3

There was no consideration  
for said note

4

The note was obtained by fraud

5

The company had no power un-  
der or by virtue of the laws of the state  
to receive said note in payment of  
the capital stock of said company  
nor to transfer and endorse the  
same

6

The Court erred in not overruling the demurrer.

7

The Court erred in overruling the motion for a continuance of the case until the next term thereof.

8

The Judgment is manifestly against the laws and the evidence in the case.

10

The said judgment was given in favor of the said Elish. P. Reynolds Stephen L Wilder & William Marshall In late partners under the style of Reynolds Wilder & Co for the use of <sup>Wm</sup> A. Adams Whereas by the laws of the land it ought to have been given in favor of Calvin Goodrich Therefore the said Calvin Goodrich prays that the said judgment may be reversed annulled and held for nothing and that he may be restored to all things he has lost by reason thereof.

Samuel Strawder  
Samuel R Allen  
Attorney for Calvin Goodrich

State of Illinois }  
Grand Division } 21st April Term  
AD 1863

Calvin Goodrich Appellant }

vs  
Reynolds Wilder & Co Appellees }  
for use of Alfred Adams }

And now come the Appellees in  
the above entitled cause by A.  
Webster their attorney - and to the  
Errors assigned in the foregoing  
Record say that no error  
exists in the said Record in  
manner aforesaid as the same is  
therein assigned by the said  
Appellant & that the judgment of  
the Court below ought to be affirmed  
and of this the said Appellees  
pray the judgment of this Court

A. Webster  
Atty for Appellees

176-6

Goodrich  
v

Reynolds v. Stals

Record

Filed April 21<sup>st</sup> 1863  
L. Leland  
Clerk

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*[Faint, illegible handwritten text, likely bleed-through from the reverse side of the page]*