

No. 12841

Supreme Court of Illinois

People ex-rel.

vs.

Ritchey, et al.

62

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[unclear] [unclear] [unclear]
[unclear] [unclear] [unclear]
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Petition for Mercantiles

At a Supreme Court term held at Ottawa on the twentieth day
of April in the year of our Lord one thousand eight hundred and fifty
eight within and by the Third Grand Division of the State of Illinois
Present the Court John I. Eaton Chief Justice
" " Sidney R. Bacon Associate Justice
" " " " " "

Be it remembered that on the twentieth day of April 1858, the
same being one of the days of the April Term of said Supreme
Court for the year 1858, the following order was made by said su-
-preme Court and entered upon the Records of said Supreme Court
which said order is in the words and figures following to-wit

The People of the State of Illinois ss.
The Farmers Rockford Rail Road Company)
vs.
Richard W. Tucker Asakell (Petitioner)
Alger & Paul & Clark (Respondents)

Petition for Alteration writ of
Habeas Corpus

This day the Court having diligently
examined the Petition herein being now sufficiently advised of and
concerning the premises concludes that an Alteration writ of Habeas
Corpus be awarded herein & that said writ be made returnable in
two days from the date hereof.

And afterwards to wit on the third day of May 1858, an Alter-
ation writ of Habeas Corpus was issued which said writ is in the
words and figures following to-wit

State of Illinois Supreme Court ss.
Third Grand Division

The Clerk of the State
of Illinois to Richard W. Tucker Judge of the Rockford County
Court, George Johnson and Melzer & Paul Attorneys at Law of the

Henderson County Court and Charles J. Brown Clerk of said
Henderson County Court. Greeting!!

Whereas it has been reported to the Judges of our Superior
Court by the Judge of the State of Illinois on the validity of the
road and Rockford and Peoria Rail Company, a Corporation of
this State duly organized and acting under and by virtue of the Charter
of said Company entitled "An act to amend an act entitled an act
to incorporate the Peoria and Warsaw Rail Road Company"
Approved February 10 1840, and "An act to amend an act entitled
an act to amend an act entitled an act to incorporate the Peoria
and Warsaw Rail Road Company" and under said act was ap-
proved June 21 1852, and by virtue of said several laws of the
State enforced to locate, construct, complete and open a Rail Road
from Warsaw in the County of Hancock in this State to the
Town of Rockford in the County of Winnebago in this State or
to any other point intersecting with the Chicago & Galena Rail
Road in this State, and which said Corporation so duly or-
ganized since the year 1854, situate, as aforesaid, on
the actual location, construction and completion of the said
Road in the said original Charter of said Corporation men-
tioned, from said Warsaw among others, Henderson County,
in this State to said Rockford. That after the dis-
obligation of said Corporation and while the same was engaged in the
actual construction & completion of the said Rail Road, to wit,
at the regular Session Term Oct 1853 of the County Court and
Henderson County Judges held term in the City of Springfield
Oct 1853 at the County Seat of said Henderson County (The said
County were having, to wit, Township organization) the said
County Court did order and vote of record in said Court as follows
that is to say: "Ordered that an Election be held in this County
at the usual places of holding elections on the Sunday after the
first Monday of December next at four o'clock in the afternoon."

"County of Washington will take, such in the manner and subject
" said Grand Company in the sum of one hundred thousand
" Dollars payable in the hands of the County for the term of years
" to wit: one year, five years, ten years, and the County
" will and the Sheriff shall take the necessary legal action of such
" debt is."

And the said Court did at the same time order to the
" effect of record thereafter the following:

"Ordered further that each and every stockholder in said
" Company furnish satisfactory evidence to this Court that said
" Bond is completed within four years from the issuing of
" such Bonds and that said Company will pay the interest on
" said Bonds until said Bond is completed."

And afterwards at a term of said County Court held at the
" County seat of said Washington County, March on the 27th day of
" March 1853 the said County Court did order and enter of
" record in said Court the following that is to say:

" to the satisfaction of this Court that at an election held in this
" County on the eighth day of November 1853, in pursuance of
" an order made at this September Term 1853 of this Court to
" decide on the propriety of Washington County subscribing for
" one hundred thousand dollars of the Capital stock of the
" Marine and Puget Sound Pacific Railroad Company, as agents
" of the stockholders of said County, it was ordered in favor of said order.
" It is therefore ordered, that the County judge of this
" Court forward to a J. of said County, Treasurer for the
" hundred thousand Dollars of the Capital stock of the said
" Marine and Puget Sound Pacific Railroad Company and that he
" cause the same to be paid at such times and in such sums as
" may be required by said Company against the private subseri-
" ptors of Stock, and payment to be made in the hands of this
" County at five payable yearly years from this date to wit:

"Interest at the rate of Eight per cent per annum payable annually
at said Barbauld house in the City of New York. Said Bond
to be signed by the County Judges of this County and attested by
the Clerk of the Court with the County Seal attached thereto."

And the said County Court did at the same time
Cause to be entered of Record, to wit: the following, Provided that
such roads shall not be up until said County signifies satisfaction
to said Court that said Road will be completed within six years
from the passing of such Order.

And afterwards at a Term of said County Court held at the County Seat of said Henderson County to wit on the second day of December 1855 the said County Court did order and the Clerk thereof recorded the following;

"Newman and Buckford, Trust, Bond Company,"
 On this day appeared John E. Johnson Esq. one of the directors of
 and agents of the Newman and Buckford Trust Bond Company,
 and made application for the subscription of this Bond, on the Bonds
 of said Trust Bond Company, for one hundred thousand Dollars
 in the Capital Stock of said Company, and the Court was satisfied
 from the Statement of the said Johnson of the ability of the said
 Company to complete said Bond, together with the City of New York do
 Junction with the Board and Agents said Trust Bond Company,
 within a period of one year, satisfactory to this Court.

This specific Ordinance that the County Judges of this County make and subscribing and that be subscribed following the Bonds of the County in the sum of Five Thousand Dollars bearing interest from date payable on the first day of July 1837 and annually thereafter and that he give the Bonds of his County for the balance of said sum of Five Hundred thousand Dollars in such sums and at such times as the Engineer of said County shall certify that such can and shall be paid to his County by the Government of the State and Dollars has been completed under his direction.

And the Just. Court afterwards at a term of said Court
held at the County Seat of said County of Henderson, took in the

" On the 1st day of September 1836, the order and course of
" interest of record in said Court be following:

" Worcester and Rockford Rail Road Company 3

" On this day appeared Stephen S. Phelps Esq. President of
" the Worcester & Rockford Rail Road Company & presented a
" Certificate from William Miller Esq. Chief Engineer of said Rail
" Road Company certifying that the last dividend paid to said
" in Worcester County up to the first day of September 1836
" amounted to the sum of Twenty Thousand Dollars
" and he said S. S. Phelps made application for the record of this
" County to issue in accordance with the terms of said Rail Road
" Subscription.

" It is therefore ordered that the County Judge of this
" County issue the Bonds of this County in the sum of Twenty Thousand
" Dollars bearing interest from date of the rate of Eight per cent per
" annum payable on the first day of July 1837 & annually thereafter.

" And the said County Court afterwards at a session of said
" Court held at the County Seat of said County on the second
" day of March 1837 did order & decree to be entered of record
" in said Court the following:

" Worcester and Rockford Rail Road Company 3

" On the 1st day of June Stephen S. Phelps Esq. President of the Worcester
" & Rockford Rail Road Company and pursuant to the Court a
" Certificate from William Miller Esq. Chief Engineer of said Rail
" Road Company and ~~presented~~ certifying that the last dividend
" paid to said Worcester County up to the first day of
" January 1836 amounted to the sum of Fifty nine Thousand
" Three hundred Dollars (\$59,000) - and he said S. S. Phelps made app-
" lication for the record of this County to issue in accordance with
" the terms of Subscription to said Rail Road Company.

" It is therefore ordered that the County Judge of this County
" issue the Bonds of this County in the sum of Eighteen Thousand
" Dollars (18,000) bearing interest from date of the rate of Eight
" per cent per annum payable on the first day of July 1838 and
" annually thereafter."

And the said County Court afterwards at the regular September Term of said County Court did order to wit on the 9th day of September 1837 the said County Court did order cause to be entered in said Court the following

Warren and Rockford Rail Road Company 3
On this day James Stephen & Phelps Esqrs President of the Warren and Rockford Rail Road Company and present to the Court as Attorneys from the Chief Engineer of said Road that they were due on said said Road in Henderson County on the first day of September last amounts to the sum of Ninety Eight Thousand Dollars (\$9800) and the said President made application for the Court of the County to issue in accordance with an engagement made with said Company.

It is therefore ordered by the Court that the County Judges of this County issue the Bonds of the County for the sum of Ninety Eight Thousand Dollars (\$9800) payable in thirty days from this date and bearing interest payable at the rate of Eight per cent per annum payable on the first day of July 1838 and annually thenceforth.

And the said County Court did at the same time order cause to be entered of record in said Court the following;

Ordered that a Sum of thirty cents or each cent hundred 3 Dollars valuation of taxable property real and personal be laid to pay the interest due July first 1838 on the Bonds of this County issued to the Warren and Rockford Rail Road Company.

And a Writ of Habeas Corpus of said County Court issued to the County Jail of said Henderson County. And on the 25th day of January 1838 the said County Court did order cause to be entered of record in said Court the following;

On this day presented to the Court by James Stephen & Phelps Esqrs and 45 others present to the Court an order authorizing the County Judges to receive and issue the same Bonds submitted to the Warren and Rockford Rail Road Company and also to issue them from

"the payment of the tax bond for the payment of the interest on the
"bond that have already been issued. which petition was allowed and
"the Court being fully advised in the premises. It is ordered that
"a writ of an order be issued by the Court on the 2^d day of March
"1858 authorizing the County judges to cause the issue of
"said County for the sum of one hundred thousand Dollars in
"payment of said Principal Shares to the Capital Stock of said
"Rail Road Company and is hereby recorded and that
"hereafter as and to be issued to said Rail Road Company by
"this Court or under its authority (admitted unanimously)

"And it is further ordered that an Order of this Court made
"at the September Term 1857 authorizing a Sum of Fifty Dollars on
"the 1st day of March 1858 to be levied upon the taxable property in this County for
"the year 1857 to pay the interest due July 1st 1858 on 87500th of the
"bonds of this County already issued and directed to said Rail
"Road Company be hereby confirmed and it is ordered that the
"Collector General is hereby enjoined not to collect said tax as
"carried out in the tax Books for the year 1857 which said tax
"is hereby annulled.

"And the said County Court adjourned at as
"Term of said Court held at the County Seat of said Washington County
"March 1st day of March 1858 did cause to be entered of
"record the following

"Whereas and be it remembered that said Rail Road Company
"did send of Stephen S. Phelps as President of the same
"President Rail Road Company for bonds of the County of
"Washington in the State of Illinois amounting to \$250,000 payable
"in full years after the date thereof and bearing interest
"payable annually in ~~part~~ part payment for the sum taken by
"said County in the Capital Stock of said Company and on the
"offer of E. H. Williams Secretary of said Company as such bonds
"to this Court Certificate to the County expressed for stock in the
"Capital Stock of said Company amounting to \$23,000 and within
"said County to stock in said Company amounting to \$23,000. and said
"bonds amounting to \$23,000 should be paid to said Company by said

" Petitioner having as such security issued and delivered to his Clerk
 " warrants to said County Courtmaster to pay to said petitioner
 " Bonds to Stock in said Company amounting to \$5000 which said
 " returned Certificate was signed by the Court for and for the
 " return and receipt of said Clerk in consideration of bond of
 " said County Judge's Clerk, then of the date then and bearing
 " right for and interest payable annually amounting to \$3000 being
 " now before said Court by order of the County Court
 " said County and on the evidence adduced by said Clerk as
 " President of said Company, in behalf of said Company, setting
 " said Company to the time of said amounting to \$2500. do
 " he Clerk under said Evidence the Court refuse to in body in the
 " order. And now this Court after hearing the evidence adduced
 " in this case and being sufficiently advised of the matters and
 " things contained in said application for the issuing of the
 " bonds of this County for the sum of \$5000 in addition to \$5000
 " of bonds already issued it is ordered by the Court that said
 " application be granted it of him self to pay or issue said bonds
 " to said Rich Road Company."

1st That in pursuance of the said
order of said Court, said ~~has been~~ alleged, and in pursuance
of full compliance with the Statute, in such case made, and pro-
vided and upon due notice as in the Statute in such case was
is provided, at the proper Station in said County, for County
opinion, not less said Henderson County on the Tuesday next
after the first Monday of December 1850, the voters of said Hen-
derson County did vote upon the Question then & there so submitted
to them, for and against the said County of Henderson subscribe
to the Capital Stock of the said Tennessee & North East Coal
Company, the sum of Thousand Dollars, payable in the hands of
said Henderson County, payable in yearly shares and having there-
at each year for certain, payable annually, and that of such
number, which in the number of 1, the said was said and
said for and that the number of votes for said subscription

was Jim Hunsbuds and family then and that the number of votes
cast at said Election against the said Subscription was one hundred
and twenty seven and that a majority of the votes of said Hunsbuds
said family taking in the Standard the votes for County Officers
cast at said General Election did at said Election vote for said
Subscription.

That afterwards the said County Court did cause to
be subscribed on the behalf of said Hunsbuds County
to the County Judges of said County Court, and the Board of
said Corporation, to the Capital Stock of said Corporation and
said Road Company ten or the second day of December 1855
at said County of Henderson in pursuance of their said order afore-
said of the said Term of the said County Court held on the
said second day of December 1855. Ten thousand shares of said
Capital Stock (the said shares being one hundred Dollars each)
and amounting to the sum of One hundred thousand Dollars
payable in the bonds of said Henderson County payable as
aforesaid and bearing the annual interest aforesaid.

That afterwards the said County Court did cause to be issued
said bonds of said Henderson County in pursuance of the determi-
nation of the aforesaid Order each and the same to be delivered
to the said Corporation, in payment of said Stock so subscribed
at first to the amount of Ten thousand Dollars and for
some did accept & receive from said Corporation Certificate of
said Stock in the amount of Ten thousand Dollars.

That at the time of the issuing of said Order of said County Court
at the said session Term thereof 1855 the said Corporation had
made payments and calls of all Subscriptions yet public & pay-
able to the Capital Stock of said Corporation the full amount of
their Subscriptions excepted by and that the same was fully and entire-
ly able to the full amount thereof and that then & there the said Corporation
did present & exhibit to said County Court of Henderson County the
Certificate of the Chief Agent of said Corporation's Rail Road
Company that said Eight thousand Dollars of stock in the said
Rail Road within said Henderson County had been here.

And that afterwards at the said March Term of said County Court
A.D. 1888 the said Corporation presented to said Court the Certificate
of the Chief Engineer of said Corporation showing that thirty eight
thousand Dollars had been expended by said Corporation in work
within said Henderson County, in the building of said Rail Road
and ordered by said Court Certificates of said Stock in said Corpora-
tion to said Henderson County amounting to the sum of Twenty
thousand Dollars the balance of said thirty eight thousand
dollars to be as aforesaid ordered to be received as aforesaid for Stock subscri-
bed as aforesaid by said Henderson County in said Corporation
and respectively demanded of said Court the Judge Judge Clerk Henry R. Rode
of said Henderson County in payment thereof to the amount of said Twenty
thousand Dollars. It was then and there ready & willing to deliver to
the said County Court. Certificates of said Stock in said Corporation
to said Henderson County amounting to the sum of Twenty Thousand
and Dollars the balance of said Thirty eight thousand Dollars
subscribed upon the Order in payment thereof of Bonds of said
Henderson County amounting to said Twenty thousand Dollars
and was then and there ready & willing to do so - but the said County
Court of Henderson County and the Judge and associated clerks
being refused to give up to the said Corporation in payment of
the said Stock in said Corporation as aforesaid subscribed
by said Henderson County and Court. Therefore of the said County
and the same date ought and ought to do.

That the work on said Rail Road actually done in the building
of said Rail Road within said Henderson County amounted to twenty
one hundred thousand Dollars and that at the time of the
demand & order aforesaid the same work actually done & expended
in the building of said Rail Road within said Henderson County
amounted to twenty one hundred thousand Dollars.

That Richard W. Beckley at the time last aforesaid was and now is
Judge of the said Henderson County Court. that Charles Johnson and
Walter C. Paul at the said time were and now are associate judges
of said Court and that Charles S. Brown at said time was and

was Clerk of said Court all of whom reside at said County of
Henderson

That the said Corporation is endeavoring to build complete & operate the said Road aforesaid & is soliciting private & Corporate Subscriptions to the Capital Stock of said Company Standing open to be paid to, & forwarded only by such mode & within time limits as the public dispatches - that over four hundred & thousand Dollars of such private & Corporate Subscriptions to the Capital Stock of said Corporation have already been reported in the building of said Rail Road - that Contracts of said Corporation with private persons for work done on said Rail Road are now in progress & that the said Subscriptions of said Standing County is necessary to pay the debt of said Corporation & preserve the said work & satisfactions.

We therefore being willing that due and speedy justice be done to the said Woman & Rockford Paul Bond Company, in this behalf command you that the said Richard Whelpley, Judge of the said Circuit Court, Abraham Johnson & Melgar O Paul, clerks of said Circuit Court & Charles S. Connor, Clerk of the said Henderson County Court, that immediately after the receipt of this writ, receive, create and deliver to said Woman & Rockford Paul Bond Company, said Bonds above mentioned, or that you be and appear forthwith before the Justices of our Supreme Court in session at Ottawa and show cause if any you have, why you and how you shall execute this our Commandment to the Justices of our said Supreme Court upon or previous at Ottawa on the twentieth day of May 1838, together with this writ."

Spal,

Witness the Hon^{ble} John D. Edgar Chief Justice of our
Said Supreme Court & the Seal of Said Court at
Albany this 5th day of May 1858

Delaware

Book of the Superintendant
By J. B. Davis, Sept.

And afterwards to wit on the Eleventh day of May AD 1838 the same being one of the days of said April Term of said Supreme Court Judges Richard M. Packer, George H. Johnson, William C. Pratt and Charles J. Jones the said respondents by their Attorney William H. Bond and filed their Answer to said Alternative writ of Mandamus of which substance to said Alternative writ of Mandamus the following substance is in the words and figures following to wit: "6th. These respondents further state and show that the estimate of work done on the road of said Road in Henderson County on said 1st of September and on said 1st of September is by said estimators who have perjured the same to be made for the purpose of Cheating and defrauding the County of Henderson - that all the work actually done on said Road does not exceed the sum of Fifty Thousand (\$50,000) Dollars which is well known to the said estimators."

And afterwards to wit on the Twelfth day of May AD 1838 the same being one of the days of said April Term of said Supreme Court Judges the same and took said said Road the said estimators by Joseph Skinner Counsel for said estimators and filed their Answer to the said Alternative writ of Mandamus which said answer is in the words and figures following to wit:

In the Supreme Court?
 Chancery Term 1838

The People of the State of Illinois, as plaintiffs
 of the road & back road Road Road (expansive)

is
 Richard M. Packer & others

Mandamus

And now come the plaintiff and says that by reason of the matter and things in the return of Defendants contained or any of them, the County of Henderson is liable of having a perjury writ of mandamus return home they say that the same are sufficient in law to carry the matter in said writ contained before the jury for judgment.

By Joseph Skinner
 for the Plaintiff

And afterwards took on the nineteenth day of May 1838. the same
being one of the days of said April term of said Supreme Court
the following order was made by said Supreme Court and entered
of records which said order is in the words & figures following to wit:

Sup. of the State of Illinois, our relation
of the Union & Real Estate, Real Estate Company

vs
Richard M. Gentry, Joseph Gibson
Steger (plaintiff) and Charles (defendant)

Shawmut

This day came out for hearing
the sufficiency of the return of Defendants to Alternative writ of
Habeas Corpus, upon demand by said return, and the Court
being sufficiently advised, said Court ordered that the matters
in said return set forth be true. That the "Witnesses of work done on
the line of the said Court in said return contained in said return
County, are false and fraudulent, and tending to prove by said de-
fendants and persons by said return to be made for the purpose
of cheating and defrauding said County of Madison County!!
And that all the work actually done in the said County in said
said return, does not exceed Fifty Thousand Dollars. And sufficient
in law to bar the plaintiff from raising and obtaining a new return
work of Mandamus herein. And as to said return, it is a bar
to the plaintiff the same to be proved or not. And as to the other
matters in said return set forth, the same Court ordered a new
return in law to bar the plaintiff herein. And said Court
writ of Mandamus herein.

And afterwards to wit on the nineteenth day of May 1838.
Came the said return by C. S. Shinnick and Attorney and filed
his Application to the said return to said Alternative writ
of Mandamus which said Application is in the words and figures
following to wit.

In the Supreme Court
Ottawa Term 1858

The People of the State of Illinois on the motion
of the Comrs and Respondents Carl E. D. Campbell

vs.
Richard M. Bishop Comr. Judge of Madison
County Court Illinois Compt. General and
Nathan C. Buff Compt. General of said Court
and Charles Green Clerk of said Court

Sheweth

That said Comr. and the Compt. General
and for application to the action of the Respondents made to the
Compt. General of Madison County, Illinois and says "specifically" and
because they say: that the estimate of work done on the line
of the said Rail Road in said Madison County is said to be
Compt. General not false and fraudulent and known to be so by said
Compt. General and was not procured by said Compt. General for the
purpose of cheating and defrauding the said Court of Madison
County and the said Compt. General does not actually deliver said Compt.
on the said Rail Road does not send said Compt. General
before the Compt. General that in truth and in fact the work actually
done in said Rail Road in said Madison County and not
back of said Rail Road Company, the latter according to the terms
of said Contract and order thereon and charges done by said
Company, the latter does amount to nearly seven thousand
dollars to say nothing of the interest and of the interest
and put themselves upon the Compt. General

Charles Green

Attorney for the Respondents

And therefore since the said Compt. General and said
said application is, adding, their similar, which said similar
in the enclosed form of the said

And the Respondents do the like

Charles Green for Respondents

this order to make and fulfil under seal of this Court and the
same duly transmit without delay to the said Circuit Court of
Windsor County Illinois for the trial of said issue and return of
the finding thereon. And it is further ordered that said Court in
which such issue may be tried in cases such as are to be found for the
caption the said Western Rockford Coal Road Company versus
Jury finding precedent to assess the damages the said Walter
Hall has sustained by the wrongful withholding of the goods in
said Alternative writ mentioned and the same with such finding
drag along to this Court.

State of Illinois, Supreme Court,
First and Second Divisions of said State

The People of the State of Illinois, on the relation of
the Western Rockford Coal Road Company

Richard M. Peckham, County Judge of Windsor
County Illinois, Charles J. Peckham, County
Associate Justice of said County & Charles S.
Carrington, County Clerk of said County

Fiducia for Alternatives
writ of Mandamus.

I, George S. Taylor, Clerk
of said Supreme Court do hereby certify that the foregoing is a
full, true and correct transcript of the Alternative writ of Mandamus
issued in the above entitled case & of the return numbered Sixty of
the return to said Alternative writ of Mandamus of the Jury in
said cause to said Alternative writ of Mandamus and of the objection
to the said return numbered Sixty of said return and of the Substitution
to said objection and of all of the orders of said Supreme Court
made in the above entitled cause and that the same appear in the
records and files of said Supreme Court. In witness whereof I have
signed at any hand and affixed the seal of said Supreme Court at
Chicago this 20th day of May A.D. 1858.

(Seal)

I, Edward, Clerk of said
Supreme Court by go her
Copy

To the Honorable John V. Thompson Judge of
Fifth Judicial Circuit

Your Petitioners the Warsaw
and Rockford Rail Road Company respectfully ^{represent}
that they fear that they will not receive a fair
trial of the case if
the People of the State
of Illinois on the relation
of the Said Warsaw and
Rockford Rail Road Com-
pany

Petition for Alternative
Writ of Mandamus

vs
Richard W. Richy County
Judge of Henderson County
Illinois, Asahel Johnston
and Melzer C. Paul as-
sociate Justices of Said County
and Charles Llewellyn Clerk
of the County Court of Said
County

On the Circuit Court of the County of
Henderson aforesaid on account of the Wrongdoings of
the Inhabitants of Said County against Said Company
Wherefore Your Petitioners pray a change of venue
for the trial of Said Cause

Warsaw and Rockford Rail
Road Company

By E. A. Shinnick & Son
their attys

State of Illinois
County of Menard

W Stephen W Phelps after being
first being duly Sworn upon oath State that the
Matters contained in the within Petition are true
and that I fear that the Company therein named
will not Receive a fair trial of the Cause therein
named in the Court therein named an account
of the Prejudice of the Inhabitants of Said County
against Said Company

Sworn to and Subscribed
before me this 26th day of
May A 1858

Stephen W Phelps
Hough B Thompson
Clerk

The People of the State of Illinois
on the Petition of the Warsaw and
Rockford Rail Road Company

Richard W Rechy County Judge
of Menard Et al

Petition for
Attachment
of Moneys

To the Clerk of the Circuit
Court of Menard County
State of Illinois

Whereas application ^{being on this} ~~has~~ this day been made before
the undersigned John S Thompson Judge of the Tenth
Judicial Circuit of Said State at his Chambers in
the Town of Alton in Said Circuit by the Warsaw
& Rockford Rail Road Company applicants by Pet
ition in Writing verified by Affidavit which is herewith

Returned Marked, A. for a change of venue in the above entitled cause on account of the Prejudice of the ~~Said~~ Inhabitants of Said County of Hancock against Said Company and it Satisfactorily appearing to the undersigned that due notice of the application for change of venue has been given to Said defendants and it Satisfactorily appearing that sufficient cause doth exist for the granting of Said change

Whereby allow the same and order that the venue in Said cause be and is changed from the Said County of Hancock

And it further ~~appearing~~ Satisfactorily appearing that the convenience of Parties would be materially promoted by awarding Said change of venue to the County of Hancock in Said State

And therefore ^{hereby} order and award a change of the venue in Said cause to be changed to the Said County of Hancock and direct you the Said Clerk to make out and transmit forthwith to the Clerk of the Circuit Court of Hancock County a full and complete Transcript of the Record in Said cause together with all papers appertaining thereto Dated this 27th day of May A 1858.

John L. Thompson

Few Clerk Supreme Court

Making out Transcript

\$ 12 50

Hugh S. Thomsen Fee

Filing Transcript & Taking affs 10

15

Making out Transcript

8 00

Ent Just for tests 25 Dec Ent 10

35

Makes Ent Bill tests 30 Copy 25

40

Bill & Seal 35

\$ 21 90

State of Illinois
County of Henderson, I, Hugh L. Thomson Clerk of the
Court of said County
do certify that the within is a true Transcript of
the papers now on file in my office and also a correct
copy of my fee Book in the above entitled Cause
Given under my Hand and the Seal
of said Court this 28th day of May
1858

Hugh L. Thomson
Clerk

The People of
the State of Illinois
- in on the relation
of the W orred
of the W orred
W R R Company
W R R
Richard W
Rehney & others

Filed May 31st 1857
J. R. Davis Clerk

" State of Illinois }
" Hancock County } Sch.

" Please before the Honorable Joseph Sibley
" Judge of the Fifth Judicial Circuit
" of the State of Illinois, At a Circuit
" Court begun and held at the Court
" House in Carthage on the last
" Monday in the month of May in
" the year of our Lord one thousand
" Eight Hundred and fifty Eight
" It being the thirtyfirst day of said
" month,

" Present the Honorable.

" Joseph Sibley Judge &c.
" Calvin A. Harrow States Attorney
" Squire R. Davis Clerk
" Benjamin G. N. Clarkson Sheriff

" The People of the State of Illinois } Special Issue
" on Relation of the Warsaw & Rockford } of fact from the
" Rail Road Company } Supreme Court.
" vs } Mandamus. } on change of
" Richard H. Richey County Judge of } venue from
" Henderson County Illinois. } Henderson
" Asahel Johnson & Melgar C. Paul } County.
" Associate Justice of said County }
" and Charles J. Cogan County }
" Clerk of said County.

and afterwards to wit on the aforesaid
thirtyfirst day of May A.D. 1858. an order was
entered of Record in the foregoing cause which
said order is in words and figures following
to wit:

" This day came the defendants and entered
their appearance in the cause and issue in

" this Court and moved the Court for a continuance
" herein for want of time to obtain testimony, and
" affidavit being waived the Court on hearing the
" defendants, sustain said motion and this
" cause is continued to the next term of this Court.

" State of Illinois

" Hancock County, &c.

" Pleas before the Honorable Joseph Sibley Judge
" of the Fifteenth Judicial Circuit of the
" State of Illinois. At a Circuit Court.
" begun and held at the Court House in
" Carthage on the first Monday in the
" month of October in the year of our
" Lord one thousand eight hundred
" and fifty eight it being the fourth day
" of said month.

" Present the Honorable

" Joseph Sibley Judge &c.

" Calvin A. Harris State Attorney

" Squire R. Davis Clerk

" Benjamin V. McCluskey Sheriff

" The People of the State of Illinois

" on Relation of the Warsaw & Rockford

" Rail Road Company,

" vs.  Mandamus

" Richard M. Richy County Judge of

" Henderson County Illinois, Asahel

" Johnson & Melgar lePaul associate

" Justice of said county and Charles

" A. Cowan County Judge of said

" County

and afterwards took on the seventh day of

October 4th 1858 at a regular term of the Hancock
Circuit Court then held as aforesaid an order was
entered of Record in the foregoing cause which
said order is in the words and figures following
to wit:

" This day came a Jury twelve good and lawful
" men of said Hancock County to wit: Henry Berner
" W^m O'Dell, William S. Williams Mathew Gray
" Thomas Jones, Levi Williams Charles H. Parker,
" John White, Rice L. Williams, Marion House
" H. Perkins & Samuel Harris to try the Issue of
" fact herein joined, who being duly empanneled
" and sworn the said Issue to well and truly
" find according to the Evidence, who after hearing
" the Evidence returned the following Verdict
" We the Jury find the issue for the Plaintiff and
" that the work actually done by the relator the
" Warsaw & Rockford Rail Road Company
" on the said Warsaw & Rockford Rail Road
" in the said County of Henderson, amounts
" to the sum of One Hundred Thousand
" Dollars in manner and form as in and
" by the replication of the Plaintiff to the return
" of the defendants herein is set forth, and alleged
" and that the Estimate of Work done on the line
" of said Rail Road in said Henderson County,
" are not false, and fraudulent: and that
" the said Replication to said return is true.

It is therefore ordered by the Court that the
issue aforesaid found together with the
Record and orders of this Court herein and
the record of the Supreme Court filed in this

" Cause etc. Change of venue from the County of
 " Henderson, be by the Clerk of this Court certified
 " to the Supreme Court of this State from whence the
 " said issue came for trial in the Circuit Court.
 " And it is ordered by consent of Parties that the
 " Relator, the Warsaw & Rockford Rail Road
 " Company pay the cost in this Court taxed and
 " that the defendants, have execution therefor
 " against said Warsaw and Rockford Rail Road
 " Company,

The following is a bill of cost in the foregoing case
 Plaintiffs costs,

Clerks fees deans, filing 1 paper 5. Ent. p. l. & attys ap. 10. D. & C. suit	.20
2 times 20. Ent. ord. imp. 8. May 10 Call & hearing	.40
June 16. Ent. verdict 10. Make & Ent. bill of cost 30.	.55
	\$ 1.15

Defendants costs,

Clerks fees deans, Ent. depts. & attys ap. 10. ord. infra contin 20.	.35
ord. last's form 20. Ent. ord. for p. d. 20. Ent.	.40
June 25, Sat 15. Make & Ent. bill of cost 30	.70
	\$ 1.45

State of Illinois
 Hancock County, 3^d Sch.

I Lamine R Davis Clerk of the Circuit
 Court in and for said County & State hereby certify
 that the foregoing is a true perfect and complete
 transcript of the record and proceedings in the
 foregoing entitled cause as the same now appear

62
People of Illinois et al

vs $\frac{3}{4}$ Mandamus

Richard H. Richey et al

Filed April 17. 1859

L. Deland
Clerk

Pres for Record \$1.25
Paid By, C. B. Skinner

4284-113

adherent in this court.
In testimony whereof have hereunto
set my hand and affixed the seal of said court
at my office in Chicago this 10th day of
February A.D. 1859.

Jennie R. Davis Clerk
By Wm Manning Deputy

The People of the State of
Illinois on the relation of
the Warsaw & Rockford
Rail Road Company

vs

Richard W. Riskey
Asahel Johnson
Melzer & Paul &
Charles S. Cowan

In the Supreme
Court of the
State of Illinois
April Term
1858

And now comes the
said respondents and show cause
why a final Writ of Mandamus
should not issue against them in
compliance with the prayer of the
Alternative writ granted herein &
make return to said Alternative Writ as follows
1st Said defendants say that by &
under the Constitution and laws of the
State of Illinois, the County Court of
Henderson County is a Municipal
corporation; having power and authority
to subscribe stock to Rail Roads when
the same has been voted by the people
of the County, and to issue bonds to
pay for such subscription by and
in pursuance of a legal order

made by said Court and entered upon
the records thereof and in no other manner
and that these respondents, either separ-
ately or collectively have no power
or authority conferred upon them by
law or any order of said Court to
issue the bonds called for in said
Alternative Writ, and that said Bonds
can only be issued by the County
Court of Henderson County, while
acting as a Court, and cannot
be issued by these respondents, and
they insist, that for want of such
power and authority this proceeding
against them should be dismissed
and that said Writ should be issued
if at all against the County of
Henderson

2. Said respondents further say that the vote of the people of Henderson County, and the subscription of stock by said County to the relators Rail Road was made had and obtained upon the following conditions ~~viz~~ upon the part and behalf of the said relators ~~viz~~

1st It was agreed by and between said relators and said County before the vote of the people of said County was taken upon such subscription, and before such subscription was made by said ^{County} and was a condition precedent to such vote and such subscription, that said relators that ~~such the Bonds~~ would not call for said Bonds in payment of such subscription, and that said Bonds should not be issued in payment of said subscription until said relators should furnish satisfactory evidence to said County Court of Henderson County that said relators rail road would and should be completed from the Town of Warsaw in the County of Hancock to the

Town of Port Byron in the County
of Rock Island in said State within
four years from the issuing of said
Bonds, and that said Company would
pay the interest upon said Bonds
until said Road should so be
completed as aforesaid,

And said respondents further
say that said relators have not
furnished satisfactory evidence to the
County Court of Henderson County
that their Rail Road would or could
be finished from Warsaw to Port
Byron ^{within four years} as aforesaid, from the issuing
of said Bonds, nor have they furnished
satisfactory evidence to said Court
that they would pay the interest on
such bonds until said Road should
so be completed as aforesaid, Nor
has said road ever been completed
from said Town of Warsaw to said
Town of Port Byron

3 And for further return to said
Alternative Writ and as a reason
why the final Writ should not issue
herein. these respondents say that
the vote of the people of Henderson
County in favor of said subscrip-
tion, and the subscription by the
County Court of said County was
obtained by fraud and circum-
vention upon the part of said relation
in this

Said relation in order to ob-
tain ~~a vote~~ said subscription and a
vote of the people aforesaid in favor
thereof did falsely fraudulently and
corruptly publish and cause to be
published in writing, and circulated
throughout said County of Henderson
immediately before the vote was taken
for and against such subscription
the following false fraudulent and
corrupt orders ^{for Resolutions} purporting to have been
made by the Board of Directors
of said Company ~~viz~~ at a meeting
of said board legally held on the
18th day of October A.D., 1853
~~viz~~ -

" Resolved That this Company will
" pay the interest on all County and
" City Bonds subscribed and paid
" into this Company until the road
" is completed and in running order

Whereas in truth and in
fact said ~~Company did not~~
Board of Directors did not pass
said order, and by reason of such
false publication and circulation
so made as aforesaid, ^{a majority of} the people of
Henderson County were induced to
vote in favor said subscription
and said County Court was in-
duced to subscribe for one hundred
thousand dollars of stock in said
relators Company when said voters
would not have voted in favor of
such subscription but for such
false and fraudulent publication
nor would said County Court have
subscribed any stock to said
Rail Road but for such false
fraudulent and corrupt publica-
tion so made as aforesaid by said
relators

4. And said respondents for further answer set forth and return that said vote of the people of Henderson County and said subscription by said Court were obtained by fraud and circumvention in this

That immediately before the vote was taken for and against said subscription by the people of Henderson County aforesaid said relators caused to be published and circulated the following hand bill, or circular containing separate and distinct assertions, all of which are and were false fraudulent and untrue and by reason of the publishing and circulating of said hand Bill or Circular a majority of the Citizens of Henderson County were induced to vote & did vote in favor of such subscription when in truth & in fact they would not have so voted but for such false & fraudulent representations, nor would the County Court have made said subscription but for such false & fraudulent representations, & the same were well known to be false & fraudulent by said relators, when they were made

WARSAW AND ROCKFORD RAILROAD.

To The Voters of Henderson, Mercer and Rock Island Counties.

The voters of Mercer, Henderson and Rock Island counties will soon be required to decide a question of great importance to their interests.

The Railroad System is making rapid strides in this, as well as in other countries; and so profitable has it proved to Farmers and Capitalists, that charters are everywhere sought for; and to such an extent is it carried, that a very just alarm is being felt, from the fear of overdoing the matter.

This Road claims your attention,

FIRST—Upon the general advantage of all others. For, by its connection with other Roads, it becomes part of the great system of rapid intercourse with the East and South, whereby much time and expense is saved; Railroad speed being from 30 to 50 miles per hour, at a cost of about two cents per passenger or ton per mile, whereas stage or wagon transportation is from 4 to 7 miles at an expense of six cents per mile—and steam boat, from 6 to 15 miles per hour.

Then again, the nearer Railroads from the East have approached the Mississippi river, the higher has become the price of Farm productions.

Every Farmer who has lived in this section ten years, must have observed the increased tendency to high prices, during the latter part of this period; and the more active demand for his productions.

Why should corn be worth sixty cents at Chicago and twenty-five on the Upper Mississippi? and wheat \$1.20 at the one place and 60 to 80 cents at the other? It would only cost from 12 to 16 cents to carry either of them to Chicago by Railroad. Consequently, with your Eastern Roads completed, the price of every article produced by you must rise.

Now, what is the peculiar object and design of the Warsaw and Rockford Railroad? It is,

FIRST—To give you a market at Saint Louis and New Orleans, to compete with the Chicago market.

Already do we find prices at St. Louis equalling those of Chicago; whereas, while St. Louis, from the want of a competing market, was flooded with produce from the Illinois, Mississippi and Missouri rivers, prices were invariably low.

SECONDLY—As the ice and equinoctial storms virtually close the Lake navigation, much sooner than the Mississippi, this Road gives you a longer water communication from Warsaw down.

THIRDLY—Citizens of Missouri have organized a company to connect by Railroad a point opposite Warsaw with St. Louis, and the work on a portion, has been commenced. From St. Louis there is water communication southwardly at all seasons.

By our Road, then, at all times, whether it be winter or summer, high or low

water on the Rapids, the Farmer and the Merchant can cheaply and rapidly send his produce to market.

The price of your productions will only differ from their value in St. Louis, by the cost of transportation and sale—and the chances of getting to market and its value at a future day, will not enter into the Merchant's calculation—thereby will grow up a solid, substantial and not that speculative business, by which some Farmers, as well as Merchants, have heretofore been ruined.

It is the Farmer who has been paying the immense cost of crossing the Lower and Upper Rapids. He has been paying it, in the lower price of his grain, and the higher price of his salt, sugar, iron and other merchandize. From one dollar to one dollar and thirty cents per hundred pounds, is now the freight on goods coming over these Rapids. This, the Merchant in the first instance pays, and then to make a living, he must charge it to you.

But to any argument here advanced you may answer, that you are afraid of taxation, and that you are paying high enough taxes already. To this we reply, that we are placing the means in your hands to pay your taxes more readily than ever—

FIRST—By the higher price your produce brings under the Railroad System.

SECOND—By the cheaper price at which you can obtain goods.

THIRD—By adding to the taxable property of your county—the Road itself being taxable up to its value—and by increasing emigration and the improvement of lands, which follow, enlarging the area of taxable property. You are required to subscribe one-third the cost of the Road. By taking \$100,000 in stocks yourselves, foreign capital is then contributed to the extent of \$200,000. You thereby add \$200,000 to the taxable property of your county. A large portion of the subscription is expended within your limits, and adds so much to the general wealth of the inhabitants.

But suppose for a moment your taxes were increased. Do you not tax yourselves to make your ordinary farm and market roads, because they are of an advantage to you? Then why would you not be willing to tax yourselves and non-residents for a Railroad, which gives you much cheaper transportation and a higher market; your corn being nearly doubled in value, and your wheat enhanced at least twenty per cent. For instance, if a man has 1000 bushels of corn, worth now 20 cents or \$200, and can get with a Railroad 35 cents or \$350, he surely can afford to pay five or ten dollars additional taxes.

In this light do the farmers in Ohio

look at the matter. For they have nine Railroads built or in progress, to traverse the State from east to west, and six from north to south; and *nearly every county in the State has taken stock.*

The counties in Kentucky and Tennessee, are taking from one to three hundred thousand dollars, and your younger sister, Iowa, is determined to keep pace with them, and \$200,000 in a single Road is voted with great unanimity. Missouri is waking up, and her counties have even voted to raise their whole subscription (not the interest only) by taxation.

You are now offered a Road running to Rockford and to Fon du Lac, crossing in its route the Galena and Chicago, the Lyons and Fulton City, the Rock Island and La Salle, the Oquawka and Peoria, the Warsaw and La Fayette; and connecting with the North Missouri, the Iron Mountain and the Great Pacific, whether it starts from St. Louis, Rock Island, Fulton City, or any other probable point.

With the view of relieving the counties from raising in the first instance by taxation, the interest on their Bonds, which it is believed, would only have to be refunded to the County Treasury, by the dividends on the Road, the Directors have requested me to make known to you the following resolutions passed by them on the 18th inst.

“Resolved, That this Company will pay the interest on all County and City Bonds subscribed and paid into this Company, until the Road is completed and in running order.”

“Resolved, That the funds derived from the county subscriptions to this Road, shall be expended within the limits of the county making such subscriptions.”

These resolutions refer only to the Division of the Road between Warsaw and Port Byron, and they are obligatory between you and the Company as your endorsers to the full extent of the responsibility of the Company.

Never has a Road been brought before the public with such favorable offers on the part of the Company, or with better promise of advantage to the farmer.—Whether it runs close to your door, or is twenty miles off, it still presents these advantages in a greater or less degree.

Be not, therefore, selfish, but afford to your neighbor all the benefits you yourself would ask, were you in his position.

Vote for the County to take stock, and let every friend of the Road consider himself one of the Committee to attend the polls the entire day, and urge the subject upon the people.

W. H. ROOSEVELT,

President of the Warsaw and Rockford Railroad Company.

Dated Oct. 27, 1853.

5, That in order to procure said subscription and vote the Directors of said Road immediately before said vote was taken and said subscription had, represented that said road was a feasible road, that it could be easily built, and when built would pay a fair dividend upon the Capital stock, all of which representations were false and untrue and are well known by said Company to be false & untrue when they were made, and these respondents charge the facts to be, that said road is wholly impracticable, and never will pay any dividend whatever upon the Capital stock, that the same never can be built, or kept up when built - that the money paid by said County has been fraudulently and foolishly expended without benefiting any one, that said Company have no hope prospect or expectation of ever building said Road or any considerable portion thereof that have in fact abandoned all idea of ever building the same

and do not expect ever to build it
from Nassau to Port Pyre as
contemplated by their Charter

That the project is foolish
chimerical, impracticable and unprof-
itable, and if the remaining twenty
five thousand dollars of Bonds
called for by the Relations shall
be issued, the same will be divided
out among the members of the
Company, and will not be so
expended as to benefit the County
of Henderson or the people thereof

6. These respondents further state and show that the estimates made of work done on the line of said Road in Henderson County are false fraudulent and untrue and are known to be so by said relators, who have procured the same to be made for the purpose of cheating and defrauding the County of Henderson — That all the work actually done in said County on said Road does not exceed the sum of Fifty thousand dollars, which it well known to said relators.

7. The An for further return to said
Wm. said respondents say that it is
not true that the relators have hands at
work upon the line of said Rail Road
but on the contrary assert the fact to
be that said Company have entirely
abandoned all work along the line
of said road and upon said road
that no hands are now at work
thereon and that none has been done
for several months past, nor will any
more ever be done, in the opinion of
your respondents. That nearly
four years has elapsed since the first
issue of Bonds to said Road by the
County of Henderson and yet no part
of said road has ever been completed,
nor is there any prospect or probability
that any portion of it ever will be
completed but on the contrary all hope
prospect or probability of completing
the same has been abandoned by said
Company and the Bonds are wanted
not to complete the road or to be used
in its construction, but to divide
among needy speculators, who desire

to make money without labour ~~and~~
to speculate off from ~~forced~~ the earnings
of others

And now having fully
answered in obedience to the order
of the Court these respondents pray
to be dismissed hence with their costs
Wm. Williamson Richard W. Richey
Attorneys for Asahel Johnson
respondents Melchor C. Paul
Charles S. Cowan

And for further return respondents by leave
of Court say that said Bonds ^{+ interest thereon} were ordered to
be made payable in the City of New York, ~~whereas~~
by which arrangement the County will lose
more than three thousand dollars in making the
payments in that City, as it will cost that sum
more than it would to pay said bonds & interest in
Henderson County - And said Court had no power
or authority to make said Bonds & interest payable
in said City of New York Wm. Williamson
for respondents

Agreed & sent to return
Filed May 18, 1858
J. Deland
clerk

for People on the
relation of the Maroon
& Woodford Road Road

Richard W. Kealey
Others

Return of Respondent

227

Filed May 11 1888
J. L. Kealey

Declarer & Respondent to return

Filed May 19 1888
J. L. Kealey

And now comes the plaintiff and demands
to the amendment to the return of defendant
to the writ herein and says the same is not
material or sufficient in law to require
and further or other answer from
the plaintiff Wherefore they pray that
said amendment be quashed &c

Witness my hand
at New York

The Moundmen act or it-
now stands was Approved Jan'y 6
1827 and in force June 1st 1827.
Statutes 1833, 444.

The law as it then stood, author-
ized suits to be brought in any
County and process to be sent
to any other County. So that
Action might be brought
in any County at the election of
the Plaintiff, and the defendants
served any where.

Statutes 1833, 486 487, Sec 1.

The law was first changed
just two years afterwards.

The act of Dec 30 1828 in force
1 June 1829 ~~was~~ repealed
the law in this respect and com-
pelled victims to be brought in
the County where defendants
reside, or should be found to

Statutes 1833, 145.

When it follows that the Mound-
men act should be construed

in connection with the low or
in the flood when the water was
passed: that is the low following
visions to be brought in ~~any~~
County, without regard to
residence of defendant or
service on him in such
County.

Hence, it follows that the ~~issue~~
issue may be tried in any
Court having general
jurisdiction construing the
words of the 'warrant' out
~~with~~ according to its
effect when passed and the
supposed understanding of
it by the Legislature.

Again the same set series
damages on damages will
decide it. Can this Court
determine these damages without
jury?

Again, what is to become of
our damages from issue found
until final judgment perhaps
a year, and amounting more than
to say \$2000.?

Dividing the issue should be
has tried in this court, not
however, ~~over~~ doubting that
the court may direct the issue
to be framed in any court
of competent jurisdiction.
The short & practicable way
is trial of issue in this court
where judgment only can
be rendered. Respectfully
Submitted - O. A. K.

No. ~~777~~ 62

Addenda
in questions
as to place
of trial of
issue

The People on relation of the
Horsaw & Ruckford R R Company
vs ~~the~~ ^{the} ~~defendants~~
Rickey & others

The provision of the Statute: "Of
" issue shall be joined upon such
" proceedings, the person ~~suing~~
" suing such writ; shall and
" may try the same in such place,
" ~~or~~ ^{any} ~~the~~ issues joined on such
" action on the case should ~~or~~
" might have been tried,"
must be taken in connection
with the preceding words of
the same section: "and such
" further proceedings shall be
" had therein, and in such manner,
" for the determination thereof, (of the
" issue) or might have been
" had if the person suing ~~such~~
" such writ had brought his
" or her action on the case for
" a false return."
Now it is plain, ~~that~~ this being
an original action in this court,
that giving effect to those
last words the issue would be

tried in this Court, in such manner as the Court, under its unquestioned powers, could try an issue of fact. The truth of the return is to be tried in like manner as would an issue in an action on the Case for a false return, and involving the same material question, be tried. That is, tried as an issue of fact.

Now, where could an issue joined in an action on the case be tried? The answer is obvious. In any place and in any Court having jurisdiction of the subject-matter, where such issue might in fact be joined. The parties might appear in any Court of competent jurisdiction and join such issue, and there - in the same Court and place would the issue be tried. That is not the case, that an issue in an

3 action on this case for a false return,
~~and~~ can only be tried in the
County where the party is
found reside. Party may
be sued where found —
where served with process —
in any Court having jurisdic-
-ion, and there the issue is
tried. These defendants being
sued in one action on the
case in Cook County, is the
proper Court, and jurisdiction
of the person being obtained,
the issue ~~there~~ will be tried
in that County & Court.

If one is sued in Adams
& service obtained, another
in Kendall, another in
La Salle, and so on with
the five defendants, in case
for a false return, the
action being in form of objections,
the several issues ~~formed~~ formed
would be tried in so many
different Counties. As that
the Court wherever it may be
located, having jurisdiction of
the subject matter and having

obtained jurisdiction of the person, by appearance or service, is competent to try the issue, and it is the place, within the meaning of the Statute, where the issue may be tried.

I ask the Court this question:—

Is the Circuit Court of Henderson County the only place where an action on the case against these defendants, can be tried? ~~Answer—~~

~~Answer~~ The answer is, of course, no! Any Circuit Court is the place where such issue may be tried the Court having obtained jurisdiction of the person.

The Court will observe, that this is not a proceeding or suit against Henderson County, nor could Henderson County be sued for a false return of these persons to this writ of Monstrum

3-

mus. This is so, of course,
and without question.

I think the Court will
see on examination, that
the only sensible, or practical
able construction of the Statute
is, that the words, "in such
place" mean the Court
or jurisdiction competent
to try such issue - having
jurisdiction of the subject
matter, and no more.

The word place in legal
 parlance, is frequently used
for Court, or to denote
a jurisdiction, and in that
sense appears in the older
Statutes, very often

"By misprison of any clerk
" in any place where soever it
" be", and the words "otherwise
" than according to the writing which
" thereof remaineth in the offices,

Courts, or places, one illustra-
- tion of the position I take

See Statute Jeoffails sections
1 & 2 R.S. page 48.

6.

No change of venue could
be taken from the County
where the issue may be
sent down to be tried.

It is no suit there commenced,
and sending the case to that
person would result probably
in Miss. trial after mistake.
Costing the public much
money and ending in a
substantive denial of
justice.

I submit to the Court,
that this issue may be tried
in this Court, or any Court
having general jurisdiction,
in the State, to which they must
may be known to send the
issue for trial.

O. C. K. R. R.
for ~~att~~

777 62

The People
in relation

to
Rikey &

Mondays.

Argument
as to plan of
trial of issue

Filed May 18. 1858
Leland
att

Worow & Rockford R R Co
vs

County Judges & of Anderson
County
Suggestions on the part of the
Mountiff.

The petition shows:

- 1 The Capacity of the petitioner - a
Rail road Company, empowered
- to build and operate a
rail road from Worow to
Rockford.
- 2 That the County Court of And-
-erson County made an order
strictly in conformity with the
provisions of the Statute, for an
election in said County upon
the question, whether the County
should subscribe to the Capital
stock of said ~~Company~~ ^{Company} \$100,000,
payable in the hands of said Com-
-pany &c; that these proceed-
-ings and the election were
in strict conformity with the
Statute - setting out such proceed-
-ings in the petition.

2

And that the ^{Court} ~~County~~ caused
to be entered of record an
order, at the same time, that the
bonds should not issue until
the Court should be satisfied
that the road would be built
within four years, and that the
Company would pay the interest
on the bonds until the road
was ~~built~~ completed.

3. That the vote was taken accordi-
ngly for and against the County
taking stock, as mentioned in the
order, that is; in the amount of
\$100,000. Payable in the bonds of
the County; payable in twenty ~~four~~
~~years~~, ~~at eight per cent~~
bearing 8 per cent interest
payable semi-annually, and
which is the substantive language
of the order.

That the vote was taken at the
time of the general election for
County officers, and that a
majority of the votes cast at
such election was cast in favor

of the subscription.

- 4 That the County Court, after words, ordered the subscription to be made by the County Judge; that the same was made in pursuance of the order for the election, the vote and the order for subscription, that is: to 1000 shares of the Capital stock of said Company amounting to \$100,000, payable in the bonds of Henderson County, payable in 20 years bearing 8 per cent interest per annum - or payable semi-annually. That the order under which said subscription was made (there being two orders, the order of 2 Nov 1835 -) declared that the said order ^{was} based their order of subscription upon the fact, that they were satisfied of the ability of the Company to complete the road from Knoxville to the junction of the Peoria & Oquawka R R near Oquawka, within a time satisfactory to the Court. And

4 That they ^{directed} the issuing of bond
for 5 per cent of the subscription
£5000 ~~£~~ — and the issuing and
payment of the balance in sums
as the engineers of the Company
should certify that work had
been done in Anderson County
and ~~amounting~~ ^{equal} to the expenditure
in Anderson County, so certified
by the Engineer.
See this order

5 That, after words, from time
to time, as the Certificate of the
Engineer of work done in
Anderson County was produced,
the Court ordered the issuing
and ^{delivery} of bonds amounting to
£75,000. and paid ~~with~~ ^{delivered}
the same in payment of stock
and received Certificates of
Stock therefor. The last order
for the issuing of bond amount-
ing to £38,000, showing that
work to that amount had been
done in Anderson County.

6

That afterwards, the Company not having lifted \$23,000. of the \$98,000 ordered to be delivered, the Court chose to repudiate, refuse to issue the bonds ordered, and avoid the obligation of the bonds and of the subscription.

That upon ~~demer~~ tender of Certificates of stock stock and demand they - admitting in the order of refusal all the pre-requisites of their former orders, upon which ^{the} parties had acted - refused to deliver any more bonds whatever.

We submit that these facts entitle the relator to the writ, the road running through Henderson County vs is alleged.

The cases I find like this in the facts, one 1 Ohio Rep R 77; 11 B Monroe 143, 1 Sneed (Gen) 637; and they establish the law for ~~relator~~ relator on this petition Redfield on R R 806, 807

And the record shows due notice of this
application served 20 April 1838 and
filed in court with the petition. ^{Which notice is}
sufficient by all laws, rules, & orders then in effect
depending.

The paper of defendants filed, in
the nature of a demonstrandum and
to have the full effect of a dem-
-urrer to the petition, necessarily is
an affirmance, rendering the writ useless. #

This Court has original jurisdic-
-tion in cases of Mandamus.
The writ issues in the ~~name~~ name
of and for the People - ~~which~~
Investigative writ.

It is not an action, or
suit, in the ~~sense~~ sense of
18 section of Chapter 27 of
the Statutes.

The writ is not against
a County, but individuals,
who refuse to perform an
official duty. Neither the
People of the County, nor the
County in its corporate capacity
- City ^{name} ~~or~~ party or brought
to be subjected to an action.

2

The ~~as~~ mode of service of
the writ, when it shall be
returned and when answered,
one ~~is~~ matter of discretion with
the Court. And such has been the
~~course~~ course and usage in
this State.

1 Preble (116) 129 (176)

A writ to show cause is sufficient
without alternative writ. 11 B Monroe
144

3 Writ of mandamus is the clear remedy
in this case to compel an
inferior tribunal, or the offic-
ers, or members thereof to do
what the law requires them ~~to~~
~~do~~ a simple ministerial
duty, requiring no discretion
or judicial determination.

The following cases clearly
settle the law on this point, and one
detected no cases similar in
principle to this: 17 H 17 24 123
22 Pick 263; 7 Ligh 696;
247 Munford 132; 4 Humphrey 437;

2 Pick 414; 12 Peters 525;
 1 Cronin 137; 2 Bimby 275;
 5 Ball 548; 5 Pick 323;
 4 Alderson 147; 317; 19 Barbou 468;
 4 Aid 64; 2 ibid 397; 4 Geo 26;
 5 ibid 522; 2 Deem & 362, 482, 187;
 3 Deem 153; 1 Gil 28; 2 Gil 99. ~~And~~
 And cases before cited in portraiture.

There is no other remedy
 to obtain the bonds which
 it is the duty of the County Court
 to issue and deliver, or, in other
 words, to compel the doing of
 the official act. The C, M. & S R R
 Co vs Clinton Co, 1 Ohio Note R. This like this
and in point; to get some thing done.

4

When the Court had ordered the
election, to vote for and against
the County of Henderson subscribing
to the Capital stock of the Missouri &
Rockford railroad Company, to
the amount of \$100,000, payable
in the bonds of said County, payable
in 20 years and bearing 8 per
cent interest, payable semi-ann-
ually, the Court has done
all the law empowered it to do
 in that matter, and any and all

~~every other~~ orders, or conditions
 which it may have made beys
~~and~~ who the law authorized
 and directed, reserving to
 the Court discretionary power
 or any power not given by
 the law, are utterly void.
 Their authority was derived
 from the Statute and was not
judicial, but ministerial,
 and beyond the Statute they
 could not go. So far as the
power of the Court extended,
 so far, and to that extent only,
 is the order or record of any
 validity. This principle seems
 to me too plain for argument.
 Such is the case under all
powers, Statutes and Constitu-
tions. Wherein the record
 is not based upon the Statute,
 it is nothing. Besides, such
discretionary power may be
 abused and when exercised
 to defeat the subscription may
 operate as a fraud upon other
 stockholders, who have voted

the faith of the subscription,
standing upon the books of
the Company and without
any condition whatever.

If such discretion may
be exercised to annul the
subscription, the public and
the Company would be at
the mercy of the Court, and
constant struggles would
be ~~thus~~ introduced amo-
ny the people - at the de-
-vies, and with new incumbents
of office. No certainly could
exist, ~~and~~ the subscription
would be valueless for good
and a snare to others.

But, the Court, if any such
power could be reserved, by
have waived it by abandon-
-ing the condition and adopt-
-ing others - as being ~~illegal~~ ^{will}
It is said that the Company ~~can~~ ^{will}
complete the road to the ~~the~~
Perrier & Oyster Lake road near
Oyster Lake; and, again -
issuing bonds in amounts
equal to money expended within

Under the Company making
these, as suited the Copier of
the Court, the basis of right
of the Company.

Whatever the condition was
the Court sought to return
to the lawful order, it was
clearly abandoned, and the
Company filed their unlawful
demands, by performing
the new conditions of doing
work within the County equal,
and, as the petition shows, more
than equal to the face of the
words demanded.

This

It is too late, therefore, to setup
~~an~~ abandoned condition
even if it had any original
validity. Repudiation in
this case, is a precedent for
other counties and ought
not to be tolerated, and may
result in the loss of the money—
some \$40,000—already expended.

Respectfully

O. H. Hissner

for relative

62

The people
in relation to
Monson &
Rockford
R. R. Co

my
Purveyors

Suggestions
by Retor

Filed April 30, 1858
L. Leland
V. H.

by Jules Henderson and the
said Company greatly damaged;
that the Company are making
diligent efforts in good faith to
build and operate said road,
but cannot progress therein
so long as this case is undeter-
-mined for the reasons aforesaid, that
the work done on said road in
said Henderson County under
contracts with said Company in
truth and fact amounts to over
~~four~~ one hundred thousand
dollars; that the estimates of work
done on said road in said County
are not false & fraudulent or
made to defraud said County;

That if this suit remains undeter-
-mined until the next term of this
Court irreparable injury will be
sustained by said Company in delays
and expenses; that the Engineer
is expected to leave this State soon;
that by him ~~the proof~~ of the truth
and fairness of said estimates can
best be proved; that the Circuit
Court Court held in the vicinity
said Henderson County is in Howell
County which commences on
Monday next. All of which facts
believe to be true in substance &
matter of fact.

Subscribed & sworn to before
me this 17th day of May 4th 1858

L. Deland Clerk of the Sup. Court
by J. B. Rice Deputy

~~77~~ 62

The People ex rel the
Warren & Rockford R.R. Co.

Richard W. Richey et al

Affidavit

Filed May 17, 1888
L. Leland
clerk

1
The People vs
vs 3 Mandamus
Rush et al

Acquiescence & 22 Rotifaction
22 Conn R 448, 449, 450, 451.
16 Ala 374, 375. Found in motion.
5 Richardson 145. Void subscription
gave by acquiescence
10 Notts ³⁶⁴ Subscriber stopped by
acquiescence from sitting up
motion in evidence of
subscription.

The writ is properly directed to
the persons whose duty it is to
do the act. People vs Wilson 17 Me
12; the case against Pearson
to sign bills of exceptions, to
refused to trive & one
all against the person by his
official disruption.
The case is decided, 12 Nov 1855.
But, no act of the Court is
required. But of the Officer only.

2

Pease on R R low says, that
found in procuring the subscri-
 -ption is a defense of guilt for
 noyment; but the author's
 reasoning to hold a different
 doctrine as applied to this
 case, 6 Richardson 95.
 16 Sergt & Rowe, 144, 145 &
 146.

Pease on R R low says, 75, 76.
 Cannot defeat subscription to which
 he was party in fact, or in law.
Pease's case cited as to ground by good defense
 6 Richardson 91, 95.
 Party to be bound by terms of subscri-
 -ption & cannot show imposition
 16 Sergt & Rowe, 144, 145, 146.
 very unequivocal defense to
 subscription.

22 Missouri 299, 300-301-304
 Subscribers bound to work
 other & the public, and one bound
 according to purpose of contract.
 Remedy in equity not lost
 by defence to subscription.

25 Missouri 548-549.
 Contract of subscription with all
stockholders & cannot be
repudiated by acts of company
 or others.

24 Vermont 476, 477, 478.

Party bound by terms of subscrip-
-tion. All matters at and prior
 to subscription ~~and~~ and
irrevocable. Found to
company irrevocable.
 As to the subscription must
 be deemed bono fide &
binding according to its
terms.

13 Bill re ~~7.7.19~~ 6.7.19.
 The act of the Court ministerial
and compulsory - not discretionary.
 Subscription inducement
 to others & to be held as
according to its terms

1 Needs (Yenn?)
638-639-640 —

680-681-683 — 684 —

686

No discretionary
power - ministerial -
act under the law
alone -
act beyond the law
void. Questions concerning
relation cannot be
considered

1 Ohio State R 71— 88-89
— 105.

Low mandatory
new ministerial —
rights complete in
subscription 20

11 B Monroe 143-144
146-147-148-

Subscription irrevocable
— at ministerial 20

207 Monahan proper
remedy.

New Conditions void 20

18 Howard 331.

Equity proper plan to
compel R R Co to deliver
& protect subscribers 20

Monahan also see

Redfield in R R Co 455; 456
458 # 2 & 3

62 ~~217~~
The People
in relation

my
Richard
114

Book for
1848

Filed May 13, 1848
L. Leland
Clerk

The People of the State of Illinois
 on the relation of the Morrow
 and Rockford rail road
 Company & Moundville
 Richard M. Richey Archel Whann
 Melville Paul and Charles D.
 Brown. This day came on

for

~~to hear and determine~~ the hearing
 of the sufficiency of the return
 of defendants to the alternative
 writ of Moundville herein,
 upon answers to said return,
 and the Court being sufficiently
 advised do find and adjudge
 that the matters in said return
 set forth to wit: "that the steamer
 of work done on the line of the
 rail road in said writ-mentioned
 in said Henderson County, are
 false and fraudulent, and
 known to be so by said relations
 and were procured by said
 relations to be made for the
 purpose of cheating and defraud-
 -ounding said Henderson
 County; the sufficient in law
 to bar the plaintiffs from having
 and obtaining ~~an~~ a writ of
 stay writ of Moundville here-
 in. And as to said matters the
 leave is given to the plaintiff
 the same to ~~traverse~~ traverse
 or avoid. And as to the other

It is ordered that all the work done actually in and
 the said County on said road does not exceed
 fifty thousand dollars.

Matters in said return set forth,
the same ~~the same~~ the Court
adjudge insufficient - in law
to give the Plaintiff their said
presumptive writ of mandamus
herein.

249

The People in
Relation of
Plaintiffs
vs
Defendants
Conspiracy

Richard M. Bailey
vs
Hos.

Order

Read May 17, 1854

D. Ireland
Clerk

In the Supreme Court
Second Grand Division
April term 1858

The People of the State of Illinois
on the relation of the Warsaw
and Rockford rail road company
vs $\frac{3}{4}$ Mondoum
Richard W. Richey County Judge
of Henderson County Illinois
vs ~~Charles~~ Johnson and Melinda Paul
Associates parties of said county
and Charles Brown ~~County~~
County Clerk of said county.
It is ordered, that the issue of
fact formed herein by the
~~portion of the portion~~ of the
defendant's return to the other
notion writ herein, adjudged
by the Court good in law, and
the Plaintiff's ~~plea~~ ^{supplication} thereto
traversing the same, and
the common similiter to said
~~plea~~ ^{and} replication, be tried
by jury in the Circuit Court
of the County of Henderson
should there be no objection to
trial of said issue in said county,

truly made by affidavit, or in
case of application for change
of venue, ^{grounded on sufficient affidavit under the statute} by the statute provided,
and in case of such application,
then by jury in the Cir Circuit Court
of some other County to which
the same for such trial may
be sent by the Cir Circuit Court of
said County of Henderson or the ^{Chief of} Judge.

in vacation And such Cir Circuit Court is hereby
directed the same issue to cause
to be tried, found and returned
to this Court, ~~at the present term~~
~~of this Court, if practicable, and~~
~~if not practicably, at some other~~
~~after as may be practicable~~
~~due regard being had consistent~~
~~ly with a fair trial of said issue,~~
avoiding all unnecessary delay
and hindrance, so that said
trial and the finding of the
said issue may ~~and~~ speedily
be had, ~~and~~ made and returned
to this Court.

And it is ordered that each party
may take depositions to be read
in the hearing of said issue by
giving the opposite party ^{in writing} notice
within five days, ^{in writing} of the

large and place of taking the same;
and such depositions taken upon
such notice before an officer by law
authorized to administer oaths
and duly certified according to the
statute in such case provided, and
being relevant to the matter in
issue, may be read in evidence
on the trial of said issue.

And the ^{Chief of this} Court is hereby directed
a true transcript of the ~~same~~ ^{hearing}
alternative writ of mandamus,
of the items of the return ^{therein}
and by this Court ^{good in law}
numbered ~~LA~~ ^{LA} of the replication
thereto, traversing the same,
and similiter thereto, and of
all the orders of this Court herein
made, including this order, to
make and certify under seal
of this Court and the same duly
transmit without delay, to the
said Circuit Court of Henderson
County - Missouri, for due
trial ~~for~~ of said issue and
return of the finding thereon.
And it is further ordered that
said Court in which such issue
may be tried ^{in case such issue} ~~the same~~
~~shall be bound~~ for the return,

The said Weston & Rock first met and company
 cause the jury finding such verdict to uphold the
 damages the said Weston & Rock were suste-
 -ined by the wrongful withholding of the
 board in said other notice wit mentioned
 and the same with such finding duly
 return to this Court.

~~277~~ 62

The People
 vs
 William Rock
 and R.R. Co
 vs
 Weston
 Richey et al

Order of
 Court

Filed May 17. 1858
 Leland
 Clerk.

Wm. & Richard Ral Road Company.

At this the June term
March A.D. 1858. The Court being satisfied from the evidence before them,
that work has been done on the Village and Rockford Rail Road in
this the County of Madison and State of Illinois, in the building of said
Rail Road under contract with the Madison and Rockford Rail Road
Company, amounting to One Hundred Thousand Dollars, according to the
terms of such Contracts, and that such evidence would establish the same
upon the trial of the case of "The People of the State of Illinois, in the
petition of said Company against Richard W. Parker, County Judge of
said County and Michael Johnson and Moses C. Paul, his associates
in office and Charles S. Cowan, Clerk of the County Court of said County
pending in the Supreme Court, in and for the Third Grand Division of the
State of Illinois, do Order and Adjudge, That said writ of Mandamus
and the issue therein framed be no further defended, and that the Court
will abide such Order as said Supreme Court shall in said case make
and award in said case, And that it is the desire of this Court, that a
preceptory writ of Mandamus, in said case issue immediately requiring
among other things, that the lands for which said writ was brought be
returned immediately, bearing interest from the 10th day of March A.D. 1858
and that the Clerk of this Court, immediately make out, and transmit
to the Clerk of the Supreme Court, of said Grand Division, by the hands
of C. M. Harris, Esq. a Copy of this Order by him certified under the seal of
this Court.

Attest of Illinois
County of Madison
I, Charles S. Cowan, Clerk of the County
Court, in and for said County, do hereby certify, the above and foregoing to be
a true Copy of an Order, passed by, and entered upon the records of said Court
sitting for the transaction of County business on the 15th day of June A.D. 1858.
In Testimony Whereof I have hereunto set
my hand and the seal of said Court at
Rockford, this 15th day of June 1858.
C. S. Cowan, Clerk

62

The People ex. rel.
The Attorney & Blockford
Rail Road Co

4

Richard H. Pichey
et al

—

Copy from of
County Court of
Hudson Co.

Filed April 19. 1858
L. Leland
Clerk

Blockford

27. 62
The People on
Relation to

my Σ
Rights of

Disposition
to Return

Filed May 12, 1854
Leland
C. H.

The People on the
 relation of the Mazon
 & Rockford Rail
 Road Company
 vs
 Richard W. Richey &
 others

In the Supreme
 Court of the State
 of Illinois
 April T. 1858

Application
 for a Mandamus

It is Wead being duly sworn doth
 depose say that he is counsel for the
 defendants in the above entitled
 cause and is employed to defend
 said Application. That he understands
 the rule of practice to be that the
 defendants may appear & show cause
 why the Application should not
 be ~~allowed~~ granted — That since the
 filing of such application this
 deponent has been engaged in atten-
 ding to other cases now pending
 in the Supreme Court so constantly
 & necessarily that he has not had
 time to attend to the application
 in this case. That he desires to
 look up law & either write an
 argument or make one orally

against allowing a Writ of
Mandamus in this case.

That he is preparing to
argue the next four or five cases
to be called on the docket of this
Court in which he is counsel
& his time is necessarily and
indispensably occupied & will
for the most of this week occu-
pied in preparing & arguing
the cases aforesaid & in preparing
other cases which will be
reached before the close of the
week, so that he cannot get
time ~~now~~ to enable him to
oppose the application in this case
or to look up the law or prepare
said case properly for trial
before the last of the present week
or the first of next week, for
which reason he prays that
the hearing & consideration of said
case may be postponed until
this defendant can have time to
make his objections therein.

Subscribed & Sworn to
before me this 27th day
of April 1858
Leland Bell
by J. B. M. Deputy

J. B. M. Deed

The People } In the Supreme Court
vs. Relators } April Term 1838, 3 term
The Missouri and } Division
Rockford Rail Road Company
vs. E. Mondou
Richard W. Richey & others

It is agreed in this case that the
Alternative Writ of Mandamus shall
be made out & filed with the Clerk
& copy thereof immediately furnished
by Complainants to defendants
counsel. And that the notices
to the defendants, signed by the
Clerk, ^{but not embodying the facts} shall be served on the de=
fendants ^{by the sheriff or his deputy} by leaving with each
of them a copy of such notice,
which notice ^{or writ} is to be served in apt
time (no waiver as to the time)
being agreed to) and that such
service shall be considered a
sufficient service of the alter=
native Writ of Mandamus.

Atm Wead for
defendants
O. C. L. L. L.
Wm. H. R. R.
for relators

The People in
relation of the
Books and
Papers of
J. J. Co.

~~21~~ 62

Richard W.
Richey &
others

(Disposition)

Filed May 8, 1858
L. Leland
clerk

~~Richard W.~~
~~in relation~~
of the
Papers

~~21~~ 62

The People of

Richard W. Richey

Affidavit H. M. M. M.

Filed April 27, 1858
L. Leland
clerk

I have served the within notice by on the within
named Richard W. Richey Asahel Johnson
Melgar, C. Paul and Charles S. Conner by reading
and delivering to each said Johnson and
Paul a copy thereof on the 19th day of April
AD 1858 and on each said Richey and
Conner on this day

April 20 1858 Willson M. Graham Sheriff of Henderson
County Missouri

By Daniel P. Kimerer Deputy

I the undersigned Daniel Kimerer after first
being duly sworn upon oath to the State that I
have read and delivered to each the within
named Richard W. Richey Asahel Johnson
Melgar, C. Paul and Charles S. Conner a copy
of the within notice. ^{having served and delivered each} said Johnson and Paul
on the 19th day of April AD 1858 and to
said Richey and Conner ^{each} on this day

April 20, 1858

Daniel P. Kimerer

Subscribed and sworn to
before me this 20th day of
April AD 1858

Hugh L. Thomson Clerk of the Circuit Court
of Henderson County

Missouri

Whipple's Fee
4 copies @ .50 c 2.00
4 Writs @ .50 c 2.00
42 miles @ .05 c 2.10
returning summons 1.00
\$6.20
Willson M. Graham Sheriff
By Daniel P. Kimerer Deputy

Filed April 30, 1858
L. Deane
614

Prosser
62
The People vs
Robinson
vs 3 Prosecutors
Deborah M. Thomas

To Richard W. Pichey, Asahel Johnson &
Melzer, C., Paul. Ingers and associate Justices of
the County Court of Henderson County, State
of Illinois, and to Charles S. Cowen, Clerk
of said Court.

You and each of you are hereby
notified, that the Warsaw & Rockford Rail
Road Company will, ~~on the fifth day of the~~
next Term of the Supreme Court of the
State of Illinois, for the Third Grand Division,
to be held at Ottawa on the 19th day of
April 1858, ^{or as soon thereafter as circumstances can be had} apply to said Court for the
alternation writ of Mandamus, commanding
you or the County Court of said Henderson
County, to issue & deliver to said Warsaw &
Rockford Rail Road Company, in payment
of the subscription of ^{said} Henderson County to the
Capital stock of said Company, certain
Bonds of said Henderson County. —
Dated this 16th day of April 1858. —

Forris & Peirce
Attorneys for Warsaw &
Rockford Rail Road Company

State of Illinois for
In the Supreme Court of said
State, for the ~~Lower~~ ^{Third} Grand Division.
At the April Term A.D. 1858.

Inducting
The People of the State of Illinois, on the
relation of the "Warsaw and Rockford Rail Road
Company", a corporation of this State duly organized
under and by virtue of the Charter of said Company,
entitled "An act to amend an act entitled an act
to incorporate the Warsaw and Warsaw Rail Road
Company" approved February 10, 1849, and "an act
to amend an act entitled 'an act to amend an
act entitled an act to incorporate the Warsaw and
Warsaw Rail Road Company'", and which last
act was approved June 21, 1852, and by virtue of
said several laws of this State empowered to
locate, construct, complete and use a Rail Road
from Warsaw in the County of Hancock in this
State to the Town of Rockford in the County of
Winnebago in this State, or to any other point
intersecting with the Chicago and Galena Rail
Road in this State, and which said Corporation
so duly organized, since the year 1854 hitherto
has been engaged in the actual location, construc-
tion and completion of the Rail Road in the
said original Charter of said Corporation numbered
from said Warsaw, ^{passing} through Henderson County in
this State to said Rockford, ~~and to said Chicago
& Galena Rail Road, at said Rockford.~~

And your Relator states, that after the said

organization of said Corporation and while the same
has engaged in the actual construction & completion
of the said Rail Road, to-wit, at the regular September
^{A.D. 1853} Term, of the County Court of said Henderson County
Illinois, held, to-wit, on the 8th day of September A.D. 1853,
at the County Seat of said Henderson County. (the
said County never having adopted Township organiza-
tion) the said County Court ^{did} order and enter
of record in said Court as follows, that is to say:

" At a regular Term of the County Court of
Henderson County in the State of Illinois, held at the
Court House in Oganshaw, on Thursday the 8th day
of September A.D. 1853, the following proceedings were
had, to-wit,

" Ordered, That an election be held in this County
" at the usual places of holding elections, on the
" Tuesday after the first Monday of November next, upon
" the question, "Whether the County of Henderson will
" take stock in the Warsaw and Rockford Rail Road
" Company, in the sum of one hundred thousand dollars,
" payable in the Bonds of the County, due in twenty
" years, with eight per cent interest, payable annually,
" and that the Clerk issue and the Sheriff post up
" the necessary legal notice of such election."

" and the said Court did at the same time
cause to be entered of record thereunder the following:
" Ordered further, that such bonds shall not issue
" until said Company furnish satisfactory evidence to
" this Court, that said Road will be completed within
" four years from the issuing of such bonds, and that
" said Company will pay the interest on said bonds
" until said Road shall be completed."

And afterwards, at a Term of said County Court.
held at the County Seat of said Henderson County.
to-wit, on the 27th day of March A.D. 1854. the said
County Court did order & enter of record in said Court
the following, that is to say:

" It appearing to the satisfaction of this Court, that,
" at an election held in this County on the eighth day
" of November A.D. 1853. in pursuance of an order made
" at the September Term A.D. 1853 of this Court, to decide
" on the proposition of Henderson County subscribing for
" one hundred thousand dollars of the Capital Stock
" of the Warsaw and Rockford Rail Road Company.
" a majority of the legal voters of said County have
" voted in favor of said law.

" It is therefore ordered, that the County Judge of
" this County, for and on behalf of said County, subscribe
" for one hundred thousand dollars of the Capital Stock
" of the said Warsaw and Rockford Rail Road Company.
" and that he cause the same to be paid at such
" times and in such sums, as may be ascertained by
" said Company against the private subscribers of
" stock, said payments to be made in the bonds
" of this County, at par, payable twenty years from
" their date, to bear interest at the rate of eight
" per cent per annum, payable annually at some banking
" house in the City of New York. said bonds to be signed
" by the County Judge of this County and attested
" by the Clerk of this Court, with the County Seal
" attached thereto " -

And the said County Court did at the same
time cause to be entered of record thereunder the
following:

" Provided, that such bonds shall not issue
until said Company furnish satisfactory evidence
to this Court, that said Road will be completed

within four years from the opening of such bonds."

And afterwards, ~~and~~, at a term of said County Court held at the County Seat of said Henderson County, Ind., on the second day of November A.D. 1855. the said County Court did order & enter of record in said Court, the following:

"Harsaw & Rockford Rail Road Company"

"On this day appeared John E. Johnson Esq. one of
"the Directors and agent of the Harsaw and Rockford
"Rail Road Company, and made application for the
"subscription of this County, on the Books of said Rail
"Road Company, for one hundred thousand dollars, &
"the Capital Stock of said Company. And the
"Court being satisfied, from the statements of the said
"Johnson, of the ability of the said Company, to complete
"said Road from the City of Harsaw to its junction
"with the Provia & Oquawka Rail Road, near Oquawka,
"within a period of time satisfactory to this Court,
"It is therefore ordered, that the County Judge of this
"County, make said subscription, and that he issue
"forthwith the Bonds of the County, in the sum of
"five thousand dollars, bearing interest from date, payable
"on the first day of July 1857, and annually thereafter,
"and that he issue the Bonds of this County for the
"balance of said sum of one hundred thousand dollars,
"in such sums and at such times as the Engineer
"of said Company, shall certify, that work on said
"road in this County, to the amount of one thousand
"dollars, has been completed under his direction."

And the said County Court, afterwards, at a term of said Court, held at the County Seat of said County of Henderson, Ind., on the ^{twenty sixth} ~~second~~ day of ^{October} ~~November~~ A.D. 1855. did order & cause to be entered of record in said Court the following:

" Warsaw & Rockford Rail Road Company 3.

" On this day appeared Stephen S. Phelps Esq. President
" of the Warsaw & Rockford Rail Road Company, & presented
" a certificate from Wm. Williams Esq. Chief Engineer of
" said Rail Road Company, certifying that the work done
" on said Road in Henderson County up to the first
" day of September A.D. 1856, amounts to the sum of
" twenty thousand eight hundred dollars. and the said
" S. S. Phelps made application for the Bonds of this
" County to issue, in accordance with the terms of said
" Rail Road subscription.

" It is therefore ordered, that the County Judge of
" this County, issue the Bonds of the County, in the
" sum of twelve thousand dollars, bearing interest
" from date, at the rate of eight per cent per annum,
" payable on the first day of July A.D. 1857, & annually
" thereafter, -

And the said County Court, afterwards, at a
Term of said Court held at the County Seat of
said County, to-wit, on the second day of March A.D. 1857,
did order & cause to be entered of record in said
Court the following:

" Warsaw & Rockford Rail Road Company 3.

" On this day came Stephen S. Phelps Esq. President
" of the Warsaw & Rockford Rail Road Company, and
" presented to the Court, a certificate from William Wile
" Esq. Chief Engineer of said Rail Road Company,
" certifying, that the work done on said Rail Road
" in Henderson County, up to the first day of December
" 1856, amounted to the sum of thirty nine thousand
" two hundred dollars, \$39,200. - And the said
" S. S. Phelps made application for the bonds of this
" County to issue, in accordance with the terms of
" subscription to said Rail Road Company.

" It is therefore ordered, that the County Judge of this

" County issue the bonds of the County in the sum of
" eighty thousand dollars, \$80,000, bearing interest from
" date, at the rate of eight per cent per annum, payable
" on the first day of July A.D. 1858, and annually thereafter.

And the said County Court afterwards, at the regular
" September Term of said County Court, A.D. 1857, to-wit, on
" the 9th day of September 1857, the said County Court
" did order & cause to be entered of record in said
" Court the following:

" Warsaw & Rockford Rail Road Company }.

" On this day comes Stephen L. Phelps Esq. President
" of the Warsaw & Rockford Rail Road Company, and
" presents to the Court a certificate from the Chief
" Engineer of Rail Road Company, that the work done
" on said Rail Road in Henderson County on the
" first day of September last, amounts to the sum
" of ninety eight thousand dollars, \$98,000, and the
" said President made application for the Bonds of
" the County to issue in accordance with an arrangement
" made with said Company.

" It is therefore Ordered, by the Court, that the County
" Judge of this County, issue the bonds of the County
" for the sum of Thirty six thousand dollars (\$36,000)
" payable in twenty years from this date, and bearing
" interest from date at the rate of eight per cent per
" annum, payable on the first day of July 1858, and
" annually thereafter.

and the said County Court did at the same
" time order & cause to be entered of record in said
" Court the following:

" Ordered, that a tax of thirty cents on each one
" hundred dollars valuation of taxable property, Real
" and personal, be levied to pay the interest due
" July 1st 1858, on the Bonds of this County, issued
" to the Warsaw & Rockford Rail Road Company.

and afterwards, at a Term of said County Court held at the County Seat of said Henderson County Tenn., on the 28th day of January 1858. the said County Court, did order & cause to be entered of record in said Court, the following:

" A petition was this day presented to the Court
" by Lewis J. Brock, signed by William F. Archer and
" 459 others praying the Court to rescind an order
" authorizing the County Judge to sign & issue the
" remaining bonds subscribed to the Murfreesboro & Rockford
" Rail Road Company, and also to relieve them from
" the payment of the tax levied for the payment
" of the interest on the bonds that have been already
" been issued. - & Which petition was received and
" examined by the Court, and the Court being now
" fully advised in the premises, it is ordered, that
" so much of an order passed by this Court on the
" 2^d day of November A.D. 1855, authorizing the County
" Judge to issue the bonds of this County for the sum
" of one hundred thousand dollars in payment of
" one thousand shares to the Capital Stock of said
" Rail Road Company, be and is hereby rescinded,
" and that hereafter no more bonds be issued by
" said Rail Road Company by this Court, or under
" its authority, (adopted unanimously).

" And it is further ordered, that an order of this
" Court, made at the September Term 1857, authorizing
" a tax of thirty cents on the \$100.⁰⁰, to be levied
" upon the taxable property in this County for the
" year 1857, to pay the interest due July 1, 1858, on
" \$75,000. of the bonds of this County already issued
" and delivered to said Rail Road Company, be &
" the is hereby rescinded, and it is ordered, that the
" Collector be and is hereby enjoined not to collect
" said tax, as carried out on the tax books, for the

year 1857, which said tax is hereby remitted.

And the said County Court, afterwards, at a term of said Court held at the County Seat of said Henderson County, to-wit, on the sixth day of March A.D. 1858, did cause to be entered of record in said Court the following:

" Warsaw & Rockford Rail Road Company 3.

" On demand of Stephen P. Phelps as President
" of the Warsaw & Rockford Rail Road Company, for
" bonds of the County of Henderson in the State of
" Illinois, amounting to \$23,000, payable twenty years
" after the date thereof, and bearing eight per cent
" interest payable annually, in part payment in the
" stock taken by said County in the Capital stock
" of said Company, and on the offer of E. H. A. Pat-
" terson, Secretary of said Company, as such, to deliver
" to this Court, certificates to the County aforesaid, for
" stock in the Capital stock of said Company,
" amounting to \$23,000, and entitling said County to
" stock in said Company amounting to \$23,000.
" when said bonds amounting to \$23,000, should be paid
" to said Company, by said Patterson, having as
" such Secretary, signed and delivered to this Court,
" certificates to said County amounting to \$75,000, and
" entitling said County to stock in said Company
" amounting to \$75,000, which last mentioned cer-
" tificates were received by this Court, for and for the
" sole use and benefit of said County, in consideration
" of bonds of said County, payable twenty years after
" the date thereof, and bearing eight per cent interest,
" payable annually, amounting to \$75,000, having been
" heretofore paid to said Company by order of the
" County Court of said County, and on the evidence
" adduced by said Phelps, as President of said Company,
" in behalf of said Company, entitling said Company

" to the bonds aforesaid, amounting to \$23,000. as he
" alleges, which said evidence the Court refuses to
" embody in this order -

" And now this Court, after hearing the evidence
" adduced in the case, and being sufficiently advised
" of the matters and things contained in said
" application for the issuing of the bonds of this
" County for the sum of \$23,000. in addition to
" \$75,000. of bonds already issued, it is Ordered,
" by the Court, that said application be rejected,
" & that they refuse to pay or issue said bonds
" to said Rail Road Company -

As by the records of said Henderson County
Court, an exemplification and duly certified
transcript whereof is now here to this Court shown,
will fully appear -

And your Relator states, that in pursuance
of the said order of said County Court first herein
alleged, and in pursuance & full compliance
with the statute in such case made & provided,
and upon due notice, as by the statute in such
case was & is provided, at the regular election
in said County for County officers, held in said
Henderson County on the Tuesday next after the
first Monday of November 1853, the voters of said
Henderson County did vote upon the question then
& there so submitted to them, for and against
the said County of Henderson subscribing to the
Capital Stock of the said Warsaw & Rockford
Rail Road Company, your Relator, one hundred
thousand dollars, payable in the bonds of said
Henderson County payable in twenty years, and
bearing interest at eight per cent per annum,

payable annually, and that at such regular
election the whole number of votes cast for
~~County officers~~ was Nine Hundred and
Two and that the number of votes
for said subscription was Five Hundred and
Ninety Three and that the number of
votes cast at said ~~election~~ ^{election} against the said
subscription was Two Hundred and Twenty
Seven ~~and that a majority of the~~
~~votes cast at said election were in favor of the~~
~~subscription~~ ^{was a majority of}
~~votes cast at said election were in favor of the~~
~~subscription~~ ^{and that a majority of the votes of}
said Henderson County, taking as the standard
the votes for County officers cast at said
general election, did, at said election, vote for
said subscription.

And your Relator states, that afterwards the
said County Court did cause to be subscribed, on
the behalf of & for said Henderson County, by the
County Judge of said County Court, on the Books
of said Corporation, your Relator, to the Capital
Stock of said Corporation and Rail Road Company,
twice, on the second day of November 1855, at said
County of Henderson, in pursuance of their said
order, aforesaid, of the said Term of said County
Court held on the said second day of November
1855, one thousand shares of said Capital Stock
(the said shares being one hundred dollars each)
and amounting to the sum of one hundred
thousand dollars, payable in the said bonds of
said Henderson County, payable as aforesaid, and
bearing the annual interest aforesaid.

And your Relator states, that afterwards, the said County Court did cause to be issued said bonds of said Henderson County as aforesaid, of the denomination of one thousand dollars each, and the same to be delivered to the said Corporation, your Relator, in payment of the said stock so subscribed, at par, to the amount of ~~the said stock so subscribed~~ seventy five thousand dollars, and for the same did accept & receive from said Corporation certificates of said stock in said Corporation to said Henderson County to the amount of seventy five thousand dollars. -

And your Relator states, that at the time of the making of the said order of said County Court, at the said September Term thereof ¹⁸⁵⁷ ~~1857~~, the said Corporation had made assessments and calls of all subscriptions, ^{both public & private} to the Capital stock of said Corporation to the full amount of such subscriptions respectively, and that the same were fully due & demandable to the full amount thereof, and that then & there the said Corporation your Relator, did present & exhibit to said County Court of Henderson County, the Certificate of the Chief Engineer of said Corporation & Rail Road Company, that ninety eight thousand dollars of work on the said Rail Road within said Henderson County had then been done. -

And your Relator states, that, afterwards, at the said March Term of said County Court A.D. 1858, the said Corporation presented to said Court the Certificate of the Chief Engineer of said Corporation, showing that ninety eight thousand dollars had been expended by said Corporation in work within said Henderson County, in the

building of said Rail Road, and tendered to said Court certificates of paid stock in said Corporation to said Henderson County, amounting to the sum of twenty three thousand dollars, the balance of said ninety eight thousand dollars so as aforesaid ordered to be paid as aforesaid for stock subscription as aforesaid by said Henderson County in said Corporation and specially demanded of said Court, the Judge & Clerk thereof, bonds of said Henderson County in payment thereof to the amount of said twenty three thousand dollars and was then & there ready & willing to deliver to the said County Court certificates of paid stock in said Corporation, amounting to the sum of twenty five thousand dollars, the balance of said one hundred thousand dollars subscription upon the delivery in payment thereof of bonds of said Henderson County amounting to said twenty five thousand dollars, and now the same are ready willing & offer to do, - but the said County Court of Henderson County and the Judge & associate justices & Clerk thereof refused to issue or pay to the said Corporation in payment of the said stock in said Corporation, so as aforesaid, subscribed by said Henderson County, any bonds whatever of the said County, and the same doth still neglect and refuse to do -

And your relation states, that the work on said Rail Road actually done in the building of said Rail Road within said Henderson County amounted to largely over one hundred thousand dollars and that at the time of the demand & tender aforesaid the same work actually done & performed in the building of said Rail Road within said Henderson County amounted to

* Contract of said Corporation with private persons for work done & to be done on said Rail Road, are ~~unlawful~~ ^{unlawful} & ~~unlawful~~ ^{unlawful} & that the said subscription of said Henderson County is necessary to pay the debts of said Corporation & ~~prosecute~~ ^{prosecute} the said work & enterprise.

largely more than one hundred thousand dollars. —
Your Relator states, that Richard W. Richey
at the time last aforesaid was & now is Judge of
the said Henderson County Court, that Asahel
Johnson and Melzer C. Paul, at the said time,
now & now are associate justices of said Court,
and that Charles S. Cowan, at said time, was &
now is Clerk of said Court, — all of whom reside
at said County of Henderson, —

And your Relator states, that the said Corporation is
endeavouring to build, complete & operate the Rail Road aforesaid
& is endeavoring from private & corporate subscriptions to the capital
stock of said Company standing upon their books to proceed with
the said work & enterprise with all possible dispatch — that near
four hundred thousand dollars, derived from private & corporate
subscriptions to the capital stock of said Corporation, have already
been expended in the building of said Rail Road — that &

Your Relator, by reason of the premises,
asks of this Honorable Court, that the People's
petitioner that of mandamus may issue against
the said Richard W. Richey, Asahel Johnson,
Melzer C. Paul, & Charles S. Cowan, commanding &c.
and that upon the final hearing thereof this
Honorable Court will award the People's petitioner
writ of mandamus, commanding the said
defendants, the said Henderson County Court, or
such officers thereof as to this Court may seem
meet, the said twenty five thousand dollars of
the bonds of the said County of Henderson, to
pay & the same debt, in payment of the
said balance of said one hundred thousand
dollars subscription of said Henderson County
to the capital stock of said Corporation, your
relator, and that if this cannot be done in
the judgment of this Court, that the same

they may be required to do to the amount
of twenty three thousand dollars. — and
your Relator asks for such further and other
remedy as to this Court may seem meet &
proper in the premises.

Horis R. Keiser
Attorney for Relator

State of Illinois

Henderson County, Ill.

E. H. C. Patterson

being duly sworn deposes & says, that he is
the Secretary of the Macon & Rockford Rail Road
Company; that he has heard the foregoing Petition
read & knows the contents thereof, & that the matters
therein stated are true in substance & matter
of fact. —

Subscribed & sworn before me

E. H. C. Patterson

on the 20th day of April 1858

Hugh S. Thomson

~~Notary Public~~

Clerk of the Circuit Court

of Henderson

County, Ill.

The People on the {
relation to { In the Supreme
vs { Court April 1,
Richard W. Richie { 1858
& others { 3

Suggestions for the Court
on the part of the defendants by
H. M. Reed

1. The counsel for the defendants
desires to demur to the Petition & to
argue the same orally

2. He suggests that in the ~~event~~ event a
case an Alternative mandamus shall
be awarded ~~that~~ it must be made
returnable to the next term of this
Court. It being a writ to bring
a party into Court it must like
any other writ, be returnable to the
next term & served in the manner
prescribed in the Statute

62

~~247~~

The People, &c. &c. &c.
Huron & Rockford
Rail Road Company
vs

Richard W. Richey
& others,

Petition for Mandamus.

Filed for record
in the
Court of the
County of Cook
Ill.
Nov 17 1887

3. This is a writ substantially against the County of Henderson and must be brought in that County

Revised Statutes 1845, P 132, Sec 18

And by the same section it must be served so that a term of the Court will intervene between the day of service & return

4. Defendants contend that the Petition is wholly defective & does not show sufficient cause for the granting of the writ

The original order of the Court runs "that such Bonds shall not
" issue until said Company furnish
" satisfactory evidence to this Court
" that said Road will be completed
" within four years from the issuing
" of such Bonds and that said Com-
" pany will pay the interest on said
" Bonds until said Road shall be
" completed "

The whole record shows that these conditions constituted a contract between the Company & the County.

The Company was to furnish evidence that the road would be ^{completed} completed within four years from the issuing of the Bonds, and also that they ~~and also that they~~ would pay the interest on the Bonds until the road should be completed. These were conditions precedent to be performed by the Rail Road Company, and which they have not performed.

No part of the road is yet completed, nor has any evidence been furnished to the County Court that it ever will be.

No evidence has been offered to the ^{County} Court that the Company will pay the interest on the Bonds until the road is completed.

Until the Company shall furnish proof of "Satisfactory" to the Court that these conditions will be performed, it is in no condition to demand the Bonds;

Indeed it is very questionable whether, the conditions, being a part of the original order ~~by~~ under which a vote was had by the people, did not render the vote void for fraud. They were intended to operate upon the minds of the people improperly — and beyond all question had a potent influence. ~~But~~ The election was carried by false pretences — by fraudulent means, in which the Company participated, ~~and~~ the Company cannot now take advantage of their own iniquity. The original order was pregnant with a big swindle, and had a stump speech in its belly.

Under these circumstances the Company has no clear & certain right to be enforced by a Mandamus. They have another remedy which is more appropriate viz by Bill in Chancery, where the facts can be investigated, or by action at law. If the County refuse to surrender the Bond

the company has a clear and specific remedy at law. Suppose the subscription had been made by a private person, who agreed to give bonds for the amount of his subscription & afterwards refused to comply, would any one ever think of compelling him to keep his contract by a Mandamus?

"It has often been decided in England ^{& New York} that a mandamus will not be granted where there is a remedy by action.

The party asking for a Mandamus must have a clear legal right and no other appropriate specific remedy.

The People vs. The Supervisors &c. 10 Wendell 367.

2 Cowen 444

1 Wendell 325

7 Teram Rep 396-404

2. Carter (Indiana) Rep. 527

The first order was passed on the
8th September 1853.

The vote was had on the 8th Nov
1853;

The 2^d order was passed 27th
March 1854 & ordered a subscrip-
tion to be made to the Bonds to
"be paid out at such times and in
"such sums as may be assessed
"against private subscribers"
"Provided that such Bonds shall
"not issue until said Company
"furnish satisfactory evidence to
"this Court that said Road will be
"completed within four years from
"the issuing of said Bonds"

On the 2^d Nov 1855 John E Johnson
President of the Company appeared
before the County Court and showed
the Court that the Road would be
completed from "Warsaw to the junc-
"tion of the River & Aqueduct Road"
within a time satisfactory to the
Court, whereupon the Court

ordered five thousand dollars of Bonds to be issued immediately & the balance from time to time and "at such times as the engineer of said Company shall certify that work on said Road ^{in this County} to the amount of one thousand dollars has been completed under his direction

Sept 26 1856, the Court issued \$16000. of Bonds to Phelps

March 2^d 1857 ¹⁸ \$24,200 more of Bonds were issued

(Seventy five thousand dollars of Bonds has been issued in all)

On the 28th January 1858, the Court rescinded the order passed on the 2^d Nov 1855 "and that no more bonds be issued to said Rail Road Company by this Court or under its Authority"

The subscription by the County was made under the order of March 27, 1854, & upon the condition that the Company would furnish satisfactory evidence that the road would be completed within four years from the issuing of the Bonds.

We insist then that the Court was but trustee for the people, and that the people having fixed upon the terms & conditions on which the subscription should be made, the Court had no power to alter those conditions.

That when the subscription was made, it was made upon certain conditions, which have not been complied with — that this as well as the other was a contract, which ^{could} ~~cannot~~ be changed at the pleasure of the Court.

— That if the Court could alter or change the contract at pleasure the same Court did on the 28th January 1838 rescind the order of 2^d Nov 1835, & that the Court had the same power & right to rescind that order which it had to alter the original contract

I further insist that the legal right of the Road to have the Bonds is not clear nor certain, and that in such a case the Company should be turned over to some other remedy & that a Mandamus will not lie

Wm & Williamson
for defendants

State of Illinois
Supreme Court within & for the } set
Third Grand Division of Said State }

The People of the
State of Illinois to Richard W. Richey, Judge of
the County Court of Henderson County in the State of
Illinois, Asahel Johnson & Melzar B. Paul associate
Justices of said Court and Charles S. ~~Casperson~~^{Cowen}
Clerk of said Court, Greeting: " "

Whereas our said Supreme Court after
having diligently examined and inspected
the Complaint of the People of the State of
Illinois on relation of the Warsaw and
Rockford Rail Road Company, against the
said County Court of Henderson County & the
said Judge, Justices & Clerk of said Court
has awarded an alternative writ of
Mandamus herein against the said
Judge, Justices & Clerk of said County Court:

We therefore being willing that due
and speedy justice be done to the said
Warsaw and Rockford Rail Road Company
in this behalf, Command you the said
Richard W. Richey, Asahel Johnson, Melzar
B. Paul & Charles S. ~~Casperson~~^{Cowen} and every of
you, forthwith to be and appear before
the Justices of our said Supreme
Court now in session at Ottawa and show
cause if any you have why the County
Court of Henderson County, Illinois and
you the said Judge, Justices & Clerk
thereof should not issue and deliver

to the relator-the said Warsaw and
Rockford Rail Road Company Certain
Bonds of the said County of Henderson,
in the said Complaint mentioned.

And now you shall execute this our
command, certify to the Justices of
our Supreme Court, now sitting at
Ottawa, on the tenth day of May A.D.
1858, together with this writ.

Witness the Hon John D. Eaton
Chief Justice of our said Supreme
Court at Ottawa 30th day of April
A.D. 1858.

L. Island Clerk
Sup. Court.

I have served the within writ by reading the
same to the within named Richard M. Ritchey
Charles S. Carver Asahel Johnson and Melza
C. Paul and by leaving with each of them
a true copy of the same
May 31 1858

Wm M Graham Sheriff
by Daniel P. Timmeres Deft Sheriff

I Daniel P. Timmeres executed
after first being duly sworn
upon oath the State that I have
served upon each the within
named Richard M. Ritchey
Charles S. Carver Asahel Johnson
and Melza C. Paul a true
copy of the within writ
May 31 1858

Daniel P. Timmeres Deft

The People vs
The Warsaw & Rockford
Rail Road Company
65
Richard M. Ritchey Deft

~~277~~ 62

The People of the
1 12

Richard W. Riskey

Suggestion on the
part of defendants
by

Wend & Williamson

Filed Apr 28. 1858

W. Leland

Clk

~~277~~ 62



4 Volumes @ 50c 2.00
4 Copies @ 50c 2.00
40 miles travel 1.00
returning 1.00
\$ 6.00

Wilson M. Graham Sheriff
by James P. Hinson
Deft. - Deft.

Filed May 6. 1858

W. Leland
Clk

State of Illinois
County of Cook
I, Hugh L. Shawver, Clerk of
the Circuit Court in and for said County do hereby certify
that Daniel J. Shawver did subscribe his name and
duly sworn to the said Affidavit.

In Testimony Whereof I have hereunto set my
hand and the Seal of said Court, this 4th day
of May 1858.

Hugh L. Shawver

Clerk of the Court

1/11/1858

People in relation to

²⁴
Rising as

Suggestions on amendments
to amendments to return

I

The writ does not seek or
claim bonds payable at
a Banking house in New
York.

~~The writ only demands bonds~~
~~such payable in 20 years~~

The writ does not demand
bonds payable in New York

Bonds payable in New York
may be more beneficial
to the County; - for then
the County may pay them there, if
it choose, if not there at
home, and no damages
or money demand, can be
given for not paying at the
time or place, except by way
of interest - interest being the
only damages in such cases.
The County therefore cannot
be injured by such provision.

3

The place of payment
is the act of choice or election
of the County Court - & they
cannot complain of their
own act and choice.

4

The place of payment is one
of those incidental powers
which the County Court may
exercise, & arrange with the Comptroller
to suit convenience.

5

The question of place of paym-
ent is not in this case
- nothing of that sort is
disputed.

The act or arrangement
for bond such as the Statute
describes and the court
may issue under the vote
of the people, the order and
subscription, and more other.
Merion for
R.H.

277 62

The People
in relation to
WRR RR
Company
in 3

Rickey v. WRR

Points in
disposition to
amendment
to return

1. We admit by the demurrer whatever is well pleaded, and would constitute a defence to the application now.
2. This proceeding is properly instituted against the County Judge and Clerk.

The Order of 2nd Nov. 1855 made by the Court requires the County Judge to issue the Bonds— It is a mere ministerial duty that he is to perform

(No further action of the Court is required—

They are to be issued upon the Certificate of the Engineer.

County of Henderson, no proper party to this proceeding.

3. Every fact stated in the return and admitted by the On Derr, interposed no bar to this writ.
What are those relied on?.

1st

That Before the Election or Subscription, no bonds should be called for, until satisfactory evidence was given - of completion of the road, Morlow to Port Byron in 4 years and that Company would pay the interest on the Bonds til Completed

Evidence not furnished - nor Evidence that they would pay interest. —

Answer

1

Conditions no part of the contract of Subscription

2

Condition to the Order of Submission - void
See order.
Could do nothing except to order the vote

3.

Neither the Notice, of the Election, nor the Votes given contained or referred to any such Condition.

4

The Subscription merged all former contracts if any existed.

B. } Subscription was obtained - or rather
L⁴ } the Vote for it by a fraudulent Electionary
handbill, issued by relatives, containing
an Order - Never Made, that Company would
pay the interest on the bonds No. which
induced the People, to Vote for the Subscrip-
tion — — — — —

Answer

1

The People were bound to know that this
was nothing more than a Stamp Speech

2

That it was binding upon no one

3

That it could constitute no part of the
Contract of Subscription, hereafter to be
made, and that they were not voting upon
any such proposition.

3.

The Statement, that the people would have
voted the other way is too uncertain and
indefinite - Who would have so voted?
How many?

L⁴

No Election can be contested in such a
colateral proceeding as this
Wholly impracticable to do so -

5.

The subsequent action of the Court in issuing the bonds & providing for the payment of interest, would, if the Defendants were before had any rights, to withhold, the bonds.

6.

No agreement that Relators have not paid the interest -

7

Request to do so no defence in this proceeding - If Company fail to perform any valid contract - parties have their remedy

8.

Need appear to think the People were voting for, and against the bond bill

How is such an issue to be proved or disproved —

5th

Byron Vote Co. represented route a good one
false, Relators knew it — Wholly impossible
redempt — Never pay. Money paid prodigiously
Expended — No benefit to any one

No prospect, of finishing road — abandoned
all Idea, of it. Bonds will be improperly
appropriated, divided out among speculators

Answer. (1st)

Lefts knew it too. No allegation that they did
not or that they were deceived by representations

2

No Issue can be made upon such propositions

How are you going to prove whether the
Road would or not be profitable — beneficial —
or — the abandonment of Ideas — Chimericalities
or impossibilities — On that bonds would
be improperly appropriated.

3

If there is any thing in these points their
remedy is clear & certain — In Chancery.

6. Estimates of work done false & fraudulent
Relators should it, procure them to be made
to cheat the County - Work done not worth
\$50,000. —

Quidam

1

Said, nt they know it too before they issued
the \$75,000 — If so have defrauded.

Quid

Not necessary that any work should be done
in Henderson County, to Entitle Relators to
these bonds — Conditions & orders affec-
ting their rights void.

3.

Bonds to be issued upon Certificate of
Engineer — Agent of both parties.

9
y^h No work at work upon the Road
none have been for several months

No part of road completed, never
will be - don't want the money to com-
plete the road, but to decide among Spec-
ulators -

Answer

1st

Not a single statement here upon
which any issue can be made

What if the work is suspended
What if they do suppose nothing more
will be done - or that the Petitioners
intend to misapply the money -

2.

Issue upon questions of intentions
and belief, would take too much
time to settle -

3

The defendants can not make a defence
of this kind, against the issuing of
the bonds. The work upon the
road has been done upon the credit
of the Subscription, and if there is

~~277~~ ~~277~~
Mason, Rockford
R. R. Co

62 74

R. N. Ritchey
and Others

Points

Purple

Filed May 13, 1888

L. Leland
clerk

any danger of a misapplication of the
funds — the defendants have an ample
remedy, either by Mandamus, or by
bill in Chancery.

The People on the relation
 of the Warsaw & Rockford
 Rail Road Company. } In the Supreme
 v2 } Court May,
 Richard W. Richey & others } Term 1858

State of Illinois
 Henderson County } Melzar C. Paul one of
 the defendants in the above entitled
 cause being duly sworn doth depose
 & say that he cannot safely proceed
 to the trial of the above entitled cause
 at the present term of this Court
 on account of the absence of witnesses
 to prove that the amount of work
 done by said relations on their Rail
 Road in Henderson County does
 not exceed the value of Fifty thousand
 dollars and that the certificate of
 the Engineer of said Road certified
 to the County Court of said County
 were obtained by fraud.

That this affiant is confident
 & verily believes from the best
 information he has been able to
 obtain that the amount of work
 done on said Road in said

Henderson County does not exceed the
sum of ^{Seventy five} ~~Eighty~~ thousand dollars and
that said Certificate was obtained
by fraud — That in order to obtain
said a full knowledge of the amount
& value of the work to be done as
aforesaid on said Road in said
County it will be necessary to procure
competent engineers to ^{survey &} measure the
amount of work to be done as aforesaid,
and that to do this will
require a longer period of time
than ~~can~~ this Court is likely to be
held at the present term; That in
order to procure such survey
& measurement it is necessary
to have a meeting of the County
Court of Henderson County — That
in order to such meeting, it is
necessary to give considerable notice
and when met to agree upon the
proper persons to make such
survey & measurement and that
in the opinion of defendant such
measurement and survey cannot
be had in less time than several
weeks and that the present meeting

He cannot be procured or
convinced to attend the present
term of this Court;

That he knows of no other
way of proving the facts aforesaid
except as is above indicated, wherefore
he prays that this cause may be
continued until the next term
of this Court in order to procure
such testimony;

Subscribed & sworn before M. C. Paul
me this 17th day of May.

A.D. 1858. - L. Leland Clerk of Sup. Court
by J. B. Smith & party

277 62.

The People ex rel The
Warsaw & Rockford
Rail Road Company

vs
Richard W. Richey & others

Affidavit

Filed May 12 1858
L. Leland
Clk.

In the Supreme Court
Ottawa term 1858.
The People of State of Illinois
on the relation of the
Morrow and Rockford rail
road Company
vs 3 bondsmen

Richard W. Richey County Judge
of Henderson County, Illinois,
Abner Johnson and Milgor
to Paul Adair Justice
of said Court and to Henry J.

Crown Clerk of said Court
And now comes the Plaintiff
and for replication to the return
of the defendants made to the
alternative writ of mandamus
herein says precludi non,
because they ~~showed~~ say;
that the statements of work done
on the line of the railroad
in said writ mentioned in
said Henderson County are
not false and fraudulent
and known to be so by said
~~relators~~ relators and were
not procured by said relators
to be made for the purpose of
cheating and defrauding
the said County of Henderson
and of this they put them-
selves upon the ~~country~~ the County
vs this Honorable Court shall
disallow order. No claim
att'y for plaintiffs

and mention the fact that the relators are not the same as the defendants in the writ of mandamus, it is well known

277 62

The Paper
in relation to
the Morrow
Rockford
River Road
Company
by J. M. Anderson

Richard W. Richey

Yours of
return

Filed May 17, 1858

L. Leland
clerk

And the respondents the True and

Shut the door

for the respondents

And the said relator denies that
the work actually done in the
said County, on the said rail
road does not exceed fifty
thousand dollars, but on the
contrary, ^{and that} in truth and in fact
the work actually ~~done~~ done in
good faith on said rail road in said
County under the contracts
of said rail road company
the relator, according to the
terms of such contracts and
under them and otherwise
done by said Company, ^{done} the
relator ~~is~~ ^{to greatly more than said sum} does amount
to one hundred thousand
dollars, and of this the relator
~~has been~~ put there by
upon the County &
of Merimer
Attorney for the
relator.

And the respondents do not like.

Amos Miller.

For Respondents

Supreme Court,

State of Illinois

Third Grand Division

April Term 1859

The People v. upon the
petition of the Warsaw &
Rockford Rail Road Co.

Richard W. Pichay & others

The issue of fact in this cause, sent
to the Circuit Court for trial, arises upon the
sixth item of the Defts return to the Alternative
writ of habeas corpus - which this Court held not
Demurrer sufficient in law, to wit "that the
estimates of work done on the line of the Rail Road
in said writ mentioned in said Hancock County
are false & fraudulent and known to be so
by said Relator and were procured by said
Relator to be made for the purpose of cheating
and defrauding said Hancock County - and
that all the work actually done in said Hancock
County on said Rail Road does not exceed fifty
thousand dollars" - and the Replication of the
Relator admits transcribing said allegations, to wit:

"That the estimates of work done on the line of
said Rail Road in said Hancock County are
not false and fraudulent, and that in truth
and in fact the said work actually done on
said Rail Road in said County does amount
to greatly more than said sum of fifty thousand
dollars, to wit, to the sum of one hundred thousand
dollars."

Said issue was tried in the Circuit Court
of Hancock County, in charge of course to that
County, in which Court the respective parties

intend their appearance, and was found as follows - "That the jury find the issue for the Plaintiff, and that the work actually done by the Relator, the Hudson & Rockford Rail Road Company, on the said Hudson & Rockford Rail Road, in said Henderson County, amounts to the sum of one hundred thousand dollars, in manner and form as in & by the Replication of the Piffs to the Return of the Defendant. Likewise, is set forth and alleged, and that the estimates of work done on the line of said Road in said Henderson County are not false and fraudulent, and that the said Replication to said Return is true".

The second therefore shows the issue fully found for the Plaintiff, which entitles them to the peremptory writ of Mandamus.

The Court will perceive, that by the allegations of the alternative that is the issue of fact found for the Piffs, that the Piffs are entitled to their Peremptory writ requiring bonds to be found, of the date of the proper demand for said bonds, admitted by the pleadings, to wit, the Fifth day of March 1858. Said bonds to be made payable twenty years after their date, with interest at the rate of eight per cent per annum payable annually at some Banking House in the City of New York. Signed by the County Judge of Henderson County and attested by the Clerk of the County Court of said County under the seal of said Court - in the usual form of such bonds, with interest

Coupons accordingly. —

The Court however will be saved any particular investigation of the Record, by an inspection of a copy from the Records of the County Court of said Henderson County, made to avoid further costs & Special Damages, whereby the said Court directs that this proceeding shall not be further defended, and submit that a Peremptory Writ mandamus issue requiring the issue of said bonds, bearing interest from the fifth day of March 1858, the time of the demand for said bonds, in the alternative not mentioned, and show the same, to wit: twenty five thousand dollars, should have been issued —

By reason of which order of said County Court, claim for Special Damages by the Relator was abandoned — and the costs of the issue in the Circuit Court, by consent, paid by the Relator, —

The People, v. et. al. the
Hartman & Rockford
Rail Road Co.

4

Richard H. Richey
Attorney

Brief.