



that it has not been reduced to writing, and secondly, if it has not, it is not the less a contract or less obligatory on that account, because there had been a part performance by them both; these gentlemen receiving the stock, the proof of which is their consenting to the transfer, and the company advancing the instalments as they became due, as it has done. It is not absolutely necessary that it should be in writing; it would derive no additional force from being reduced to writing. Nor is it an objection to it, that the articles have not yet been delivered. They have never been demanded, and these gentlemen are by the agreement to supply them on demand; no demand having been made, they are guilty of no breach. The company undertook among other things to advance the instalments as they should become due, and these gentlemen to supply the articles when required; now if it be admitted for the sake of argument that it is a bad contract for the interest of the company, still that does not weaken its force or affect the question now at issue. The company had the right to contract, which necessarily includes the right to judge of the terms and conditions of the contract, and if it make a bad bargain it is nevertheless bound by its agreement; it cannot escape from its conditions, but must abide its consequences. To say that the company, and so far as the present question is involved, the State are not bound by its terms, because they may be onerous, is to deny to it the right to contract, a right which cannot be questioned. It may be asked how the company were to advance the instalments. This could only be done in the mode it was done.— When the instalments became due under the contract, it had a fund in its hands belonging to these gentlemen which was to be applied to the payment of their stock. The fund was in its possession and it was to be paid to itself: now this could only be done by crediting these persons on the stock book, with so much cash paid by them on stock, and charging them elsewhere with so much cash paid to them for engines and cars. Nothing unfair or unusual is perceived in this, and it is believed to be strictly within the spirit and intention of the resolutions of the last session.

The second branch of this enquiry is, whether the situation of this stock was not known to the legislature before the passage of the resolutions in question; and by it approved of. Was it known? The testimony taken before the committee last session and found in the printed documents already referred to and recited, puts this matter beyond question. It was fully known, not only the sale of the stock, but how the instalments had been, and were to be paid, [See page 17 of printed testimony,] before the passage of the resolutions. The legislature had that testimony before it when considering the measure which was finally adopted. This point being settled; was the situation of this stock approved of? To decide this question we must look to the facts then before the legislature and observe the reasons that influenced its action.

The company had memorialized the legislature setting forth as a cause of grievance that the act for the promotion of internal im-