

No. 12568

Supreme Court of Illinois

Ill. River R.R. Co.

vs.

Casey

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116

Illinois River
Rail Road Company

vs

John W. Casey

116

12568

1858



Repaired

Pleas to a term of the County Court
began and held at the Court house
in the City of Pekin within and for the
County of Tazewell and State of Illinois
on the Third Monday of the month of
January in the year of our Lord
One Thousand Eight Hundred and
Fifty Eight it being the eighteenth
day of said month before the
Honorable John M. Bush Judge
of said County Court

Be it remembered that on the 8th day of Janua-
ry in the ^{year of our} Lord One Thousand Eight Hundred and
Fifty Eight a Precipe was filed in the words
and figures following. to wit:

Recip: " Illinois River Rail Road Company } State of Illinois }
" vs. } County. Tazewell }
" John W Casey } County Court. 16th }
" } January Term 1858 }
" Damages \$1000 }

" The Clerk of the County Court of Tazewell
" County will issue a summons in the above entitled
" Cause against John W. Casey defendant returnable
" to the next term of the County Court

" B S Prettyman
" Attorney for the Plaintiff

And now afterward, to wit: on the same day
a declaration was filed in the words and figure
following, to wit:

" State of Illinois } The County of Pazerwell
" Pazerwell County } County Court
" January Term, A. D. 1858.

" Illinois River Rail Road Company }

" vs
" John W Casey }

" The Illinois River
" Rail Road Company complains by B. B. Prettyman
" John W Casey of a plea of Trespass in the case
" on promises. For that whereas heretofore to wit:
" On the 11th day of February 1853 the Legislature of the
" State of Illinois passed a certain act entitled an
" act to Construct a Rail Road from Jacksonville
" in Morgan County to LaSalle in LaSalle County
" which act was approved by the Governor of the said
" State of Illinois the 11th day of February, 1853, and
" became a Law of the State of Illinois and also after-
" wards, to wit: on the first day of March, 1854, the
" Legislature of the State of Illinois passed another
" Certain act to amend an act entitled an act
" to Construct a Rail Road from Jackson^{ville} in Morgan
" County to LaSalle in LaSalle County which
" Last mentioned act was approved by the Governor
" of the said State of Illinois on the said first

" day of March 1854 and became a Law
" of the State of Illinois and also afterward to wit:
" on the 29th day of January 1857 the Legislature
" of the State of Illinois passed another certain act
" entitled an act to amend an act to amend the
" Charter of Illinois River Rail Road Company
" which last mentioned act was approved by the
" Governor of the Said State of Illinois the 29th day of
" January 1857, and also became a Law of the State
" of Illinois. and also afterward to wit on the 16th day
" of February 1857 the Legislature of the State of Illin-
" ois passed another certain act entitled an act to
" amend an act Entitled an act to Construct a
" Rail Road from Jacksonvill in Morgan County
" to Sasale in Laclede County approved February
" 11th 1857, which last mentioned act was approved
" by the Governor of the State of Illinois the Said 16th
" day February 1857 and became a Law of the State
" of Illinois all of which acts before mentioned are
" here to the Court Shown and these were the laws of
" the State of Illinois at and before the acts and
" doing in the promises and indentings the Said
" defend ant herein after mentioned and whereas
" afterwards a sufficient amount of the Capital Stock
" of the Said Rail Road having been Subscribed
" according to the provisions of Said acts the first second
" above mentioned and that on the 6th day of
" September 1856, at Chancelersville To wit: at Said

County of Page and State aforesaid became
duly organized under the provision of the said
Several acts first above mentioned by the Stockholders
Then of Electing the Officers thereof as by said acts
is provided which said organization of the said
Company the said defendant subsequently assen-
ted to will more fully afterwards appear and
afterward to wit: on the 13th November in the Year
of our Lord 1858. at the County and State aforesaid
for the purpose of the Constructing of the said
Illinois River Rail Road and pursuance of the
provisions of the said acts of the Legislature as
aforesaid. and for the purpose of becoming a
Stockholder in the said Illinois River Rail Road
the said Defendant among other individuals and
parties present made and subscribed his certain
agreement in writing in the words and figures
following to wit: Know all men by these presents
that we the undersigned do hereby subscribe the number
of Shares of the Capital Stock of the Illinois River
Rail Road Company herein after set opposite our
names Respectively and in consideration of our
Mutual Subscriptions to said Company for
the purpose of Building said Road and of the
premises herein do severally agree to pay to the
said Illinois River Rail Road Company the amount
of Capital Stock hereinafter subscribed by me
Respectively set opposite our names and pay all

demanded to the said Company when called for
according to Law by said Company (Dated)
Pekin Nov 13th 1856. To which said agreement the
said defendant then and there Subscribed his
name to wit: John W Casey and place opposite
his Name the Number 10 — Shares and the
amount one thousand Dollars. thereby the said
defendant became a Subscriber to the amount
X of ten Shares being one Thousand Dollars of
the Capital Stock of the said Company and the
said Company accepted the said Subscription
of the said defendant to the Capital Stock
thereof as aforesaid by means whereof the said defen-
dant became a Stockholder in the said Company
and became liable to pay said sum of one
thousand Dollars to the said plaintiff and being
so liable the said Defendant in Condition thereof
at the County and State aforesaid on the
day of 13 1858 undertook and faithfully promised
to pay the said plaintiff the sum of \$1000 —
Dollars when they should lawfully be required so
to do according to the tenor and effect of the said
written against aforesaid the said Plaintiff avers that
at a meeting of the Board of Directors of the said
Company held at Jacksonville in the County of
Morgan in the State of Illinois on the second day
of December A.D. 1857 then and there the said Board
of Directors of the said Illinois River Rail Road

Company duly passed an order in the following word
and substance, to wit: Ordered that each and
every Subscriber to the Capital Stock of the Illinois
River, Rail, Road, Company who resides in Tazewell
County or whose Subscription are made on the
Books in Tazewell County shall pay on the first
day of January 1858 Sixty five per cent (Sixty
five dollars per share) on each and every share
Subscribed by such Subscriber to the Capital
of said Company and also five dollars per share
on the first Monday in each month therefor untill
the whole amount of Stock is subscribed shall
be paid up the said Subscribers to make such
payment to Joshua Wagenseller or B. S. Prettyman
and that twenty days notice shall be given
by the said Wagenseller & Prettyman of the times
when and place or places where such payments
are to be made by publication in some Newspa-
per ^{Publisher} in the City of Pekin. The said Plaintiff aver
that the said Wagenseller & Prettyman in
pursuance of the said order so made by the said
Board of directors of the said Illinois River
Rail Road Company as aforesaid, published
a Notice in the Tazewell Register a Newspaper
published in the City of Pekin as was required
by the said order so made as aforesaid by the
said Plaintiff and the said Plaintiff further
aver that the said defendant afterwards, to wit:

On the First day of January 1867, paid two
installments on his Subscription, To wit:
ten dollars for and upon each Share by him
Subscribed of said Making the Sum of One Hundred
dollars so paid by him on his said Subscription
aforesaid, and plaintiff avers that the said de-
fendants made his said Subscription made his
said Subscription in the County of Tazewell
as aforesaid and the plaintiff further avers that
by reason of the Subscription as aforesaid and
by virtue of the promises aforesaid the said defendant
became liable to pay the Sum of \$65.00 Dollars
being the Sum of \$65 dollars 65 per cent on each
Share Subscribed to the Capital Stock of the
said Rail Road Company as aforesaid in
manner and form as aforesaid and the said
Plaintiff further avers that the said defendant
has not paid the said Sum of Money as before
specified or any part thereof although the said
B. A. Prettyman and Joshua Wagonmiller attended
at the time and place specified in said notice
then and there to receive the said Sum of money
so above due from the said defendant to the said
Plaintiff, yet he do so refused and still refuses
to pay the said plaintiff, the said Sum of money
as aforesaid or any part thereof, But to pay the
same has failed so to the damage of the said
Plaintiff of one Thousand dollars therefore
they bring this Suit

" and whereas also heretofore to wit; on the Fourth
" day of January 1858 at the County and
" State aforesaid the day and year aforesaid
" the Said defendant was indebted to the
" Said Plaintiff as aforesaid in a further
" Sum of \$650.⁰⁰ Dollars for so much money
" before that time Paid Said out and Expended
" to and for the use of Said defendant at his
" Special instance and request. And in a further
" Sum of \$650.⁰⁰ Dollars for so much money
" then and there due and owing from the Said
" defendant to the Said Plaintiff upon an
" account then and there Stated between them
" and being so indebted the Said defendant then
" and there in Consideration thereof undertook
" and promised the Said Plaintiff to pay
" them the Said Several Sums of money when he
" Should be thereunto afterwards requested;
" Yet the Said defendant (Not regarding his Said
" promises but undertaking and contriving to
" injure and defraud the Plaintiff in this behalf
" hath not paid the Said Several Sums of money
" or either of them or any part thereof though often
" requested but hath Neglected and Still doth
" neglect and refuse so to do which is to the dam-
" age of Said Plaintiff as they say in the Sum of
" \$1000.⁰⁰ Dollars for which Cause they bring their
" Suit

J. L. R. R. R. Co
per A. S. Puttymann,

" John W Casey in a.c. with Ill. R.R.R. Co
 " To money Recd \$ 650,00
 " " of States 650,00
 " " Subscription 650,00

And now afterwards, to wit: on the the same day
 aforesaid the Clerk issued summons in the words
 and figure following, to wit:

State of Illinois } The people of the State
 Tazewell County } of Illinois to the Sheriff
 of Tazewell County-Reading

Summons, We command you that you summon John
 W Casey if he shall be found in your county
 personally to be and appear before the County Court
 of Said Tazewell County on the first day of
 the next Term thereof to be holden at the Court
 House in Pekin in Said Tazewell County, on
 the Third Monday of January 1858 to answer unto
 Illinois River Rail Road Company in a plea
 of Assumpsit to the damage of the Said plain-
 tiff as it says in the Sum of One Thousand Dollars
 And have you then and there this Writ with
 an endorsement thereon in what manner you shall
 have Executed the Same

Witness John Gridley Clerk of our
 Said Court and the Seal thereof at Pekin
 the Eighth day of January A.D. 1858
 John Gridley Clerk
 per Erasmus Rhodes, Deput

And now afterwards, to wit: on the Twenty Eighth
day of January in the year of Our Lord One Thousand
Eight Hundred and Fifty Eight came to the
defendant and filed his plea and Demurrer
in the words and figures following, To wit:

" John W Casey } Payee County Court
" ad
" Illinois River
" Railroad Company }

Plea

" And the Said defendant
" Comes and defends &c and Says Actio non
" as to all the matters mentioned in the plaintiff
" declaration Except the first Count therein
" because he Says he did not undertake and
" promise in manner and form as in Said
" Counts the plaintiff hath thereof above against
" him complained and of this he puts himself
" upon the Country &c

" Davison & Parker
" for Deft

" And for further plea to Said declaration
" Except the first Count thereof the defendant
" Saith actio non because he Saith that he
" has fully paid and Satisfied the Said sever-
" al demands therein mentioned in full and
" this he is ready to verify &c wherefore he

Prays judgement &c

Davison & Parker

for. Deft.

Greene County Court, Jan'y Term, 1858.

John W. Casey

vs

Illinois River Rail
Road Company

And the Said defendant
comes and defends &c. and as to the first count
of the defendant Says actio non because he
Says that the declaration of the plaintiff and
the matters therein contained are not sufficient
in Law for the plaintiff to have or maintain
his aforesaid action thereagainst the defen-
dant and this he is ready to verify wherefore
he prays judgement &c

1st And for Cause of Demurrer the plaintiff saith
that Said declaration is insufficient in this that
it does not alledge that the defendant at the
time of signing for the Stock in the plaintiff
declaration mentioned that he paid ten per
cent on his Subscription

2^d That it does not appear by the Said declara-
tion that the Capital Stock (One Million dollars)
has ever been Subscribed

3^d It does not appear from said declaration that
the call for which this suit is brought was
general upon all the Stockholders or Subscribers
but it does appear that the call is partial and
only made upon a part of the said Stockholders
or Subscribers -

4th It appears from the declaration and the Laws
therein referred to that the plaintiffs has procured
and adopted such amendments to its Charter
as will enable the plaintiffs to build any and such
part of the said Road and run the same as the
plaintiffs may see fit, and leaves the plaintiffs
under no obligation to ever finish and complete
the road from Jacksonville to Lasalle, and authorizes
the Plaintiffs to finish and complete any
portion of road on the route which may be laid
off as a division and abandon any other part
of said road -

5th It appears from the declaration and the Laws
therein referred to that said Company has procured
such an amendment of its Charter as allows the
Company to take subscriptions to stock on any
credit that may be contracted for and payable
in property, labour or any other thing thereby
enabling said Company to sell its stock upon
terms much more favorable to new than
old subscribers, thereby greatly reducing the value
of the stock for which the Defendants subscribed -

And because the declaration and the Laws referred
to therein show that the Company have procured
and adopted an amendment to the Charter
of the Company by which Subscribers are
required to pay Calls made by said Co
on a Notice of 20 days instead of an a
Notice of 90 days as the Charter provided when
the defendant Subscribed. And for that the
Said declaration is in other respects informal
and insufficient

Darison & Parker
for Deft.

And now afterwards, to wit, on the 8th day of
February in the Year of our Lord One thousand
Eight Hundred and fifty Eight a bill of
Exceptions was filed in the words and figures
following, to wit:

" Illinois River Rail Road Company	Of the January
" vs	Term of the Superior
" John W. Casey	County Court A.D. 1858

Be it remembered that in the above Entitled
Cause Plaintiff filed the above declaration
Containing Counts and thereupon the defendant came
and filed their demurrer as above to the first Count
in Said plaintiff declaration, and the Cause
coming on to be heard on demurrer to Said

" Plaintiff first Count in his said declaration
" set forth. The court upon consideration thereof
" sustained the said demurrer and adjudged the
" said first Count of the said Plaintiff said decla-
" ration insufficient in Law to authorize them to
" recover thereon, and thereupon rendered judgment
" for the Defendant. Thereon Plaintiff then with-
" drew all the other Counts in said declaration
" Except the said first Count aforesaid and then
" and there Excepted to the said decision of the court
" sustaining the said demurrer. And now prays
" that this bill of Exception may be signed
" and Sealed which is accordingly done,

John M. Bush ^{Seal}
County Judge Payerell
County Illinois

And now afterward, to wit: at a term of
the County Court begun and held at the Court
House in the City of Pekin in and for the
County of Payerell and State of Illinois
on the 3^d Monday in the month of January
in the year of our Lord One Thousand Eight
Hundred and fifty Eight, it being the Eigh-
teenth day of said month, Present. The
Hon John M. Bush, Judge. Chapman, Willi-
amson Sheriff and John Gricey
Clerk

Tuesday January 28th 1858

All R R R Co

vs

Assumpsit

John W Casey

Record

And now came as well
the Plaintiff by their Attorney, Prettyman
as the Defendant by his attorneys, Davison
& Parker. and the Defendant entered his
Special Demurrer to the declaration and the
Court having heard arguments of Counsel
thereon took the same under advisement

Wednesday February 3rd 1858

All R R R Co

vs

Assumpsit

John W Casey

And now again came the
parties by their attorneys and the Court
having fully considered the Special dem-
urrer to the declaration and having
fully advised in the premises is of Opinion
that said Demurrer be Sustained for Special
Causes, Number 3, & 4. Thereupon the
Plaintiff^{asked} and obtained leave to amend his
Declaration.

Friday February, 5th, 1858

All R R R Co

vs

Assumpsit

John W Casey

and now again came the parties by their
Attorneys and the Plaintiff enters a *Nolle
prosequi* as to Common Count

It is therefore
ordered and adjudged by the Court that the
Defendant Recover of the said Plaintiff
the Cost and Charges by him about his
Special Demurrer Expended and that
Execution issue thereon

It is further ordered
that the Plaintiff have 20 days to file a Bill
of Exception in,

State of Illinois
Pawnee County

I John Gridley Clerk
of the County Court within and for said County
do hereby Certify that the foregoing Sixteen
pages contain a true and perfect Copy of
all the papers and the record of the proceed-
ings had in the Cause therein named
as the same appear of Record in my Office



Witness John Gridley Clerk of
the Said County Court and the
Seal thereof here to affixed at
Pekin this 6th day of March,
A.D. 1858. Jno Gridley clerk

State of Illinois. S.S.

In Supreme Court of said State. April Term 1858

3rd Grand Division

The Illinois River Rail Road Company
against } upon Writ of Error from
 } Judgment of Taylorville County
John W Casey } Court,

And the said plaintiff by her Attorneys, comes
and says. That in the proceedings of the County
court and Review thereof Manifest Errors
have intervened to her prejudice, and she has
set down the following

First; the Court Erred in giving Judgment
for defendant on the answer to the
declaration

Second; the said Court ^{Erred} in not giving Judgment
for the Plaintiff upon the answer to the
declaration

Third; the Court Erred in ^{giving Judgment} ~~giving Judgment~~
upon the defendant's answer, whereas of the
Record it appears that the defendant
had filed a plea to the action after filing
the answer, - Wherefore she prays that
the Judgment aforesaid be reversed.

W Thomas, People.

& B Prettyman

for Defts.

Shs. R R Road Co.

vs

John W Casey

Complete Record

Filed April 5, 1858

Leland
Clerk

Dec \$4.80

See Supreme Court, April 1858

The Illinois River Rail Road Company

against } Error from judgment of
Haley to Zehner } Taylors County Court.
} Summer Term 1858.

Declaration filed 8 January 1958

process of the same clay returnable January Term 1858.

Allegations

1. Res. the 11 February 1953 at of Incorporation papers.
- Res. the 1 March 1954 act amended

29 January 1957 - act further amended.

16 February 1897 act feathers commenced.

Of all which acts perfect is unusual.

- 2 That a sufficient amount of the Capital Stock having been subscribed, according to the provisions of the 1st and 2nd acts, on the 6th September 1856 at Grand Creville, the Company was duly organized by the stockholders, by the Election of officers, which Organization was ascribed to by the Defendant.
3. That Defendant with others, made and subscribed their certain agreement in Writing as follows "Know all men by these presents that we the undersigned, do hereby subscribe the number of Shares of the Capital Stock of the Illinois River Rail Road Company, having set opposite to our names respectively, and in consideration of our mutual subscription to said Company for the purpose of Building said Road, and the promises herein, do severally agree to pay to the said Illinois River Rail Road Company the amount of Capital Stock, having after subscription by me(us) respectively set opposite to our names, and pay all demands to said

company when called for according to laws by
said company, dated Patina November 13th 1856
to which said agreement the said defendant
then and there subscribed his name, and placed
opposite thereto, two shares and the amount \$200
thereby the defendant became a subscriber to
the amount of two shares being \$200 of the
capital stock of said company, and the said
company acceptance of the said subscription of
the said defendant to the capital stock thereof
as aforesaid, by means whereof the defendant
became liable to

4. That at a meeting of the Board of Directors held
at Saultersville 2 December 1857 an order was
passed as follows
"Ordered that each and every subscriber to the capital
stock of the Illinois River Rail Road company
who resides in Tazewell County, or whose subscription
is shown on the Books in Tazewell County
shall pay on the first day of January 1858
fifty five percent (fifty five dollars per share)
on each and every share subscribed by such
subscriber to the capital stock of said company,
and also \$5 per share on the first Monday
in each month thereafter until the whole
amount of stock so subscribed shall be paid
up; the said subscribers to make such payments
to Joshua Waggonseller or P. G. Priddy or any of the
firm where, and places, or places, where, such
payments are to be made by publication
in some Newspaper published in the city of
Patina."

Averments.

1. That Waggonseller and Prithyoman in pursuance of said order so made by the said Board published a notice in the Tazewell Register, a Newspaper published in the city of Pekin, in compliance by said order so made as aforesaid, and the said defendant on the 1st of January 1857 paid two installments on his subscription, to wit, \$10 for said issue, each share of his subscription making \$100 to said
2. That the defendant renounced his said subscription in the County of Tazewell, that by reason of the subscription, and by virtue of the provisions aforesaid, he became liable to pay the sum of \$630 being the sum of \$65. 65 percent on each share subscription,
3. That the defendant has not paid said sum of money or any part thereof, although the said Waggonseller & Prithyoman attended at the time and place specified in said notice then and there to receive the said sum of money as above said by

Second Count.

1. Claiming \$630 for money paid laid out & expended
2. \$630 on an account stated.

Pleadings

1. Plea Nonassumpsit to Second Count.
2. Plea of Payment as to Second Count.

As to which count the plff. voluntarily entered
Not Pro.

3. Remover to first count, with special causes.
1. No Allegation that Defendant paid 10 percent at the time of subscribing.
 2. It does not appear that \$1,000,000 of stock, has ever been subscribed;
 3. It does not appear that the call for which suit was brought is general upon all the stockholders or subscribers, but does appear that the call was partial, only under one part.
 4. It appears that the plaintiff has procured an order to the Clerk, authorising the making of any part of the Road, and leaves them under no obligation to complete the whole.
 5. That by the amendments, the peff is authorised to take subscriptions on credit, payable in property, labour &c, thereby reducing the value of stock, and peffs may require payments of stock, on calls of 20 days, instalment of 90 as Charter provides when Defendant subscribed.

The Remover was sustained by the Court and Judge went into judgment for Defendant, and the case is brought before this Court, by writ of Error.

Act of Incorporation of 11 Feby '53 Acts of 1853 p 53
Sec 6 p 55 provides for receiving Subscriptions to the
Capital Stock, and requires payment of \$5 on each
at the time of subscribing; Also for Election of Directors
Whenever \$100,000 of stock is taken

Sec 9. Vests power in Directors to open Books and
receive Subscriptions to fill up the Additional
\$1,000,000, Provides "that all the Installments, required
to be paid on stock, shall be paid at such times
times and such sums as the Directors may prescribe;"

Sec 14 p 57. Vests power in the Directors to require
payments from Subscribers, at such times, and
in such proportions, and on such conditions
as they shall deem fit, but 90 days notice
required to be given of calls.

Act of 1 March 1854 Acts of 1854 p 207.

Sec 1. Overlooks, Ploughs, & Reapert appointments
concerns to receive Subscriptions of Stock

\$10 required to be paid on each share, at the
time of subscribing, Books to be kept open
until \$100,000 is subscribed, and then
Directors to be elected.

Sec 2 Vests power to unite, or consolidate, with
other Roads, and in case of connections at Terminus
the Company not required to build the Road
North of such connection.

Act of 27 January 1857 Acts of 1857 p 105.

Sec 8 p 107. Five years allowed to commence building the Road, with power to raise and operate such parts as may be completed, notwithstanding the whole Road may not be finished.

Sec 9. Directors ^{or other} with power, to make calls of the stock subscribed by a County or the citizens thereof, to be used in such County. without making calls upon other Counties or the citizens thereof.

Sec 12 p 107 20 days notice to be given of calls in advance of 90 as heretofore, - notice served personally or by advertisement in a Newspaper published in the County wherein stockholders reside.

Act of 16 February 1857 Acts of 1857 page 938.

Sec 3. Subscriptions of Stock may be received payable at any time or in any manner that may be specially agreed on, to have interest on payment to be secured by Bond & mortgage.

Sec 5. All acts and proceedings of the Corporation and Commissioners, be declared to be valid whether all the provisions of the laws, have been complied with or not,

Sec 6. Power given to locate, construct, finally complete and operate the Road or any part or parts thereof, by, or in divisions, with in such length, and with such terms as the Board may determine, All subscriptions of persons living

consequent to any such decision, to be applied exclusively to the construction thereof

W. Morrison for Jeff and Error

The Assignment of Errors questions the correctness of the decision of the County Court, sustaining the claimant to the declaration

The questions introduced to have been presented by the claimant are 1st did the acceptance of the amendments to the act of Incorporation, absolute or Balance the stockholders from the payment of stock subscriptions,³ and 2nd can the stockholders be required to pay upon a notice of 90 days as provided for by the act of 29 January 1857.³ The two questions necessarily resolve themselves into one, viz. the validity, and binding force of the amendments. ~~both of which~~, It is insisted that the opinion, and decision, of the court, in the case of "Perrin and Ogden's Rail Road Company against John Ellington" (12 Ill Reports 429) settles all the questions involved in this case, -

As the first ~~and~~ ~~ground~~ ground of objection to the declaration, or to the right to recover, the answer is, 1 That although the Commissioners were not bound to receive the subscriptions without the payment of the \$10 on the share, yet not exacting such payment at the time, was to the relief and advantage of debt, and could not operate to render void his promises to pay the \$200.00 in any case, or could, result to him by the omission,

2. The payment made by him in payment to the subscribers was an efficient cause of the act of subscribing, and as waiver of any objection to the full performance of his undertaking.
3. By the 3rd section of the act of 16 February 1857 this irregularity on the part of the Commissioner is curial, and the defendant is secured in all the benefits of his subscriptions as though he had paid the full amount.
4. The objection assumes the non-payment of the \$10 per share, whereas the books put a person before the Board.

To the second, objection, the answer is, that the law provides for the organization, and action of the company, whenever \$100,000 of stock was subscribed, and never did require the subscription of 1,000,000 \$ and more, it does not appear that \$100,000 had not been subscribed.

To the third objection the answer is, ~~that~~! That no provision of the original, or amended acts requires that calls shall be general, or that the second assessment shall be required from each stockholder at the same time, - but on the contrary the Directors were vested with power by the original charter, "to require payment of the sums subscribed, at such times, in such proportions, and on such conditions, as they should deem fit."

2 By the 7th section of the act of 29 Jan'y 1857. The power is expressly given to make the call as ~~well~~ alleged to have been made in the declaration.

To the 4th objection, the answer is, 1 That the defendant is one of the company on whose application, and for whose benefit, the amendments to the

and for whose benefit the amendments to the
Charter were obtained, and he has no right to
complain of the acts of himself and associates.
If the acts complained of, were beneficial, the defendant
cannot be excluded from their operations, if
injurious he must submit to the consequences. The
Court will presume that the amendments operate beneficially
and ~~but~~ cannot assume the contrary.

By the act of Incorporation, the several Stockholders
became one person, and that person was vested
with power to will, and act for ~~the whole~~ all parties
Interested. By subscribing for the Stock, the defendant
agreed that his rights and interests in the premises
should be represented and controlled by that one
person created by the act of Incorporation.
He does not stand in the position of a contractor
with a corporation, but as a partner, bound
by the acts of his copartners.

It is not complained that the Directors have exceeded
their power, or have violated any provision of the
Charter, — but the complaint is, that ^{the corporation} (the defendant
and his co-stockholders) have procured the passage
of ~~an~~ laws vesting the Directors with powers
with which they were not clothed originally.

To the 5th objection the same answer is applicable
as to the fourth; — Both objections proceed, upon
the notion, that the amendments to the Charter
are void, or inoperative so far as they relate
to the rights of defendant.

It is not alleged, that the amendments referred to,
or either of them, have not been accepted or
adopted by the corporation, nor that the Directors

and Seeking to recover money which they are not
entitled to under the provisions of the Charter as
amended. —

The County Court seems to have acted upon the
Motion, that the respondent sustained the same
relations to the corporations, as would be
contractors for work or materials, whereas the
position is wholly different, — whatever changes
has been made in respect to defendants rights
^{as a member of}
~~relations~~ to the corporations, has been effected
to by him, in the only legal mode of giving
such assent, — and he is as much bound, as
if he had given the assent in proper person.
The Directors are elected by the persons owning the
majority of stock, and become the Representatives
of the whole stock and of the owners thereof.
The stockholders can only act by, or through, the
Directors, whose action within the provisions of
the Charter, is binding and conclusive, upon
minorities as well as majorities, and the right
to assent to amendments of the Charter
necessarily entails the existence of the corporations.

Ottawa 26 April 1858

Wm. H. Thomas

for Jeff in Error

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Illinois River R.R. Co

as { Statement of
 { points &
 { argument
 for pass.

John W Leasing

W. Thomas

Filed May 8. 1858
J. Leland
Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of *Tazewell*

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *County* Court of *Tazewell* County, before the Judge thereof, between *The Illinois River Rail Road Company*

plaintiff, and

John W. Casey

defendant, it is said that manifest error hath intervened, to the injury of the said

plaintiff

as we are informed by *the* complaint, *of said plaintiff* the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

John W. Casey

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April *next*, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *John W. Casey*

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *5th* day of *April* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*eight*

L. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

Clerk of the Supreme Court
and Esq. of the
Year of Our Lord One Thousand Eight Hundred
this 7th day of April in the
of our said Court and the Seal thereof at Ottawa,
Ontario, The Hon. JOHN D. CAVON, Chief Justice
notice, together with this writ

you shall give the said
Court shall order in this behalf; and have you then state the names of those by whom

being Monday in which to show the records and proceedings in which
term of said Court to be holden at Ottawa, and to be held in the Court of the said
Court to be held before the Judges of the said Court, the names of those by whom

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Filed April 15, 1888
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John W. Casey
Devin
The Union River
Rail Road Company

Executed this writ April 7th A.D. 1888
By reading to the within named
John W. Casey
C. Williamson S.T.C
By J. C. Mevis Jett

STATE OF ILLINOIS

STATE OF ILLINOIS,
SUPREME COURT,

} ss. The People of the State of Illinois,
To the Clerk of the County Court for the County of Tazewell Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the County Court of Tazewell County, before the Judge thereof, between The Illinois River Rail Road Company plaintiff, and John W. Casey

defendant, it is said manifest error hath intervened, to the injury of the aforesaid Plaintiff

as we are informed by the complaint of said plaintiff and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April, 1858 next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 5th day of April in the Year of Our Lord our thousand eight hundred and fifty-eight

S. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

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The Illinois River
Rail Road Company

vs
John W. Casey

Writ of Inve

Filed April 5, 1858

L. Leland
clerk

County of Cook, State of Illinois, ss.
I, the Clerk of the County, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same appears in the records of the County of Cook, State of Illinois.
In testimony whereof, I have hereunto set my hand and the seal of the County at Chicago, this 5th day of April, 1858.
J. W. Casey
Clerk of the County of Cook, State of Illinois.