

No. 12595

Supreme Court of Illinois

Ill. River R.R. Co.

vs.

Zimmer

In the Supreme Court of said State, April Term 1888

Third Grand Division

The Illinois River Rail Road Company
against } whose bill of error from
Henry Zimmerman } judgment of Taylorville
County Court,

And the said plaintiff by her Attorneys came
and say, that in the proceedings and
judgment of the said County Court,

Manifest Errors have intervened to her
prejudice, and she has set down the
following as the causes of error to

First; the said County 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

Wherefore the plaintiffs pray that the
said judgment may be reversed for

Prattman, Purples

W. W. Thorman for

Jefferson Error

And the said Henry Zimmerman
comes and says that neither in the record
or proceedings aforesaid nor in the
giving of the judgment aforesaid

is there any error. Wherefore he prays
that the said judgment so as aforesaid
given may in all things be affirmed

A. L. Dawson for
Sgt W. Erwin

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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 Sixth day of January
in the year of our Lord One Thousand Eight Hundred
and Fifty Eight a precept was filed in the above
and figures following, to wit:

State of Illinois }
Tazewell County } of the January Term of the
Tazewell County Court A.D. 1858

Illinois River }
" Rail Road Company }
" vs } Assumpsit
" Henry Gimmer } Damages \$ 200.00 Dollars

The Clerk of the Tazewell County Court
will please issue process in the above entitled cause
returnable to the next term of Said County Court
set the cause in assumpsit and lay the damages
at \$ 200.00

B. S. Puttyman

Atty for Plaintiff

Precept

And now afterward, to wit: on the 6th day of January in the year of our Lord One Thousand Eight Hundred and fifty Eight. The Clerk Issues Summons in the Words and figures following to wit:

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

Summons
We Command You that you
Summon Henry Zimmerman 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 plaintiff as they say in the sum of
Two hundred Dollars.

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

Witness John Grisdley Clerk of our
Said Court and the Seal thereof at
S. S. Pekin aforesaid this 6th day of
January A.D. 1858.

John Grisdley, Clerk
per Crastus Rhoads. Deft

Which Writ was returned on the 14th day of Jan-
uary 1858. Endorsed Served by reading the Same
To the within named Henry Zimmer Jan. 8th
1858. as I am therein Commanded

O Williamson Sheriff D.C.
By J. B. Orr Deft

And now afterward to wit on the 8th day
of January in the year of Our Lord One Thousand
Eight Hundred and Fifty Eight a declaration
was filed in the words and figures following
To wit:

" State of Illinois } The County of Tazewell
" Tazewell County } Taz County Court
" January Term A.D. 1858.
" Illinois River Rail. Road Company }

" vs
" Henry Zimmer }

Declaration " The Illinois River
" Rail Road Company complain by B.S. Putz-
" man atty Henry Zimmer of a plea of Trespass
" in the case of promise. For that whereas herebefore
" to wit on the 11th day of February 1853 the Legisla-
" ture 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 afterwards, to wit; on the first day of
 " March 1854, the Legislature of the State of Illinois
 " passed an other certain act to amend an act
 " entitled an act to Construct a Rail Road from
 " Jacksonvill in Morgan County to Lasalle in
 " Lasalle Countz which Last Mentioned act
 " was approved by the Governor of the Said State
 " of Illinois, on the first day of March 1854, and
 " became a Law of the State of Illinois, and
 " also afterwards, 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 the Illinois River Rail Road Company
 " Which Last mentioned act was approved
 " by the Governor of the State of Illinois
 " the 29th day of January 1857, and also
 " became a Law of the State of Illinois, and also
 " afterwards to wit; on the 16th day of February 1857
 " the Legislature of the State of Illinois passed an
 " other certain act entitled an act to amend
 " an act entitled an act to Construct a Rail
 " Road from Jacksonvill in Morgan County
 " to Lasalle in Lasalle County, approved Febru-
 " ary 11th 1853 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 they
"were the Law of the State of Illinois at and
"before the acts and doings in the premises and
"undertakings The Said defendant herein after
"mentioned and whereas afterward 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
"1854 at Chancelorville, to wit: at Said County
"of Tazewell and State aforesaid became duly
"Organized under the provisions of the Said several
"acts first above mentioned by the Stock holders
"thereof electing the officers thereof as by Said acts
"is provided which Said Organization of the Said
"Company the Said defendant Subsequently assented
"to as will more fully afterward appear and
"afterwards to wit: on the 13th day of November in
"the year of our Lord 1856. 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 act 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 indiv-
"iduals not parties herunto made and Subscri-
"bed his Certain agreement in writing in Substance

4. in the tenor and effect following to wit:
Know all men by these presents that we the under-
signed 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 Subscription 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 herein after Subscribed
by us Respectively set opposite our names and
pay all demands to the Said Company when
called for according to Law by Said Company
(Dated) Pekin Nov 13. 1856 to which Said agreement
the Said defendant then and there Subscribed his
name to wit: Henry Zimmer, and
place opposite his name the number 2 Shares
and the amount two Hundred Dollars. thereby
the Said defendant became a subscriber to the
amount of two Shares being two hundred 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 defendant
became a Stockholder in the Said Company and
became liable to pay Said Sum of two Hundred
Dollars to the Said Plaintiff and being so liable

the Said Defendant in consideration thereof at the
County and State aforesaid on the 13 day of 1856
undertook and faithfully promises to pay the
Said plaintiff the sum of Two Hundred Dollars
when they should lawfully be required so to do
according to the tenor and effect of the Said written
agreement 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 24 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 words 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 subscrip-
tion 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 Stock of Said Company
and also five dollars per share on the first
Monday in each month thereafter untill the whole
amount of Stock is subscribed shall be paid
up the Said Subscriber to make such payment
to Joshua Wagenseller or B.S. Puttyman.
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 Newspaper
 " published in the City of Pekin the Said Plaintiff
 " avers that the Said Wagenseller and 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 Said order so made as aforesaid by the Said
 " plaintiff and the Said Plaintiff avers that the
 " Said defendant 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
 " premises aforesaid the Said defendant became
 " liable to pay the Sum of One Hundred ^{and Thirty} Dollars
 " being the Sum of \$650 dollars a 65c per cent
 " on each Share so subscribed to the Capital
 " Stock of the Said Rail Road Company as
 " 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 in any part thereof although
 " the Said B.S. Prettyman and Joshua Wagon
 " Seller attended at the time and place specified
 " in Said notice then and there to receive the

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" Said Sum of Money do above and from the
" Said defendant to the Said plaintiff
" Yet to do so refused and still refused 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 Two Hundred Dollars. Therefore they bring
" the Suit,

" And whereas also heretofore to wit,
" on the 4th day of January 1858, at the County
" and State aforesaid this day and year aforesaid
" The Said defendant was indebted unto the Said
" plaintiff as aforesaid in a further Sum of
" Two Hundred dollars for so much money before
" that time paid, laid out and Expended to
" and for the use of the Said Defendant and at
" His special instance and request,
" and in the further Sum of two Hundred Dollars
" for so much money before that time had and
" received by the Said Defendant to and for the
" use of Said plaintiff at his special instance
" and request and in a further Sum of two Hundred
" Dollars for so much money then and there due
" and owing from the Said defendant to the Said
" plaintiff upon an account then and then stated
" between them and being so indebted ~~to the Said~~
" The Said defendant then and there in consid-
" eration thereof undertook and promised the

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" The Said plaintiff to pay them the Said Several
" Sums of Money when he should be thereunto after-
" wards requested. (But the Said defendant not
" regarding his Said promise but undertaking
" and contriving to injure and defraud the plain-
" tiff in this behalf hath not paid the Said Several
" Sums of Money as either of them or any
" part thereof though often requested but hath
" Neglected and still with neglect and refuse
" so to do which is to the damage of Said
" plaintiff as they say in the Sum of two Hun-
" dred Dollars for which cause they bring their
" Suit

Illinois Road Road Co
vs Prettyman

Copy of Instrument sued on } Atty
Set out in first Count above }

Henry Gimmer in account with the Illinois	
Road Rail Road Company	Dr
To Money Paid	\$200,00
" " Money Had & Recd	200,00
" " Act Stated	200,00
" " Amt due on Subscription	130,00

" And now afterward, to wit: on the 28th day
" of January in the year of our Lord One Thousand
" Eight hundred and fifty Eight the defendants
" filed their demurrer in the word and figure following
To, wit:

Fazell County Court January Term 1858

Henry Gimmer

vs.

Illinois River Rail

Road Company

And the Said Defendant

Demurrer

Cornu and defendo &c and Says actio non
because he says that the first Count of 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 thereof against the defendant and that
he is ready to verify wherefore he prays
Judgement.

1st And for Cause of Demurrer the plaintiff
saith that said declaration is insufficient
in this that it does not alledge that the defen-
dant at the time of signing for the Stock
in the plaintiff Declaration mentioned, paid
ten per cent on his Subscription

2^d That it does not appear by the said declar-
ation 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 Subse-
ribers for Stock but it does appear that the
Call is partial and only made on part

of the Said Stockholders or Subscribers.
4th It appears from the declaration and the
Laws therein referred to that the plaintiff has
procured and adopted such amendments to
its Charter as will enable the plaintiff to build
any or such part of the Said Rail Road and
Run the Same as to the plaintiff may seem fit
and leave the plaintiff under no obligation
to ever finish and complete the Road from
Jacksonville to Lasalle and authorizes the
plaintiff to finish and complete any portion
of Said Road on the route which may be laid
out 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 Company
" on a Notice of 20 days instead of on 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

Davidson & Parker
of Defendant

And now afterward to wit: on the 3d day
of February in the year of Our Lord one Thousand
Eight Hundred and Fifty Eight Come the
Defendant and filed his plea in the word
and figure following, to wit:

Jaywell County Court

Henry Gimmer

vs

Illinois River Rail Road Company }

" And the Said
" Defendant Come and defends VC and Says
" actio non as to all the Matters mentioned
" in the plaintiffs declaration except the
" first Count therein because he says he did
" not undertake and promise in manner and
" form as in Said Counts the plaintiffs

" hath thereof Complained against him
" and of this he puts himself upon the
" Country &c

Davidson & Parker
for Plff

And now afterward, to wit: at a term of the
County Court began and held at the Court
House in the City of Pekin in and for the County
of Tazewell 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 eighteenth day of
said month. present the Hon John M. Bush
Judge Chapman Williamson Sheriff and
John Gridley Clerk

Thursday January 28th 1858

Illinois R. R. Road Company
vs
Henry Zimmer

And now came
as well the plaintiffs by their attorney
Pettysman as the defendant by his attorney
Davidson & 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 Feb 3^d 1858

Illinois R. R. R Co

vs

Assumpsit

Henry Zimmer

And now again came
the parties by their attorneys and the Court
having fully considered the Special Demurrer
to the declaration and being fully advised
in the premises is of Opinion that said
Demurrer be Sustained for Special Causes
Number 3 & 4. Thereupon the Plaintiff asks
and obtained Leave to amend his Declaration.

Friday Feb 5th 1858

Ills. R. R. R. Co

vs

Assumpsit

Henry Zimmer

And now again came
the parties by their attorneys and the Plaintiff
Enters a Nolle prosequi into Common Court.

It is therefore ordered and adjudged by
the Court that the Defendants Recover of the said
Plaintiff the Costs and Charges by him about
his Special Demurrer Expended, and that
Execution Issue therefor.

It is further ordered

that the plaintiffs have 30 days to file
Bill of Exceptions in

State of Illinois
Paywell County

I John Gricey Clerk
of the County Court within and for Said County
do hereby Certify that the foregoing fifteen
pages contain a true and perfect Copy of
all the papers and the record of the proceedings
had in the Cause therein named as the
Same appears of Record in my Office.

Witness John Grisley Clerk of
the Sevier County Court and the Seal
thereof hereunto affixed at Pekin
this 8th day of March, A.D. 1858,

H. P. Read & Co.

As
Henry Zimmer

Complete Record

Recd April 21 1858
Leland
Ct R

Chas \$ 4.50

Illinois River Rail
Road Company

by
Henry Limmer

Supreme Court
April Term
1888

Argument for Deft

This is a demurrer to the plffs
declaration

The first objection taken to
the declaration is that it does
not appear by any proper
allegation or averment therein
that there is any such
Corporation. It is nowhere
averred therein that I can
find that the plff was ever
organized & became an
incorporated Co. The printed
abstract alleges that but is not
in that respect sustained by the
Record See Record page 3.

It will appear to the Court that
the amended Charter required ten
per cent to be paid by each
Subscriber on making his subscription
to the Stock of the Co. and this
whether the subscription was
made before or after the

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Co. should be organized. It is
conceived that a subscription
without such payt. would be void.
If this view is correct then it was
necessary for the pff to add this
payt. in his declaration.

The ground upon which this
objection is placed is that such
subscribers would have no means
or power to compel the Co. to
issue to him Certificates of Stock.
The agreement would be all on one
side a mere nudum pactum
and if his subscription can be enforced
by the Co it will follow that here
is an agreement which one party
can enforce and which could not be
enforced by the other party.

Every agreement to be binding
in law must be mutual.

1 Conn. Cas. 86.

2 Am. R. Way Cas. 490

13 Ill. Rep. 504

13 Ill. " 520

13 Ill. Rep. 514

The case cited by the pffs 16 B. Monro
p. 5 was one where the charter
required \$1. on each share to be
paid at time of subscribing.

which was implied by Jeff and the Court held him bound by his Subscription, but in that case he had actually received his Certificate of Stock and so of course could not complain of the want of mutuality as he already had received all he would under any circumstances be entitled to even if he had fully paid his Subscription. But in this case nothing was paid by Zimmer & no Certificate of Stock was issued to him and if they shall never receive any thing from him, they are left in the same situation that he found them having gained nothing & parted with nothing & they not injured and he no gainer.

But it is said that the 9th Sec. of the Charter the Directors have power to prescribe the time & amount in which instalments due for stock shall be paid. The very words of this section import that his reference to balances for stock & not to the entire amount of the Subscription & presupposing that at least the first part, had been made

On a careful examination it does not appear that in the original or first amended Charter there is any permission to the Directors or others to dispense with the first pay't.

I think it will be found in every well considered case where an action for calls has been sustained that the first payment had either been made or the Certificates of Stock had been issued.

Another objection to the declaration is that it does not allege that the Capital Stock of the Co had ever been subscribed (One Million Dollars).

It is not denied that subscribers when the subscription is regularly made and after the Co. organized may be called on for such small part of their subscription as will be sufficient to defray the preliminary expenses of organization ascertaining the feasibility of the objects of its creation even before the whole Capital is subscribed. But when a Co. of a million dollars

Capital is created for a specific
purpose each Subscriber expects
& understands, when he subscribes,
that the whole amount is to
be made up before his subscription
can be demanded — No one thinks,
when he subscribes to such a Co
that if but a quarter or half the
amount shall be obtained that
his subscription is to be wasted
in the vain endeavor to
accomplish with the small portion
subscribed what it would take
twice or four times the means
at the disposal of the Co to
~~achieve~~ achieve —

That the subscription should
be full before calls for the general
purposes of the Corporation are
allowed appears consonant to
good sense and fair dealing
and indispensable to economy

Angel & Ames on Cor. Sec 543

6 Pick (Map) R. 23

9 do 187

10 do 142

1 Am. R. W. Cam 422

It is further objected to the declaration that it shows that the call sued for was not general upon all the stock holders but partial & only upon such as resided or subscribed in Lazenell Co. the nature of this call is specifically alleged in the declaration ~

This objection attempted to be answered by claiming that 3rd Section of the Charter authorizes such calls And if not that the amendment of 1867 January 29th ~

The view ordinarily taken of the rights & liabilities of stock holders in such a Co. is that it is in the nature of a private partnership, an association of individuals undertaking jointly some enterprise in which to the extent of their interests they are to share precisely alike both as to the burdens & profits of the undertaking and this view seems to have been entertained by this Court

13. Ill. Rep. 516 Rydu vs A & S R R Co.
A. V. A. on Corp See

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Generally men would not be willing
to invest their means in such projects
where they would be exposed to the
danger of any man or set of men
associated with them asking &
requiring them to bear the heat
& burden of the day while they
held back from the work and
only prepared to take active
measures themselves, when profits
were to be divided - The dividing
this work up as by the last recited
act in Counties And again sub-
dividing it indefinitely as provided
^{for} in the act of Feb 1867 into
such Sections as there were or
as might thereafter be laid ^{out} and
subdividing the call so that even
in one Co. half the subscribers
might be called upon to pay
up entirely and the rest in the
same Co. not called on at all
certainly has an unfair look and
indicates not only that there may
be cheating round the board, but
as if this contrivance was made
on purpose to advance selfish
ends & promote personal interests
& not the general good -

It is worthy of note that the
three very able Counsel for the
Jefy. have not been able to furnish
the Court with any authority to
justify this call — In my
limited reading I have ^{not} found
any thing analagous to it, and
the reason probably may be that
no Corporation before ever
attempted to enforce ~~so grossly~~
~~unjust~~ a rule, so grossly
unjust —

It is submitted that the
subscribers intended to take whatever
interest they subscribed for in the
whole road & not in any particular
County or Division ^{or section} of the road
The road was to be commenced &
fully completed by a certain time
limited in the Charter — Now
these amendments — And this
objection of dividing up the road
into Sections & making & running
just so much or many of them
as they choose to make & abandoning
the rest is made another special
ground of demurrer — It is
insisted that this extraordinary
power authorizing the directors

of the road in the discretion
to make only such portions
as they shall see fit is
such a radical alteration
as to discharge the subscribers
Barnet v. A & S R R 13 D U 504
Angell & A on Corp. Section
5' 36-7-8-9 & 540

It is no fair answer to their
objections to say as the plff
does that Dyer was a member
of the Co & that they were procured
by him or those lawfully
authorized to act for him.
Before any stockholder should
be held responsible for such
radical changes as have
been made to this Charter
& which the declaration shows
have been adopted by the
Company it should appear
that he was active in procuring
them & mere passiveness
not doing & not knowing
what was being done in the
premises is not enough.
Clearly a man ought not to be
charged with giving away his

rights-

unless at least a knowledge of the means by which they are sought to be affected is brought home to him —

Upon the authority of The P. O. R. R. Co. v. Elting reported in 17 Ill. Rep. it is claimed if I understood the argument of Counsel that every attestation which may be made in a Charter ~~and~~ binding upon all the subscribers upon an undefinable assumption that all attestations are for the benefit of the Co. & made in the particular application of all the members. This case is I believe by one or the other of the learned Counsel brought before against every objection made by the Dept and judging by the apparent confidence with which it is on all occasions produced it is supposed that there may probably ^{be in it} some hidden efficacy which I have as yet been unable to discover — If so much as Counsel claims has been decided in that case it is humbly submitted that the cause of justice & fair dealing would be greatly

promoted by an early review
of that case and a clearer
elucidation of what the Court
did decide therein, —

But as I read that case
it is by ^{no} means decisive of this
one and perhaps much of the
opinion was delivered too loosely
& without sufficiently criticising
the language used, —

Another ground of objection
is that the directors in their
amendment got themselves (see 2.)
authorized to take subscriptions
in any sort of property and
to give any price for it & to
wait & give any indefinite
credit on the sale of stock
whether they are promised money
or property in the end — The
very fact of such unusual traffic
in stock would have the
inevitable tendency to degrade
the price of all the stock of
the Co thereby injuring cash subscribers.

Besides such power is liable
to great abuse & might be used
by the directors to their great

pecuniary profit & to the loss of the rest. It is a power that might be used by a dishonest director to retain the control of the affairs of the Co., if they were cheating all the time.

It is an unfair & fallacious answer to this objection to say that Courts will presume that these powers will always be exercised to promote the interests of the Co., & not for selfish & improper ends. — If it was a fact that R.R. directors were always honest & capable of rightly conducting the affairs entrusted to them these extraordinary powers might not be so objectionable. But experience has shown that they do not always know what is to the best interest of their associates and it has sometimes happened & no doubt will happen again that they seek their interest so steadily as to render their Companies utterly bankrupt.

The Charter of the Co at the time Zimmer subscribed required that calls should be made & notice of 90 days given. The amendments procured in 1887 provide that 20 days notice shall be sufficient. The declaration alleges the making of the order by the board & advertising three weeks and this record shows that before ninety days had expired this suit was brought. It is conceived that this shortening of the time of payment is such an essential alteration of the contract as could not lawfully be made without the express consent of Zimmer.

The Court will see by the preceding declaration that the amendments to the Charter have all been adopted by the pff. And we think the charges wrought by them are so radical & may be said so disastrous to defeat the first object of this Co.'s organization that if a case can arise where subscribers may be

relieved from the consequences
of such misdeeds & hereby legislation
that the Court ought to interpose
in this case —

Now Zinner can be
charged with assisting to
procure these amendments
is not proven — No act
of his has been shown. And
besides no Certificate of stock
is alleged to have been issued
to him — He knew nothing
about these amendments (and
if he had known he was in
no position where he could
properly have by his act or
vote done any thing to
prevent them —

The abstract does not show
but the record does that the
Jud. Court was N. Pro. by
the plff —

A. S. Davis,
for Defendant

M. R. R. Lee

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Henry Zimmerman

Defts Argument

A. L. Davis
Atty.

Filed May 8. 1858

L. Leland
Clerk

The Illinois River
 Rail Road Company }
 vs } Error to Loggell
 Henry Zimmer }

Brief & Argument of Plff
 by Purple

The Declaration alleges the passage,
 and makes proposit of -

- X 2. An act of 1. March 1854. - Laws 1854. 227
 1st " " 11 February 1853. Laws 1853. 53
 3rd 29. June - 1857. Laws 1857. 105
 4. 6 February " " " 838.

Incorporating the " Illinois ~~River~~ River
 Rail Road Company."

That on the 6th Sept 1856.
 a sufficient amount of the Capital Stock
 having been subscribed as required by the
 acts of 1853 & 1854. The Company became
 organized by the Election of ~~Stockholders~~
 Officers by the Stock holders. as provided
 by the said acts. That Defendant subse-
 quently assented to the Organization -

That on the 13th Nov. 1856 Defendant
 subscribed & shone \$200. to the Stock
 of said Company and became a Stock Holder

and liable to pay, and being liable
promised to do so when lawfully required

That on the 2nd Decr. 1857 the Board of
Directors passed an Order requiring sub-
scribers to stock residing in, or whose
subscriptions were made in Logan County
on the Books in that County to pay 65.
per cent or \$65. on each share of stock
subscribed — and \$5.00 per share on
the 1st Monday in each Month thereafter until
the whole amount subscribed should be paid
Payments to be made to Waggon seller and
Purveyor — 25 days notice of the time
and place of payment to be given by publi-
cation in a newspaper printed in P. Kin.

That Notice was given and published in
the Logan Register a Newspaper published
in P. Kin as required by law and the
Order of the Board

That defendant made his subscrip-
tion in Logan County, and thereby became
liable to pay \$130. \$65. per share, that
Purveyor Waggon seller attended at the time
and place specified in the notice, but defendant
did not pay, but refused to.

The Defendant demanded specially to the Declaration for the following reasons.

1. No Allegation that at time of signing for the Stock Defendant paid ten per cent.
2. Declaration does not show that \$1.00,000~~0~~ Capital Stock of the Company had ever been Subscribed
3. The Call for payment of Subscription was partial being made on part of the Subscribed only
4. That the Charter was so amended that the Plaintiff might finish any portion of the road and abandon any other portion — so that Plaintiff would be under no obligation, even to complete the road from Jacksonville to Pasade
5. That the Amendments to the Charter authorized the company to take Subscriptions on credit payable in property or labor &c, thereby reducing the Value of Defendants Stock.
6. Amendment, to Charter authorizes Stock Calls to be made on 20, instead of 90 days Notice as provided when defendant subscribed

The Special Causes of Remun assigned all except the first or Specially authorized by the charter and its amendments, all of which are presumed to have been made and procured by the Company for the general benefit of the Stockholders who compose it. All alterations and amendments to the charters of Rail Road Companies are presumed in the first place to have been made upon their application and at their request.

Whether one member of such Company, or Stockholder could, if an issue were formed upon that question be permitted to prove that he protested against or objected to the alteration, is a question which can not arise upon a demurr to a declaration.

The Demurr admits the existence & passage of the laws as set forth, the Organization of the Company, and all the material averments in the declaration — And also the presumption arising from these enactments that they were made by the consent and for the General benefit of all the Corporators.

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The 14th Sec. of the act of 1853. p. 57.
permits the directors to call for payment
of stock Subscriptions in the discretion
of the Directors on 90 days Notice, This
act. requires \$5.00 to be paid on Subscribing

The act of 1854. p. 207 appoints 3 Commis-
sioners to receive Subscriptions — Authorizes the
Election of Directors when \$100,000 shall be
Subscribed — requires \$10.00 on a share to be
paid on Subscription — Authorizes the Company
to Connect with any other road and dispended
with the necessity of building the road north
of such Connection.

The act of June 29. 1857. — p 107. provides
that the Company may commence their
Road within 5 years after its passage,
May own and Operate the portions Completed
though the road may not be finished — and
the 9th Sec. provided that calls for Sub-
scription may be made in any one
County, alone, provided the money is to be
expended in such County

6
Sec. 12. provides that Calls may be made upon 20, instead of 90 days notice as provided in the original act.

The act of Feb. 14. 1857. § 839 Sec. 2. authorizes Subscriptions to be received payable at any time or in any manner to be agreed upon by the parties —

Thus I believe on all the provisions of the laws complained of by the Special Demurrer

If the proposition with which I set out, that all these amendments to the original Charter are presumed to have been made at the request and by the consent of the Corporation; be true — then that is an end of this whole case.

There is nothing complained of which has not been done, under authority of law and by the consent of the Plaintiff himself.

The Reason 1st urged that it does not appear that the Plaintiff paid his ten per cent when he subscribed, it seems to me is a slim excuse for not paying the residue —

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7
If the Plaintiff below assumes that he did,
he ought not to find any fault on that
account; He can pay it now if he chooses.

The Subscription as to him would not
be invalid even if he had got trusted
for the 10 per cent, or if the Company
chose to give it to him - The Contract to
pay the balance is binding, notwithstanding,

As to the 2nd Special Cause of Return
the declaration does allege that a suf-
ficient Subscription had been made to
authorize the organization of the Company,
so that this assigned Cause has no foun-
dation in fact.

The partial Call of Subscription from the
Logan County Subscribers was authorized
by the amendment to the charter -

There is nothing unjust or inequitable
in it. It is expended within the County
where it is collected and where the parties
Subscribed, and are supposed to live,

8
As to the 4th 5th & 6th Special Causes of
reference to the declaration, I need only say,
that as to them, and indeed as to all
causes assigned which would appear to be
material — they are covered by the decid-
ion and principles asserted, in the case
of "The Poria & Aquana Rail Road Company,"
no. Etting 17 Ill. R. p. where all or nearly
all the questions are learnedly discussed
and judiciously considered.

I refer to that case, as being of
controlling authority in this, and suppose
it must be decisive of the questions presented
by this Record; and in conclusion I state
with confidence that it no where appears
in this record, nor can it be made to
appear outside of the Record, that the
Defendant has, or can sustain any in-
jury or loss on account of these amend-
ments to the Charter of the Company, or
by reason of any thing which has been
done in the premises

A. J. Crump

115
Minors River
Rail Road Co
Henry Zimmer

Argument

Purple

Filed May 8 1858

L. Leland
Clerk

Wm. H. P.

Klincks Rail Road Co / Supreme Court
vs
Henry Simmer / April Term 1858
3^d Grand Division
Argument for Appellant

The Argument already on file in this
Cause for appellant, by Thomas one
of the Counsel, fully reciting the acts
of incorporation, Allegation of Declaration
& Promises of Simmer, we respectfully
refer to them as then set forth.

And the first Point we make in the
Case is, That it is not Necessary to
allege in the Declaration that the
Appellant Paid ten p. Ct. on his subscription
at the time of subscribing.

Because it is not Material whether
the subscriber paid 10 p. Ct. at the time of
subscribing or at any other time afterwards
and the payment at the time, or the
payment of ten p. Ct. is the Subject
Matter of Proof, and the want of a time
of Payment at the time of subscrib-
ing does not render the Declaration
Obnoxious to Demurrer See 16th
B Monroe 5, & 21 Vermont R. 30, 13 Wb
514.

And If the Appellant was in duty bound to pay
the 10 p. Ct. at the time of subscribing, the

Agency is now Manifestly Uncon-
-civable allowing a Party to take ad-
-vantage of his own wrong See Pierce on Railways
page 64. And when Charters required the
first installment of 5 p. ct. to be in Cash
& parties gave a note for it, the subscription
is held good 13 Nbs 514 & 5 Alabama 807.
and also when the Party subscribing
had refused to pay the note see Pierce on
Railways 65 & 66. & 21 Vermont 30. &
5 N. H. 145. And in Kentucky it is
"Decided that although the Commission-
-ers might have refused to receive the
"subscription when made without payment
"at the time. Yet if they did not reject it
"they Contract, after the stock had been
"received by them, with out Payment,
"was Binding on Both Parties." It was
"Considered the Duty of the Subscriber
"to pay the installments when he subscribed
"and he was not allowed to take ad-
-vantage of his own wrong" - See 11 B
Monroe page 5, and 1 Ann Burleigh
13 Nbs 516.

And this subscription was made
after the organization of the Company
And by the 9th Dec. of the Original Charter
"All installments on all stock so

"to be paid at such times and
"in such sums as said Directors may
"present" And the Directors have pur-
-sued, and now the to be paid as directed
upon.

And the Legislature by the act of 1857
page 839 ratify & confirm this subscrip-
-tion, And as the state alone has a right
& Complain she may well ratify and
assent to the act of the Porters, even if it were
irregular, the Porters being limited cannot
Complain.

2^d It is not necessary to say in the Declaration
that \$1,000,000. has been subscribed,
Because this is a subject matter of Proof
and may be shown by the Deeds of the
Company. See 39 Maine R. page 587. 13 Hb
51b. And the Charter of the Company autho-
-rizes the organization thereof, directs proceeding
on the subscription to collect. Acts (53 page 55
Acts (54 page 207. And the subscription
nor the Charter, any when make the
subscription of \$1,000,000. of dollars,
a Convention Precient to receive Colls.
And if the raising of the entire capital
stock is not made by the agreement subscribed
on the act of incorporation a Convention

incident to the right of the Corporation to
recover Calls either expressly or by imple-
-tion, the Subscriber will be liable for
the same although the full amount
has not been, subscribed, or taken.
See Rorer on Railways 687 also 7
Barb. 157.

3^d It is not necessary that the Declaration
should show that the Calls are general
on all of the Stockholders of the Company
Because the Annual Meeting expressly
authorizes, the calls to be made, upon
Subscribers of particular Counties for Money
to be expended in the County in Promoting
the same General object. viz. the Building
of the Road, see Act 37 page 107. Sec 9.
And this is calculated to promote
the interest of the Company, And
Additional Powers and privileges
Conferred on a Corporation by Amer-
-ican Act, do not multiply the
Contracts and Obligations of the
Stockholders to the Company see
Peoria & O. R. R. Co. vs Elling 17 Ills page 432
And for the same reasons the
objections No 4 & 5 are also untenable.

It is in no sense a change of the
Character of the Enterprise, which still
remains, that for building and opera-
ting a Railroad, with enlarged capacities
and privileges, which may be highly
promotive of its welfare and success.
See acts (57 page 107, & 838, = 13 Hls 506,
17 Hls. 432,

And is the 9th Sec. of the original Charter
Acts (53 page 56, which provides, that all the
instalments required to be paid for stock
taken after the organization of the Company
shall be paid at such times, and
in such manner as the Directors may
prescribe, with out effect? The
Directors prescribe the time & manner
declared upon and so required Payment
And if the Change of the time of notice
in cases when forfeiture may be had
or non payment, has by the amendment
act from 20 to 20 days. Is that such
a change of the Charter, as nullifies
the contract of the stockholders
with the Company? Is the amendment
unconstitutional & void? Is not that
act manifestly designed to promote
the general welfare, and interest
of the Company, and can the

Dependent to the advantage of the
Act procured for his relief in common
with other Members of the Company
to shrink out of his subscription, &
permit it would be manifestly
unjust, as well as contrary to the
Law. See Pierce on Railways page
87 & note 93 & note, 19 Eng Law & Equ Rep.
page 11 & 17 H Ill 432 & Cases then
cited. And I cannot think therefore
but that the Declaration in this case
shows good Cause of action against
the Defendant. And that the Sumner
should have been over ruled & judg-
ment rendered for the Plaintiff.

B. B. Rogers
for applicant

Winn R. R. Rec
No 115

Amey L. Winn

Argument for
PLA

Filed May 8, 1858
L. Leland
clerk

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

To the Sheriff of the County of *Tazwell*

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 *Tazwell* County, before the Judge thereof, between *The Illinois River Rail Road Company*

plaintiff, and *Henry Zimmer*

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

Plaintiff

as we are informed by *their* 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

Henry Zimmer

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 *Henry Zimmer*

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 Eng. ...
Year of Our Lord One Thousand Eight Hundred
this ... day of ... in the
of our said Court and the Seat thereof at Ottawa
Illinois, The Hon. JOHN D. CALTON, Chief Justice

notice, together with this writ.

you shall give the said ...
Court shall order in this behalf; and have you then there the names of those by whom
the errors assigned, if ... shall see fit; and further to do and receive what and

... to hear the records and proceedings aforesaid and
term of said Court to be holden at Ottawa in said State, on the first Tuesday of the next
that ... do and appear before the Justices of our said Supreme Court, at the next

...
Command that, that by good and lawful men of your County, you give notice to the said

the errors in the same, in due form and manner according to law; ...
preme Court of the State of Illinois at Ottawa, before the Justices thereof, to correct

and proceedings of which said judgment was rendered, to be brought into
as we are informed by ...

... it is said that manifest error torts intervened to the injury of the said

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The Illinois River & Rail Road Company
Henry Zimmer
Service
Chicago
First Writ
Writ April 10 1858
Black
Writ April 11 1858
W. C. Williams
W. C. Williams

52
5
210.68

Executed Writ April 7th A.D. 1858

By reading to the Within named Henry Zimmer
C. Williamson S.T.C.

By J. C. Keene Sept

Court, before the Judge thereof, between
of a plea which was in the

Because, In the record and proceedings, and also in the rendition of the judgment

to the effect of the Court of

Creating:

SUPREME COURT
STATE OF ILLINOIS

STATE OF ILLINOIS,
SUPREME COURT,

To the Clerk of the

County Court for the County 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 Henry Zimmer

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

as we are informed by the complaint 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 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 one thousand eight hundred and fifty-eight.

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

115

The LL. River R.R. Co

or

Henry Zimmer

Writer

Filed April 5th 1858

L. Leland

CLK.

W. R. R. Co. { Supreme Court term
Term Summer 1858

Prints & Authority for

1st It is not necessary & allude in the
Declaration that I have paid 10 p.c. on
his Subscription at the time of Subscription
See Acts 1853 page 53. Act (54) page 208.
16 B Monroe 5. 21 Burnett R 30. 13 Wls 514.
Power on Railways 64, 65, 46. 5 Atlantic 807
5 Ruel. 145. 13 Wls. 516. Acts 1857 page 839

2^d It is not necessary & over in the Declaration
that \$1,000,000, has been subscribed
See 39 Maine R page 587. 13 Wls. 516.
Act (53) page 55. Act (54) page 207 power on
Railways page 18. 7 Barb. R. 157.

3^d The Legislature have granted & amended
the Charter of Railroad Companies and Comp
on them additional power and privileges
so as to promote the interest of the
Company and advance the general
objects of the Corporation, and
these amendments tend to promote
those objects. See Acts of 1853 page 53. Acts
1854 page 208. Act (57) page 107. 839. 13 Wls
506. ~~17 Wls 432~~ Power on Railways
87 & 93 & note. 17 Eng Law & Eq. Rep. page 11.
17 Wls 432 & cases there cited

Wm. R. R. Co.

M. J. N. Co

June

PAID

Contd. Huttons

STATE OF ILLINOIS, }
SUPREME COURT. }

April Term,
3d GRAND DIVISION.

Illinois River Rail Road Company,

vs.
Henry Zimmer

} Encl to Tazewell

Abstract of the Record.

This was an action of assumpsit brought by the Illinois River Railroad Co., vs : Henry Zimmer, of the January term of the Tazewell County Court, 1858, to recover a sum of money of him as a subscriber to the Capital stock of said company.

The plaintiffs' set out in their declaration, that on the 11th day of February, 1853, the Legislature of Illinois Incorporated the said company for the purpose of building a Railroad from Jacksonville in Morgan county, to La Salle, in Lasalle county, and was approved by the governor the same day, and became a law of the State of Illinois, also afterward to-wit: on the 1st March, 1854, the Legislature passed another Law amendatory to the above law, and was approved the same day, and became a law and afterwards on the 29th January, 1857, the legislature passed another law entitled "An Act to amend an act to amend the Charter of the Illinois River Railroad Company," and approved January 29th, 1857, and became a law and afterwards on the 16th day of Eebruary, 1857, the Legislature passed another additional act, entitled 'an act to amend an act entitled an act to construct a Railroad from Jacksonville, in Morgan county to Lasalle in Lasalle county, and approved 11th February, 1853, which last act was approved 16th February, 1857, which

Page 3
Averment.

Page 4
Contract.

several acts the declaration, makes profect, and the several acts were in force at that time and that there having been sufficient amount of the capital stock of said railroad company subscribed according to the provisions of said charter on the 6th day of September, 1856, the said company became duly organized under the provisions of the several acts first above mentioned, by the stockholders electing the officers &c., and that the defendant assented to the said organization, and that the defendant on the 13th November, 1856, for the purpose of constructing said railroad, among others subscribed to the following agreement, 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 Railroad company, herein after set opposite our names Respectively, and in consideration of our mutual subscription 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 Railroad company the amount of capital stock herein after subscribed by us and set opposite our names and pay all demands to the said company when called for according to law by said company. Dated Pekin, Nov. 13th, 1856; and the said plaintiffs' aver the defendant subscribed his name for 10 shares, amounting to One thousand Dollars, and that the company accepted his subscription by means of which he became liable to pay plaintiffs according to the terms of said subscription, and that at the meeting of the Directors of said company, at Jacksonville on 2nd December 1857, the directors passed an order requiring subscribers who resided in Tazewell county, or whose subscriptions was made payable there, should pay on the first January, 1858, 65 Dollars per share on each and every share so subscribed, and they should on the 1st Monday in each month there after pay \$5 on each share, until all was paid, and that the payment to be made to Joshua Wagenseller or B. S. Prettyman, and that they should give twenty days notice of time and place where such payments were to be made by publication in some Newspaper published in Pekin; the plaintiff avers notice, by publication as required by the last made order, and also avers that the defendant made his subscription in Tazewell county, and that Wagenseller and Prettyman attended at the time and place given in said notice to receive payment, the plaintiff avers that by reason of the premises the defendant became liable to pay the sum of \$130 or \$65 on each share, so subscribed, also, to which declaration was added, the common counts, the plaintiff's also files a copy of account sued on.

Pleas.

The defendant pleaded the general issue to all but the first count.

Demurer.

To the first count the defendant demurs and assigus for cause of demurer,

Cause.

1st, there is no allagation in the declaration that the defendant paid 10 per cent. on his subscription.

Cause.

2d. It does not appear that the One Million of dollars has ever been subscribed to the capital stock.

Cause.

3d. If does not appear in the declaration that the call on which the suit was brought was general upon all the stockholders, but it appears the call was partial and only upon part of the subscribers.

Cause.

4th. It appears from the declaration and the laws therein refered to that the plaintiff's have procured and adopted such amendment to its charter as will enable the plaintiff's to build any and any such part of the railroad and run the same as as the plaintiff's may see fit and leave the plaintiff's under no obligation to ever finish and complete said road from Jacksonville to Lasalle and authorized the plaintiff's to finish and complete any portion of said road road on the rout which may be laid off as a division, and abandon any other part

2 shares +
* 2 Hundred

Page 5
Averment.

Page 6

of said road.

Contract. 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, labor or any other thing, thereby enabling said company to sell its stock upon terms much more favorable to new than old subscribers, and because the declaration and the laws referred therein shown that the said company have procured and adopted an amendment to the charter of the company by which subscribers are required to pay calls named by said company on a notice of 20 days instead of a notice of 90 days, the charter provided when the defendant subscribed, and that the said declaration is in other respects informal and insufficient, and upon the issue on the demurrers.

Issues. The court entered the following Judgment :

Illinois River Railroad company, vs:

John W. Casey

} January term, Tazewell County
Court, 1858.

And now again comes the parties by their attorneys, and the court having been fully considered the special demurrer to the declaration and having been fully advised in the premises it is ordered that the demurer be sustained for the special causes, No. 3 and 4.

The court rendered judgment for costs against said plaintiff, to all which orders and Judgment the plaintiff excepted and prayed an appeal.

Abstract
Filed April 5, 1858
S. Leland
CLK

STATE OF ILLINOIS,
SUPREME COURT.

April Term,
3d GRAND DIVISION.

Illinois River Rail Road Company,
vs:
Henry Zimmer

Exor to Tazewell

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Fleas. The defendant pleaded the general issue to all but the first count.

Demurer. To the first count the defendant demurs and assigns for cause of demurer,

Cause. 1st, there is no allagation in the declaration that the defendant paid 10 per cent. on his subscription.

Cause. 2d, It does not appear that the One Million of dollars has ever been subscribed to the capital stock.

Cause. 3d. If does not appear in the declaration that the call on which the suit was brought was general upon all the stockholders, but it appears the call was partial and only upon part of the subscribers.

Cause. 4th. It appears from the declaration and the laws therein refered to that the plaintiff's have procured and adopted such amendment to its charter as will enable the plaintiff's to build any and any such part of the railroad and run the same as as the plaintiff's may see fit and leave the plaintiff's under no obligation to ever finish and complete said road from Jacksonville to Lasalle and authorized the plaintiff's to finish and complete any portion of said road road on the rout which may be laid off as a division, and abandon any other part

of said road.

Contract. 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, labor or any other thing, thereby enabling said company to sell its stock upon terms much more favorable to new than old subscribers, and because the declaration and the laws referred therein shown that the said company have procured and adopted an amendment to the charter of the company by which subscribers are required to pay calls named by said company on a notice of 20 days instead of a notice of 90 days, the charter provided when the defendant subscribed, and that the said declaration is in other respects informal and insufficient, and upon the issue on the demurrers.

Issues.

The court entered the following Judgment :

Illinois River Railroad company, vs:

John W. Casey.

} January term, Tazewell County
Court, 1858.

And now again comes the parties by their attorneys, and the court having been fully considered the special demurrer to the declaration and having been fully advised in the premises it is ordered that the demurer be sustained for the special causes, No. 3 and 4.

The court rendered judgment for costs against said plaintiff, to all which orders and Judgment the plaintiff excepted and prayed an appeal.

The Illinois R.R. Co.

*13
Lyman*

Filed April 30, 1858

*Leeland
Clock*

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And now again comes the parties by their attorneys and the court having been fully con-

Illinois River Railroad company, vs.

January term, Taxewell County.

The court entered the following judgment:

And upon the issue on the demurrer defendant answered, and that the said declaration is in other respects material and material on a notice of 30 days instead of a notice of 60 days, the charter provided when the charter of the company by which subscribers are required to pay calls named by said company shown that the said company have procured and adopted an amendment to the charter to new than old subscribers, and because the declaration and the law referred to any other thing, thereby enabling said company to sell its stock upon terms much more than to stock on any credit that may be contracted for and payable in property, upon or has procured such an amendment of its charter as allows the company to take subscriptions. It appears from the declaration and the law therein referred to that said company of said road.

Grants heretofore to corporations may be presumed
to be accepted as well as grants to individuals and
an express acceptance is not necessary

Chas River Bridge as under Mass 7 Dist 469,506

The same presumption are made ^{in favor of} ~~in respect to~~ ^{beneficial} ~~to~~ corporations
as of individuals - grants and proceedings ~~to~~ ^{beneficial}
to corporations are presumed to be accepted - nor is
there any difference ~~in respect to~~ in the presumption of
the acceptance of an original charter ^{direct} from its source
under it & the same presumption of the acceptance of
a particular charter by ^{a corporation already in existence} ~~an existing corporation~~ - the
fact either case the acts of the corporate officer are
sufficient evidence ~~of~~ ^{of} their to infer an
acceptance - in respect to the ^{acceptance of} ~~acceptance of~~ the original charter
- or of a particular charter by an existing corporation, or
of grants of any kind ~~from~~ ^{beneficial} to the corporation
- no particular form of acceptance, or necessary evidence
is necessary - & the doctrine applies equally in favor of a
subsequent corporation.

Bank of India Acts as Decree 6 N. S. Lond. 445-448
~~against corporations~~

Welshpka & Coose N. S. Co vs Birmingham 5 Ala. 657

Hampshire vs Franklin 16 Mass 76

By most or certainly by many of the real estate charters
in Illinois, it will be found, on examination of the charters
that all the "powers of the corporation" are expressly
vested in the Board of Directors— This clause makes
them act, as the acts of agents employed by them, & the
acts of other officers of the corporation acting in subordi-
nation to them must shew a more conclusive
evidence of acceptance of a additional charter, ~~than~~
~~any~~ or other grants favorable to the corporation, than
~~the~~ case of the United States Bank, ~~as appears to show~~
the foregoing ~~case~~ of principle we have shown in the
case of Bank N. A. is demanded— the Board of Directors
of the Bank, being little more than a business Board
& by no means invested with all the corporate powers

But as a general rule it seems that the Board of
Directors possess all the powers of the corporation
unless expressly limited by the charter or by the
by laws

Piedmont on Real Estate 290

As to the acceptance of additional charters, it does not
seem much expressly, nor any thing that

distinguishes the mode of run or plane, or the manner of moving it, from that is seen in or among cases of airplane of original charter, so far as the fact of airplane or non airplane where no specific mode of airplane is prescribed by the act is concerned. See Angel & Ames on Corp. pp 81-87

Acts done by the corporation under an amendment of the charter are sufficient evidence of its airplane though no express airplane has been given

Trustees of School District vs Gibbs 2 Cusk 39
~~freedom case~~

Bringing suit, under an additional act, by the directors of a corporation is an airplane of the act by the corporation

Insolvent Kenebush Bank vs Richardson 1 Grant 81

Though in the following case there ~~is~~ ^{was} a court proceeding by ^{in this case} ~~the court directed~~ ^{one of the parties} ~~that there was no airplane~~ ^{in this case} ~~in fact of an amendment to a charter, nor any thing from~~ ^{in this case} ~~that such airplane could be enforced, yet the court in~~ ^{in this case} ~~the fullest manner recognized the authority that of an under~~ ^{in this case} ~~airplane, by an amendment, by the act of the body of the corporation,~~ ^{in this case} ~~or by the act of the corporate officers, & by acts of user under~~ ^{in this case} ~~it.~~ ^{in this case} ~~Commonwealth of the Commonwealth vs Cullen 13 Penn 133, 140-1~~ ^{in this case}

Of course where the charter or the amendment prescribe a particular mode of operating changes, or of appealing to them, this mode must be observed. There is the following & many other cases, where seen to me interesting distinct from cases where no mode is prescribed, though I find them loosely referred to in some cases, to show they have a real analogy. Case of St Mary Church 6 Id R. 498, 504-5

The Illinois River
Rail Road Company

by
Henry Zimmer

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