

M., O. & R. R. RAILROAD CO. VS. TURRENTINE.

The decision in M., O. & R. R. Railroad Co. vs. Gaster, 20 Ark. 455, as to notice of assessments of stock under the charter of the company, approved.

*Appeal from Sevier Circuit Court.*

Hon. Len B. Green, Circuit Judge.

Watkins & Gallagher, for the appellant.

Mr. Chief Justice English delivered the opinion of the court.

The M., O. & R. R. Co., brought assumpsit against Turrentine for assessments made upon shares taken by him in the capital stock of the company.

There were several counts in the declaration. The defendant interposed a demurrer to the first count, and pleaded the general issue to the others. The court sustained the demurrer, and the plaintiff rested. The issue to the other counts was submitted to the court, and, the plaintiff declining to introduce any evidence, judgment was rendered for defendant, and the plaintiff appealed.

The causes of demurrer do not appear in the record, and no counsel has appeared here for the appellee, to point out the supposed defects in the count demurred to.

The clerk, in entering the judgment sustaining the demurrer, states that the court sustained the demurrer because in the averment of notice, to the appellee, of the assessments made upon his stock, the word due was not inserted before the word notice.

The declaration alleges the date of each assessment, and avers the last one sued for to have been made 27th November, 1856, to be paid 1st March following. The suit was commenced 10th July, 1858.

After setting out the assessments upon the appellee's stock, the time when made, the amount of each, when due and payable, the interest chargeable thereon, and the aggregate amount in arrear, notice is averred thus: "Of all which said assessments, instalments, or calls, at the county aforesaid, on the said day on which they were respectively made, as aforesaid, the said Charles P. Turrentine had notice, and was requested to pay the same."

The averment of notice was sufficient, according to the decision in *M., O. & Red River Railroad Company vs. Gaster*. 20 Ark. 455.

Perceiving no other objection to the count that could be considered on a general demurrer, the judgment must be reversed,

and the cause remanded, with instructions to the court to overrule the demurrer to the first count of the declaration, and permit the appellee to answer over thereto.

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