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Filed 18 June 1863

No. 30.

COURT OF APPEALS OF MARYLAND, JUNE TERM, 1863.

Appeal from the Circuit Court for Baltimore City.

AN INJUNCTION CASE.

THE MAYOR AND CITY COUNCIL OF BALTIMORE,

vs.

THE BALTIMORE AND OHIO RAIL ROAD COMPANY.

APPELLANTS' STATEMENT.

The bill which was filed on the 11th of March, 1863, alleges, among other things, that the Baltimore and Ohio Rail Road Company heretofore loaned to the Central Ohio Rail Road Company the sum of \$400,000, and took a mortgage from the latter Company, which stood against its property as the fourth mortgage. That the mortgages having priority over the said \$400,000, were the first, second, and third mortgages, amounting in all, with back interest, to \$3,600,000, besides income bonds and other indebtedness, making the entire debt of the said Ohio Company, nearly seven millions. That therefore the said debt of \$400,000, has been long regarded as hopeless and lost.

The bill further states, that the Baltimore and Ohio Rail Road Company had determined to grant a loan to the said Ohio Company, either by advancing the money, or by the purchase of the said first mortgage of \$1,250,000. That a proposition was made to the Board of Directors of the Baltimore and Ohio Rail Road Company, by the President thereof, recommending the said loan;—that the said proposition was favorably entertained by the Board—referred to the Committee of Finance, which unanimously reported, with the exception of one member, that the loan be made, and that the same will be consummated within a few hours, if the proceeding is not arrested by injunction. The bill distinctly charges that the said

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loan is beyond the corporate powers of the said Company, and will be a fraud upon the rights of the Complainant and the other Stockholders of this Company. That if the Baltimore and Ohio Rail Road Company have funds on hand for which it has no use within its legitimate powers, it is in duty bound to hand the same over to its stockholders, to whom they belong.

The bill states that the Complainant is the owner of forty-five thousand shares of the capital stock of the Baltimore and Ohio Rail Road Company.

A writ of injunction was issued on the 11th day of March 1863, and on the same day served on the President and the Board of Directors then in session.

On the 24th day of March 1863, the answer of the Rail Road Company was filed.—*Rec'd*, p 6. It admits that the Baltimore and Ohio Rail Road Company "*propose to cause themselves to be substituted in the place and stead of the holders of the first mortgages of the Central Ohio Rail Road Company,*" and say, "*that the measure is one eminently judicious in every respect;*" and a copy of the resolutions, actually passed by the Board is exhibited with the answer;—to which the attention of this court is especially asked—p. 8.

The answer avers, "*That the measure proposed is altogether within the corporate powers of the Company.*"

The simple issue, therefore, is, whether the Baltimore and Ohio Rail Road Company had the power to go into Ohio and make such an investment of its funds, or not? For if it had no such power, then all the reasons assigned in the answer, showing how desirable such an investment was, must pass for nothing.

The court dissolved the injunction and filed an opinion—which is in the *Record*, p. 11.

The city then proposed to give bond; which would have the effect of continuing the injunction until the case could be heard by the Court of Appeals.

The Judge was requested to name the penalty of the bond, which he would require—the city intending to give its own bond. But the Judge did not name the sum—but speaks, in his opinion, of several millions of dollars. He finally determined that the city could not give such a bond, and the consequence was, that the Baltimore and Ohio Rail Road Company was left at full liberty to consummate its investment.

The Complainant appeals from both orders: that dissolving the injunction—and that refusing to receive the bond of the city.

The parties agreed:—

1. That the connection between the Baltimore and Ohio Rail Road and the Central Ohio Rail Road, takes place at Benwood, four miles below

Wheeling, where there is a lateral road not quite a third of a mile in length which diverges from the main stem of the Baltimore and Ohio road, and ends on the bank of the Ohio river opposite Bel-Air, the station of the Central Ohio road, and that the communication between the two roads is kept up by means of a steam Ferry-boat, for the benefit of goods and passengers.

2. That either party may read all Acts of Virginia and Maryland which are printed in any authentic form, in the same manner as if the same had been referred to and made part of the bill and answer.

3. That the Central Ohio Rail Road runs from Bel-Air on the west bank of the Ohio river, opposite Benwood, which is its eastern terminus, to Columbus, the capital of Ohio, which is its western terminus. That the entire work lies within the State of Ohio.

4. Either party to be permitted to use *any good* Rail Road Map for illustration, and to read the printed railroad reports and documents.—P. 11.

#### APPELLANTS' POINTS.

1. A corporation is the creature of the law, and derives all its powers from the act of incorporation—it is exactly what that act has made it, and is incapable of exerting any other faculties than those conferred by that act, or in any other manner than it authorizes.

Grant on Cor. 302, 303, (top) 4 Ken., 298.

Head and Amory *vs.* The Providence Ins. Co., 2 Cr. 127, 166.

Dartmouth College *vs.* Woodward, 4 Wheat., 636.

United States Bank *vs.* Dandridge, 12 Wheat., 68.

The N. Y. Fire Ins. Co. *vs.* Ely, 5 Conn., 560.

Purim *vs.* Ches. and Del. Canal Co., 9 How., 172, 183, 184.

Latrobe *vs.* Com. Bank, 8 Dana, (Ky.) 114.

2. Every act of incorporation must be construed in such manner, if possible, as not to exceed the sovereignty of the legislature granting it. It ought not therefore to be deemed to authorize any act to be done which would exceed the jurisdictional power of the State, or interfere with the rights of other States.

Farnum *vs.* The Blackstone Canal Co., 1 Sum-n., 46, 62.

Abbott *vs.* Balto. and Rapp. Steam Packet Co., 1 Md. Ch. Dec. 542.

Bank of Augusta *vs.* Earle, 13 Pet., 587.

3. A railroad corporation is no exception to the rule requiring a strict construction of corporate powers.

Coleman *vs.* Eastern Counties Railway Co., 10 Beav. 1.

4. If the power claimed be not a power expressly granted, but one existing by implication, it must be shown that the implied power is necessary to carry into effect the powers expressly granted. In one case of high authority it is said that it must be incidental to its very existence.

Dartmouth College *vs.* Woodward, 4 Wheat., 636.

Penn., Del. and Md. Steam Nav. Co., 8 G. and J., 318, 319.

The People *vs.* The Utica Ins. Co., 15, Johns, 383.

Beatty *vs.* Sessey Knowler, 4 Pet., 168, 171.

Appellant's points on the second appeal, viz: The refusal of the Judge to allow the city to file an appeal bond.

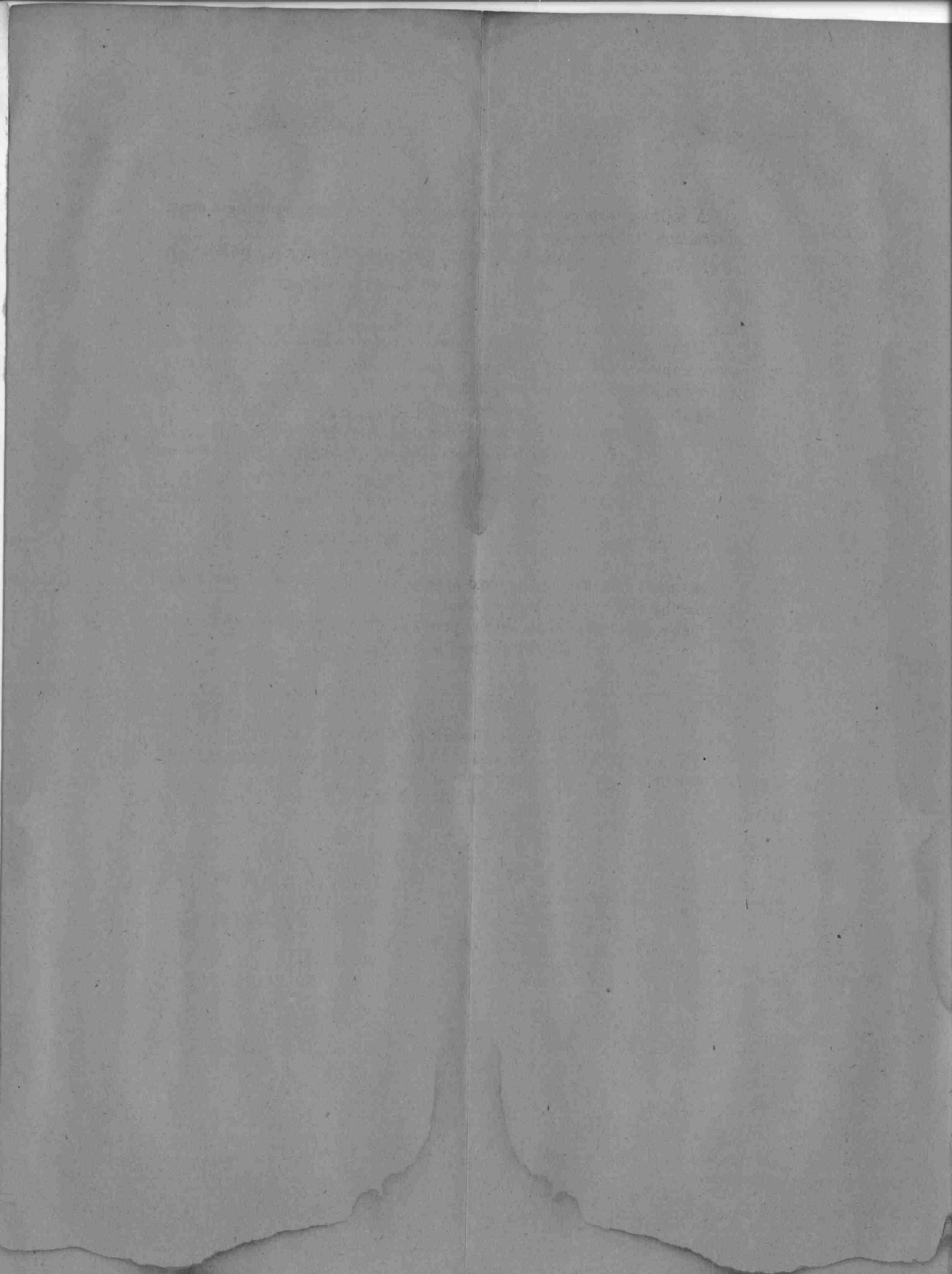
1. The corporation of the city has power by its charter to *sue and be sued*.  
Code Pub. Local Laws, 152, sec. 1.

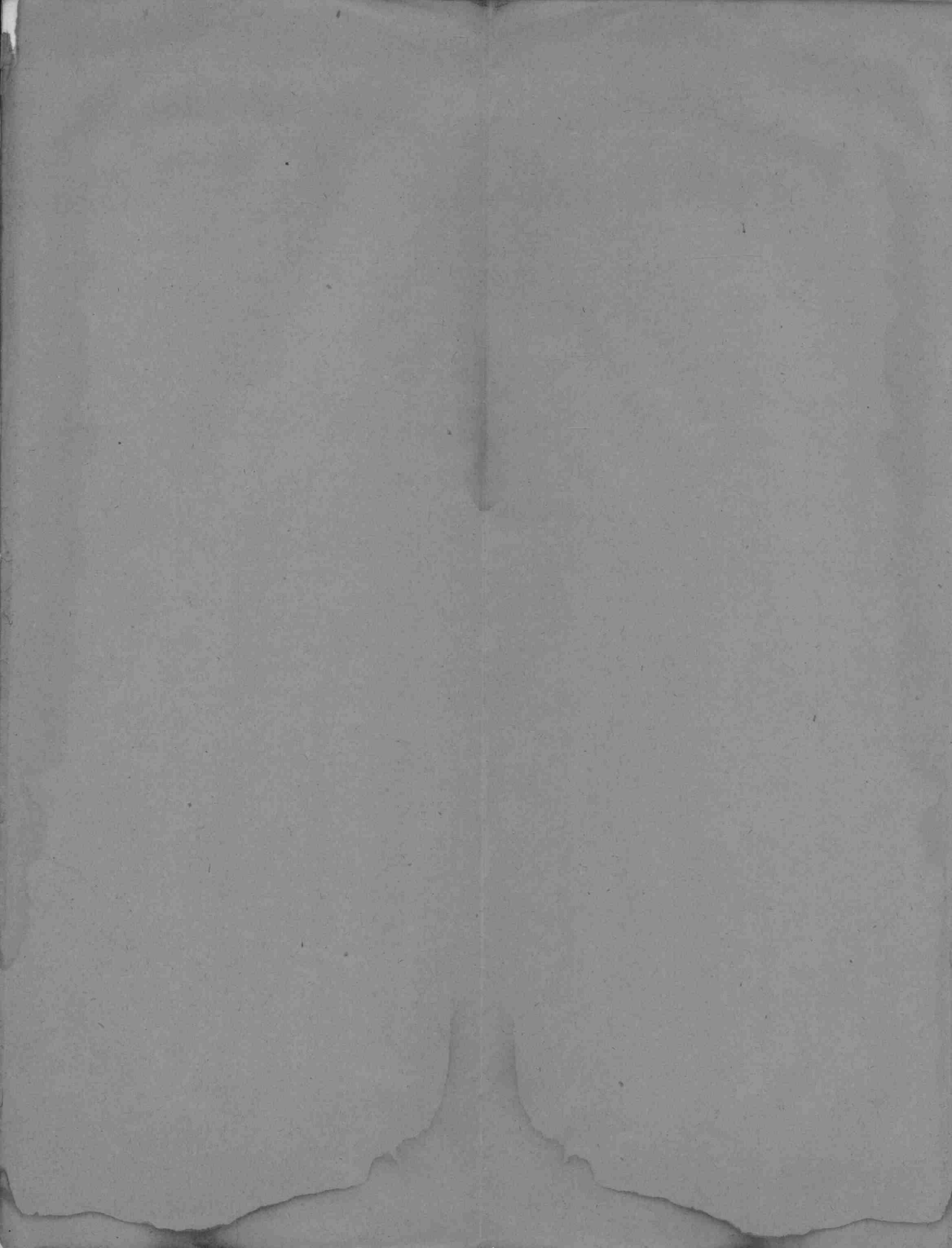
Alexandria Canal Co. *vs.* Swann, 5 How., 89.

2. The seal of a corporation affixed to a bond of the corporation is *prima facie* evidence that it is affixed by the proper authority.

Ang. and An., sec. 224.

JOHN L. THOMAS, JR.,  
WM. PRICE,  
*For Appellants.*





Ch<sup>a</sup> 97  
# 30  
Filed June 19<sup>th</sup> 1863

THE MAYOR & CITY COUN-  
CIL OF BALTIMORE,

vs.

THE BALTIMORE & OHIO  
RAIL ROAD COMPANY.

SAME vs. SAME.

No. 29.

Court of Appeals of Maryland,

JUNE TERM, 1863.

Appeals from the Circuit Court for Baltimore  
City.

APPELLEES' POINTS.

The Appellees will contend in the first of the above cases:

1. That the residence of a corporation in one State, by which it has been created, forms no bar to its powers of contracting in another State within the scope of its charter, and not inconsistently with the laws of such other State.

Bank of Augusta vs. Earle, 13 Peters, 579.  
5 McLean, 111.

2. That the true construction of the Appellees' charter, authorises it to aid roads lying in other States by subscribing to their construction, provided they are in connection with, or in continuation of roads lateral to, the road of the Appellees.

Mayor & City Council of Baltimore, vs. Balt. & Ohio R. R. Co., 6 Gill, 288.

3. Such aid may be given by subscription to the capital stock or by loan of money, and the right to give it includes the right to take, and enforce securities connected therewith.

Bank of Augusta vs. Earle, 13 Peters, 579, &c.  
30 Miss., 410.  
11 Barb., 213.  
1 Pratt, 364.  
21 Howard, 441.

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4. That it was therefore lawful for the Appellees to lend to the Central Ohio Rail Road Company, the \$400,000 mentioned in the Bill of Complaint, and to take security therefor by way of mortgage.

5. And that if such loan was in peril of being lost in consequence of the proceedings of a prior mortgagee, the Appellee was at liberty to substitute itself in place of the first mortgagee by paying the debt and taking the security.

13 Peters, 123.

7 Greenleaf, 377.

Saxton, 121.

3 Barbour, 534.

7 Foster, 30.

6. That irrespective of the Appellees' right of subrogation, it was authorised under its charter to make the purchase of the mortgage bonds complained of, as a direct aid to the Central Ohio Rail Road Company, even after the amount of the purchase money had been, in fact, expended, if the President and Directors were of opinion, that it was necessary to the maintenance of a connection advantageous to the Appellees.

Thompson & others, 3 Sa. Chancery Rep., 625.

In the second case the Appellees will contend:

That the seal of the corporation is only *prima facie* evidence of the standing of the Plaintiff in Court and that it is admissible to introduce evidence to shew, that the seal was affixed without sufficient authority; and that the Ordinances of the Mayor and City Council of Baltimore offered in evidence, indicating, as they do, the custodian of the seal of the corporation and limiting his use of it, throw upon the Appellant the burden of proving that the use was authorised in the particular instance.

JOHN H. B. LATROBE,  
For Appellees.

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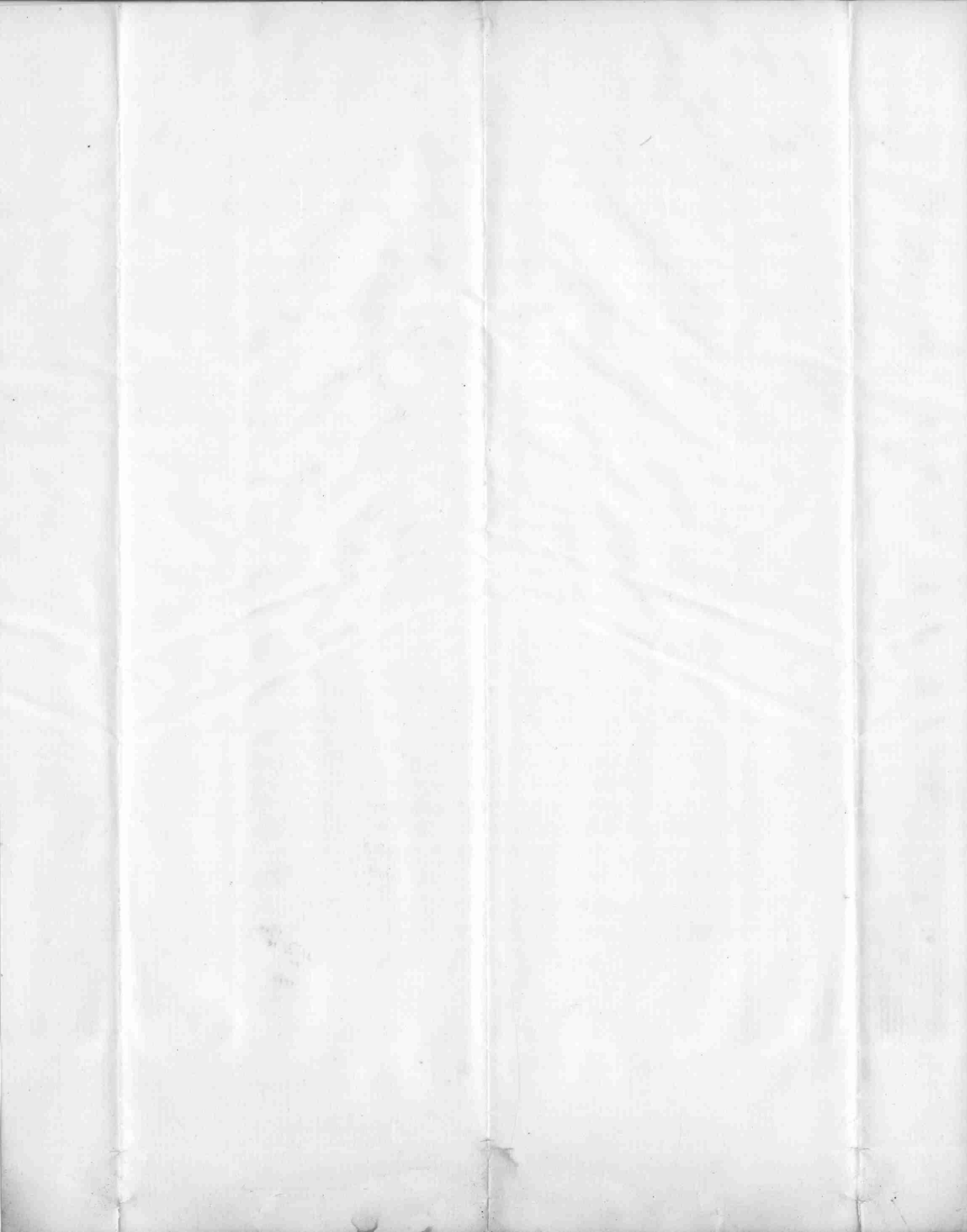
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No 30 Special  
The Mayor & City Council  
of Baltimore.

vs  
The Baltimore & Ohio  
Rail Road Company

Appellants Statement

Filed June 2<sup>d</sup> 1863

Print.

The Mayor & City Council  
of Baltimore

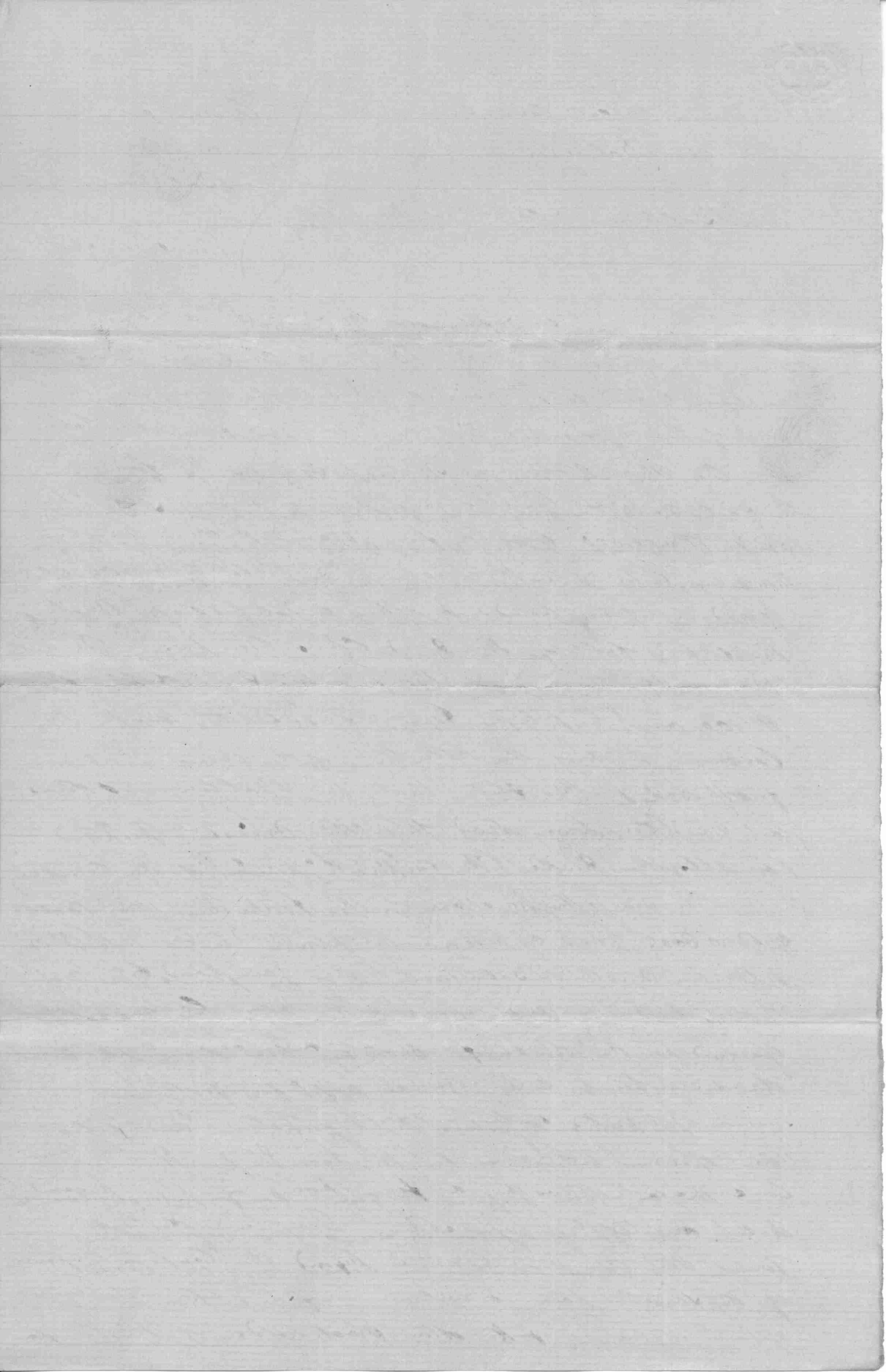
vs  
The Baltimore & Ohio Rail Road Co.

Appeal from the  
Circuit Court of  
Baltimore City:

—  
An injunction case,

The bill which was filed on the 11<sup>th</sup> of March 1863 alleges among other things, that the Baltimore & Ohio Rail Road Co. hereinafter named to the Central Ohio Rail Road Co. the sum of \$400,000 and took a mortgage from the latter Company which stood against its property as the fourth mortgage. That the mortgages having priority over the said \$400,000 were a first second & third mortgages amounting in all with back interest to \$3,600,000 besides income bonds & other indebtedness making the entire debt of the said Ohio Company nearly seven millions. That therefore the said debt of \$400,000 has been long regarded as hopeless & lost.

The bill further states that the Baltimore & Ohio Rail Road Company had determined to grant a loan to the said Ohio Company either by advancing the money or by the purchase of the <sup>said</sup> first mortgage of \$1250,000. That a proposition was made to the Board of Directors of the Baltimore & Ohio Rail Road Co by the President thereof recommending the said loan. That the said proposition was favorably entertained by the Board, & referred to the Committee of Finance, which was & is reported and the exception of one Member, that the loan be made & that the same will be consummated within a few hours if the proceeding is not arrested by injunction. The bill distinctly charges that the said loan is beyond the corporate powers of the said Company, & will be a fraud upon the rights of the complainant & the other stockholders of the Company.



That if the Baltimore & Ohio Rail Road Company have funds on hand for which it has no use within its legitimate power, it is in duty bound to hand the same over to its stockholders, to whom they belong.

The bill states that the Complainant is the owner of forty five thousand shares of the Capital Stock of the Baltimore & Ohio Rail Road Company.

A writ of injunction was issued on the 11<sup>th</sup> day of March 1863 & on the same day served on the <sup>President of the</sup> Board of directors then in possession.

On the 24<sup>th</sup> day of March 1863 the answer of the Rail Road Company was filed. Rec. p. 6. It admits that the Baltimore & Ohio Rail Road Co. "propose to cause Thompson to be substituted in the place & stead of the holders of the first mortgages of the Central Ohio Rail Road Co. & say that the measure is one eminently judi- cious in every respect." and a copy of the resolution actually passed by the board is exhibited on the bill answer, to attract the attention of the Court in each part judg asked. p. 8.

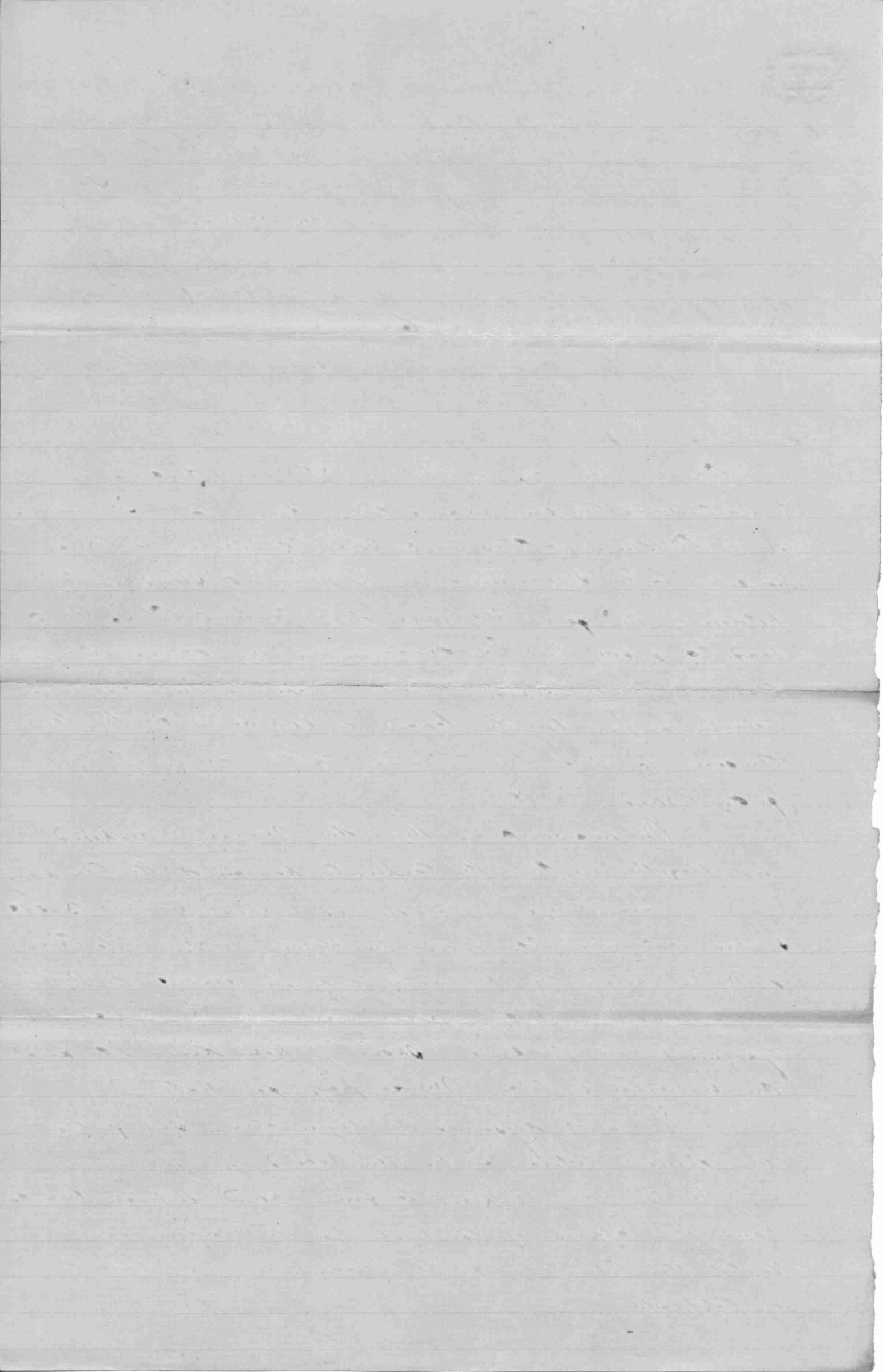
The answer avers "that the measure proposed is altogether within the corporate powers of the Company

The simple issue therefore is, whether the Balt. & Ohio Rail Road Co. had the power, to go into Ohio & make such an investment of its funds as set out. For if had no such power then all the reasons specified in the answer, showing how desirable such an investment was, must pass for nothing.

The Court dissolved the injunction and filed an opinion which is in the Record p. 11.

The City then proposed to give bond, which would have the effect of continuing the injunction until the case could be heard by the Court of Appeals.

The judge was requested to remove the bond.



of the bond, which he would require the city intending to give its own bond. But the judge did not receive the same view, but speaks in his opinion of several millions of dollars. He finally determined that the city could not give such a bond, and the consequence was that the Baltimore & Ohio Rail Road Company was left at full liberty to consummate its investment.

The complaint appears from both sides, that depriving the city - & that referring to receive the bond of the city:

The parties agreed.

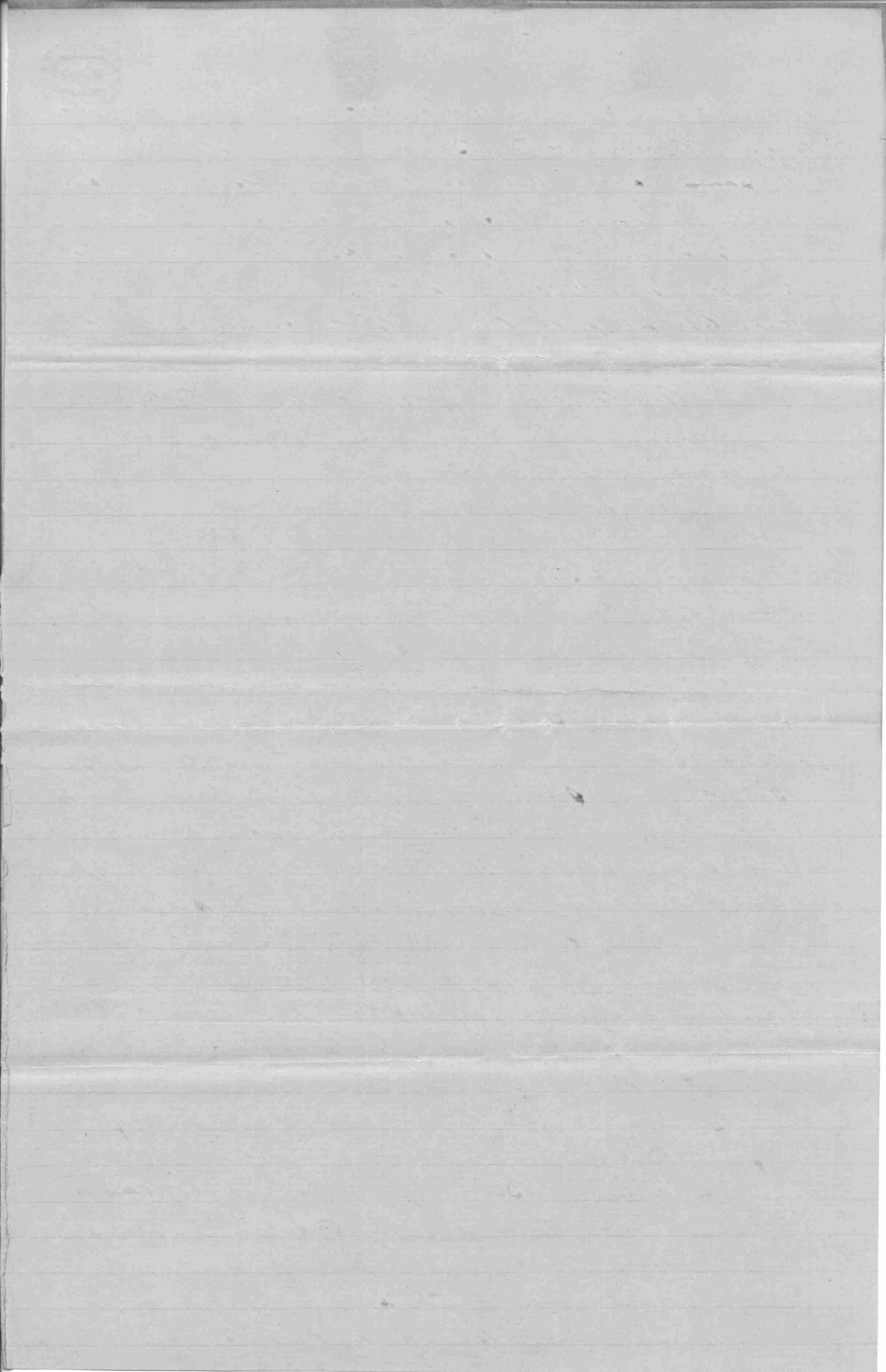
1. That the connection between the Baltimore & Ohio Rail Road, & the Central Ohio Rail Road, takes place at Bonwood, four miles above Wheeling, where there is a lateral road not quite a third of a mile long in length, which diverges from the main stem of the Baltimore & Ohio Road and ends on the banks of the Ohio River opposite Bel-air, the station of the Central Ohio Road & that the communication between the two roads is kept up, by means of a Steam-ferry-boat, for the transport of goods & passengers.

2. That either party may read all acts of Virginia & Maryland which are printed in any authentic form, in the same manner as if the same had been referred to & made part of the plea & answer.

3. That the Central Ohio Rail Road runs from Bel-air on the west bank of the Ohio River opposite Bonwood, which is its eastern terminus, to Columbus the Capital of Ohio, which is its western terminus. That the entire work lies within the State of Ohio.

4. Either party to be permitted to use any good





Rail Road Map for illustration & to read the printed Rail Road Reports & documents: p 11.

The appellant makes the following points on the first appeal.

1. The powers of a corporation are confined strictly to the language of the Charter. ~~of incorporation~~  
A corporation is the creation of the law, and derives all its powers from the act of incorporation - it is exactly what that act has made it, & is capable of executing its faculties only in the manner which that act authorizes.

Hoad & Amory vs The Providence Ins. Co. 2 Cr. 127. 166

(Leave space for authorities)

2. A Rail Road Corporation is no exception to the rule confining the <sup>Corporate</sup> powers strictly to the language of the grant, but on the contrary the best reason of showing & the controlling influence would be these great corporations, afford reason for confining them even more strictly to the language of their Charters.

Colman vs Eastern Counties Railway Co. 10 Bosc. 1

(Leave space for the authorities)

3. The acts ~~incorporating~~ of Virginia & Maryland incorporating the Baltimore & Ohio Rail Road Co., nor do any of the Supplements in either State, authorize the act in question.

~~are true and within the jurisdiction of this Court~~

Upon the second appeal - (namely the refusal of the judge to receive the bond of the city, the appellant makes the following points:

1. The corporation of the city has the power by its Charter to buy & be bound.

Code Pub. Local Laws p. 152 Sec. 1.

Alexandria Canal Co. v. Swan 5 How. 89.

(See also for authority)

2. The seal of the Corporation verifies the bond as the act of the Corporation. If a bond were tendered under the Corporate Seal no Court could go behind the Seal to question the bond's validity of the bond, except upon proof of fraud or irregularity in affixing the Seal. But the judge refused to affirm because he took it for granted that there was no authority to affix the Seal.

(See also for authority)

John R. Thomas

J. R. Thomas

for appellant.

THE MAYOR AND CITY  
COUNCIL OF BALT.,

*v s.*

THE BALTIMORE & OHIO  
R. R. COMPANY.

No. 30.

Court of Appeals of Maryland,

JUNE TERM, 1863.

*Appeal from the Circuit Court for Balti-  
more City.—An Injunction Case.*

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The Judge was requested to name the penalty of the Bond, which he would require—the City intending to give its own Bond. But the Judge did not name the sum—but speaks, in his Opinion, of several millions of dollars. He finally determined that the City could not give such a Bond, and the consequence was, that the Baltimore & Ohio Rail Road Company was left at full liberty to consummate its investment.

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The parties agreed :—

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2. That either party may read all Acts of Virginia and Maryland

which are printed in any authentic form, in the same manner as if the same had been referred to and made part of the Bill and Answer.

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4. Either party to be permitted to use *any good* Railroad Map for illustration, and to read the printed Railroad Reports and Documents.—

P. 11.

The Appellant makes the following Points on the First Appeal :—

1. The powers of a Corporation are confined strictly to the language of the Charter. A Corporation is the creature of the law, and derives all its powers from the Act of Incorporation;—it is exactly what that Act has made it, and is capable of exerting its faculties only in the manner which that Act authorizes.

Head & Amory vs. The Providence Ins. Co., 2 Cr., 127, 166.

2. A Railroad Corporation is no exception to the rule confining the corporate powers strictly to the language of the grant, but, on the contrary, the vast sums of money, and the controlling influence wielded by these great Corporations, afford reason for confining them even more strictly to the language of their Charters.

Coleman vs. Eastern Counties Railway Co., 10 Beav., 1.

3. The Acts of Virginia and Maryland, incorporating the Baltimore & Ohio Rail Road Company, nor do any of the Supplements in either State, authorize the act in question.

Upon the Second Appeal—namely, the refusal of the Judge to receive the Bond of the City—the Appellant makes the following Points :—

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Code Public Local Laws, p. 152, sec. 1.

Alexandria Canal Co., vs. Swann, 5 How., 89.

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JOHN L. THOMAS,  
WM. PRICE,  
For Appellants.

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Alexander Canal Co., vs. Bowman, 5 How., 89.