

12349

No. _____

Supreme Court of Illinois

Ill. Wisconsin R.R. Co

vs.

Van Horn

71641  7

Supreme Court of the State of Illinois
Third Grand Division

Illinois & Wisconsin

Rail Road Company

Plff. in error

April Term 1857

Error & Cook

vs.

John Van Horn

Def't. in error

Now comes the said

Plaintiff in error by Blogett. its attorney and
saith that there is manifest error in the
Record of said Cause as follows—

1st The Circuit Court in admitting witnesses to testify
to their opinions as to the value of the property in
question in said Cause.

2^d Said Circuit Court erred in admitting the
testimony of witnesses as to value who were not
experts.

3^d Said Circuit Court erred in ~~not~~ allowing the Defendant
in error to give evidence of the sale made in August
1853 of Lot in vicinity of Lot in question—(See testimony
of W^m Davis—Page 6 of abstract)

4th The Circuit Court erred in allowing Def't. in error
to ask witness Moseley—(Page 7 of abstract) as to rise in
value of property after Lot in question was appraised

5th The said Court erred in not granting a new trial in
said Cause for the reason that said verdict was grossly
contrary to the weight of evidence.

6th The judgment in said Cause is not in accordance
with the law and therefore erroneous. Said judgment
not stating the purpose for which said Lot is to be used.

7th Said Circuit Court erred in not granting said motion for a new trial.

8th Said Circuit Court erred in allowing the defendant in error to open & close the case.

9th Said Circuit Court erred in admitting improper evidence & go to the jury.

10th Said judgment & proceedings are otherwise erroneous ~~in substance~~ ~~in substance~~ and defendant & the same ought to be reversed.

W. M. Plouffe
Atty. for App. in error.

And the said defendant in error John Van-
Horn - by his attorneys J. L. Driskill & Mather & Taft
join in error - denying that any such errors
appear & asking that said decision & proceedings shall
be affirmed.

J. L. Driskill
Mather & Taft. } for defendant
in error

Monday 17th November. A.D. 1856

United States of America }
State of Illinois } p.
County of Cook. }

Pleas Before the
Honorable George Maniere Judge of the
Seventh Judicial Circuit of the State of
Illinois and presiding Judge of the Circuit
Court of Cook County in said State at a
Trial Term thereof begun and held at the
Court House in Chicago in said County
on the 17th Monday (being the Seventh
day) of November in the Year of Our
Lord One thousand Eight hundred and
Fifty Six and of the Independence of
the United States the Eighty First

Present Honorable George Maniere Judge of
Judicial Circuit

James S. Beach. Corner
& acting Sheriff of Cook County

Daniel McHenry
State Attorney

Attest Louis O'Han
Clerk

Be it remembered that heretofore to wit
 on the tenth day of May in the year
 of Our Lord One thousand Eight hundred
 and fifty four The Illinois & Wisconsin
 Rail Road Company by H. H. Blyden
 their Attorney filed in the office of the
 Clerk of the Circuit of Cook County
 their Certain Petition which is in the
 Words & figures following to wit:—

To
 The Honorable ^{the} Circuit Court of
 the County of Cook in the State of
 Illinois

The Illinois and Wisconsin
 Rail Road Company by H. H. Blyden
 its Attorney respectfully represents
 that said Company is duly incorporated
 by virtue of an act of the General
 Assembly of said State of Illinois
 Entitled an act entitled an act to
 incorporate the Illinois & Wisconsin
 Rail Road Company "Approved
 February 12th 1854 and also by virtue
 of an act of said General Assembly
 Entitled an act Supplemental to an
 act Entitled An "Act to incorporate
 the Illinois & Wisconsin Rail Road

Company" Approved Feb'y 17th 1851
And also by virtue of another Act
of said General Assembly entitled "An
Act Supplemental to an act to incorporate
the Illinois & Wisconsin Rail Road
Company Approved Feb'y 1st 1853 and
also by virtue of another act of said
General Assembly Approved November 5th
1849. Entitled "An act to provide for a
General system of Rail Road incorporation
And it is further represented that
by virtue of said General enactments
and also by virtue of an act of said
General Assembly entitled "An act
to amend the law condemning the
Right of way for purposes of Internal
improvement" Approved June 22nd 1852
Said Corporation is authorized and
Empowered to take and apply private
property for the purpose of Constructing
and maintaining the Rail Road
which by said acts of incorporation
said Company is authorized to construct
and maintain

And it is further represented
that said Company has surveyed and
located its Rail Road from a point
on the North Line of said State of Illinois

4
and within one mile of the North West
Corner of McHenry County to Woodstock
in said County of McHenry and thence
extending by way of Algonquin in said
County of McHenry to the South line
of lot one (1) in Watansia addition
to the City of Chicago in the County of
Cook in said State

And it is further
represented that said Company desires
for the purposes of constructing and
maintaining its said Rail Road and
especially for the purpose of suitable
Station grounds turn-outs turn tables
Engine Houses Passenger Houses &
Freight Houses and other structures
necessary for the operating of said Rail
Road to take and apply to its own use
The Undivided half of Lots. Numbered
One (1) and Two (2) in Watansia addition
to ^{the city of} Chicago Lots Numbered Two and Three
in Block Sixty one (61) and Lots Eleven
(11) and Twelve (12) in Block Sixty Two
(62) in Russell Mather & Roberts addition
to said City of Chicago

And it further
represented that the said undivided half
of said Lot One (1) in Watansia addition

So far as is known to the said Attorney
of your Petitioner or shown by the Records
is owned or some right title or interest
therein is claimed by the Widow and heir
or heirs at law of Edward Mullen late
of New York City deceased (the names
of said Widow and Heirs at law being
unknown to said Attorney) John McElroy
of Albany New York as Mortgagee and
C Means of said City of Chicago as
Lessee

That the said undivided half of
Lot two in Matanus Addition so
far as shown by the Records or
known to said Attorney is owned or
some title or interest therein claimed
by James H Cobb of said City
of Chicago That said Lots numbered
two (2) and three (3) in Block sixty
one (61) in Russell Mather & Roberts
Addition is owned or some right
title or interest therein claimed by
Samuel Russell of Middletown
Connecticut and Benjamin Adams
and Mary Adams and Mary Jane Adams
heir at law of James Adams late of
said City of Chicago, deceased

That said

Lot Eleven (11) in Block Sixty Two (62)
 so far as known to said Attorney as
 shown by the Records is owned or some
 right title or interest therein claimed
 by John Van Horn of said City of
 Chicago and that said Lot Twelve
 (12) in said Block Sixty Two is owned
 or some right title or interest therein
 claimed by Edmund Fitz Gibbons of
 said City of Chicago

And it is further
 represented that the title to said Lots
 cannot be obtained by said Company
 by negotiation or purchase.

Your Petitioner
 therefore requests said Court to cause
 to be ascertained the Compensation to
 be made by said Company to the said
 Owners of and parties interested in said
 Lots or any part thereof and that upon
 payment of said Compensation said
 Court will require a conveyance or
 release of said Lots to said Company
 or that by an ~~order~~ order or orders
 of said Court the right and title
 in and to said lots be invested in
 said Corporation to be used and applied
 for the purposes aforesaid.

And that said petitioner may
have such other and further relief
as is agreeable to law

And Your Petitioner will ever
pray &c

Illinois & Wisconsin

Rail Road Company

By H. W. Bloodgett its atty

The following is a true copy of
the notice given by said Rail
Road Company to the said John
Van Horn of the Affidavit of
Service of a copy of the same

To John Van Horn

Please take notice
that the Illinois & Wisconsin Rail
Road Company has filed in the office
of the Clerk of the Circuit Court of
Cook County in the State of Illinois
its Petition to said Court praying
for the appointment of Commissioners
(pursuant to an act of General Assembly
of the State of Illinois entitled
"An act to amend the law condemning the
right of way for purposes of internal
improvements" approved June 22^d 1852

8 To fix the Compensation and Damages to be paid to the owners and parties interested in Lot Eleven (11) in Block Sixty Two (62) in Russell's Addition to the City of Chicago in said County of Cook by reason of the location of the Rail Road of said Company over and across the same and the taking of the whole of said Lot for the use of said Road and that on the Third day of June 1854 at the hour of ten ^{o'clock} A.M. a Certified Copy of said Petition will be presented to the Honorable B. L. Morris Judge of the Circuit Court of said County, at his Chambers in said City of Chicago and an application then and there made for the appointment of said Commissioner by the said Judge

Dated this 27th day of May A.D. 1854

H. W. Blodgett

Atty & Agent for said Company

State of Illinois }
Cook County }
City of Chicago }

A. S. Van Meenan

being duly sworn doth say that he
delivered a true copy of the within
notice at the residence and to the wife
of the within named John Danhem
on the 29th day of May AD 1854

Subscribed and sworn before me this 3 day
June AD 1854

Geo. J. Pearson

Notary Public

Seal

and afterwards to wit: on the third
day of June in the year of last
aforesaid by the Judge of said Court in
Chambers sitting a certain Order was
made appointing Commissioners in
pursuance of the prayer of the Petition
aforesaid which order is in the words
and figures following viz:

State of Illinois }
Cook County } p

At Chambers before
Buckner S. Morris Judge of the Cook
County Circuit Court

Now this third day of June AD
1854. Comes the Illinois and Wisconsin

Rail Road Company by S. H. Blodgett its Attorney and presents the Certified Copy of hereto annexed of a Petition heretofore filed by and in behalf of said Company in the office of the Clerk of the Circuit Court of said County and thereupon said Attorney in behalf of said Company makes application for the appointment at this time by the undersigned of the Commissioners whose appointment is prayed by said Petition and it appearing by affidavits duly filed with the Certified Copy of said Petition that due notice of the time and place of making this application has been given by said Rail Road Company to the said John Wm. Horn who is the person named in said Petition as interested in Lot Eleven (11) in Block Sixty two in Russell & Mather & Roberts addition to the City of Chicago

in said petition described It is therefore ordered after hearing the proof arguments and allegations of the parties that Edwin Mennine Jas. Gurley and S. C. P. Jones of Chicago State of Illinois who are respectively

disinterested freeholders of said County
be appointed and they are hereby appointed
Commissioners to fix the Compensation and
apportion the Damages which the Owners and
parties interested in said Lot Eleven (11)
will sustain by reason of the taking
of the same for the purposes of said
Rail Road under and virtue of the
provisions of the

act of the General Assembly of this State
entitled an act to amend the law
concerning the right of way for purposes
of Internal Improvement Approved
June 22nd 1852. and it is further ordered
that the first meeting of said Commissioners
shall be held at the office of the Clerk
of the Circuit Court of said County on the
13th day of June 1854. between the hours
of Eight O'clock in the forenoon and
Six O'clock in the afternoon

and it is further ordered that upon payment
by said Company of the sum of which may
be awarded for compensation and damages
by said Commissioners to the Owners and
parties interested in said lot (if an appeal
shall be taken from the report of said
Commissioners) the Owners and parties
interested in said Lot shall make a

Conveyance or release of said lot to said Illinois & Wisconsin Rail Road Company and that in default of such conveyance the right and title to said lot shall be invested in said Company to be used for the purposes stated in said Petition:-

Witness my hand this 3^d day of June AD 1854

B. S. Morris
Judge of 1st Judicial
Circuit of Illinois

Copy of Oaths of Commissioners

State of Illinois }
Cook County } of

We S. C. Paulie Street
Jas. Carley & Edward Mancini do
Solemnly and solemnly swear that we
will faithfully and impartially
Execute the duties required of us
Commissioners by the foregoing att-
-estment to the best of our judgement
and understanding and to make all our
Estimates and assessments according to
law

Subscribed and Sworn to } C. Mancine
Before me this 13th day of } S. C. P. Street
June 1854 } Jason. Gurley
S. D. Mead Clerk

And afterwards to wit On the 28th day
of June in the year last aforesaid the
said Commissioners aforesaid filed their
Report & award which report is in the
words and figures following to wit:—

To the Honorable the Circuit Court
of the County of Cook

The undersigned
the Commissioners named in the
aforesaid Order of appointment made
by the Hon. B. S. Morris Judge of said
Court on the 3rd day of June A.D. 1854.
would respectfully report that they met
at the time and place in said order
mentioned and having taken the oath
required by Law to be taken by them
as such Commissioners they proceeded
to view said premises and the said
parties having from time to time
appeared before the undersigned and
produced proof touching the value of
said Lot Eleven (11) in Block Sixty two (62)

in Russell Mather & Roberts addition
 to the City of Chicago
 And the Compensation to be paid
 therefor by said Company and having
 heard the said testimony and
 allegations of the parties We have
 fixed and assessed the Compensation to
 be paid by said Illinois & Wisconsin
 Rail Road Company to the Owners of
 and parties interested in said Lot Eleven
 (11) in Block Sixty two (62) in ^{the City of} Russell
 Mather & Roberts addition to Chicago
 at the sum of Three Thousand dollars
 and we have assessed the Compensation
 to be paid by said Company for the
 Buildings and improvements on said lot at
 the sum of Six hundred making in
 all the sum of Three Thousand and six
 hundred dollars

when the payment of which said
 sum said Owners and parties interested
 shall convey or release said lot to said
 Rail Road Company or in Default
 thereof the right and title to said
 lot shall be invested in said Rail
 Road Company for the purposes stated
 in the Petition a copy whereof is
 herewith annexed pursuant to the Statute

by virtue of which said appointment was made

Witness our hands and seals this 27th day of June AD 1854

L. C. Paine Secy Seal
Edward Marime Seal
Jas. Searley Seal

Whereupon the said John Van Horn
Appealed from the Award of said
Commissioners to the Circuit Court
of Cook County and filed his appeal
bond therein which Bond has been mis-
-laid or lost and also notified the Attorney
of said Rail Road Company of such
appeal proof of which is now in the
files of this Cause and is in the words
and figures following viz:-

I acknowledge
Service of Notice of appeal in the
within Cause this day and notice
of filing of Bond on appeal with
the Clerk of Circuit Court of Cook
County

Dated July 7th 1854

H. M. Blodgett
Atty for. I. & M. R. R. Co

Whereupon the said Rail Road Co
 afterwards to wit On the 20th day
 of August in the year of last aforesaid
 filed in the Office of the Clerk of the
 Court Aforesaid in this Cause their
 Certain bond which is in the words
 figures following viz:

Know all men by these Presents
 that we Henry Smith and John P
 Chapin of the City of Chicago in the State
 of Illinois are held and firmly bound
 unto John Van Horn of said City
 and others interested as owners or
 otherwise in the track of land described
 in the Condition hereto appended in the
 penal sum of ten thousand dollars in
 lawful money for the payment whereof
 well and truly to be made we bind ourselves
 Our heirs Executors and Administrators
 jointly severally and firmly by these
 presents Witness Our hands and seals
 this twenty Eighth day of August AD
 1854.

The Condition of the above obligation
 is such that whereas the Commissioners
 appointed on the third day of June AD
 1854 by the Honorable B. S. Morris

Judge of the Circuit Court of Cook County
in said State of Illinois to fix and
ascertain the Compensation and Damages
to be paid by the Illinois and Wisconsin
Rail Road Company to the Owners of
and parties interested in Lot Number
Eleven (11) in Block Numbered Sixty
Two (62) in Russell Mather & Roberts
Addition to the City of Chicago by reason
of the location and Construction of the
Rail Road of said Company over and
through the said premises and the
taking and using of the whole of said
Lot for the purposes of said Road have
filed in the Office of the Clerk of the
Circuit Court in and for said County
of Cook their Report by which said
Compensation and Damages are fixed
at the sum of Three Thousand and
Six hundred Dollars and from which
said Decision and Report of said
Commissioners said John Van Horn
has taken an appeal to the Circuit
Court of said County And whereas
said Rail Road Company wishes
to proceed to enter upon take possession
of and apply to the purpose of
Constructing said Rail Road the

property with reference to which said
 Commissioners have reported as aforesaid
 And Therefore if the above named
 Henry Smith and John P Chapin
 their Executors & Administrator shall
 pay to the said John Van Horn and
^{others interested as givers or otherwise in}
 said land, whatever sum may be required
 by ^{the} decision, order or judgement of the Court
 in said Appeal Cause and also comply
 with, or conform to any rule or order
 that the Court may in relation to the
 matter in Controversy, then the above
 obligation shall be void otherwise to
 remain in full force and effect

Witness	}	Henry Smith	Great Seal
W. H. Blodgett		John P Chapin	Great Seal

And afterwards to wit on the 2nd day
 of June in the Year of Our Lord One
 thousand Eight hundred and Fifty five
 and of the June Special Term of Our said
 Circuit Court for said year this Cause
 having been regularly continued from
 term to term until the present term
 the following, among other proceedings
 in said Court were had and Entered
 of Record in this Cause to wit:

Illinois Wisconsin
Rail Road Company

vs Pet for Right of way
John Van Horn Appeal from Comm^r

This day Come the said parties by their respective Attornies and issue being joined it is Ordered that a Jury come Thereupon Come the Jurors of a Jury of good and lawful men, to wit:-

S. J. Grammis	Jerome Fay	William Sawyer
Jacob Rhul	J. B. McChesney	Eduard Barth
W. L. Smith	Geo. Cornell	William Justis
Levi Chipman	A. Leatherman	S. W. Grammis

who being elected tried and sworn well & truly to try this Cause and in giving the Compensation and assessing the damages to be governed by the laws ^{existing} which this Trial is had and they having heard the Evidence adduced, arguments of Counsel and instructions of the Court retire under Charge of an officer of the Court to Consider of their verdict Whereupon by argument of Counsel It is Ordered that when the Jury shall have agreed upon a verdict they may reduce the same to writing, seal

it and meet the Court tomorrow morning:-

And Afterwards to wit On the 22nd day of June A.D. 1855. it being as yet af. the Juneth Term for said year. of said Court. the following. Among other proceedings in said Court. in this Cause were had and Entered af. Record to wit!—

Illinois & Wisconsin
Rail Road Company
vs Pet for Right of Way Appeal from
John Dan Horn

This day again Come the said parties
by their Attornies and the Jurors of
the Jury also Come and render their
Verdict and say. We of the Jury assess
the damages for the land of said Van Horn
taken by said Rail Road Company at
the sum of five thousand five hundred
dollars and we assess the damages of
the buildings on said land at the sum
of five hundred dollars amounting
in all to the sum of Six thousand dollars
Whereupon the said Petitioners by their
Counsel enter a motion for a new trial

herein and in Court of Judgement

The said Rail Road Company afterments
to wit On the day and year last afore
said filed in this Cause their points in
their mo for a new trial which are
in the words and figures following
to wit

Cook Co. Cir Court	}	Appeals
Illinois & Wisconsin		
Rail Road Company		
vs appellees		
John J. Dan & Co		

The plaintiff moves the Court for
a new trial in the above entitled
Cause and assigns the following reasons

1st The Verdict of the Jury in said
Cause is Contrary to the Evidence

2nd The Court Erred in Excluding upon
the trial Evidence of actual ^{sales of property} and
prices at which it was sold for sale
of property of similar and equal
advantages with that in question
and in the same vicinity

3^d The Court erred in Excluding Evidence
afforded by the Plaintiff in the Trial of
said Cause

4th The Verdict of in said Cause is
imperfect, informal & insufficient

And Afterwards to wit On the 24th
day of June A D 1855. it being as
yet of the Tenth Sp^l Term of said
Court for said Year. the following,
Among other proceedings of said Court
was had and Entered of Record in this
cause to wit:—

Illinois & Wisconsin	}	et al
Rail Road Company		
vs		
John Van Horn		Appel

This day again Come the said
parties by their Attornies and
the Court having heard the
arguments of Counsel on the
matter for a New Trial heretofore
Entered orders that the same
be granted

and afterwards to wit On the 16th day
of December A.D. 1856 it being one of
the days of the November Term of said
Court for the year A.D. 1856 the
following, Among other proceedings
in said Court were had in this
Cause to wit:

The Illinois Wisconsin } Rights of way
Rail Road Company } appeal from award
of Commissioners
vs
John Van Horn

and then comes the said Rail
Road Company by H. W. Blodgett
its Attorney and the said John Van
Horn by Dickey & Mather his attorneys
also comes Whereupon it is
Ordered that a Jury come and
thereupon come the Jurors of a Jury
of good and lawful men to wit:
 C. A. Warner Wm. C. Sundnick John March
 W. B. Moore Orrin Chauncey Philip Petrie
 Wm. White Saml Willard Saml Miles
 Arthur Hitchcock James Turner St. J. Peck
 Who being duly elected tried and sworn
well and truly to try the Cause and
in fixing Compensation or assessing

damages they will be governed by the provisions
of the law under which this trial is had
after hearing a part of the Evidence and
the hour of adjournment having arrived are
Allowed to Separate to meet the Court
at the Coming in thereof tomorrow
morning

And afterwards to wit On the 17th day
of December A.D. 1856 it being as
yet of the said November Term for said
year of said Court. the following
among other proceedings were had
and Entered of Record in this Cause
to wit:

The Illinois & Wisconsin	} Right of way Appeal from the Award of Commissioners
Rail Road Company	
v.s.	
John Van Horn	

This day
again Come the said parties by
their Respective Attorneys and the
Jurors of the Jury Empaneled on
Yesterday to try this Cause also comes
and having heard all the Evidence
adduced, arguments of Counsel

Which said motion was filed on the 18th
day of December in the Year of Our
Lord. last aforesaid and is in the words
& figures following to wit:—

Court. to Our Court

Illinois & Wisconsin }
Rail Road Company } Apr. T. 1856

vs
John Van Horn

Appellant

The Appelles in said Cause move
for a new trial for the following reasons

- 1st The Verdict of the Jury is Contrary
to Evidence; and the Amount of
Compensation awarded is palpably
inconsistent with the Weight of Evidence
- 2nd The Court Erred upon the trial in
admitting the Opinions of Witnesses as
to the value of the property in question
to be received as Evidence
- 3rd The Court Erred in admitting testimony
as to the rise of property in value after
the Appraisal of the Commissioners

4th The Court Erred in admitting the Evidence of Witnesses as to the value who were not qualified as Experts to testify to their Opinion

5th The Court Erred in declaring in the presence and hearing of the Jury that he had no doubt but that the "appellant was entitled to interest" upon what the Jury should find to "be the value of the property at the time of the appraisal" thereby giving to said ^{declaration} all the force of an instruction from the Bench although at the request of Appellant's Counsel the Court gave a Contrary instruction

6th The Court Erred in admitting Evidence as to the present value of the property

7th The Verdict is uncertain informal and otherwise Contrary to law and the Court Erred in Changing the form of the Verdict after the same had been rendered in Court by the Jury

And instructions of the Court
Retire under charge of an Officer
to Consider of their Verdict.

And afterwards to Wit On the 18th
day of December A.D. 1886 it being
as yet of the November Term of said
Court. For said year. The following
among other proceedings in said Court
were had and Entered of Record in this
Cause to Wit!

The Union's Wisconsin } Right of Way
Rail Road Company } Appeal from award
vs } of Commissioners
John Van Horn }

And now at this
day Come again the said parties by
their ^{respective} Attorneys And the Jury heretofore
Empanelled in this Cause having
agreed upon their Verdict Come into
Court and say "We the Jury find
"The Compensation to be paid by said
"Petitioner to the said Van Horn
"Appellant for the taking of and Applying
"to its own use for the purposes
"mentioned in said petition. Said
"Lot Chamber ^{Eleven} ¹² ^{Block} ^{to} Sixty Dms. in Russell

"Wether & Roberts a petition to Chicago
 "the sum of Seven thousand five hundred
 "Dollars"

Whereupon the said Petitioners
 by its Counsel moves the Court for
 a New Trial of this Cause

And Afterward to this On the 16th day of
 January AD 1857, it being as yet of the
 November term of said Court for the year
 AD 1856. aforesaid the following among other
 proceedings in said Court, were had and
 Entered of Record in this Cause. to wit

The Illinois Wisconsin	} Petition for right of way appeal from award of Commissioners
Rail Road Company	
vs	
John Van Horn	

And then again at this day Come
 again the said parties by their
 respective Attornies and the Court
 On hearing the Arguments of Counsel
 upon the Motion of the said
 Petitioners for a New Trial of this
 Cause and due Consideration being
 thereupon had and the premises well
 understood doth deny said motion

provided said Appellant will remit
nine hundred Dollars of the ^{said} amount
fixed as such Compensation by the said
Verdict of the Jury in this Cause;
And hereupon said Appellant by his
Attorney Comes and freely remits the
Sum of Nine Hundred Dollars from
the Amount of said Compensation so
fixed by the Jury aforesaid

Therefore it
is Considered that the said Petitioner
upon the payment to the said Appellant
of the Sum of Six Thousand Six
hundred Dollars as Compensation as
aforesaid shall be invested with the
right of title to said Lot No Eleven (11)
in Block No Sixty Two (62) in Russell
Mather & Roberts Addition to the City
of Chicago with the right to Enter upon
use and Apply the same for the purposes
stated in the said petition: And it is
further Considered that the Appellant
recover of the said Petitioner his costs
in this behalf Expended And that
he have Execution therefor!

And afterwards to wit:- on the
day of . . . A D 1857. The said Rail
Road Company by S. C. W. Blodgett their
Attorney files their certain Bill of
Exceptions in this cause which is in
the words and figures following to wit

Cook Co. Cir Court	}	Appeal from award of Commissioners
Illinois & Wisconsin		
Rail Road Company		
vs		
John. Van Horn		
Appellant		Be it

Remembered that on the trial of the
above entitled cause the Court before any
testimony was introduced by either
party decided on the motion of
Appellant's Counsel that Appellant
had the opening & closing of the case
to which Appellee Excepted. The
Appellant then proceeded to call his
Witnesses who being generally duly
sworn testified as follows

At P. Kyle part

I am a resident of the
City of Chicago and have been so for
the last five years during which

time my sole business has been the buying and selling of Real Estate I know the lot in question Lot 11 Block 62 Russell Mather & Roberts addition to said City and am tolerably familiar with the value of Real Estate in said City Inquiry being made of the witness as to the value of said Lot the Court on objection by the Appellees Counsel decided that said inquiry should be confined to the value of said Lot in June 1854 when the proceedings to condemn were commenced In which decision Counsel for Appellant Excepted

I knew said property at time the ^{same} Commission in ~~June 1854~~ was appraised by the Commission in June 1854

The Witness was then requested by Appellant's Counsel to state his opinion of the value of said Lot at said time to which Counsel for appellee objected on the ground that the Witness should state facts & not opinions but the Court overruled the objection and

decided the Witness Competent
to which ruling the Appellee by
his Counsel Excepted

Witness then
proceeded in reply to said question

The lot in question was in my
opinion worth two hundred dollars
in gold coin in June 1854 at
time of said Appraisal

The lot is forty feet front on
Des Plaines Street runs back
to an Eighteen foot alley
It is 150 feet deep and the back end
is within 60 or 70 feet of the North
branch of Chicago River

The lot & whole
Block lies so as to be convenient to
the River and suitable for Summing
Business & Commercial purposes
It is but Six Blocks North of Lake
Street four blocks South of Chicago
Avenue

Cross Examination

I did not own any property in the
vicinity at that time and have
not owned any in that vicinity
since 1852 I owned a lot in
Block 68 in 1852. which I sold to

Crane of Detroit for \$50 per foot front - Block 68 is in the tier of Blocks North and the tier West of Block 62. I did not know of any sales in that vicinity nor the prices at which other property was held.

I testify solely, as an Expert and only from my general knowledge of property in the City. The most of my dealings are with property in the South & South West part of the City - I was a Witness before Commissioners & gave some opinion there as to value of property that I do now.

Louis Starr

I am a Land Agent in the City of Chicago, have been so engaged for the last five years know the Lot in question. I knew it in June 1854 said Lot was in my opinion at the time of the appraisal in June 1854 worth One hundred & twenty five Dollars per front foot. The Lot was Eligibly situated for business - within about 60 feet of North Branch of Chicago

River was valuable for Lumber purposes was 40 feet front by 150 feet deep. Ran back to an alley in the rear.

Crop Examined

Knew less about the value of property in that vicinity than in almost any other part of the City. I sold about that time a lot further West on Olive Street for \$50.00 per foot. It was a Cash sale. It was a 20 foot front & half as deep as Van Horn's. In Block 64 & 68 same addition. Lots of the size of Van Horn's was at that time worth 60 Dollars per foot front. In the Block immediately West of Van Horn's Block 40 & lot of same size were worth 70 Dollars per foot front. Block 69 South of Van Horn's worth \$100.00 per foot front. In Walrusia South of Van Horn's and on West Water Street lots were worth \$125 per foot front. Knew of no sales in immediate vicinity of said lot at or about the time spoken of and did not know the price at which other owners sold

in same vicinity their Lots was a Witness before the Commissioners and gave same testimony as to value which I have here from my opinion as to value of Lot from its location and proximity & relation to the business center of the City and its availability for Commerce & Lumbering purposes on a Block well adapted thereto on the navigable water of the River

Property is much higher up on the South branch of the River at same distance from Main Stream. The distance from the centre of the City taken alone is not a true criterion of value

Joseph Mitchell

I knew the Lot in question in June 1854. It was then worth in his opinion Two hundred & fifty dollars per foot front. I am a joiner by trade keep about two blocks from said Lot on the Corner of West Water & Minnie Streets. Keep a grocery store. The Lot was very valuable for lumber purposes

Crop Examined

I own the property where my store is. There has been some talk that the Rail Road Company would take my property. I do not judge of the value of Van Horn's lot from actual sales in the vicinity or the prices at which others held their property. There was no such property for sale. Owners of lots were holding on to them because property was rising.

Do not know what Fullerton got for his lots nor what Morely, nor Adams nor Buchanan got for theirs. I heard that they sold. I was a witness before the Commissioners & testified the same as to value. That I do now Van Horn lived on his lot and occupied it for the purposes of a dwelling. He only owned that one lot in the vicinity. I don't know what the lot would have brought in Cash in June 1854. One of the Fullerton lots was worth more than Van Horn's.

Lot.

William Hayman

I knew the property in question when it was appraised by the Commissioners - It was then in my opinion worth One hundred and Seventy five Dollars or just about. It was valuable for Scraper & other business purposes. I am a Wagon and Carriage maker reside about Six Blocks south of said Lot. Have lived there about ten & in the city about 20 yrs. Have given some attention to the value of lots in my vicinity. I was Assessor last year in that division of the City.

Corp. Examined

Did not own any property nearer Van Horn's than my own. Bought a lot for a friend one or two Blocks from Van Horn's in June 1854. It was on the corner of Orrin and Des-plaines Street. Sub Lot 1, 32 by 70 feet North West corner of Block. My friend paid \$1400 for this Lot.

He lived in the County. I looked
it up for him & told him it was
a good bargain. There was but
little land for sale in that
vicinity at that time as the
owners were refusing to sell
the prices given higher as you
approached the River.
I think it a prudent purchaser
would then have given \$175. for foot
front for Van Horns Lot. I would
have done so if I had had the
money. I might however have
looked around & found a cheaper
or better chance to invest if I
had the money. If I had owned
the lot I would not have sold
for less. The value was not much
less in May than in June 1854
if I had wanted an investment
I would have given that price. The
house and improvements on the Van
Horn Lot were worth 500 or 600
Dollars. I knew of no other sales
nor the prices at which the owners
held property in vicinity of Van
Horn. In making up my opinion
as to value I did not refer to

other sales or prices but rather to location. I was witness and testified to same value before the Commissioners.

George W. Clarke

I have resided in the City of Chicago since 1838. Have dealt considerably more or less in real Estate for the last 12 years. Have bought and sold a good deal. Know the lot in question in 1847 and in 1852. Was at Van Horn's then to get surveying done. In June 1854 the property was in my opinion worth two hundred and fifty Dollars for foot front. It was worth that to hold out for a rise. It was very valuable.

Croft. Examined

I never dealt in property in that vicinity. Don't know any thing about sales or what other property in vicinity was held at at the time. I can't say that I think the lot would

have brought \$250 cash up at that
time but what I mean is that I
consider it a good purchase at that
price then and that a prudent
man wishing to invest would have
given that price & got a good
investment. I would have thought
it a prudent purchase at that
price. My attention was not
directed to the price of property in
that vicinity at that time I cannot
say that said Lot would have
brought in Cash \$250 for foot then

Thomas A. Jones

I have resided in
the city of Chicago 22 years have
bought & sold some Real Estate
in the city near Van Horn's Lot
in June 1854. Am of opinion that
it was then worth \$175 for foot front
I have watched that part of the town
since 1847.

Comp. Examined

I base my opinion
to a certain extent on what has
transpired since I did not know

40
of any sales or make any Enquiries
as to prices of property in vicinity in
June 1854 or about that time I
don't think it could have been
sold for more than \$175 per foot. If
I had had the money then I would
have bought at \$175 per foot front &
considered it a good bargain. I am
a machinist. I have not testified
on any former trial.

Charles Williams

I reside in Chicago
have resided here about 22 years was
not particularly acquainted with
the value of property in June 1854
I was neither buying nor selling
Chas. Keen Van Horns Lot 12
or 15 years I had bought property
in the vicinity in 1844 but had not
sold any I examined the property
at about the time of the appraisal
or a little after to make up my
mind as to its value
It was then worth in my opinion
from \$175 to \$200 per foot front —

Corp Examined

I have some property near which I
Expected the Rail Road would take
I heard the value of Van Horn's Lot
Extensively discussed at that time
by property holders. Didn't know of
any sales in Spring or Summer of
1854 in vicinity of said Lot except
Sale of Adams Lots. I think Adams
Lots brought more than the appraiser
gave Van Horn's. It was about same
time as Appraisal. The Adams
Lots were on Block South of Van-
Horn's. I got my opinion of Van Horn's
Lot by looking at the Lot. I judged
by its location.

Edmund Fitz Gibbons

I knew the
Lot in question when it was appraised
I owned the adjoining Lot and lived
on it. Van Horn's Lot was then worth
in my opinion Two Hundred & Fifty
per foot front.

Crop Examined

I am a Teamster
Don't know what other Lots sold
for in vicinity at that time because

There were no sales. Don't deal in Real Estate. My lot was appraised at same time as Van Horn's and by some Commissioners my lot was appraised at \$3800 Eight hundred Dollars was for improvements. I appealed when Van Horn did; but in the Winter after when the Company took possession of my lot as I had no other means to buy a home with I settled with the Company & took the lot awarded me. We frequently talked about the value among ourselves. I did not want to sell my lot & Van Horn did not want to sell his. Van Horn's lot was valuable for business purposes.

There was no business done as far up the Stream as that at that time. The River was clogged up about to the point opposite this lot & navigable for Largest Claf vessels up to Chicago Avenue several blocks above this lot.

Peter Merille

I have resided in the City of Chicago about 19 years. I know the

the property in question. It was in my opinion worth in June 1854 at time of Appraisal \$200 for front foot & so testified before the Commissioners.

Carp. Examined

I own property near the lot in question which at one time expected the Rail Road Company would take. I do not know of any sales or prices fixed on property in vicinity at or about time of Appraisal. Van Horn called on me to set a price on his lot. Don't know what Fullerton Massey Larned or Adams sold for. I am a Carpenter by Trade don't deal in Real Estate Exclusively:-

Dennis McCarty

I knew Van Horn's lot in June 1854 when it was appraised. It was then worth in my opinion Two Hundred and Fifty Dollars for front foot. I owned a lot about \$200. feet south & West of it. Am a laborer never bought or sold any other lot than

the One I owned near there I don't
know how much. \$250 per front
would make the whole lot come to
for Sharps' reckoned it up

Hugh. Maher

I have resided in Chicago
19 years & have dealt considerably
in Real Estate & am still doing
so. In June 1854 Mr. Fitz Gibbons
called on him to Examine his lot
which he did & also Examined Van
Horn's lot ^{at some time & formed an opinion} as to its value. Van Horn's
lot was then in my opinion worth
\$150 per front front without the improve-
ments. I have never bought or sold
property in the vicinity of this lot
& don't own any there. I have dealt
quite largely in property in the City
for the past Six or Eight years.
I judged of its value by its location
& business facilities. It was not
fully developed business property.
I did not inquire as to sales ~~or~~
prices in vicinity and did not
know any thing about them. If I
had been investing I should have made
more inquiry. I think I should have

have been willing to have given \$125
per foot front for the property & if I had
owned would not have sold it for less
than \$150. It would have been worth
more than \$150 per foot front 1/4 down
and balance in 1, 2, & 3 years. Any
one buying it at that rate on those
terms would have made money
and a person owning it would have
done better to hold than sell at that
price & terms.

Calix Randolph

Who testified that
he knew the property in question in
1854. Lived near it. Knew something
of the Value of Real Estate in vicinity.
In my opinion Van Horns Lot was
worth \$125 per foot front at the time
of the appraisal. I think a prudent
man would have been willing to
pay that for it. There was no
business on the River up there. I
knew of sale of Adams Lots they
were sold at auction & bid off by
Mr Gurnee at \$4000 each at \$100
per foot front. Rail Road Company.
I think Van Horns Lot was worth

& 200. more than Either of the Adams Lots. Do not know of any other sales in vicinity. There were no side walks or Planting the property and vicinity was uninformed. Except for Residence purposes. The Adams Lots were more than three times further off from the River than Van Horn's.

William Davis

Was next called by appellant who testified that he had lived four years a short distance from Van Horn's Lot. Knew the property in question and of the Opinion it was worth \$175 per foot front in June 1854 at time it was appraised. My property was a hundred & fifty or two hundred feet South and West from Van Horn's. I am a Mechanic & do not deal in Real Estate. Do not know what other property was bought or sold for or held at in vicinity. - My property was forty feet front by seventy feet deep. I sold my lot in August 1855. Question by Van Horn's Counsel. "What did you sell your lot for in

August 1855." Question objected to by
Appellee's Counsel & objection overruled
by the Court to which Appellee
Excepted. I got \$3000 for it -
my property was further from the River
than Van Horn's & not so valuable -

It was agreed between Counsel
for the parties that the improvements
upon the Lot in question were not
done at the time of the Appraisal
and the valuations fixed by the
preceding witnesses were Exclusive
of the Improvements.

Appellant here rested and Appellee
called

J. Moseley who testified that he
never operated in Real Estate but
very little that he knew the Lot
in question in June 1854. A friend
of his at the East owned a lot a
little way South of it which he
was requested to sell. He made
inquiries & took considerable pains
to find out the value of said Lot
so belonging to his friend in June 1854

and sold said Lot about that time
 From inquiries then made think Van
 Horn's Lot then worth about \$500 per foot
 front or rather less. Sold friends Lots
 for \$105 per foot front quarter Cash down
 & balance with Six per cent interest
 in one two & three years.

Think the Lot I sold was worth the
 most altho it was not quite as deep
 as Van Horn's mine was 25 feet deep
 by 100 feet front. Don't think that
 Either the Lot I sold or Mr Van Horn's
 could have been sold in June 1854
 for over \$80 per foot front Cash.

The usual way of buying & selling property
 in this City is for a quarter Cash and
 the balance in one two & three years.

Question by Appellants Counsel

"Did not property in that vicinity rise
 very rapidly immediately after you
 made your sale?" Objected to by
 Appellants Counsel & objection over ruled
 by Court & Exception taken - Answer -
 There was no time within the next
 six months but what I considered it
 a good sale. I don't think I could
 have got more three or four months
 after. It advanced considerably within a

a year

Appellee then called

D. L. Lee

Who testified that he knew the Lot in question in June 1854 that he owned Lots & had the agency of others in the vicinity to quite an extent at that time that he had Lots for sale at that time in the Block directly West of the one Van Horn's Lot was in that he had dealt considerably in Real Estate in Chicago and that from what he knew of the prices of property in the vicinity he should value the Lot in question at \$30 per foot front in June 1854 & still own quite a number of Lots in the vicinity

Appellee next called

H. A. Fullerton

Who testified that he knew the Lot in question in June 1854. I owned Lots near it which I sold in April or May of that year I know something of the value of property in that vicinity at that time I think the property in question was worth in

June 1854. Seventy five dollars per foot front I sold two lots one was a water lot and the other lay across the street from the water lot. I sold my water lot for \$150 per foot front and the other for \$100 They were each 100 feet front & the water lot was 125 feet deep. I sold for quarter cash & balance in one & two years with interest Van Hens Lot was not worth as much as the one I sold for \$100 per foot front My Lots were nearer the business part of the City

Appelle next called

James H. Rees

Who testified that he was engaged in the business of buying & selling Land & Lots in Chicago in 1854. Knew Lot in question & had a general knowledge of the value of Real Estate in that vicinity but knew as little of the value of property in that location as any where in the City having owned none had the agency of some in that vicinity was of opinion that said Lot was in June 1854 worth from fifty to sixty dollars

for foot front Fifty Dollars was a
fair value for Cash There were Canal
Sales just South of Kinzie Street
about a quarter of a mile from said
Lot in May of said year I judged
something of the value of this Lot
from said Sales

Appelle next called

W S Gurnee

Who testified that he knew
said property in summer of 1854 I
bought several Lots in the vicinity of
said Lot in Spring & Summer of 1854
I was acting for said Rail Road
Company & Chicago & Milwaukee Rail
Road Company I bought two Lot
of Adams, two Lots south of North
East Corner of Block fourth (Block 6)
They were worth more than Adams
property. Paid for for foot front Third
down and balance in Six and Twelve
months with Interest I also bought
Lot through Mosely and Lot near it of
Buckman Paid \$104 for foot front for
Mosely's Lot and \$100 for foot front for
Buckman's Lot. Bought both of them
on Canal time that is quarter down

I balance with interest in 12, + 3 years
 from my acquaintance with said
 property and the prices at which
 other property in vicinity was bought &
 sold & held at. I should value Van
 Horns Lot at \$2000 in June 1854 at
 time of Appraisal I was formerly a
 Director & Vice President of Company
 am not now & have not been for about
 two years am not a stock holder
 in Company

Appellee next Called

J. B. Smith

Who testified that he dealt
 Considerably in Real Estate in
 Chicago in 1854 Owned a Lot near
 Van Horns in Spring of 1854 I
 had Patent title and another person
 had a Tax title My Lot was a water
 Lot about One and a half Blocks
 North of Van Horns I knew Van Horns
 Lot at that time and should value it
 at that time at from Forty to Fifty
 Dollars per foot The holder of the Tax
 Title and I valued my Lot at \$2000
 and he paid me \$1250 for my Title
 That valuation was the basis of my

sale I think it was a fair valuation
That was on the 20th day of March
1854 my attention was called to Van
Horn's property in June 1854

Appellee next called
Henry Smith -

Who testified - That he
knew the Lot in question in 1854 & had
bought & sold Lots in that vicinity
at that time. Owned property at that
time in Block immediately West
South-West & South of Block 62 and
was agent for Lots in Blocks 61
41, 68, 48, 45, 42, and 44, of same
addition. Should think might possibly
have bought \$50 for foot front at time
of Appraisal. That was an outside
price. The Lots on South E Corner
of Block Opposite were owned by
Brandiger and held at that time
for sale at \$35 (?) for foot front and
afterwards raised to \$40. I offered
mine for \$40 for foot front. I was a
Director of the road at that time of
Appraisal and am now. Am not
a Stockholder now.

Appellee next called

W. H. Heston

Who testified that he was Clerk in the Office of Order Heston & Co. Land Agents in said city. Said Firm owned & had the Agency for a large portion of the Lots in the vicinity of the Lot in Question in 1854. I was familiar with the sales & prices in vicinity. I think Van Horn's Lot was then worth \$50 for York front. I, from my opinion from Lots we had for sale in Blocks 69, 68, & 70 near by I am 22 years old.

Appellee next. Called
Capt. Smith

Who testified that in Spring & Summer of 1854 he had charge of a Lot to sell for a friend in the neighborhood of said Lot, but his attention was not called particularly to Lot in question & don't know deem myself qualified to give Opinion as to value of Lot in question at that time.

Appellee next Called

J. H. Benson

Who testified. That in Summer of 1854 he was a Land Agent

in said City. Now Van Horns Lot
had a Lot in his Office for sale in
Block South and West. It was a
Common Lot had attention directed
to value of property in that locality
by having said Lot to sell should
think from Van Horns Lot worth in
June 1854 Seventy five Dollars to get
front that was the price put on the
Lot I had for sale & it was worth as
much as Van Horns. It being a corner
made up for the increased distance
from the Water.

Appellee also called two
other Witnesses who testified that they
sold Lots in the vicinity in 1853. I
knew said Lot but did not deem
themselves qualified to give an
Opinion as to its value in 1854. A
Map of the City of Chicago was also
introduced by both parties & referred to
by the Witnesses of both parties a
Copy of which said map is herewith
filed marked "Exhibit A".

This being all
the testimony in the case the
Appellee here testifies

And this being all

The Evidence in the Case the Court at the request of the Appeller gave the Jury the following instructions

1st In Estimating the Plaintiffs Compensation the Jury are to find the value of the Lot in question & the improvements at the time of filing the Petition in June 1854. And are not to merely speculate on the probable price since that time but are to ascertain what the value of the property was at that time as nearly as it can be ascertained from the Evidence

2nd The Jury are the Judges of the value of the Opinions of the various witnesses And if they believe that any of them had no knowledge of the value of the Lot in question their Opinions are Entitled to little weight

3d The Jury are to find the value of the Lot & improvements at the time of filing the Petition in June 1854 without interest (The Court instructing that Van Horn was not Entitled to interest at the Express request of his Counsel Jury of

opinion that he was entitled thereto

§ In determining the Compensation to be paid to the Plff for the property in question the Jury may consider all the facts & Circumstances detailed by the Witnesses touching the location of the Lot and other Elements entering into its Value - the price which other Lots in the same vicinity were sold at about the time both before and after when the Award was made in this Case & such other testimony (including the Opinions of value expressed by the various witnesses giving to each of those Opinions such weight as the Jury shall deem proper) as may have any tendency to assist the Jury in determining the value of the property in question at said time (June 1884) and in fixing the amount of Compensation to which the Plff is entitled.

Whereupon the Jury having rendered their verdict appraising said Appellants Compensation & Damages at \$7000 the Appellee moved the Court for

a new trial & Assigned therefor the following reasons

- 1st Because said verdict is contrary to Evidence and the Amount of Compensation awarded, palpably inconsistent with the weight of Evidence -
 - 2nd The Court Erred in admitting upon the trial the Opinion of witnesses as to the value of the property in Question to be received in Evidence
 - 3d The Court Erred in admitting the Evidence of witnesses who were not qualified as Experts to testify to Opinions
 - 4th The Court Erred in admitting testimony as to the size of the property in value after Appraisal by Commissioners
- Which said motion it was ordered and considered by the Court. Should be granted unless the appellants would remit nine hundred dollars of the damages assessed to them.

and the Appellant have thereupon
elected to Quits and having remitted
nine hundred dollars from the command
of said verdict the said motion
for a new trial was overruled by the
Court.

To which decision of ^{the} Court
the Appellee Excepts & prays the Court
to Sign & Seal this bill of Exceptions
which is done

Chicago

1887

George. Munierre ^{Seal}
Judge of ^{the} Judicial
Circuit Illinois

State of Illinois }
County of Cook } p



I William L. Church
Clerk of the Circuit
Court in and for the
County of Cook in
the State aforesaid
do hereby Certify
the above and fore-
going to be a true

perfect & complete copy as well of
all the papers filed, as the proceedings

had and Entered of Record in said
Circuit Court in a certain cause
lately pending therein wherein The
Illinois & Wisconsin Rail Road
Company were Appellees and John
Van Horn was Appellant as the
same appears from the files and
Records of said Court

In Testimony
Whereof I have hereunto set my
hand and Affixed the seal of
said Court at Chicago this 21st
day of April A.D. 1854

W. L. Church

Clerk Court to be
Court

Clerks fees for Record \$12⁰⁰

Cash to Circuit Court

The Illinois and
Wisconsin Rail
Road Company
attorneys
vs

John S. Van Horn
Appellant

188

The Illinois & Wisconsin
Rail Road Company
vs

John Van Horn

Filed May 4, 1887

L. Leland

Clerk

Rec'd by J. S. Van Horn

for Record this

23^d day of April

1887 Wm. C. Church
Clerk

Filed 1887

Complete Record

SUPREME COURT,
THIRD GRAND DIVISION,
STATE OF ILLINOIS,
APRIL TERM, A. D. 1857.

THE ILLINOIS & WISCONSIN R. R. CO. PLAINTIFF IN ERROR, <i>vs.</i> JOHN T. VAN HORNE, DEFENDANT IN ERROR.	}	ERROR TO COOK.
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ABSTRACT OF RECORD.

This was a proceeding by the Illinois and Wisconsin Railroad Co., to condemn, for railroad purposes, a city lot of Van Horne's, under the general right of way act, approved June 22nd, 1852.

2 Petition filed 10th May, 1854, before Morris, Judge, of Cook Circuit Court. No-
9-12 tice served on Van Horne, May 29, 1854. Commissioners appointed June 3rd, 1854,
13 were sworn on 13th, same June, and reported their assessment on 28th, same June,
and on that day it was filed with the clerk of said Court.

14 The commissioners fixed amount of compensation at \$3,600, \$3,000 for the lot,
15 and \$600 for improvements. From this, Van Horne appealed to the Circuit Court,
of which the Railroad Co. had notice, July 1st, 1854.

16 On the 25th of August, 1854, said Co. filed a bond as required by section 12 of
said act, and took possession of the lot.

19, 20 The cause was tried by a jury in June, 1855, and the assessment raised to \$6,000.

22 The Court granted a new trial on motion of R. R. Co., and the cause again came
25 on to be tried on 18th of December, 1856, and the assessment was raised to \$7,500.

A new trial was again asked by the R. R. Co., whereupon, upon the suggestion of
27 the judge, Van Horne remitted \$900 of said assessment, and thus reduced the same
to \$6,600; and the motion was refused, and judgment.

29 Bill of exceptions gives all of the testimony. On motion of appellant's counsel
the Court decided that appellant had the opening and closing of the case. *to which*
appellate accepted.
47 It was agreed on the trial between the counsel for the respective parties that the
improvements on the lot in question were worth in June, 1854, \$600, and the valua-
tions fixed by appellant's witnesses were exclusive of the improvements.

TESTIMONY OF VAN HORNE'S WITNESSES.

N. P. IGLEHART.—Have resided in Chicago five years, all the time engaged in
dealing in real estate; knew lot in question in June, 1854; am familiar with value
of real estate in Chicago.

30 On motion of appellee, the Court confined testimony as to value to June, 1854.
Witness was asked by appellant's counsel his opinion as to value of lot. Objected
to; objection overruled; exception.

31 Witness then stated that, in his opinion, said lot was worth in June, 1854, \$200
per foot. Said lot is 40 feet front by 150 feet deep, and back end was within 60 or
70 feet of North Branch of Chicago river; the whole block lies convenient to river,
and suitable for commercial purposes.

Cross-examined.—Have not owned any property in that vicinity since 1852; sold a lot one block north and one west in 1852 for \$50 per foot. I testify as an expert and from general knowledge. Most of my dealings were in south and south-west part of the city.

32 LEWIS STARR.—Have been land agent for five years in Chicago; knew lot in question in June, 1854; in my opinion it was worth \$125 per foot. It was eligibly situated for business, within 60 feet of North Branch of Chicago river, and valuable
33 for lumbering. It was 40 feet front by 150 deep.

Cross-examined.—Knew less about value in that vicinity than other parts of the city; sold, about June, 1854, a lot further west, half as deep as Van Horne's, 20 feet front, for cash, at \$50 per foot; in block 67 and 68, same addition, lots of same size worth \$60 per foot; in block immediately west, lots of same size worth \$70 per foot; in block south, \$100 per foot; in Wabansia, south, on West Water street, worth \$125 per foot; knew of no sales in immediate vicinity at or about that time, nor the prices at which others held their lots in same vicinity; form opinion from location and relation of lot to business centre of city, and its availability for and being on a block well adapted to commerce and lumbering on the Chicago river; property on South Branch, same distance from main stream, much higher—distance from centre of city alone not a true criterion of value.

34 JOSEPH MITCHELL.—Am a joiner by trade; live two blocks from lot in question; knew lot in June, 1854; in my opinion it was worth then \$250 per foot; valuable for lumber purposes.

35 *Cross-examined.*—Was some talk of R. R. Co. taking my property; do not judge of value of lot from sales, or from prices asked by others; owners were holding on because property was rising; one of the Fullerton lots worth more than Van Horne's.

26 WILLIAM WAYMAN.—Knew lot in question, and, in my opinion, it was worth, June, 1854, \$175 per foot; was valuable for lumber and other business purposes; have lived six blocks south for 10 and in the city for 20 years; was assessor last year in that division.

Cross-examined.—Bought corner lot for a friend in June, 1854, one or two blocks west, 32 front by 70, for \$1,700; but little land for sale then in that vicinity; owners refused to sell; prices grew higher toward the river; think a prudent man would have given for Van Horne's lot \$175 per foot; had I owned the lot, would not have sold for less; would have given that for investment. Know of no sales or prices others asked in vicinity; my opinion is based on location.

28 GEORGE W. CLARK.—Have resided in Chicago since 1838; dealt more or less in real estate for 12 years; knew lot in 1847 and 1852; in June, 1854, lot, in my opinion, was worth \$250 per foot—worth that for speculation.

Cross-examined.—Never dealt in property in that vicinity; can't say that the lot would have brought \$250 per foot, cash; consider it a good purchase at that, and a prudent man wishing to invest, would have given that. My attention was directed to the prices in that vicinity at that time.

39 THOMAS C. JAMES.—Resided in city 22 years; have dealt some in real estate; am of opinion that Van Horne's lot in June, 1854, was worth \$175 per foot; have watched that part of city since 1854.

Cross-examined.—Opinion based on what has transpired since '54; did not know of any sales, or make inquiries as to prices, in that vicinity at that time; do not think it could have been sold for more; I would have given that and considered it a good bargain.

40 CHARLES WILLIAMS.—Resided in Chicago 22 years; not particularly acquainted with value of property in 1854; have known Van Horne's lot 12 or 15 years; bought property in that vicinity in 1844; examined property a little after appraisal; it was then worth, in my opinion, \$175 per foot.

41 *Cross-examined.*—Had some property near said lot, which I expected R. R. Co. to take. Heard value of Van Horne's lot extensively discussed by property holders; got my opinion of Van Horne's lot by looking at it; judge by its location.

EDWARD FITZ GIBBONS.—Knew lot in 1854; owned adjoining lot; Van Horne's lot then worth \$250 per foot.

Cross-examined.—Am a teamster; don't know what other lots sold for; my lot was appraised at same time at \$3,800. We frequently talked about value of lots among ourselves; Van Horne's lot was valuable for business; no business done that far up at that time; river docked up that far, and navigable for largest class of vessels up to Chicago avenue, seven blocks above.

42 PETER MERILLE.—Resided in Chicago 19 years; knew property in question, and it was, in my opinion, worth in June, 1854, \$200 per foot.

43 *Cross-examined.*—Owned property near said lot, and expected R. R. Co. to take it; knew of no sales or prices fixed in 1854; Van Horne asked me to set price on his lot; don't deal in real estate exclusively.

DENNIS MCCARTY.—Knew Van Horne's lot in June, 1854; it was then worth, in my opinion, \$250 per foot; own a lot near it; am a laborer; never dealt in real estate.

44 HUGH MAHER.—Have resided in the city 19 years; have been and am still dealing in real estate; in June, 1854, Fitz Gibbons called on me to examine his lot, which I did, and also Van Horne's at same time; Van Horne's lot then was worth, in my

opinion, \$150 per foot, aside from improvements; never dealt in property in that vicinity; don't own any there; have dealt largely in property in the city for 6 or 8 years; judge of its value by location and business facilities; it was not fully developed business property; knew nothing of sales or prices held at in vicinity; think I would have given \$125 per foot, and if I had owned the lot, would not have sold it for less than \$150; worth more than \$150, canal terms; any one buying at that rate and terms would have made money.

45 CALEB RANDOLPH.—Knew lot in question, June, '54; lived near it; knew something of value of real estate in vicinity; Van Horne's lot worth, in my opinion, in '54, \$125 per foot; think a prudent man would have paid that; no business on river up that far. Knew of sale of Adams' lots at auction; bid off by Gurnee, for Rail Road Company, at \$4,000 each—\$100 per foot; Van Horne's lot worth \$2,000 more than either of Adams'; knew of no other sales in vicinity; no sidewalks;
46 property in vicinity unimproved, except for residences; Adams' lots more than three times as far from the river as Van Horne's.

WM. DAVIS.—Lived four years near Van Horne's lot; am of opinion it was worth, in June, 1854, \$175 per foot; my property was forty feet front by seventy deep, and lay 150 or 200 feet south and west of Van Horne's. Am a mechanic; do not deal in real estate; do not know what other property was bought or sold for, or held at; sold my lot in August, 1855.

Question by Appellant.—"What did you sell your lot for, August, 1855?" Objected
47 to; overruled; excepted to.

Answer.—I got \$3,000; it was further from the river than Van Horne's, and not so valuable.

Appellant rested.

Appellee called—

F. MOSELEY.—Never operated in real estate but little ; knew lot in question, June, 1854 ; a friend East owned a lot near it, and desired to sell ; made inquiries and
 48 took considerable pains to learn value of friend's lot, June, 1854. From what I then learned, think Van Horne's lot then worth \$100 per foot, or rather less ; sold friend's lot for \$101 per foot, canal terms ; friend's lot 25 feet front by 100 deep ; think it was worth more than Van Horne's ; don't think either could have been sold, June, 1854, for more than \$80 per foot, cash down ; usual way of selling property in this city is one-fourth down, balance in one, two and three years.

Question by Appellant.—"Did not property in that vicinity rise very rapidly immediately after you made your sales ?" Objected to ; overruled ; excepted to.

Answer.—Considered it a good sale for six months afterward ; it advanced considerably within a year.

49 D. S. LEE.—Knew lot in question, June, 1854 ; owned and had agency of lots in vicinity to quite an extent ; had then lots for sale in block west of Van Horne's ; have dealt considerably in real estate in city ; and I valued Van Horne's lot at \$30 per foot, June, 1854 ; still own lots in vicinity.

50 H. N. FULLERTON.—Knew lot in June, 1854 ; owned some near it which I sold in spring of 1854 ; think Van Horne's lot then worth \$75 per foot ; sold, in spring of 1854, a water lot, 100 feet front by 125 deep, for \$150 per foot, and another, across the street, for \$100 per foot, 100 feet front—one-fourth cash, balance in one, two, and three years ; Van Horne's lot worth as much as the one I sold for \$100 per foot ; my lots were nearer the business part of the city.

JAMES H. REES.—Was dealing in real estate, June, 1854; had general knowledge of value of real estate in vicinity, but knew as little of value of lots in that vicinity as any where in city; knew lot in question; owned some and had agency of some there;
 51 was of opinion said lot was then worth \$50 or \$60 per foot—\$50 fair price for cash; some canal sales in spring of that year, one-fourth mile from said lot; judge something of value of said lot from said sales.

W. S. GURNEE.—Knew said lot in June, 1854; bought several lots in spring and summer of 1854, in same vicinity, for said Company, and for Chicago and Milwaukee Railroad Company; bought two of the Adams lots, in block 61, which were worth more than Van Horne's, for \$100 per foot, one-third cash, balance in six and twelve months, with interest; bought lot through Moseley, and one near it of Buchanan—
 52 \$101 per foot for Moseley lot, and \$100 for Buchanan's—both on canal time; from my acquaintance with said lot, and prices at which other lots in vicinity were sold and held at, should value Van Horne's at \$2,000, in June, 1854. Was Director and Vice President of said Company; am not and have not been for two years; am not a stockholder in said Company.

J. C. SMITH.—Dealt considerable in real estate in 1854; in spring of 1854 owned a water lot one and a half blocks north of Van Horne's; had the patent title; another had tax title; we valued it at \$2,500; sold my title on 20th March, 1854, for \$1,200—that valuation being the basis of sale; think it was fair; knew Van Horne's lot then; should value it then at from \$40 to \$50 per foot; my attention called to Van Horne's lot, in June, 1854.

53 HENRY SMITH.—Knew Van Horne's lot in June, 1854; dealt in real estate then in that vicinity; owned lots in block immediately west—south-west and west—of 62,

and agent for lots in blocks 61, 71, 68, 78, 75, 72 and 74, of same addition; Van Horne's might possibly have brought \$50 per foot; that was an outside price; lots on south-east corner of block opposite held at \$35—afterward raised to \$40; offered mine for \$40; was then a director of said Company, and am now; am not a stockholder.

54 W. F. FLEETWOOD.—Was clerk in office of Ogden, Fleetwood & Co., land agents; they owned and had agency for large portion of the lots in vicinity of lot in question, in 1854; was familiar with sales and prices in that locality; think Van Horne's lot then worth \$50 per foot; form my opinion from lots we had for sale in blocks 69, 61 and 70, near by; am twenty-two years of age.

55 F. H. BENSON.—Was a land agent in 1854; knew Van Horne's lot; had a corner lot in block south and west, for sale, which called my attention to value of property in that vicinity; think Van Horne's lot then worth \$75 per foot; that was price of mine; it was worth as much as Van Horne's, being a corner lot made up for the increased distance from the water.

This was all the testimony in the case.

56

INSTRUCTIONS GIVEN AT REQUEST OF R. R. CO.

1st. In estimating the plaintiff's compensation, the jury are to find the value of the lot in question and the improvements at the time of filing the petition in June, 1854, and are not merely to speculate on the probable rise since that time, but are to ascertain what was the value of the property at that time, as nearly as it can be arrived at from the evidence.

2nd. The jury are the judges of the value of the opinions of the various witnesses, and if they believe that any of them had no knowledge of the value of the lot in question, their opinions are entitled to little weight.

3rd. The jury are to find the value of the lot and improvements at the time of filing the petition in June, 1854, without interest. (The Court instructed that Van Horne was not entitled to interest, at the express request of his counsel, being of opinion that he was entitled thereto.)

57 4th. In determining the compensation to be paid by the plaintiff for the property in question, the jury may consider all of the facts and circumstances detailed by the witnesses touching the lot in question, the location of the lot and other elements entering into its value, the price which other lots in the same vicinity were sold at about the time, both before and after, when the award was made in this case, and such other testimony (including the opinions of value expressed by the various witnesses, giving to each of those opinions such weight as the jury shall deem proper,) as may have any tendency to assist the jury in determining the value of the property in question at said time, (June, 1854,) and in fixing the amount of compensation to which the plaintiff is entitled.

Verdict of the jury, assessing the appellant's compensation at \$7,500.

Motion by R. R. Co. for a new trial, which motion the Court considered should be granted, unless appellant would remit \$900 of amount of verdict; appellant thereupon remitted \$900, and thereupon said motion for a new trial was overruled, and appellee excepted.

V mi R A

On ~~How~~

H. D. B.

Corrected by
Bledget & Upton

of the lot, amounting to the appellant's compensation at \$1,000.
... to which the benefit is entitled.
... in question at said time (June 1864), and in fixing the amount of compensation, it may have any tendency to assist the jury in determining the value of the witness giving to each of those opinions such weight as the jury shall deem about the time, both before and after, when the award was made in this case, and entering into its value, the price which other lots in the same vicinity were sold at witnesses touching the lot in question, the location of the lot and other elements in question, the jury may consider all of the facts and circumstances detailed by the

61

62. In determining the compensation to be paid by the plaintiff for the lot

... the lot was sold at the time

... was not entitled to interest at the express request of his counsel, being of the opinion in June 1864, without interest. (The Court indicated that it was

64. The jury are to find the value of the lot and improvements at the time of decision, their opinions are entitled to little weight.

65. The jury are to judge of the value of the lot and improvements at the time of decision, their opinions are entitled to little weight.

Supreme Court

The Illinois & Wisconsin R. R. Co.
Pls, in Error

vs.

John T. Van Horne
Def't in Error

Points in Error

on

Motion for New Trial

I The Court Erred - in admitting the opinions of witnesses as evidence, on the trial -

See, Testimony of Hefehart - 2 Page Abstract - Starr, 3 Page Vall

" Morehouse vs Matthews - 2 Comstock N.Y. Reports, 514

and cases cited -

also Butler vs Mehrling 15 Ill. Rep. 490, & cases cited -

(1) The question called for an opinion - not for a fact -

(2) The witness should ^{have} stated the facts - and the jury have been left to draw conclusions - (See cases above cited)

(3) Opinions of witnesses as to value of land not admissible as evidence - See Peterboro vs Tiffany 6 N.H. Rep. 462

" Rochester vs Chester 3 Do 349

(4) A new trial will be granted, for the admission of illegal testimony, unless the verdict is correct beyond a doubt - See Graham & Waterman on New Trials Vol. 2.

Marrell vs Parmelee 1st Comstock 531 & Page 644, &c. & cases cited -

People vs Wiley 3 Hill 194, 214 8th Bar, Rep. 530 - Weeks vs Lowrey

Verdict wrong beyond a doubt, Else why the remittances

II

The Court Erred, in admitting Evidence of the value of property (Lands) in vicinity - Sold a year upwards after, VanHornes Lot was appraised also some two years before -

(a) Evidence Should have been confined to value at the ^{of Van Hornes} time ~~it was~~ (June 1854) of taking or appraisal by Court -

See Meacham vs Fitchburg R.R. Co 4th Cushings R 391

" Milwaukee & Mississippi R.R. Co. vs Eble, 4th Chandler (Wis) R. 72

" Dearborn vs Boston Concord & Montreal R.R. Co - 4th Foster's (H K) Rep. 179

" Canandaigua & Niagara R.R. Co, vs Payne 16th Barbour's (Sup Ct. N.Y) R 273

(b) The evidence above referred, being objectionable; the Court cannot say, that it could not have influenced the jury,

See Allen vs May 7 Bar, Rep 585

" Marquand vs Webb, 16 John 89

" Oggood vs Manhattan Co 3 Cow 612

(c) The Court Erred in deciding that the appellants (left in error) had the opening and closing of the case

See abstract 2^d Page 29 -

Plffs in Error were really Plffs - were the party moving originally, & should have had opening & closing according to all precedent and all right - This decision of the Court, and its consequent effect, gave the appellant, an obvious, undue, improper and illegal advantage -

III The Court Erred in not granting a new trial, on the Motion of the Plaintiffs in Error —

A Because, Improper Evidence had been permitted to be given to the jury, by the Deft in Error
 Viz: Opinions of witnesses — See abstract —
 Opinions of value of other property than that in question
 Page 7 Abstract, Question to Moreley by Deft in Error
 on which See 4th Chandler's Wis. Rep. 72 *Reversed*

B Because: Proper testimony, had been Excluded from the jury, offered by Plffs in Error

In that the Court ~~excluded~~ ^{received} Evidence to prove what other & contiguous ^{lots} sold for, 13 months after the land in question was taken — and Excluded Evidence to show that lands & lots in the vicinity had increased in value during the same time —

C Because The verdict was against the Evidence

1	Deft in Error's Wils:	Splachant	gives his opinion that Lot worth \$200, per foot
2	"	"	"
3	"	"	"
4	"	"	"
5	"	"	"
6	"	"	"
7	"	"	"
8	"	"	"

9	"	"	Menille	(opinion)	\$200 per foot
10	"	"	McCarthy	"	250, " "
11	"	"	Maher	"	150, " "
12	"	"	Randolph	"	125, " "
13	"	"	Davis	"	175, " "

Average \$192,30³/₁₀ per foot —
 Whole Lot 40 ft at " " \$7692,00

Plffs in Error & Mts Estimates.

1	Moseley	\$80,00 per foot
2	Lee	30,00 " "
3	Tullerton	75,00 " "
4	Rees	60,00 " "
5	Gurnee	50,00 " "
6	J. C. Smith	\$40 to \$50,00 " "
7	Henry Smith	50,00 " "
8	Fleetwood	50,00 " "
9	Benson	75,00 " "

Average \$57,77⁷/₁₀ per foot
 Whole Lot 40 ft at " of " " " \$2311,10

Difference in Averages \$5380,93 —

Whole average of Estimates \$4546,87 +
 Damages as per verdict, above whole average \$2953,13
 Damages after remittance " " " \$2053,13

(d) The Damages are manifestly Exorbitant; in which case the Court should interfere, that an other jury may pass upon ~~the~~ the case.
 16 Pickering 541

Where there are rules for Estimating and fixing damages, and
the verdict is against the Evidence, it will be set aside,
See 10th Georgia 37- 14th Mass. Rep. 141. 5th id 435.

Where verdict is clearly against the weight of Evidence, it
will be set aside, though Evidence on both sides be given
See 2^d Gilb. 595- 20th Pick 285-9- 15th id 291

" Graham & Waterman on New Trials, Vol. 2, Page 3947

" 1 S Common 490, Smith vs Shultz

" Act 21st July 1837, Sess Laws 109,

" Hill vs Ward 2 Gilman 283-

There is nothing in the Case, nor in the Evidence
affording a reason for requiring \$900. to be re-
mitted, which does not also show that
more should ~~have~~ been remitted, and
which does not also establish the proposition
that a new trial should have been
granted.

The requisition to remit, must have been because
the verdict was wrong: and if the verdict
were wrong, it must have been so, either
because, it was Contrary to the Evidence;
or because it was based upon improper
testimony. Either of which grounds is suf-
ficient ~~grounds~~ for a new trial - and
both of which grounds existed in this case

W & M R Co
v
Van Horne
Brief
by Blodgett
& Upton

Thurston vs R.R. Co

For Appellant Defendant in Error

2 Pk. Ex. 760 -

"In questions of the value of property, the witness must of law testify to opinion"

Cites, Swifts Ex. 111 - Kellogg vs Krawson 14 Serg & Rawle 137, 141 &c

3^d N.H. Contn &c 349, 365

observe however 6 N.H. R. 462 Pelaborn vs Suffrey. In this case the the court adhere to 3^d N.H. Rep. yet they say "Evidence as to value of land is not a question of that character which requires the opinion of wits. as a matter of skill & judgment (i.e. as experts) & observe further the reasons given by the court entirely undermine the case as to its bearing in this locality, for they say "the ordinary value of land of a particular description within the county must be a matter of public notoriety & is "Such a question as the jury who are by statute required to be freeholders would be fully conversant with & abundantly "able to decide

14 Serg. & Rawle 137, 141, 2 &c Kellogg vs Krawson

Gibson C. J.

"The principal reason assigned against this evidence was that opinion
"as to the value of land is not evidence because it is not a fact. It is certain
"that such opinions are every day received as evidence, (altho it is
"true that an opinion is not strictly a fact) & it is difficult to
"conceive how the value of land can be fixed without them
"The witness may indeed prove the prices at which other
"lands in the neighborhood were sold but that would not ascertain
"the value of the land in question without a comparison between
"it & the land sold as to quality & quality is very much a matter
"of opinion. It is a kind of evidence so commonly admitted
"without dispute or objection that I have no doubt of its legality

2 Cowstock 516 Morehouse vs Matthews

The exceptions to the general rule are confined to questions of science trade & a few others of the same nature

It is allowable for a witness who deals in or is acquainted with the value of cattle or horses to testify as to the value of such animals because he then speaks of facts as derived from the market price of such property. In such case his testimony would not be an opinion but a knowledge

15 Alb. 489. gave at bottom of page 490 Butlers & Melhrling

"But there are many cases in which exceptions admit
" opinions as competent & leave the weight due them to the
" jury according to the means of information & intelligence
" of the witnesses — as a case where testimony from necessity
" embraces a compound of fact & opinion

So on 491 " This is not one of those cases where
" experts can give opinion as testimony, but it is rather
" one of the exceptions to the general rule, that facts
" alone not opinions shall be admissible "

2 Ch. Dm. 495 On estimating the value of land taken the present value of the lands not at a forced sale, but at a sale which a prudent holder would make if he had the power of election as to time & terms is to govern

It is proper to regard the location of land and the probabilities which a prudent man would entertain of the increased value of the property for building purposes. It is not competent in order to rebut the opinions of witnesses as to the value of land taken for a rail road, to show that in the town land had been increased in value by ^{the proximity of the road}

The above is Somerville & Easton R.R. Co. on Doughty
& can't say "they are to take into consideration
the injury to the lands not taken
to the owner dwelling house on the estate
the subjection of his family to danger
his buildings to risk of fire
the inconvenience of embankments & excavations
& deterioration of lands for agriculture
or for building lots

Mathew & Tappin
Attorneys

Supreme Court
John Brown Horn

^{ad}
Illinois & Wisconsin
R. R. Co.

Brief for
Appellee

Mathew & Tipton &
Whiskey
for
Appellee

Supreme Court at Ottawa. Apr. 2. 1857
Ill & Mi. R. R. Co }
vs
Van Horn } Ed. Dickey for the
defendant in error (Van Horn)

II

If the opinions of witnesses are not admissible in ascertaining the value of real estate - pray what is evidence? - Gentlemen say facts - pray what facts? - 'The fact that the same property had been sold a short time before for a given sum - would only be Circumstantial evidence to prove that ~~one man thought~~ the purchaser thought it was worth that sum at least - and that the vendor thought it was worth no more than that sum - In other words sworn opinions themselves are not evidence - while ~~remote~~ remote circumstances tending to show ~~that~~ opinions of others (& tending to show nothing else) are to be received -

The fact that it was a lot fronting on Des Plaines Street - & 60 feet from the Chicago river - would shed no tangible light on the subject of the value of the lot unless the jury were adepts in

in judging of real estate & were well posted
in that locality -

The truth is the value of the lot at
a given date is the fact to which
the witness must ~~and~~ speak and speak
directly - you might as well ~~require~~
~~a witness~~ where the issue was whether
a lady smiled or frowned on a
given occasion - require the witness
to describe the dimple - on her cheek -
the attitude of her lips & wrinkles &c
about the face and let the jury judge
from the description whether she
smiled or frowned - as I in
a case where the value of a given
article of property is the question to
require the witness to describe its
location & surroundings & leave the
jury to guess its value - Common
sense & law as usual concur in
saying that the witness shall in the
one case say whether he thought she
smiled or frowned and in the
other what is the value of the prop-
erty - In both cases the evidence in
some sort may be called an opin-
ion - From its nature it can be
no other - So with the proof of land
writing - How would it seem to
have a witness acquainted with
my hand writing describe it to the

jury and then submit the paper in question to the jury that they may judge whether it was written by me or not - ~~not~~ lest the witness might give an opinion in saying he thought it my genuine handwriting -

II

We concede that a new trial ought to be granted for admission of improper testimony unless the verdict is evidently right - And justice has been done - But we deny that this verdict was wrong. Counsel ^{say} "Else why the remittitur" - This is adding insult to injury. We read in the book of a Court in which ~~shall be~~ "from him that hath not shall be taken away even that which he hath" (Matthew chap 23 - verse 9) but that was on account of his own wrong in not having what he ought - Here we have not what we ought to have (and what the jury said we ought to have) simply because the Circuit Judge chose to require that we should remit \$900.00 from the verdict - and we submitted to it - This discretion of the Court was thus exercised in favor of the rail

road Company - against our most earnest protestations - and that too while the same Court refused to require of the Rail Road Company - any conditions which would secure to us an end of this litigation - We asked that Court ~~before requiring~~ ^{to require} of us to remit only on condition that the R. R. Com would accept - This was denied us and now this very act of injustice is made the ground of an argument against us.

III

We deny that the value of the lot at the time of the taking is the test & only test to fix compensation for its taking. In this case - possession of the lot was taken in 1854 - under an appraisement which was flagitiously too low - & Van Horn was compelled to appeal - Meanwhile the Company use the lot and keep its price - In 1855 Van Horn got another trial and the jury fixed upon \$6000. as a proper compensation - At the instance of the R. R. Company that verdict was set aside - and again in 1856 - another trial is had - & we insisted that the true question for the jury ~~was~~ ^{should have been} what amount now paid

would justly Compensate Van Horn
for having his lot taken from him
in 1854 - & that in determining this
question the jury might with proprie-
ty Consider ~~the estimate of value~~ ^{not only the}
which business men put upon it
at that time - but its subsequent
rise and present value - and
in view of all these facts say
what in their judgment would be
a just Compensation -

In this position however we
were tenaciously over-ruled by
the Circuit Court - And the jury
were charged and that Court
held tenaciously that the Measure
of Compensation was the value
of the lot in June 1854 when it
was taken - And now it is alleged
that the Court erred in not confining
the testimony to that time - This was
in fact done until the R. R. Company had
called out the statement of particular
sales of other lots as far back as 1852 -
(Abstract page 3) ^{See} ~~the~~ ^{the} ~~examination~~ ^{examination}
Then & then only after the door was thus
opened - ~~to the party~~ ~~what~~ ~~was~~ ~~did~~
we ask one such question & one only
While their evidence was full of such

out

Our question to Davis was not in the nature of Original evidence but explanatory of matters called by our adversary on Cross examination - ~~at all~~

This evidence however is not objectionable - save on the ground that it leads to prolixity & this is a matter the Supreme Court will not interfere with -

If we wish to know the price of grain on a given day in Chicago - the best source would be to find out all the actual sales which had been made about that time & in that connection take the testimony of men who were dealing & had general means of knowing - if this detail of particular sales should be excluded - by the Circuit Court that Court would be sustained upon the ground that it would lead to too great prolixity - but if the Court would take the time to hear such testimony it could harm no one - and a review of this very case will show that the R.R. Co. - gave ten times as much of that kind of evidence as we did - It sounds a little strange to find the Company alleging that this is error - when this testimony on the former trial was excluded

when they offered it - and for this reason & for this reason only the Circuit set our first verdict aside - and now they ask to have the last set aside because they had their own way in getting this class of evidence admitted -

We had a right on cross examination to test the soundness of the opinions of their witnesses by asking their views of the value of other property & the value of property at different times - It is right ^{for witnesses, & juror} to view this subject of value from different stand points and after a comparison of all say what was the value

In fact this is the position of our adversary - See instruction No 4 - on page 10 of abstract - given by the Court at the request of the R. R. Company - Can the R. R. Company be allowed to experiment upon a jury with a rule & afterwards insist that that rule is wrong by this charge all objections to sales of other property before & after - & all objection to the opinion of witnesses are waived

It may safely be said in this case that if the Circuit Court has erred in this case - in any thing that the defendant in error - was not profited thereby - nor was The R. R. Co. injured thereby - This has been a hard case on Van Horn -

He had but one lot - had nothing else - Could he have kept his lot it is now worth \$16,000 - Could he have had the true value at the time paid to him & ~~had~~ at the time he might have invested it & been worth \$16,000 to day

In the stead of this he has since lived in rented property - spent all his earnings in paying rent and cannot yet get any thing for his lot - While the R. R. Co. have paid nothing & earned thousands yearly, by the use of the property for its Depot -

Leland & Mfg. R. R. Co
vs
Van Horn

Dukey's Brief

for deft in error

Briefs on both
sides & Abstract

Filed May 11, 1889

Leland
Clerk

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Illinois Wisconsin
Rail Road Company

vs

John Van Horn

1857

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Affirmed

1857

12349

X