

12797

No. _____

Supreme Court of Illinois

Galena & Chicago Union R.
R. Co.

vs.

Pound et al.

60 = 1

The Eastern Electric
Mining Machine

60

Galena & Co.
1857

859

1859

Proprietor

12797

In the Supreme Court

The Galena and Chicago Union Rail
Road Company appellant

vs

Amelia Pount et al appellees

And now comes the said appellant
and says there is manifest error in the
record and proceedings in the Circuit
court in this cause, and assigns the
following -

The Circuit Court erred in admitting
improper evidence on the part of the
plaintiffs below -

The Court below erred in excluding proper
evidence offered on the part of the defendants
below -

The Circuit Court erred in giving oral
instructions to the jury

The Circuit Court erred in rendering judgment
upon the verdict of the jury, which was
contrary to law and evidence -

The Circuit Court erred in overruling the
motion for a new trial -

W B Platoro Esq
for appellant

Superior Court
The Helena & Chicago
N. B. B. Company
vs

Amelia Parment et al

And the said upon
doubt, in favor of Mayburn then
attorney ~~could not~~ ~~appear there~~
or say that, ^{there is} no error
in the records & ~~proceedings~~ ^{proceedings} had
in this case in the said General
Court when this case was tried
vi

J. B. Mayburn
att'y for Deft in error

United States of America
State of Illinois, Kane County

S. S.

Pleas before the Honorable
Isaac S. Wilson Judge of the Thirtieth
Judicial Circuit and Presiding Judge
of Kane County Circuit Court in the State
of Illinois at a Term of said Court begun
and held at the Court House in Geneva in
said County on the Ninth day of May
in the year of our Lord one thousand
Eight hundred and fifty Seven.

Present The Hon Isaac S. Wilson
George C. Cornin

Judge
Sherriff

Attest, Paul R. Knight
Clerk

As it remembered that heretofore to wit, on
the 2^d day of January AD 1856, a Petition was filed in
the clerk's office of our said circuit Court, which is in
the words and figures following to wit:
Kane County Circuit Court,

Of the February Term of the said
Court for AD 1856

Amelia Pennel Nathan Pennel
John Pennel, William Pennel
and the following minors, Sarah Pennel,
Jane Pennel, Josiah Pennel & Harriet
Pennel by Sylvester H. Sedgwick
Guardian

W.
The Galena & Chicago Union
Rail Road Company

The clerk in compliance
issued a summons in the above case in an action
of Trespass D. C. & returnable at said
Term of Court lay damages at \$2000.

Given January 20th 1856

Filed Jan 2. 1856.

L. Denton clk

J. H. Maybome
atty for Plff.

And afterwards to wit, on the day
and year last aforesaid, a summons was issued by
the clerk of said court in the words and figures following to wit:
State of Illinois}

Kane County ss.} The People of the State of Illinois to the
Sheriffs of said County Greeting:—

We command you that you summon The Galena
& Chicago Union Rail Road Company if they shall
be found in your County, personally to be and appear
before the Circuit Court of said County, on the first day
of the next term thereof to be holden at the Court House
in Geneva in said County on the second Monday of
February next to answer unto Amelia Pound,
Nathan Pound John Bennett William Bennett
and the following minors, Sarah Bennett, Jane
Bennett, John Bennett & Harriet Bennett by
Sybilis H. Todd their guardian in a plea of
Trespass D. C. to the damage of the said plaintiff
as she says in the sum of Two Thousand dollars, and
have you then and there this writ with an endorsement
thereon in what manner you shall have executed
the same.

Witness Luther Denton Clerk of aforesaid

Seal of Kaw Co. Court and the seal thereof at Geneva
 Co. Ill. Court in said Court, this 2^d day of Jan'y AD 1856
 L. Denton, Clerk

~~Filed~~ Copy of Endorsement on Summons
 "Personally served by reading to the within named
 B. D. Downer Freight agent, Also by giving the said
 Downer above copy of the within summons this 22^d
 day of Jan'y AD 1856. L. P. Parker Sheriff
 of Kaw Co."

And afterwards to wit on the 1st day of
 February AD 1856 a Declaration was filed in the
 clerks office of said Court, which is in the words and
 figures following to wit,

State of Illinois)
 Kaw County) Kaw County Circuit Court.

Of the February Term of the Kaw County
 Circuit Court for 1856.

Amelia Pound, Ashaw Pound, John Bennett
 William Bennett and Sylvester H. Todd (Guardians
 of Sarah Bennett Jane Bennett Jonas Bennett
 and Harriet Bennett minors) plaintiffs in this suit
 by J. H. Maybome their attorney complain of the Salina
 and Chicago Union Rail Road company defendants
 of a plea of Duress.

For that the said defendants on the tenth day of
 June AD 1853 and on divers other days and times
 between that day and the day of the commencement of
 this suit with force and arms do broke and entered into
 to wit, a certain close of the said Plaintiff situated
 in the Town of Geneva in the County of Kaw and State
 of Illinois, and then occupied by the said Plaintiff
 and known and described as follows to wit, commencing

North forty three and three fourths degrees West three chains
 Eighteen links from the North West corner of the North
 East quarter of section Eleven, Township thirty nine, North
 Range Eight East of the third principal meridian, thence
 South seventy Eight degrees East, sixty nine chains, fifty
 five links, thence South seven and one half degrees
 West, twenty two chains twenty seven links, thence North
 Eighty-four and one fourth degrees West twenty two chains
 & Eighty two links, thence North twenty six degrees East
 twenty chains seven links to Judge Wilsons corner, thence
 North six and three fourths degrees East Eighteen chains
 seventy five links to the place of beginning.

And then and there broke open, threw down and broke
 to pieces damaged and spoiled divers wood, fire stoves
 fence rails standing and being laid up in fence some
 about and upon the said close, of the value of Two hundred
 dollars. And also with feet in walking trod down
 trampled upon, consumed and spoiled the grass and
 corn wheat and oats of the said plaintiffs of great value
 to wit, of the value of Two hundred dollars then and there
 growing and being with cattle to wit, horses mares,
 geldings and cows and also cut up and destroyed
 and spoiled the said grass, corn, wheat and oats of
 the said plaintiffs of great value to wit, of the value of
 Two hundred dollars then growing and being in said
 close, and with divers other horses mules, geldings
 sheep and cattle, and also with the wheels of divers
 carts, wagons and other carriages, and also with
 divers plows, scrapers, spades, shovels, damaged and
 spoiled others the grass, corn wheat oats of the said
 plaintiffs of great value to wit, of the value of Two
 hundred dollars, then and there growing and being.
 And also then and there cut down prostrated

and destroyed the grass and underwood, to wit, fifty apple trees, fifty plum trees, thirty cherry trees, fifty pear trees, fifty peach trees, one hundred Burr oak trees, one hundred black oak trees, one hundred white oak trees, one hundred ash trees, fifty hickory trees, fifty Elm trees, and divers other trees and two acres of underwood of the said plaintiffs of great value to wit, of the value of Two Hundred Dollars then and there growing and being on the said close.

And also with divers men and boys, and with wagons and carts, wheelbarrows and other carriages and with shovels, shovels hoes, scrapers, plows, pick axes, Iron Bars and crow Bars and with divers other instruments made and used for that purpose did dig up, tore up, ploughed up, turned up excavated and removed the soil and earth of the said close and seized and took and carried the same away —

And also made deep and broad cuts, and deep excavations and ditches to wit, twenty feet deep and one hundred feet wide, five thousand feet long through the said close and piled up divers huge and large Mounds of soil, earth stone and rubbish, in and upon said close at divers places thereon, to wit, at the mouth of the said cuts, excavations and ditches so made as aforesaid, and taken and covering and occupying large spaces of ground or soil of the said close in all to wit, twenty acres of land of the said close —

And then and there Cart and threw down large quantities of Earth, stone and rubbish on the said close into divers ditches on the said close and piled up the same and then and there built and erected and caused to be placed upon and across the said close through the said cuts and excavations so made as

in and upon the said clove, and upon the earth stone and rubbish so cast and thrown into the said ditch and upon the soil and earth, of the said clove and across a railway or road to wit, in the month of July, August, September October & November AD 1853 and also kept and continued the said Railway or road so created and placed as aforesaid up to the time of the commencement of this writ the second day of January AD 1856 without leave or license of the said plaintiffs against the will of the said Plaintiffs for a long space of time to wit, from the said tenth day of June AD 1853 till the time of the commencement of this writ, and the said defendants did also came and direct in the month of September AD 1853 their their machines and Steam Engines and steam locomotive carriages and cars to run in upon and through and across the said clove of the said plaintiffs along the said Rail Way or Road so made by them aforesaid, from the said month of September AD 1853 for a long space of time to wit, till the 20 day of January AD 1856 without leave or license of the said plaintiffs and against their will, and thereby and therewith during all the time aforesaid greatly encumbered and injured and damaged the said clove and lessened its value respectively to wit, the large sum of one thousand dollars - and hindered and prevented the said plaintiffs from having the use, benefit and enjoyment thereof - in so large and ample a manner as the might and otherwise would and could have done to wit at Geneva in the County of Hamilton and State of Illinois, And other wrongs to the said Plaintiffs.

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* Thence North Eighty four & one fourth degree West Seventy
two chains & eighty two links

thence and thence did in contempt and against
the peace and dignity of the People of the State
Illinois, and to the great damage of the said
Plaintiffs in all count, the sum of Two thousand
dollars. For that the said Plaintiffs on the
first day of June AD 1853, and before the committing
of the grievance by the said defendants, as here-
inafter next mentioned the said Plaintiffs were
seized, (that is to say) in "demeasure" as of fee
of and in a certain messuage or piece or of
parcel of land with appurtenances therein situated
in the town of Geneva in the County of Kane and State of
Illinois, and described as follows to wit, Commencing
North forty three & three fourths degree West three chains
Eighteen links from the North West corner of the
North East quarter of Section eleven, Township thirty
nine, North Range Eight, East of the third principal
Meridian, thence South Seventy Eight degree East
sixty nine chains fifty five links, thence South
Seventy one half degree West twenty two chains
twenty seven links, thence North twenty six degree
East, two chains seven links to Judge Wilsons
corner thence North six & one fourth degree East
Eighteen chains seventy five links to the place of
beginning, And the said Plaintiffs being
so seized thereof, the said defendants not
regarding their rights and privileges and ownership
of the said Plaintiffs, and whilst the Plaintiffs were
so seized as aforesaid, to wit, on the 14 day of June
AD 1853 with force and arms, broke and entered
the said messuage of the said Plaintiffs and
thence and thence in a forcible manner put out and
disseized the said Plaintiffs of a part and parcel

of the said Messuages to wit, a strip of land one
 thousand feet wide, being fifty feet wide on
 each side of the center line, of said Rail Road
 where the same is located, over the north West quarter
 of Section Twelve and the North East quarter of
 Section Eleven, in Township thirty nine, Range
 Eight East of the third principal meridian for the
 distance of one thousand feet from the West line
 of the said land, crossed by said Rail Road, one
 thousand and sixty feet wide, being eighty feet wide
 on each side of the center line of said Rail Road
 in all to wit, twenty acres of land. And in a
 forcible manner and with strong hand kept and
 continued the said Plaintiffs so put out and
 dispossessed for a long space of time, from thence
 hereto, by means whereof the said Plaintiffs
 for and during all the time aforesaid lost and
 was deprived of the profits, benefits and advantages
 which might and otherwise would have arisen
 and accrued to them from the possession use and
 occupation and enjoyment of the said Messuages,
 or piece of land so seized as aforesaid, by said
 defendants, to wit said twenty acres of land
 to wit at Geneva in the County of Kane and State
 of Illinois, and other wrongs to the said Plaintiff
 then and there in contempt of and against the
 peace and dignity of the People of the State of
 Illinois and to the great damage of the said
 Plaintiffs to wit of the sum of Two thousand
 dollars, and therefore they bring suit by
 J. H. Mayhorne
 their Attorney

Filed Aug 1, 1856. L. Deaton Clk

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And afterwards, to-wit on the 25th day of February AD 1856, a plea was filed in the Clerk's office of said court, which is in the words and figures following to-wit,

Balena & Chicago
W. A. R. Co.

at
Bennett & Bennett

} Hann Circuit Court
Deby Term 1856.

And the said defendants by Plato their attorney come and defend ~~and~~ the force and injury aforesaid and say that they are not guilty in manner and form as the said Plaintiffs have complained against them and of this they put themselves upon the country &c
(And Plff doth the like)

W. J. Plato
atty of Defs.

It is hereby agreed between the parties that the defendants are allowed to give in evidence upon the trial of this cause any and all matters of defence that would be proper if specially pleaded as a defence in this suit.

Filed July 25, 1856
S. Austin clk

W. J. Plato for Defs.
J. H. Thompson atty
for Plff.

And afterwards to-wit, on the 6th day of November AD 1856, it being one of the days of the regular November Term of our said circuit court in the year last aforesaid the following among other proceedings in said court was had and entered of Record to-wit,

Amelia Bennett et al

V } *Ex parte*

Galena & Chicago Union
Rail Road Company

This day came the Plaintiff
by J. H. Mayhew their attorney
and the defendant by Plato their attorney also came
upon motion of Plaintiff it is ordered that a jury
come, whereupon a jury of good and lawful men to wit,
Mark Stringer, Mindest Auble, H. A. Godrich,
S. Hearford, Eli Peck, James Emmette
W. A. Foster, A. A. Merrill, Daniel Campbell
Lewis Spears, Alon Hall, E. Curry who
being severally elected, tried and sworn also come
and after hearing the evidence, arguments of counsel
and instructions of the court, retire under charge of
a sworn officer of the court to consider of their verdict

And afterwards to wit, on the 7th day of
November in the year last aforesaid, it being as yet
of the said November Term of said court, the following
further proceedings were had in said cause and entered
of Record in said court to wit,

Amelia Bennett et al

V } *Ex parte*

Galena & Chicago Union
Rail Road Company

This day came the parties
to this suit by their attorney
and the jury heretofore empanelled herein also come
and say they are unable to agree, and are
discharged by the court.

And afterwards Court on the 13th day of May AD 1857, it being one of the days of the regular May Term of our said Circuit Court in the year last aforesaid, the following among other proceedings in said Court was had in said Court and entered of Record to wit,

Court met pursuant to adjournment,
Present, The Hon George W. Manierre, Judge of the 7th Judicial Circuit Illinois, Presiding —
Amelin Pound, Nathan Pound
William Bennett, John Bennett
and the following jurors, Sarah
Jane, Josiah ^{and} Hamlet Bennett
by S. H. Todd Guardian
v
Galena & Chicago Union
Rail Road Company } Disputes

This day comes the Plaintiffs by Mayboms their attorney and the defendants by Plato their attorney also comes, and on motion of the Plaintiffs it is ordered by the Court that a Jury come, whereupon comes a Jury of good and lawful men to wit,

Ernest Newton, William Emmetull, J. C. G. Jell
John Marks Alvin M. Kelney, Joseph Hendley
John Wilson Parker Martin Benjamin Dingle
William Will Ferdinand Sheffer, E. D. Perry
who being severally elected, tried and sworn also comes, and after hearing a portion of the testimony, the Court adjourned to meet tomorrow morning at nine o'clock

And afterwards to wit on the 14th day of May in the year last aforesaid, it being as yet of the said May Term of our Circuit Court, the following further proceedings was had in said court and entered of Record to wit:

Amelia Pound, Nathan Pound
William Bennett, John Bennett
and the following Minors, Sarah
Jane, Josiah & Harriet Bennett
by S. H. Todd Guardian

V
Salmon & Chicago Union
Rail Road Company

Drumsg.

This day came again the parties to this suit by their respective attorneys and the Jury heretofore empanelled herein also came, and having heard the remainder of the evidence adduced as well on the part of the said Plaintiffs as on that of the said defendants, the arguments of counsel and the instructions of the court retire under charge of an officer of the court to consider of their verdict. Subsequently return into court and for a verdict upon their oath say, as the Jury find the defendants guilty and award the Plaintiffs damage at the sum of Six Hundred and fifty Dollars, which is ordered by the court to be entered of Record. Thereupon come the defendants and move the court for a new trial herein.

And afterwards to wit, on the 15th day of May in the year last aforesaid, it being as yet of the said May Term aforesaid, the following among other proceedings was had in said court and entered of Record to wit.

Amelia Pound, Nathan Pound
William Bennett, John Bennett

and the following minor, Sarah
Jane, Josiah & Harriet Bennett by
C. H. Todd their Guardian

V

Galena and Chicago Union
Rail Road Company

Defendant

This day came the parties
by their respective attorneys and the defendants motion for
a new trial heretofore entered herein coming on to be
heard, after after argument of counsel the court being
fully advised, overrules the same. It is therefore ordered
by the court that the Plaintiffs have and recover from the
defendants the sum of Six Thousand and fifty dollars
their damages aforesaid, together with their costs in this
suit expended and have execution therefor.

Whereupon come the defendants by Plato their attorney and
pray an appeal to the supreme Court of the State of
Illinois, which is allowed by the court on condition that
the ^{said} defendants file a bond in the sum of Fifteen
Thousand Dollars, conditioned as required by law,
within forty days, with H. B. Plato or John Van Antwerp
as surety. And it is also ordered that the bill of exceptions
herein be filed within forty days.

And afterwards to wit, on the 6th
day of June AD 1857 an "Appeal Bond" was filed in
the clerk's office of said Circuit Court, which is the words
and signing following to wit:

Know all men by these
present that we the Galena & Chicago Union Rail
Road Company as principals and William B. Plato
as surety are held and firmly bound unto Amelia
Pond, Nathan Pond, William Bennett

John Bennett, Sarah Bennett, Jane Bennett, Josiah Bennett and Harriet Bennett in the penal sum of Fifteen Thousand Dollars for the payment of which sum well and truly to be made we bind ourselves our heirs, executors and administrators jointly severally and jointly by these presents. Sealed with our seals and dated this 2^d day of June AD 1857.

The condition of the above obligation is such that whereas the said Amelia Poand, Nathan Pinner & William, John, Sarah, Jane, Josiah & Harriet Bennett did at the May Term AD 1857 of the Kane County Circuit Court, recover a judgment against the said Rail Road Company for the sum of Six Thousand and fifty dollars and cents. From which said judgment the said Rail Road Company has taken an appeal to the Supreme Court of the State of Illinois. Now if the said Galena & Chicago Union Rail Road Company shall prosecute their said appeal with effect and shall pay said judgment, costs ~~and~~ interest and damages in case said judgment shall be affirmed, the above obligation &c void, otherwise to remain in full force and effect.

In testimony whereof the common Seal of said Rail Road Company is hereunto affixed this 2^d day of June AD 1857.
 attest H. W. Sarrahee Secy
 W. S. Plato Clk

Filed June 6th 1857.
 R. Wright, clk.

And afterwards writ, on the 30th day of March
AD 1858, as of June 20th 1857 a Bill of exceptions
was filed with the clerk of said circuit court, which
is in the under and signing following writ:

Bennett et al }
v } May Term 1857
G. & C. R. R. Co. }

As it remembered that on the
trial of this cause the plaintiffs introduced the
following named witnesses, who testified as follows,
though Farr testified as follows - In the summer
of 1853 I was residing on his farm one mile north
of here, I know Nathan Pond - Amelia Bennett
is his wife - I knew Comfort Bennett, Amelia was his
wife, Comfort is dead - he died sometime in 1843 or 44
in the State of New York - After he came here I knew
of his death, I knew him personally, At the time he died
he was preparing to move here - I think he had a
sale there before he died. After his death in the fall
his widow and children moved here - he had been
here a short time before he died - his widow and
children moved to Kane County. When I came out
five years ago, I found them about a mile east
from Geneva. They have lived there since - I think
I knew him of Comfort Bennett at the time of
his death - They were John, William, Sarah, Jane
Josiah Harriet. Mrs Bennett was married to
Nathan Pond in June 1853. John was then in
his 22nd year - he was then in the State of New York,
Mrs Pond then lived a mile east from Geneva.
I received letters from John in 1853. He was then
living in New York. When I left, I left John
residing with my family in the State of New York.

late in the fall of 1853, John came out here to reside. In June 1853 William was on the farm with the family, he was about 20 years old, might not have been so old, Sarah was probably 14 in June 1853, Jane was some 10 or 12, Jonah was perhaps nine years old, Harriet was still younger, perhaps about five years of age - I have guessed at the girls ages, I think I have guessed rather lower than they are. In 1853, 4, 5 & 6, Nathan Pomeroy and his wife and the children above named occupied the farm from June 1. 1853 down, except John who came late in the fall but did not go on farm to do anything until the Spring of 1854.

An cross examination witness said, I lived with the Bennett family in the State of New York - When I came here John was not living here - I came here five years ago - John worked the place till the fall of 1854, and then went East - he went on again in the spring next following - I came here in the fall of 1851 - John had been here before I came out, but had returned and had lived in New York five years before I moved here.

Adin Mann testified as follows, I am County Surveyor - I know where the Bennett place is - it is on the East side of the river, it is the place that was deeded from Henry to the heirs of Comfort Bennett, the land is a part of the N.W. 1/4 of Sec 12, and part of the S.E. and N.W. 1/4 of Sec 11, Town 34 Range 8 in Stevens & Kaw County, There is a Rail Road running through the land, it enters East side of the farm 20 chains from S.E. corner and runs across it in nearly a North direction. It is the Galena & Chicago Union R.R.

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Air line, the map I have made, and it is a correct one. There are about nine $\frac{1}{2}$ acres included in the rail Road fence - The other is a map of the farm. There is a cut - an excavation through the central part of the farm. The depth of it is about ten feet in the deepest part - the house on the farm is about opposite to the cut and pretty near it. The Earth taken out of the cut is ~~thrown~~ on the North side of the track there is some on the South - it remains as it was dropped from the cart - it is piled in a strip, in some places the dirt is thrown on the farm beyond the Rail Road fence - it is 100 feet between the fences - cere pile ran out about 2 Rods - the narrow part is 10 or 12 feet wide - there are other places where it is thrown beyond the fence - the ~~said~~ soil is gravel - the height of it is two or three feet. The cut of the road is a slight embankment through the farm, the house is not far from the woods - it is quite near to the bushes - There is an orchard West of the house, the house is perhaps ten rods from the Road crossing over the road from one part of the farm to the other - the Barn is not far from the house - South from house and a little West of the center of the cut - the cut is not far from 900 feet in length - on N. side of fence the dirt is thrown about a rod from fence for 20 rods. The soil is a mixture of clay and gravel - I said the land and made a plot of it in July 1857 -

The Witness in his crop examination testified that the house is opposite the cut, the cut is near the West side of the farm as a whole, I know where the east line of the farm is, it is prairie on the East side and timber on the West end. A few small part of distance run through by roads, is timber or brush

mostly cut off and the rest is prairie - three fourths of the distance is prairie - the cut is partly on fields and runs into the timber. The timber extends further East on the North side of the track. The timber extends quite a distance along the cut, In going east I think the timber extends back before you leave the cut.

I know where the old house is, it is east of the crossing about 40 Rods - I saw but one crossing, There is another crossing near the farm, I measured the distance between the Rail Road fences West of the house, I did not see any dirt on the West side of the house, The cut begins and ends on the farm - after you leave the lent it is prairie + slight fill, towards the East end there is a slight cut again - after leaving the farm there is a slight fill, then a cut again - cut is 10 feet, not including spoil. The Rail Road fences are 100 feet apart, the line of the Road is the center in the deepest part of the cut, the fence is thrown back further than 100 feet, In the highest part on the North side of the lent, the dirt is thrown more than 40 feet beyond fence and 50 feet from the center of the Road. I did not measure where the fence was thrown back - at the deepest part, and on the North side of the cut, the dirt is thrown 100 feet from the center of the Road. I measured from the center of the Road just west, where the fence was thrown back - it was thrown back some 40 feet - the condition of it is that it appears to be as it was left when the dirt was taken out and dumped - it is pretty rough and uneven - it was some 10 or 15 feet outside of 90 feet from the center along the center as above noted. This is my judgment I did not measure it - the cut is fifty Rods long, the road is fenced out one hundred feet, and the

dirt is thrown out beyond the fence for 25 Rods in all. The cut was shallow where I measured, one side is perhaps 6 and the other 2 feet deep. It is said Road fence, on the north side the timber extends farther east than on the south side, east of the cut the fence comes in to 100 feet, the fence receding for 635 or 640 feet. I measured the distance - commenced at a point on N. side 1863 feet from the East line of land, thence West 705 feet - it will reach a little beyond where the fence is thrown back - the cut does not extend to the East line of the farm, No dist is deposited outside at the side of the 100 feet line. On the North line 55 feet would be the extent the dist is thrown beyond the 50 feet from the center.

Plat given in evidence - It is admitted by the Defts counsel, that the Plffs as the Children and Widow of Comfort Bennett, are the owners of and were in possession of the farm from the time of the commencement of building said Road until the commencement of this suit.

Joseph Adams testified as follows, I know Nathaniel Pound, and his wife Amelia, know her Children. They lived on the farm in question in '53, '54, '55 & '56, except John - I am a farmer - my farm lies north and adjoining to this - I know where the house is, It is 7 or 10 Rods from the Rail Road south, The Chicago & Dixon R.R. runs through the land. I know where it enters at the East End, The house is a little West from the middle of the cut - it is 5 or 6 Rods from the house to the edge of the timber. In '53 the farm land was enclosed in fences to the timber. The orchard was between the Rail Road and house.

There were three or four apple trees along the fence
 The Rail Road ran through the garden - The garden
 was fenced on North side just where deep cut is - the
 balance a field and the house stood in it - The barn
 is south of the house 10 or 15 Rods, there are 2 crossings
 of the Road, one between the fields at the East end
 of the cutting, the other one in the woods - from the
 house to the field crossing is over 450 feet. When
 the road was laid the land lying east of the house
 was ~~not~~ wet land used for mowing, and raised
 then - From June '53 to June '54 the use of the
 land then enclosed in the field was worth from
 \$1.50 to \$2. per acre, perhaps not more than \$1.50

From June '54 to June '55 it was worth double
 what it was the year previous, to wit, from \$3. to \$4.
 From June '55 to June '56 the use of it was worth
 from \$3 to \$4, per acre per annum, and from
 1.50 to \$2, per acre during the months. In '55
 from 1st June 1st Jan'y '56 the land was used for
 pasturage and mowing. For this purpose it was
 worth per acre during that time the same as in
 1855. The damage to the place from the manner
 in which the place was cut up and used by the R.R.
 aside from the value of the use was \$25 or \$30 per ~~annum~~
 annum. The farm as it is, is ^{worth} less with the Road
 running through it in the manner it does,
 per acre \$2.50. In '54, '55 to June '56 Nathaniel
 Pound lived in the house, and his wife Amelia
 Pound, and all of her children, except John
 who was absent a share of the time - there is in
 the place 180 or 190 acres.

The witness on his
 oath & affirmation testified, that the land was

used before for mowing and pasturage after crops
 were off, it has since been used in the same way.
 All of the land was not enclosed where the road
 took it, three fourths of the land taken was of this
 kind, one fourth part in timber - there is timber
 on both sides of the road in part. Taking the
 whole farm together, it is worth \$2.50 per acre less,
 the road is a great inconvenience to the use of the
 land - It affects the use of the South side - by the
 fence getting down and the stock getting through -
 it is difficult cropping - there is no road running
 to the place, except over the Rail Road - the Road
 running along the South line of the South half
 would injure South half - The cars would frighten
 teams, and when the fence is left down - stock
 get through and be killed - and good deal
 of trouble - If there was no land on the other side,
 think there are all disadvantages. If there are
 200 acres, I think the land would be damaged
 by the road running along \$1.00 per acre. If 100
 acres lying in the shape that this does, and did
 not extend longer than this on the Rail Road,
 I should think it would be worth \$1.00 less per acre.
 In making my estimate, I take into consideration
 the inconvenience of the Road, and also that of
 having to cross the road on the North side - On
 the North side of the farm, I think there are 33
 acres cut off by the Road, that land is worth
 per acre on the North side \$25. now on South side
 it is worth \$30. On North side per acre in July 56
 worth about the same - I recollect the fact of the location
 and survey of the road - that was the value of
 the land before and at the time the first survey was

made for the road. North about \$20. per acre
 since that time, in the summer of 1853 land has
 risen. One reason why the land is worth \$25.
 per annum less, is you have to cross the Rail
 Road to get to the other place. A farmer would
 have to be cautious in the use of teams - the fence
 on the North side lies in a long narrow strip, and
 is worth much less than the South part.

The witness on his re examination testified,
 I was the surveyor when he made the survey testified
 to, My land comes to the road - I think it is
 defendants business to keep up the fence there - it is
 frequently down. There is a Well on the opposite
 side of the house which is a living spring, in
 getting water, the Relfs would have to cross cut
 or go around - in dry seasons Relfs had to go
 there for water - The damage may have been
 \$5.00 per year - average season have to go there -
 considerable trouble to water stock.

Amasa White testified as follows, - I am a farmer and
 know the Bernatt place, it is very near my farm.
 I have been through the place when the road crosses -
 The Relfs atty then asked the witness this question,
 Does the Rail Road impair the value of the farm?
 to which ^{question} ~~answer~~ the depts by their counsel objected -
 the court overruled the objection and allowed the
 question to be put and answered by the witness, to
 which decision of the court in allowing said question
 to be put and answered by the witness, the depts
 by their counsel at the time excepted, The witness
 answered - I think it does, I think the farm
 is worth \$500 less than it would be, if there was

no road through it.

On his cross examination witness said, I think the farm is worth \$500. less than if no road had been made through it. I think it was worth that much less a year ago, to wit, January 1856. If the Rail Road had not been built, the farm would have been worth \$500. more, the road may have been some benefit to the farm, but if the road had not been built, I think the farm would ^{have been} worth more. The road itself was no benefit to the farm. I think the general benefit to the land, from \$50. to \$100. but no local advantage. I think the location of the road has benefited the farm \$50. to \$100. I think the farm was worth \$20. to \$25 per acre 4 years ago. It was worth a year ago from thirty to \$35 per acre. In estimating damages I take into consideration that the road cuts the farm very badly the danger to the stock, it takes considerable care for the road, the piece cut off from the North side is left in bad shape, bad to fence or to use, If the Defts fenced it all, the road would not make much difference. The cows are apt to scare leaving, and they are liable to run away. In estimating damages I consider the road as being occupied by Defts on a perpetual lease. The \$5.00 is according to the best of my judgment.

As Mr. Mann recalled, the Plffs atty then asked the witness this question, What would it cost to restore the land to the condition it was in before the road was graded through it, to which question the Defts by their counsel objected, the objection was overruled by the court and the witness allowed to answer. to which decision of the court the Defts by their counsel at the

time excepted, the Wilsons around, I could not state with accuracy what it would cost, I think 3,000 yards were thrown up, and it could be replaced for from \$200. to \$4,000. I think the injury done to the place, if left in its present condition, would be equal to the value of the land occupied by the Rail Road.

Adm Mann again recalled. I think the injury to the farm would be \$200. or \$300. by its remaining in its present condition, including the value of the land. The land is worth \$30. per acre - I should not want the farm defaced for less than \$200. or \$300. On consideration I think the injury is \$200. or \$300. over and above the value to the land.

On his cross examination witness said, upon the hypothesis, that the North side would sell for as much as before, then I don't know that there would be any damage to the farms. In making my estimate of damages of \$200. or \$300. I include the inconvenience with the use of the farm would be occasioned by the difficulty of getting over the cut.

It divides the farm into inconvenient shape for farming and occupancy - The long piece is bad for use, no additional fencing has been put on the place since the road was built - It might put a man to from \$15 to \$25. per annum expensible, in getting around with his cattle, to and from the pasture.

The Pliffs here rested.

Whereupon the Judge stated, that this being an action of trespass to realty, the plaintiffs (if entitled to recover) were only entitled to damages for such permanent injuries to the freehold as may have resulted from the wrongful acts and occupation of the land in question by the defendants, together with such damages to the possession as they may have sustained by reason of such acts and occupation; And that they were not entitled to recover the value of the land occupied or any part thereof - and thereupon the said Judge ^{orally} ~~excluded~~ ~~excluded~~ ~~with~~ from the jury all evidence in relation to the value of the land itself, and orally instructed the jury, that if they found for the plaintiffs, they should allow the plaintiffs nothing by way of damages for the land, itself, which the defendants had occupied or used or injured, or for any depreciation in the market value of the farm arising merely from the use of the land, by the running of trains over the same or otherwise, and not occasioned by permanent injuries to the freehold itself -

The defendants then offered to read to the jury as evidence in the case prima facie the records in the Recorder's office of Kane County, Illinois, the record of the report of the appraiser, the order of the Judge upon the same, being the proceedings had for obtaining the right of way through the lands in question, under the charter of said defendants, as follows:

Of the Hon. Isaac S. Wilcox, Judge of the 13th Judicial Circuit and Judge of the Circuit Court of Kane County, Illinois. The undersigned, appraiser appointed by your honor on the 15th day of June, 1853, as appraiser

in the matter of the Petition of the Galena & Chicago Union Rail Road Company, vs. Mary Pond & others in said Petition named, for the right of way for said company over the lands therein set forth, in obedience to the following order to wit:

In the matter of the Petition of the Galena & Chicago Union Rail Road Company for the appointment of appraisers for right of way over lands in Kane County, in the State of Illinois, the Galena & Chicago Union Rail Road Company having heretofore on the 9th day of June, 1853, presented to me their petition for the appointment of appraisers to assess damages, the owners of land mentioned in said petition will sustain by reason of the appropriation of the lands belonging to them, in the county of Kane, for the construction of said Road; And this 14th day of June, 1853 having been appointed by me for a hearing upon said petition at the clerk's office in Geneva, in the county of Kane, by my order on said petition endorsed.

Now this 14th day of June, 1853, at the Clerk's office in Geneva, in said county, at one o'clock, P.M., of said day, appeared the said Galena & Chicago Union Rail Road Company, by John A. Holland, their attorney, before me, the undersigned, Isaac S. Wilson, Judge of the 13th Judicial Circuit of the State of Illinois, and of the Circuit Court of Kane County aforesaid, and the owners of the several parcels of land described in said petition - Charity Herrington also appeared by A. W. Herrington her attorney - the other owners did not appear and it appearing that Sarah Elizabeth Bennett, Jane Bennett, Jonas Bennett, John Bennett, William Bennett, & Harriet Amelia Bennett in said

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512797.45

from its North East corner and run thence South
 83' West Two thousand five hundred and seven feet to the
 land of said Bennett, thence on the same course, one
 thousand, one hundred and sixty eight feet, thence on
 a course deflecting to the South with a bearing of Twenty
 One thousand Nine hundred and twenty feet, five hundred
 feet, thence on a course tangent to said curve South
 81° 45' West Two thousand Two hundred and Eighty three
 feet, to the West line of said land, taking for the use
 of said Rail Road, a strip of land fifty feet wide
 on each side of the center line of said Rail Road,
 as the same is staked off and located over and
 through said — containing Nine $\frac{1}{2}$ acres; And
 an additional strip of land forty feet wide, adjoining
 lands taken as above for right of way, on the North
 side thereof, commencing at a point one thousand
 eight hundred and sixty three feet from the East line
 of said land and running thence Westerly Seven
 hundred and four feet, for the purpose of depositing waste
 thereon containing in all, being the land above taken,
 and this land, Nine $\frac{1}{2}$ acres —

And it also appearing to the undersigned, he having
 examined said Petition of the said Galena & Chicago
 Union Rail Road Company, touching the appropriation
 of lands in said county of Kane as above described
 and specified, belonging to the aforesaid annure,
 and it appearing to be necessary for the construction
 of said Rail Road, that said land above mentioned
 should be appropriated by said company, and the
 damages arising thereby, appraised as prayed in
 said petition, and no cause being shown against
 the prayer of said petition, and why such appraisers
 should not be appointed according to the prayer of said

Petition, Now therefore it is hereby ordered that William P. Keck, Joel McKee, & William P. Plate, three disinterested free holders, and residents of said County of Kane be and they are hereby appointed appraisers for the purpose of appraising the damages which the several owners of land heretofore mentioned shall sustain by reason of the appropriation of the lands above mentioned and particularly specified, which several lands appropriated by said Company and to be occupied by them as above particularly specified. And it is further ordered that said appraisers after being duly sworn assess said damages by viewing the said premises above described and such evidence as may be submitted to them, and make report to the undersigned in writing, and therein specify the damages which the several owners of said land may sustain respectively. In pursuance of the Power and authority in me vested by the act entitled an act to Incorporate the Galena & Chicago Union Rail Road Company approved March January 16th 1836. Done at Geneva in the County of Kane, at the Clerk's office this 14th day of June 1853.

Drace B. Wilson Judge of the 15th Judicial Circuit Court of the County of Kane, in the State of Illinois.

By leave to report that on the 22nd day of June 1853 after being duly sworn by James Kerrington Clerk of the County Court of Kane County, an officer properly authorized to administer oaths, honestly and impartially to assess such damages as the several owners of the respective parcels of land in said order described, will sustain by reason of the appropriating of said respective parcels of land for the use and accommodation of said Galena & Chicago Union Rail Road

Company, proceeded to view said parcels of land and
 hear such other evidence as the said several persons produced
 before as the said Augustus W. Herrington appearing
 before us in behalf of the several persons above named
 for whom he was appointed to act in the premises, and
 also as attorney for Charity Herrington, George P. Hanson
 & Timothy Knie also appeared before us in respect to
 the lands reversally owned by them, as above mentioned.
 The other owners above mentioned did not appear before
 us. The said Galena & Chicago Union Rail Road also
 appeared by their attorney, and thereupon, and being
 fully advised in the premises, we assess the damages
 that Lyman Geman, Mary Powell, Sarah Elizabeth
 Bennett, Jane Bennett, Josiah Bennett, John Bennett
 William Bennett and Harriet Amelia Bennett will
 sustain by reason of the appropriation of that part of
 his land by said Galena & Chicago Union Rail Road
 Company in manner and form as set forth in said
 order at the sum of Fifty Dollars -
 All which is respectfully submitted.

William P. West
 Joel M. Rice
 H. P. Plato.

Plato of Illinois,

The foregoing report having been
 made to me, and none of the parties therein named
 expressing any dissatisfaction with their respective
 appointments, said report is hereby approved. In case
 it shall become necessary to deposit any of the sum
 aforesaid, for the use of any of said parties, the money
 is to be deposited with Charles Patterson of Geneva
 Kansas Territory.

Isaac S. Wilson,
 Judge 13th Circuit

Filed & Recorded July 6, 1853. C. C. R. M. &
 L. Stanton Recorder

To the introduction of which record the Pliffs objected, the Court sustained the objection, and refused to allow the same to be read as evidence, to which decision of the Court in excluding said record the defendants by their counsel at the time excepted. The Pliffs then introduced and read to the jury from the printed Statutes of this State, the acts and amendments incorporating said defendants, as a Rail Road Company, viz, Charter + amendments.

The defendants then offered in evidence, to prove a compliance with the terms and conditions of their charter in relation to right of way, through the land in question, the following papers, viz,

To the Honorable J. Wilson Judge of the 13th Judicial Circuit and Presiding Judge of the Eastern Circuit of the County of Kane in and for the State of Illinois.

Your Petitioners the Galena + Chicago Mining Rail Road Company, by John W. Kroll and their attorney, represent to your Honor that said Company are about to construct a Rail Road through said Kane County and over certain lands lying in said County, and hereinafter described, belonging to the several owners hereinafter mentioned, out a portion of which lands the said Company are desirous of constructing said Road, + obtaining the right of way therefor, and are also desirous of obtaining other lands along the line of said proposed Rail Road for depot grounds and for the purpose of locating thereon depot and other buildings of said Road, and appurtenances thereof, and for the purpose of obtaining earth and other material for the construction of said Road. That said Company have heretofore been and now are unable

to obtain from said owners of said land, the right of way over said land or the said lands wanted for the depot, and other purposes above mentioned by purchase, lease, conveyance or otherwise. That said land, which the said company have been unable to obtain the right of way over, and which they have been unable to obtain for the other purposes aforesaid, are severally described as follows to wit:— Part of the North West quarter of Section Twelve, and of the North East quarter of Section Eleven, in Township thirty nine North in Range Eight East of the third principal meridian, the legal title to which or a part thereof appears of Record to be in Lyman Seman of said county of Kaua, but your Petitioners have been informed and believe that one Comfort Bennett formerly of said Kaua County but now deceased, in his life time occupied said land, claiming to be the owner thereof, and that since his decease his widow and his at law, have occupied and continue to occupy said land, under a like claim of title. That the names of said widow and heirs at law, are Mary Poned, widow of said Bennett of Kaua County aforesaid, & Sarah Elizabeth, Jane, Frank, John William & Harriet Amelia, all of said heirs being infants, not arrived at full age, and all are ^{residents} ~~residents~~ of the State of New York — The center line of said Rail Road enters Section Twelve on its East line, seven hundred & fifty seven feet from its North East corner, and runs thence North 83° West four thousand five hundred & fourteen feet, to the land of said heirs, thence on the same course, one thousand one hundred and sixty eight feet, thence on a course deflecting to the South with a bearing of twenty two thousand, nine hundred twenty feet, five hundred feet, thence

an ^{curve} ~~curve~~ tangent to said ~~curve~~ South 81° 48' West
 One thousand, two hundred & eighty three feet to the West
 line of said land, taking for the use of said Rail Road
 a strip of land, fifty feet wide on each side of the center
 line of said Rail Road as the same is located off and located,
 over and through said land containing $\text{Aino} + \frac{9}{100}$ acre.
 Your Petitioners further show that they will also need
 for the purpose of depositing waste sherton, an additional
 strip of land sixty feet wide, adjoining land taken
 as above for right of way, commencing at a
 point one thousand feet Westward from the West line
 of said land and running thence Eastward, one
 hundred feet containing $\text{one} + \frac{1}{100}$ acre.

And your Petitioners further show that the survey of
 said lands as aforesaid, were made within three
 months last past, and that the lands mentioned
 in the aforementioned descriptions were all run by
 the magnetic meridian.

Your Petitioners would therefore
 pray your honor to fix some day as soon as will
 be convenient and proper for the appointment of
 appraisers as provided in the charter of said Company
 to appraise the damages the said owners above
 mentioned will sustain by reason of the appropri-
 ation of said lands, belonging to them and above
 described, for the construction of said Rail Road
 and its appendages, & your Petitioners will comply.
 Dated this — day of June 1853.

John A. Holland
 atty for said Company.

The above Petition of the Galena & Chicago Union
 Rail Road Company, having this day been presented

to make for the appointment by me of appraisers to assess the damages arising from the appropriation of certain lands mentioned in said petition for the construction of said Road, and for obtaining the right of way over said land, according to the charter of said Company. Now therefore, I do hereby appoint Tuesday the 14th day of June ~~inst~~^{inst} at one o'clock P.M. at the Clerk's office in Bureau County, in said County of Kane where and where so will be present and appear said appraisers, and I do hereby further order that said Rail Road Company give three days notice to the persons mentioned in said petition of the time and place of making such appointment in the matter of the Petition. Dated this 9th day of June, 1853.

James G. Wilson

Judge of the 13th Judicial Circuit
in the State of Illinois & Presiding Judge
of the Lincoln Court of Kane County,
in said State.

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In the matter of the Petition of the Galena & Chicago Union Rail Road Company for the right of way over lands in Kane County, in the State of Illinois.

The Galena & Chicago Union Rail Road Company having heretofore on the 9th day of June 1853, presented to me their petition for the appointment of appraisers to assess damages to the owners of lands mentioned in said Petition. will sustain by reason of the appropriation of the lands belonging to them in the County of Kane, for the construction of said Road, and this 14th day of June 1853 having

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been appointed by me for a hearing upon said
Petition, at the Clerk's office in Geneva in the County of
Kane by my order on said Petition endorsed -

Now this 14th day of June 1853 at the Clerk's office
in Geneva in said County, at one o'clock P.M. of said
day, appears the said Galena & Chicago Union Rail
Road Company by John A. Holland their attorney,
before me the undersigned Isaac E. Wilson, Judge of
the 13th Judicial Circuit of the State of Illinois & of
the Circuit Court of Kane County aforesaid; and the
owners of the several parcels of land described in
said Petition - Charity Herrington also appears
by A.W. Herrington her attorney, the other owners dissent.
* And it appearing that notice has been served on
the several owners of land described in said Petition
by affidavit shown to the undersigned herein, and it
appearing to the undersigned that said Galena & Chicago
Union Rail Road Company are desirous of appropri-
ating for the use of said company for Right of way and
for Depot and other purposes the several tracts of land
described in said Petition, and hereinafter described, ^{as}
belonging to the ~~several~~ ^{several} owners, hereinafter named, which
several tracts of land situate in Kane County aforesaid
which are to be appropriated by said Company for the
purposes aforesaid, and of which damages are to be
assessed by reason of such appropriation and particularly
and specifically described as follows, to wit: Part of
the North West quarter of Section Twelve, and of the North
East quarter of Section Eleven, in Township thirty nine
North, in Range Eight east of the third principal
meridian, belonging to Symon Seneca in whom is the
legal title, & Mary Pond, Sarah Elizabeth Bennett, Jane Bennett,
Jonah Bennett, John Bennett William Bennett & Hiram
Audelia Bennett having equal interest -

* And it appearing that Sarah Elizabeth Bennett, Jane Bennett, Jonah Bennett,
John Bennett, William Bennett & Hiram Bennett, in said Petition
named as owners of land herein described, are infants, and yet Mr. Herrington
as discreet and reputable person is hereby appointed to act in the premises in their behalf.

The center line of said Rail Road enters section Twelve on its East line, Seven Hundred fifty seven feet, for its North East corner, and runs thence South 85° West ~~from~~ four thousand five hundred & fifteen feet to the land of said Bennett, thence on the same course one thousand, One Hundred & Eighty eight feet, thence on a ~~course~~ curve deflecting to the South with a radius of Twenty Two thousand Four Hundred & twenty feet, five hundred feet - thence on a course tangent to said curve South 81° 45' West two thousand, Two Hundred & Eighty three feet to the West line of said land, taking for the use of said Rail Road for the right of way purposes a strip of land, fifty feet wide on each side of the center line of said Rail Road, where the same is staked off and located, over and through said land containing $41\frac{1}{2}$ acres, And an additional strip of land adjoining the above, at the North side thereof forty feet wide, and extending from a point one thousand, Eight Hundred & eighty three feet, from the East line of said land, Westerly, Seven hundred feet, for the purpose of depositing waste thereon, & containing in all, being the lands above taken & this land $41\frac{1}{2}$ acres. - The survey of said lines as aforesaid, were made within three months last past, and that the courses mentioned in the aforementioned descriptions were all run by the magnetic meridians -

And it also appearing to the undersigned the having examined said Petition of the said Galena & Chicago Union Rail Road Company touching the appropriation of land in said County of Kane, as above described & specified, belonging to the aforesaid owners, and it appearing to be necessary for the construction of said Rail Road that said land above mentioned should be appropriated by said Company and the damages occasioned thereby

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appraised as prayed in said petition—
And no cause being shown against the prayer of said
petition, and why such appraisers should not be appointed
according to the prayer of said petition; now therefore,
it is hereby ordered, that William B. West, Joel McKee
and William B. Platts, three disinterested freeholders
and residents of said County of Kane, be and they
are hereby appointed appraisers for the purpose of appraising
the damages which the several owners of land hereinafter
mentioned shall sustain by reason of the appropriation
of the lands above mentioned and particularly specified,
which several lands appropriated by said company,
and to be occupied by them as above particularly specified.

And it is further ordered, that said appraisers, after
being duly sworn, assess said damages by viewing the
said premises above described and such evidence as
may be submitted to them, and make report to the
undersigned in writing, therein specifying the damages
which the several owners of said lands may sustain
respectively. In pursuance of the power and authority in-
vested by the act entitled "an act to incorporate the Salina
& Chicago Union Rail Road Company, approved January
16th 1852." Done at Genoa, in the County of Kane, at the
Clerk's office, this 14th day of June, 1853.

Isaac S. Wilson Judge of
the 13th Judicial District and
of the Circuit Court of the
County of Kane in the State of
Illinois

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3 To the Honorable D. Wilson Judge of the 13th Judicial
Circuit and Judge of the Circuit Court of Kane County
Illinois:

The undersigned, apparitors appointed by your
honor, on the 15th day of June, 1853, as apparitors in the
matter of the Petition of the Galena & Chicago Union
Rail Road company, vs. Mary Condit and others,
in said petition named, for the right of way for
said company, over the lands therein set forth - in
obedience to the following order, to-wit: In the
matter of the Petition of the Galena & Chicago Union
Rail Road company for the appointment of apparitors
for the right of way over lands in Kane County, in
the State of Illinois. The Galena & Chicago Union
Rail Road company, having heretofore on the 9th
day of June, 1853, presented ^{to me} their petition, for the
appointment of apparitors to assess damages the owners
of land mentioned in said Petition will sustain
by reason of the appropriation of the land belonging
to them in the County of Kane for the construction of
said Road, and this 14th day of June, 1853, having
been appointed by me for appearing upon said petition
at the Clerk's office in Geneva, in the County of Kane,
by my order on said Petition endorsed.

Now this 14th
day of June, 1853, at the Clerk's office in Geneva, in
said County, at one o'clock, P.M., of said day,
appears the said Galena & Chicago Union Rail
Road company, by John A. Holland, their attorney
before me, the undersigned, D. Wilson, Judge
of the 13th Judicial Circuit and of the State of Illinois
& of the Circuit Court of Kane County, of record, and
the owners of the several parcels of land, Charity

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Herrington, also appears by A. W. Herrington, her attorney,
the other owners did not appear.

And it appearing that Sarah Elizabeth Bennett,
Jane Bennett, Josiah Bennett, John Bennett,
William Bennett & Harriet Amelia Bennett, in
said Petition named as owners of land therein
described are infants, Augustus W. Herrington,
Esq, a discreet and reputable person, is hereby appointed
to act in the premises in their behalf.

And it appearing that notices have been served
on the several owners of land described in said Petition,
by affidavit shown to the undersigned herein, and
it appearing to the undersigned that the said Galena
& Chicago Union Rail Road Company are desirous
of appropriating for the use of said Company, for the
right of way & for depot & other purposes, the several
tracts of land described in said petition & hereinafter
described, and belonging to the several owners
hereinafter named, which several tracts of land,
situate in Kane County, aforesaid, which are to be
appropriated by said Company for the purposes aforesaid
and upon which damages are to be assessed by reason
of such appropriation and particularly & specifically
described as follows to wit: Part of the North West quarter
of Section Twelve & of the North East quarter of Section Eleven
in Township thirty nine North in Range Eight, East
of the third principal meridian, belonging to Lyman
German, in whom is the legal title, & Mary Penn
& Sarah Elizabeth Bennett, Jane Bennett, Josiah
Bennett, John Bennett, William Bennett, and
Harriet Amelia Bennett have an equitable interest.
The center line of said Rail Road, Center Section
Twelve, on its East line, seven hundred fifty seven

feet from the North East corner and runs thence south
 83' West four thousand, five hundred & fourteen feet to
 the land of said Bennett, thence on the same course
 one thousand, one hundred & sixty eight feet, thence
 on a curve deflecting to the South, with a radius of
 Twenty two thousand four hundred & twenty feet,
 five hundred feet, thence on a curve tangent to
 said curve, South 81° 45' West two thousand two
 hundred & eighty three feet, to the West line of said
 land, taking for the use of said Rail Road, a
 strip of land fifty feet wide on each side of the center
 line of said Rail Road, as the same is located off,
 and located, over and through said - containing
 five & 1/100 acre; - And an additional strip of land
 forty feet wide, adjoining land taken as a strip for right
 of way on the North side thereof, commencing at a
 point one thousand eight hundred & sixty three feet
 from the East line of said land, and running thence
 thirty seven hundred & five feet, for the purpose of
 depositing waste stone, and containing in all,
 being the lands above taken & this land, about 1/100 acre.

And it also appearing to the undersigned, he having
 examined said Petition of the said Galena & Chicago
 Union Rail Road Company touching the appropriation
 of land in said County of Kane as above described &
 specified, belonging to the aforesaid owners, and it
 appearing to be necessary for the construction of said
 Rail Road that said land above mentioned should
 be appropriated by said Company, and the damages
 occasioned thereby, appraised as prayed in said petition.

And no cause being shown against the Petition of
 Prayer of said Petition, and why said appraisers
 should not be appointed according to the prayer of

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said Petition, Now therefore it is hereby ordered that William P. Hunt, Joel McKee & William P. Platts three disinterested free holders, and residents of said County of Kane be and they are hereby appointed appraisers for the purpose of appraising the damages which the several owners of land heretofore mentioned shall sustain by reason of the appropriation of the lands above mentioned and particularly specified, which several lands appropriated by said Company and to be occupied by them, and above particularly specified. And it is further ordered that said appraisers after being duly sworn appraise said damages by viewing the said premises above described and such evidence as may be submitted to them, and make report to the undersigned in writing & therein specifying the damages which the several owners of said land may sustain respectively. In pursuance of the Power and authority in me vested by the act entitled an act to incorporate the Galena & Chicago Union Rail Road Company approved January 16th 1853.

Done at Geneva in the County of Kane at the Clerk's office this 14th day of June 1853. Isaac G. Wilson Judge of the 13^d Judicial District Court of the County of Kane in the State of Illinois.

Be it remembered that on the 22^d day of June 1853 after being duly sworn by James Kerrington, Clerk of the County Court of Kane County, an officer properly authorized to administer oaths, honestly and impartially to assess such damages as the several owners of the respective parcels of land in said order described will sustain by reason of the appropriation of said respective parcels of land for the use and accommodation of said Galena & Chicago Union Rail

Road company, proceeded to view said parcels of land and hear such other evidence as the said several persons produced before us. The said Augustus W. Herrington appearing before us in behalf of the several persons above named for whom he was appointed to act in the premises, and also as attorney for Charity Herrington, George P. Hansen & Timothy Kime also appeared before us in respect to the lands severally owned by them as above mentioned. The other owners above named did not appear before us. The said Galena & Chicago Union Rail Road also appeared by their attorney, and testimony and being advised in the premises, we assess the damages that Symon Bennett, Mary Bonds, Sarah Elizabeth Bennett, Jane Bennett, Josiah Bennett, John Bennett, William Bennett & Harriet Amelia Bennett will sustain by reason of the appropriation of that portion of ^{said} lands by said Galena & Chicago Union Rail Road company in manner and form as set forth in said order at the sum of Fifty Dollars, all which is respectfully submitted.

William P. Hunt.
 Joel M. Kue
 W. S. Plato

State of Illinois,

The foregoing report having been made to me, and none of the parties therein named expressing any dissatisfaction with their respective assessments, said report is hereby approved. In case it shall become necessary to disburse any of the sums assessed for the use of any of the said parties, the money is to be deposited with Charles Patton Esq of Spencer Kansas County.

Isaac B. Wilson

July 1st 1853

Judge 13th Circuit

Filed & Recorded this 6th day of July, 1853 at
6⁰⁰ P.M. in Book 30 of Deeds on Pages 220, 21, 22
23, 24, 26, 27, 28, 29, 30, 31 & 32.

S. A. Easton
Recorder of Kane Co

For copy of Records of the above report of the Appraisers
See Pages 25-30 of this Record.

In the introduction of which as evidence to the jury
the plaintiffs, by their counsel ~~objected~~^{objected}, the court
sustained said objection, and refused to allow said
papers to be read as evidence of title or right way, in
the defendants, but not for the purpose of showing
good faith on their part in making their entry in the
land in question; but the defendants insisted on the
reading of said papers as evidence of title or right
of way, and declined to offer them for any other
purpose - whereupon the court excluded the same
from the jury, to which decision of the court in excluding
said evidence, the defendants by their counsel at the
time excepted -

The defendants then offered to prove
that the amount of compensation allowed the
plaintiffs by the appraisers as mentioned in their
report, was deposited at the place and with the person
named, and in pursuance of the order of the Judge
made upon that subject and still remains with him
and that the defendants had paid the expenses of
said appraisement, all of which was admitted to be
true by the plaintiffs.

The defendants rested on their part.
 The Plaintiffs then introduced as a witness J. H. Maylome who testified as follows; I received this paper from my client, as a paper purporting to be a notice in the condemnation of the land. I read this notice about 1st of August 1853 from John Bennett - It may have been later - It was during the fall of 1853.

It was admitted ~~that~~ the defendants, that the notice spoken of and exhibited by Mr Maylome was in the hand writing and signed by the atty of the said defendants -

The Plffs then offered as evidence in the case the notice mentioned by said witness, to the introduction of which as evidence the defts objected, the Court overruled the objection, and allowed the papers to be read to the Jury as follows.

To Mrs Mary Pomeroy, John Bennett William Bennett, Sarah Elizabeth, Jane Bennett, Joseph Bennett, Harriet Amelia Bennett, Lyman Bennett,
 Please to take notice that the Galena & Chicago Union Rail Road Company will apply to the Honorable Isaac S. Wilson Judge of the 13th Judicial Circuit and ~~part~~ of the state of Illinois, and Presiding Judge of the Kane County Circuit Court, at the clerk's office in Geneva in the County of Kane on the 14th day of June 1853 at 1 o'clock P.M. of that day, to appoint three disinterested persons, free holders, and residents of the said County of Kane, appraisers to appraise the damages which ^{said} the several persons above named may sustain by reason of the appropriation of so much of your land as is required for the use of the said Rail Road Company, pursuant to the provisions of an act entitled "an act to incorporate the Galena & Chicago

Union Rail Road Company" approved January 16th 1836, which said land so described, required is described as follows, to wit. A strip of land one hundred feet wide, being fifty feet wide on each side of the center line of said Rail Road, where the same is located over the North West quarter of Section Twelve, and the North East quarter of Section Eleven in Township thirty nine in Range Nine East of the 3^d P.M. & for the distance of one thousand feet from the West line of said land excepted by said Rail Road a strip of land one hundred & sixty feet wide, being eighty feet wide on each side of said center line of said Rail Road.

Gives. John C. Holland
Attorney for the said Salomon Chicago Union Rail R.R. Co.
Dated June 10th 1853.

It is admitted that this notice is in the handwriting of the authorized atty of the Co, at its date, and made at Engineers office at Geneva & in the usual form of like notices for such purpose
Plato atty for Co.

To which decision of the court, in overruling said objection, and allowing said papers to be read as evidence, the defendants by their counsel excepted at the time excepted.

The foregoing was all the evidence in the case - The Jury rendered a verdict for the Plffs for \$650. Dollars.

The defendants moved the court to set aside the verdict, and grant them a new trial, because the court erred, 1st In admitting improper evidence offered on the part of the Plffs.

2^d In excluding proper evidence offered by Deft -
 3^d The verdict was contrary to the law and the evidence.
 The court overruled said motion for a new trial,
 and rendered judgment on the verdict, to which
 decision of the court in overruling said motion for
 a new trial, and rendering a judgment on said
 verdict, the defts by their counsel at the time ^{expected}
 and pray that his Honor Bill of exceptions be signed
 &c which is done

George Manierre ^{Judge}
 Judge of 7th Judicial Circuit Presiding
 by exchange with Judge of 13 circuit
 in said 13th circuit, Illinois -

It is hereby agreed that the foregoing is true and
 made within the time agreed upon -

Plato for Deft
 July 16, 1857. J. H. Mayhew Plffs

"Filed Feb 3^d 1858 as of Jan 20th 1857, P. R. Hight clerk."

State of Illinois,
 Kane County ss. I Paul R. Hight clerk of Kane
 County circuit Court, in the State
 aforesaid, do hereby certify that the foregoing is a true
 and correct copy of the "Process", "Summons", "Declaration"
 "Pleadings", "Appeal Bond" & "Bill of exceptions" filed in the
 foregoing entitled cause, in our said Court, and also
 of all the orders entered of Record in our said circuit
 Court in said cause as appear from the file & records of my
 office.
 Witness Paul R. Hight clerk of our said

present Court and the said Sheriff at
Severa in said County this 15th day of
March AD 1858.

P. R. Wright,
Clerk

Clipped for Record 1/14,

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

THE GALENA AND CHICAGO
UNION RAILROAD COMPANY }
vs.
AMELIA POUND, et al. }

Where all the proceedings directed by the statute for the condemnation of land for the use of the company have been taken, and the proceeding confirmed by the Judge, the regularity then cannot be questioned collaterally. The assessment of the commissioners was deposited or paid as directed, and there the duty of the company, in that regard, ended, and the company became seized in fee, and were not liable as trespassers.

1 Maryland Chan. Reports, 107
13 Wharton's Reports, 555, same case
in 2d American Railway Cases, 220.

Conceding, which I do not, that the notice offered was the notice served, it was cured by the appearance of the parties, the minors and other parties in this suit, having appeared by Guardian *ad litem*.

6 Paige's ch Rep. 83; 25 Conn., 516.
1 Selden, 434; see Gardiner's opinion on p. 442.

The notice offered in proof by the plaintiffs' below, was signed by the attorney of defendants below; but unquestionably the error in that notice was detected, and a correct notice afterwards served. The defendants, at all events are estopped by their appearance before the Judge and contesting the land described in the petition, which is a correct description. Mr. Holland, who signed the notice offered in proof, died some three years since, and leaves the explanation of the notice offered in proof, so far as we know, impossible, and this is a good reason in support of the argument of estoppel.

The refusal of the Judge below, to let in the proof of condemnation of the land, was a gross error. We might have proved subsequently that a notice was given. We had a right to begin our proof in the way we thought best; but unless we began by proving a notice that we would proceed to condemn, we were liable at all events, notwithstanding the parties had appeared and resisted the condemnation.

The Judge below gave oral instructions to the jury. This was in contravention of law.

Ray vs. Wooters 19th Illinois, 82.

Wesk
for appellants

No 60

The Galena Rail Road
Company
vs

A POUND et al

Plaintiffs vs Defendants

for Mr Maybume
attys for appellants

Filed May 12, 1859
L. Deland
Clerk

For the Court

Supreme Court of the State of Illinois,

IN THE THIRD GRAND DIVISION.

THE GALENA AND CHICAGO UNION RAIL ROAD COMPANY,
Plaintiffs in Error.

vs.

AMELIA POUND, JOHN BENNETT, ET AL., *Defendants in Error.*

APRIL TERM FOR 1858.

Points and Brief of Defendants in Error.

The Defendants in Error, after repeated efforts to induce the Plaintiffs in Error to pay to them some consideration for the land taken for right of way, and for the use of the Road, and the injury done, and occasioned thereby to the Lands of the Defendants in Error, and their neglect and refusal to do so, brought an action of trespass against the Plaintiffs in Error, in the Kane County Circuit Court, which suit was tried at the May Term of the said Court for 1857, before the Hon. George Meniere, presiding, and terminated in the Jury finding for the Defendants in Error, and they assessing their damages at \$650. And thereupon Plaintiffs in Error prayed an Appeal.

The defence set up by the Plaintiffs in Error in Bar, of the Defendants in Errors' right to recover their damages in this action is,—title in themselves, and justification under and by virtue of the action taken by the Plaintiffs in Error to condemn the Land, and acquire the title and right of way through it, under the authority granted to them by their Charter, and

under which they proceeded to acquire title and right of way, which said act was passed January 16th, 1836. The Sections of the Act under and by virtue of which they claim that they have the power to condemn Land, and obtain title for the right of way, for the use of said Road, read as follows :

SEC. 11. In case the corporation shall not be able to acquire the title to the lands through which the said road shall be laid, by purchase or voluntary cession, it shall be lawful for the said corporation to appropriate so much of said lands as may be necessary for its own use, for the purposes contemplated by this act, on complying with the provisions of the six following sections.

SEC. 12. The directors may present a petition to the judge of the circuit court of the county in which the said land may be situated, setting forth by some proper description, the lands which are wanted for the construction of said rail road, or turnpike, or the appendages thereto, and the names of the owners thereof, if known, distinguishing with convenience, if it can be done, the parcels claimed in severally by the respective owners, and praying for the appointment of appraisers to assess the damages which the owners of such land will severally sustain, by reason of the appropriation thereof, by the said corporation, to its own use.

SEC. 13. On the presentment of said petition, said circuit judge shall appoint a day for the hearing of the parties in interest, and shall direct such notice as he shall deem reasonable, to be given of the time and place of hearing; and in case it shall appear that any of the owners of said lands is a feme covert, an infant, or insane, or otherwise incompetent to take proper care of his or her interest, it shall be the duty of the said judge to appoint some discreet and reputable person, to act in the premises, in his or her behalf.

SEC. 14. At the time appointed for such hearing, the said judge shall appoint three disinterested persons, freeholders, residents of the county in which said lands may lie, for the purposes of assessing such damages, and in the order in which they were appointed, shall direct and specify what lands are proposed to be appropriated and occupied by the said corporation, for the purposes aforesaid.

SEC. 15. Said appraisers, after being duly sworn before some officer, properly authorised to administer oaths, honestly and impartially to assess such damages, shall proceed, by viewing said lands, and by such other evidence as the parties may produce before them, to ascertain and assess the damages which each individual owner will sustain, by the appropriation of his land for the use or accommodation of such rail road or turnpike, or their appendages.

SEC. 16. The said appraisers shall make a report to the said judge, in writing, under their hands, reciting the order for their appoint-

ment, and specifying the several parcels described therein, with all necessary certainty—the names of the owners of the respective parcels, if known, and if not known, stating that fact, and specifying also the damages which the owners of the respective parcels will sustain, by reason of the appropriation of the same, for the purposes aforesaid; and in case either of the parties is dissatisfied with the assessment, the said judge may, on the hearing of the parties, and interest, modify the assessment, as to him shall appear just.

SEC. 17. On the payment of the damages thus assessed, together with the expenses of assessment, as the same shall be settled by said judge; or on depositing the amount thereof, for the use of such owners, in such bank or monied incorporation as the said judge shall direct, the said corporation shall immediately become entitled to the use of the said lands, for the purposes aforesaid; and the report of the said appraisers, with the order of said judge, modifying the same, if the same shall have been modified, shall be recorded in the office of the recorder of the county in which said lands shall be situated, in the same manner, and the like effect, as deeds are recorded, without any other proof than the certificate of the said judge, that the report is genuine.

SEC. 18. And when the said order shall have been so recorded as aforesaid, the said corporation shall be seized and possessed of such land or real estate, and may enter upon and take possession, and use the same for the purposes herein before recited.

The Plaintiffs in Error located their Road through the Lands of the Defendants in Error in the Spring of 1853, and in June thereafter proceeded to condemn it under their Charter, and by virtue of the power granted to them in said Sections, and took possession thereof at once, and constructed and built their Road over and through it, and continued to occupy and use it, in running and operating their Branch Road from the Junction to Fulton.

The only defence made or offered by the Plaintiffs in Error on the trial of this cause in the Circuit Court, was the Record of the proceedings had to acquire the title or right of way, by condemning the Lands of the Defendants in Error, and not in mitigation of damages, but in bar of the Defendants in Errors' right to maintain their action against the said Plaintiffs, and as evidence of title in them, and justifying them in using and occupying it, as by right, &c., to their being

used and received in evidence for this purpose, the Defendants in Error objected, and the Court sustained the objection, but allowed the Plaintiffs in Error to read them and give them to the jury as evidence, showing that the Plaintiffs in Error acted in good faith in making the entry on the said Land, and in using and occupying it as above stated, but the Plaintiffs declined to offer them for this purpose, or any other than that of showing title in themselves, and therefore they were excluded from the Jury.

The only question, as I understand the arrangement between W. B. Plato, Esq., and myself, (the attorney and counsel who tried and have had charge of this case, so far as I know,) is, did the Court, before whom this case was tried, err, in refusing to allow the Plaintiffs in Error to read and give to the Jury, the Record of the proceedings had, and taken by the Plaintiffs in Error, to condemn the said Land, and again the right of way, as evidence of title acquired by and in them? With this view, and this alone, was the Bill of Exceptions made up, so as to present this single question to the Court, clearly and fully, and nothing else.

The Defendants in Error insist and maintain that there was no error committed by the Court, in not allowing the Plaintiffs in Error to give in evidence, and to read to the Jury, the Record of the proceedings had in condemning the Land, and acquiring the right of way through the same, as evidence of title in them, and the right to do so, for the following reasons :

FIRST.

From the evidence in this case the fact is established, that Amelia Pound was the widow of Comfort Bennett, deceased, and had a right of dower in Lands used by the Plaintiffs in Error, and that Nathaniel Pound was her husband, and that John Bennett was past twenty-one years of age, and at the time a resi-

dent of the State of New York, and had been for some time previously, and that William, Sarah, Jane, Josiah, and Harriet Bennett, were minors, and resided on the premises in question; therefore, there could have been no notice served on John Bennett, by the Plaintiffs in Error, before their proceeding to condemn the Land, and the Record does not show how or in what manner the notice was served on the other Defendants in Error, as it should upon its face, affirmatively show, and be set forth at large. See Record Page 38, 39, and the notice offered in evidence of, by the Defendants in Error—as the one served on them—describes the Land as situate in Range Nine, in place and in stead of Eight, as the one is, which is sought to be condemned by the Plaintiffs in Error, therefore it was no notice at all for any purpose whatever. *Vide* Record Page 44 and without notice all the proceedings had were void. *Vide* Blackwell on Tax Titles, Pages 251-2; also, *Eddy vs. the People*, 15 Ill. R., Page 387; also, *Halliday vs. Swailes*, 1 Scammon R., Page 516; also, *Owners vs. Mayor of Albany*, 15 Wend. R. 483; also, 4 Hill, Pages 86-89, and 98-99; also, 18 Curtis' Decisions of the Supreme Court, Page 171.

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SECOND.

The Defendants in Error had the right to go behind the proceedings had before the Court, who acted in condemning the Lands, for the purpose of ascertaining their regularity, or that their action in the premises is null and void, for want of jurisdiction. *Vide* American Leading Cases, vol. 2, Pages 730 & 731; also, *Noyes vs. Butler*, 6 Barbour, 613; *Shriver, Lessee vs. Lynn*, 2 Howard, Page 43; *Staker vs. Kelly*, 7 Hill, Page 11; *The People vs. Cassels, Id.*, Page 164; *Herrington vs. The People*, 6 Barbour, Page 607. And although the tribunal before whom the proceedings

were had and affirmed, was a superior one, yet the Judge acted under special authority, conferred by the Legislature, and therefore its acts must be judged by the rules which apply to limited and inferior tribunals, and not by those which govern them in their proceedings under their general and Common Law powers.

Vide Sharp vs. Speir, 4 Hill, Page 76; *Staker vs. Kelly*, 7 *Id.*, Page 11; 6 Barbour, Page 913; *Hard vs. Shipman*, *Id.*, Page 621; Blackwell on Tax Titles, Pages 219 & 220; *Presset vs. Meadows*, 13 Ill. R., Pages 168 & 169; and 1 Smith's Leading Cases, Pages 707 & 708. *Also 10 Borchers*

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THIRD.

In this case the Plaintiffs in Error were proceeding to acquire a title to the use and occupation of some nine or ten acres of the Defendants' Lands, and most of them were minors, and the others beyond the jurisdiction of the Court, yet by the order of the Court, only three days' notice is required, and only four days intervened between the time of the making the order and the day set to appoint the appraisers; and there is no proof affirmatively appearing on the face of the Record itself, that shows that even this part of the order was complied with by the Plaintiffs in Error, by serving the notice on those that could be reached. Again, can three days be considered as a reasonable notice, in proceedings of this character and importance to the Defendants in Error, and which have for their object, purpose, and aim, the transfer of title to Land, and that Land the property of Infants? *This Court has hitherto always guarded with a watchful and jealous eye, the rights and interest of infants, and their interest in lands; and required that all the preliminary steps should be taken which the law requires, and that this should appear of Record, before they would affirm the title conveyed, where individuals were parties; and*

and
also
39

is there any reason for *relaxing this most salutary requirement when powerful Corporations are parties to the transaction*, and their interest is involved in the issue ; and who boastingly taunt you as you approach them for an amicable adjustment, that they *employ their lawyers by the year*, and that the *Supreme Court settles all their matters of difficulty with individuals*.

FOURTH.

The petition to the Court asking him to appoint appraisers, should contain a correct description of the precise quantity of Land required, and the purpose required for, and the order of the Judge appointing said appraisers ; it should also state and set out the piece of Land sought to be appraised, and should correspond with the petition in every respect as to description and quantity ; and the report of appraisers should be in every respect like petition and order, as to description and quantity of Land appraised, so that from the inspection of them it may be determined at once readily and easily that they all describe the same piece of Land, and embrace the same quantity. But such is not the case in this instance. The Petition described the piece of Land required as follows, to wit :

DESCRIPTION IN PETITION.

"Your petitioners further show that they will also need for the purposes of depositing waste thereon, an additional strip of land *sixty feet wide*, adjoining land taken as above for right of way, commencing at a point *one thousand feet easterly* from the west line of said land, and running thence *easterly eight hundred feet*, containing one and 1-100 acres."

DESCRIPTION IN ORDER.

"And an additional strip of land adjoining the above on the north side thereof, *forty feet wide*, and extending from a point *one thousand eight hundred and sixty-three feet* from the east line of said

land *westerly seven hundred* feet for the purpose of depositing waste thereon, and containing in all, being the lands above taken and this land *nine* 13-100 acres."

DESCRIPTION IN REPORT.

" And an additional strip of land forty feet wide, taken as above for right of way, on the *north* side thereof, commencing at a point one thousand eight hundred and sixty-three feet from the east line of said land, and running thence *westerly seven hundred and five* feet, for the purpose of depositing waste thereon, and containing in all, being the lands above taken and this land *nine and* 13-100 acres."

The variance in this respect is fatal, as accuracy and a particular description of the Land embraced and sought to be condemned and appropriated to the use of the Company was essential to its validity. The object of this requirement is clear and forcible, being in order to enable the owners to ascertain from the notice itself, that the piece of Land to be condemned is upon his Land, and not that of a stranger,—*Vide* Blackwell on Tax Titles, Page 151—and also to inform the appraisers of the precise piece of Land that they are required to appraise; and how it is located, and the quantity which it contains, so that they can do so understandingly. The petition is the foundation of all the proceeding, and that must contain a clear and full description of the piece and quantity of Land to be appraised and condemned; and the order must follow it in every respect; and the report must correspond in description and quantity with both; and yet in this instance neither are alike. And it would seem that it was the intention of the agent of the Plaintiffs in Error to so describe the quantity of Land required to be taken by them, that it should be left in utter confusion as to its precise location and quantity; and whether this was occasioned by carelessness or design on their part, is now a matter of no great importance, as its effect must be the same, rendering the whole proceeding had, a nullity.

FIFTH.

In the notice, petition, order, and report of the appraisers, where the name of the Defendant in Error Amelia Pound appears, she is named and called Mary Pound, so that she never could have had any notice served on her, and yet she was the only person among all the Defendants in Error in this case, on whom they could serve the notice, who was of full age, and authorized to act for the minors and herself, and yet it could not have been a very difficult matter to have got her correct name, had they made the effort to do so.

SIXTH.

The judgment or order of the Court is a nullity, because it makes all parties to it: even including John Bennett and Amelia Pound—Amelia, who is described as Mary Pound, and John, who could not have been served with notice, as he was at that time and had been for a long time before, a non-resident of this State, residing N. Y.—*Vide* the testimony of Hugh Farr, on the 1846 Page of Record; and it being a joint proceeding as to all, and failing as to him, must fail as to all. *Vide* 2 American Leading Cases, Pages 738, 739; Hall *vs.* Williams, 6 Pick. R., Page 250; 232 *Rougdy vs. Webster*, 11 New Hampshire R., Page 399; *Reed vs. Pratt*, 2 Hill's R., Page 64.

SEVENTH.

The variation in the notice served on the parties—*Vide* Record Page 44845 and the description of the Land in the petition, order, and report, is of itself alone sufficient to invalidate and render a nullity, the proceeding had by Plaintiffs in Error in their attempt to condemn the Land of the Defendants in Error, for the effect of it was to mislead them, and quiet their anxiety, if any they had, as it did not describe the

premises which were owned and occupied by them, and they had every reason to suppose that the agent of the Plaintiffs knew what land they wanted to use, and how to describe it.

EIGHTH.

The Plaintiffs in Error also insist that the Defendants in Error cannot maintain a suit in this form, of action against them, as they are the agents of the State. The case of *Bradley vs. the New York & New Haven Rail Road Company*, reported in the 2nd vol. of the *American Railway Cases*, Pages 153 to 156; also, in the case of *Harvey vs. Thomas*, same authority, Page 196, decide the very reverse of this doctrine, and say, it is true while proceeding to condemn Lands, if they follow the line marked out by the Statute, they are acting indeed under the authority derived from the State, but they do not act for it, or on its behalf, or as its agent or representative, nor with any reference to the benefit of the public, as in cases where roads, or other public highways and improvements are made. Their action is regulated and governed wholly with a view to their own profit and advantage, and not for the general accommodation or benefit of the community, but under a special grant of power acquired from the State, and used by them for their own special private advantage, and entirely independent of, and separate from, the State, and they stand upon the same footing, and the grant is the same in its character, as if made to one or more private persons, not clothed with corporate privileges. The question in this case is, not one between one individual and the State, but it is merely one between one individual and another respecting their individual rights, and that only. The State is in no way injured or benefited by the result. And if this is so, by what rule or principle of justice or law, do the Plaintiffs

claim an exemption from the duties and obligations that attach to and belong to them, as to other individual members of society acting in concert, and for their own private advantage and gain ?

NINTH.

Plaintiffs in Error went and threw the clay and stone taken out of the cut, over and upon land that the Defendants owned, that they do not pretend to have condemned, from ten to fifteen feet on North side, for a distance of some twenty-five rods. *Vide* cross ex. of Witness, Adin Mann, 778/18 Page of Record. Here is a strip of Land, containing some twenty or twenty-five rods, that is used by the Plaintiffs in Error, which they never attempted to acquire any title to, and they committed trespass when they deposited the waste earth and material thereon. On this no question whatever can be made.

The Plaintiffs in Error by insisting, as they do, that all the steps taken, and proceedings had, to condemn the Lands of the Defendants in Error, in this Case, were fair, just, and in strict compliance with the provisions of the Statute under which they acted, and derive their authority to act from, and thereby acquired title thereto, and took it out of the Defendants in Error, is, to use the mildest terms, unprecedented ; and I have not been able to find a single case reported, or even the dictum of the Court, that will warrant any such position or conclusion ; while on the other hand, the cases are numerous, and the decisions uniform in support of the principles contended for by the Defendants in Error : viz. that the Court before whom these proceedings were had, was a Court of limited authority, and therefore its jurisdiction must fully appear on the face of the Record, and even then the persons who are sought to be bound by its action, have

the right to show by evidence, aliunde the Record, that the Court never had jurisdiction as to them, and therefore their rights are not affected by its decision ; and the authority given must be strictly and rigidly observed and followed ; and by its decision no fraudulent practices will be allowed to pass unchecked or unrebuked. And that no Court acquires any jurisdiction till such time as the persons intended to be bound thereby, or their rights or property affected by its judgment in some manner, have been lawfully notified of the pendency of the proceedings against them, and have had full opportunity to be heard in their own defence : for without this requirement, no man's personal rights or property would be safe for a single moment. And where several are made parties to the same proceeding and judgment and it fails as to some one of them, for want of jurisdiction, it must be considered and treated as a nullity to all, and therefore necessarily invalid as to all affected by it. And when the rights and interests of minors are to be affected and prejudiced, the Courts will closely inspect all the steps taken, and ascertain for themselves, whether or not their interest has been properly protected and looked after.

Yet all these plain, well-known, and settled rules and principles of law and justice have been disregarded by the Plaintiffs in Error, in this cause, in the proceeding had to condemn the Lands of the Defendants in Error, and by that condemnation to clothe themselves with the title, and now they implore the aid of this Court, in confirmation of their acts, in the premises.

J. H. MAYBORNE,

Attorney for Defendants in Error.

SUPREME COURT OF ILLINOIS.

Third Division—April Term, 1859.

THE GALENA AND CHICAGO
UNION RAILROAD COMPANY
vs.
AMELIA POUND, et al.

Where all the proceedings directed by the statute for the condemnation of land for the use of the company have been taken, and the proceeding confirmed by the Judge, the regularity then cannot be questioned collaterally. The assessment of the commissioners was deposited or paid as directed, and there the duty of the company, in that regard, ended, and the company became seized in fee, and were not liable as trespassers.

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The refusal of the Judge below, to let in the proof of condemnation of the land, was a gross error. We might have proved subsequently that a notice was given. We had a right to begin our proof in the way we thought best; but ^{the Supreme Court held that} unless we began by proving a notice that we would proceed to condemn, we were liable at all events, notwithstanding the parties had appeared and resisted the condemnation.

The Judge below gave oral instructions to the jury. This was in contravention of law.

Ray vs. Wooters 19th Illinois, 82.

Peck
for appellants

no 60 - 1

The Galena Rail.
Road Company
A Pomeroy

Points & by appealants

Chief Justice Catron

Filed May 12, 1857
L. Leland
Clerk

To the Court

Supreme Court of the State of Illinois,
IN THE THIRD GRAND DIVISION.

THE GALENA AND CHICAGO UNION RAIL ROAD COMPANY,
Plaintiffs in Error.

vs.

AMELIA POUND, JOHN BENNETT, ET AL., *Defendants in Error.*

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Points and Brief of Defendants in Error.

The Defendants in Error, after repeated efforts to induce the Plaintiffs in Error to pay to them some consideration for the land taken for right of way, and for the use of the Road, and the injury done, and occasioned thereby to the Lands of the Defendants in Error, and their neglect and refusal to do so, brought an action of trespass against the Plaintiffs in Error, in the Kane County Circuit Court, which suit was tried at the May Term of the said Court for 1857, before the Hon. George Meniere, presiding, and terminated in the Jury finding for the Defendants in Error, and they assessing their damages at \$650. And thereupon Plaintiffs in Error prayed an Appeal.

The defence set up by the Plaintiffs in Error in Bar, of the Defendants in Errors' right to recover their damages in this action is,—title in themselves, and justification under and by virtue of the action taken by the Plaintiffs in Error to condemn the Land, and acquire the title and right of way through it, under the authority granted to them by their Charter, and

under which they proceeded to acquire title and right of way, which said act was passed January 16th, 1836. The Sections of the Act under and by virtue of which they claim that they have the power to condemn Land, and obtain title for the right of way, for the use of said Road, read as follows :

SEC. 11. In case the corporation shall not be able to acquire the title to the lands through which the said road shall be laid, by purchase or voluntary cession, it shall be lawful for the said corporation to appropriate so much of said lands as may be necessary for its own use, for the purposes contemplated by this act, on complying with the provisions of the six following sections.

SEC. 12. The directors may present a petition to the judge of the circuit court of the county in which the said land may be situated, setting forth by some proper description, the lands which are wanted for the construction of said rail road, or turnpike, or the appendages thereto, and the names of the owners thereof, if known, distinguishing with convenience, if it can be done, the parcels claimed in severalty by the respective owners, and praying for the appointment of appraisers to assess the damages which the owners of such land will severally sustain, by reason of the appropriation thereof, by the said corporation, to its own use.

SEC. 13. On the presentment of said petition, said circuit judge shall appoint a day for the hearing of the parties in interest, and shall direct such notice as he shall deem reasonable, to be given of the time and place of hearing; and in case it shall appear that any of the owners of said lands is a feme covert, an infant, or insane, or otherwise incompetent to take proper care of his or her interest, it shall be the duty of the said judge to appoint some discreet and reputable person, to act in the premises, in his or her behalf.

SEC. 14. At the time appointed for such hearing, the said judge shall appoint three disinterested persons, freeholders, residents of the county in which said lands may lie, for the purposes of assessing such damages, and in the order in which they were appointed, shall direct and specify what lands are proposed to be appropriated and occupied by the said corporation, for the purposes aforesaid.

SEC. 15. Said appraisers, after being duly sworn before some officer, properly authorised to administer oaths, honestly and impartially to assess such damages, shall proceed, by viewing said lands, and by such other evidence as the parties may produce before them, to ascertain and assess the damages which each individual owner will sustain, by the appropriation of his land for the use or accommodation of such rail road or turnpike, or their appendages.

SEC. 16. The said appraisers shall make a report to the said judge, in writing, under their hands, reciting the order for their appoint-

ment, and specifying the several parcels described therein, with all necessary certainty—the names of the owners of the respective parcels, if known, and if not known, stating that fact, and specifying also the damages which the owners of the respective parcels will sustain, by reason of the appropriation of the same, for the purposes aforesaid; and in case either of the parties is dissatisfied with the assessment, the said judge may, on the hearing of the parties, and interest, modify the assessment, as to him shall appear just.

SEC. 17. On the payment of the damages thus assessed, together with the expenses of assessment, as the same shall be settled by said judge; or on depositing the amount thereof, for the use of such owners, in such bank or monied incorporation as the said judge shall direct, the said corporation shall immediately become entitled to the use of the said lands, for the purposes aforesaid; and the report of the said appraisers, with the order of said judge, modifying the same, if the same shall have been modified, shall be recorded in the office of the recorder of the county in which said lands shall be situated, in the same manner, and the like effect, as deeds are recorded, without any other proof than the certificate of the said judge, that the report is genuine.

SEC. 18. And when the said order shall have been so recorded as aforesaid, the said corporation shall be seized and possessed of such land or real estate, and may enter upon and take possession, and use the same for the purposes herein before recited.

The Plaintiffs in Error located their Road through the Lands of the Defendants in Error in the Spring of 1853, and in June thereafter proceeded to condemn it under their Charter, and by virtue of the power granted to them in said Sections, and took possession thereof at once, and constructed and built their Road over and through it, and continued to occupy and use it, in running and operating their Branch Road from the Junction to Fulton.

The only defence made or offered by the Plaintiffs in Error on the trial of this cause in the Circuit Court, was the Record of the proceedings had to acquire the title or right of way, by condemning the Lands of the Defendants in Error, and not in mitigation of damages, but in bar of the Defendants in Errors' right to maintain their action against the said Plaintiffs, and as evidence of title in them, and justifying them in using and occupying it, as by right, &c., to their being

used and received in evidence for this purpose, the Defendants in Error objected, and the Court sustained the objection, but allowed the Plaintiffs in Error to read them and give them to the jury as evidence, showing that the Plaintiffs in Error acted in good faith in making the entry on the said Land, and in using and occupying it as above stated, but the Plaintiffs declined to offer them for this purpose, or any other than that of showing title in themselves, and therefore they were excluded from the Jury.

The only question, as I understand the arrangement between W. B. Plato, Esq., and myself, (the attorney and counsel who tried and have had charge of this case, so far as I know,) is, did the Court, before whom this case was tried, err, in refusing to allow the Plaintiffs in Error to read and give to the Jury, the Record of the proceedings had, and taken by the Plaintiffs in Error, to condemn the said Land, and again the right of way, as evidence of title acquired by and in them? With this view, and this alone, was the Bill of Exceptions made up, so as to present this single question to the Court, clearly and fully, and nothing else.

The Defendants in Error insist and maintain that there was no error committed by the Court, in not allowing the Plaintiffs in Error to give in evidence, and to read to the Jury, the Record of the proceedings had in condemning the Land, and acquiring the right of way through the same, as evidence of title in them, and the right to do so, for the following reasons :

FIRST.

From the evidence in this case the fact is established, that Amelia Pound was the widow of Comfort Bennett, deceased, and had a right of dower in Lands used by the Plaintiffs in Error, and that Nathaniel Pound was her husband, and that John Bennett was past twenty-one years of age, and at the time a resi-

dent of the State of New York, and had been for some time previously, and that William, Sarah, Jane, Josiah, and Harriet Bennett, were minors, and resided on the premises in question; therefore, there could have been no notice served on John Bennett, by the Plaintiffs in Error, before their proceeding to condemn the Land, and the Record does not show how or in what manner the notice was served on the other Defendants in Error, as it should upon its face, affirmatively show, and be set forth at large. See Record Page 35, 36, and the notice offered in evidence of, by the Defendants in Error—as the one served on them—describes the Land as situate in Range Nine, in place and in stead of Eight, as the one is, which is sought to be condemned by the Plaintiffs in Error, therefore it was no notice at all for any purpose whatever. *Vide* Record Page 44, and without notice all the proceedings had were void. *Vide* Blackwell on Tax Titles, Pages 251-2; also, Eddy *vs.* the People, 15 Ill. R., Page 387; also, Halliday *vs.* Swailes, 1 Scammon R., Page 516; also, ~~Owners *vs.* Mayor of Albany~~, 15 Wend. R. 483; also, 4 Hill, Pages 86-89, and 98-99; also, 18 Curtis' Decisions of the Supreme Court, Page 171. *also 10 Barbour Superior Courts N. Y. Page 111*

SECOND.

The Defendants in Error had the right to go behind the proceedings had before the Court, who acted in condemning the Lands, for the purpose of ascertaining their regularity, or that their action in the premises is null and void, for want of jurisdiction. *Vide* American Leading Cases, vol. 2, Pages 730 & 731; also, Noyes *vs.* Butler, 6 Barbour, 613; Shriver, Lessee *vs.* Lynn, 2 Howard, Page 43; Staker *vs.* Kelly, 7 Hill, Page 11; ~~The People *vs.* Cassels~~, *Id.*, Page 164; Herrington *vs.* The People, 6 Barbour, Page 607. And although the tribunal before whom the proceedings

were had and affirmed, was a superior one, yet the Judge acted under special authority, conferred by the Legislature, and therefore its acts must be judged by the rules which apply to limited and inferior tribunals, and not by those which govern them in their proceedings under their general and Common Law powers.

Vide Sharp vs. Speir, 4 Hill, Page 76; Staker vs. Kelly, 7 Id., Page 11; 6 Barbour, Page 913; Hard vs. Shipman, Id., Page 621; Blackwell on Tax Titles, Pages 219 & 220; Presset vs. Meadows, 13 Ill. R., Pages 168 & 169; and 1 Smith's Leading Cases, Pages 707 & 708. Also 10 Barbour Superior Court MS Page 111

THIRD.

See Record
Pages
No 89
In this case the Plaintiffs in Error were proceeding to acquire a title to the use and occupation of some nine or ten acres of the Defendants' Lands, and most of them were minors, and the others beyond the jurisdiction of the Court, yet by the order of the Court, only three days' notice is required, and only four days intervened between the time of the making the order and the day set to appoint the appraisers; and there is no proof affirmatively appearing on the face of the Record itself, that shows that even this part of the order was complied with by the Plaintiffs in Error, by serving the notice on those that could be reached. Again, can three days be considered as a reasonable notice, in proceedings of this character and importance to the Defendants in Error, and which have for their object, purpose, and aim, the transfer of title to Land, and that Land the property of Infants? *This Court has hitherto always guarded with a watchful and jealous eye, the rights and interest of infants, and their interest in lands; and required that all the preliminary steps should be taken which the law requires, and that this should appear of Record, before they would affirm the title conveyed, where individuals were parties; and*

is there any reason for *relaxing this most salutary requirement when powerful Corporations are parties to the transaction*, and their interest is involved in the issue ; and who boastingly taunt you as you approach them for an amicable adjustment, that they *employ their lawyers by the year*, and that the *Supreme Court settles all their matters of difficulty with individuals*.

FOURTH.

The petition to the Court asking him to appoint appraisers, should contain a correct description of the precise quantity of Land required, and the purpose required for, and the order of the Judge appointing said appraisers ; it should also state and set out the piece of Land sought to be appraised, and should correspond with the petition in every respect as to description and quantity ; and the report of appraisers should be in every respect like petition and order, as to description and quantity of Land appraised, so that from the inspection of them it may be determined at once readily and easily that they all describe the same piece of Land, and embrace the same quantity. But such is not the case in this instance. The Petition described the piece of Land required as follows, to wit :

DESCRIPTION IN PETITION.

"Your petitioners further show that they will also need for the purposes of depositing waste thereon, an additional strip of land *sixty feet wide*, adjoining land taken as above for right of way, commencing at a point *one thousand feet easterly* from the west line of said land, and running thence *easterly eight hundred feet*, containing one and 1-100 acres."

DESCRIPTION IN ORDER.

"And an additional strip of land adjoining the above on the north side thereof, *forty feet wide*, and extending from a point *one thousand eight hundred and sixty-three feet* from the east line of said

land *westerly seven hundred feet* for the purpose of depositing waste thereon, and containing in all, being the lands above taken and this land *nine 13-100 acres.*"

DESCRIPTION IN REPORT.

"And an additional strip of land forty feet wide, taken as above for right of way, on the *north* side thereof, commencing at a point one thousand eight hundred and sixty-three feet from the east line of said land, and running thence *westerly seven hundred and five feet*, for the purpose of depositing waste thereon, and containing in all, being the lands above taken and this land *nine and 13-100 acres.*"

The variance in this respect is fatal, as accuracy and a particular description of the Land embraced and sought to be condemned and appropriated to the use of the Company was essential to its validity. The object of this requirement is clear and forcible, being in order to enable the owners to ascertain from the notice itself, that the piece of Land to be condemned is upon his Land, and not that of a stranger,—*Vide Blackwell on Tax Titles, Page 151*—and also to inform the appraisers of the precise piece of Land that they are required to appraise, and how it is located, and the quantity which it contains, so that they can do so understandingly. The petition is the foundation of all the proceeding, and that must contain a clear and full description of the piece and quantity of Land to be appraised and condemned; and the order must follow it in every respect; and the report must correspond in description and quantity with both; and yet in this instance neither are alike. And it would seem that it was the intention of the agent of the Plaintiffs in Error to so describe the quantity of Land required to be taken by them, that it should be left in utter confusion as to its precise location and quantity; and whether this was occasioned by carelessness or design on their part, is now a matter of no great importance, as its effect must be the same, rendering the whole proceeding had, a nullity.

FIFTH.

In the notice, petition, order, and report of the appraisers, where the name of the Defendant in Error Amelia Pound appears, she is named and called Mary Pound, so that she never could have had any notice served on her, and yet she was the only person among all the Defendants in Error in this case, on whom they could serve the notice, who was of full age, and authorized to act for the minors and herself, and yet it could not have been a very difficult matter to have got her correct name, had they made the effort to do so.

SIXTH.

The judgment or order of the Court is a nullity, because it makes all parties to it: even including John Bennett and Amelia Pound—Amelia, who is described as Mary Pound, and John, who could not have been served with notice, as he was at that time and had been for a long time before, a non-resident of this State, residing N. Y.—*Vide* the testimony of Hugh Farr, on the 5816 Page of Record; and it being a joint proceeding as to all, and failing as to him, must fail as to all. *Vide* 2 American Leading Cases, Pages 738, 739; Hall *vs.* Williams, 6 Pick. R., Page 250; *Rougdy vs. Webster*, 11 New Hampshire R., Page 399; Reed *vs.* Pratt, 2 Hill's R., Page 64. 232

SEVENTH.

The variation in the notice served on the parties—*Vide* Record Page 4445 and the description of the Land in the petition, order, and report, is of itself alone sufficient to invalidate and render a nullity, the proceeding had by Plaintiffs in Error in their attempt to condemn the Land of the Defendants in Error, for the effect of it was to mislead them, and quiet their anxiety, if any they had, as it did not describe the

premises which were owned and occupied by them, and they had every reason to suppose that the agent of the Plaintiffs knew what land they wanted to use, and how to describe it.

EIGHTH.

The Plaintiffs in Error also insist that the Defendants in Error cannot maintain a suit in this form, of action against them, as they are the agents of the State. The case of *Bradley vs. the New York & New Haven Rail Road Company*, reported in the 2nd vol. of the *American Railway Cases*, Pages 153 to 156; also, in the case of *Harvey vs. Thomas*, same authority, Page 196, decide the very reverse of this doctrine, and say, it is true while proceeding to condemn Lands, if they follow the line marked out by the Statute, they are acting indeed under the authority derived from the State, but they do not act for it, or on its behalf, or as its agent or representative, nor with any reference to the benefit of the public, as in cases where roads, or other public highways and improvements are made. Their action is regulated and governed wholly with a view to their own profit and advantage, and not for the general accommodation or benefit of the community, but under a special grant of power acquired from the State, and used by them for their own special private advantage, and entirely independent of, and separate from, the State, and they stand upon the same footing, and the grant is the same in its character, as if made to one or more private persons, not clothed with corporate privileges. The question in this case is, not one between one individual and the State, but it is merely one between one individual and another respecting their individual rights, and that only. The State is in no way injured or benefited by the result. And if this is so, by what rule or principle of justice or law, do the Plaintiffs

claim an exemption from the duties and obligations that attach to and belong to them, as to other individual members of society acting in concert, and for their own private advantage and gain?

NINTH.

Plaintiffs in Error went and threw the clay and stone taken out of the cut, over and upon land that the Defendants owned, that they do not pretend to have condemned, from ten to fifteen feet on North side, for a distance of some twenty-five rods. *Vide* cross ex. of Witness, Adin Mann, 175/18 Page of Record. Here is a strip of Land, containing some twenty or twenty-five rods, that is used by the Plaintiffs in Error, which they never attempted to acquire any title to, and they committed trespass when they deposited the waste earth and material thereon. On this no question whatever can be made.

The Plaintiffs in Error by insisting, as they do, that all the steps taken, and proceedings had, to condemn the Lands of the Defendants in Error, in this Case, were fair, just, and in strict compliance with the provisions of the Statute under which they acted, and derive their authority to act from, and thereby acquired title thereto, and took it out of the Defendants in Error, is, to use the mildest terms, unprecedented; and I have not been able to find a single case reported, or even the dictum of the Court, that will warrant any such position or conclusion; while on the other hand, the cases are numerous, and the decisions uniform in support of the principles contended for by the Defendants in Error: viz. that the Court before whom these proceedings were had, was a Court of limited authority, and therefore its jurisdiction must fully appear on the face of the Record, and even then the persons who are sought to be bound by its action, have

the right to show by evidence, aliunde the Record, that the Court never had jurisdiction as to them, and therefore their rights are not affected by its decision ; and the authority given must be strictly and rigidly observed and followed ; and by its decision no fraudulent practices will be allowed to pass unchecked or unrebuked. And that no Court acquires any jurisdiction till such time as the persons intended to be bound thereby, or their rights or property affected by its judgment in some manner, have been lawfully notified of the pendency of the proceedings against them, and have had full opportunity to be heard in their own defence : for without this requirement, no man's personal rights or property would be safe for a single moment. And where several are made parties to the same proceeding and judgment and it fails as to some one of them, for want of jurisdiction, it must be considered and treated as a nullity to all, and therefore necessarily invalid as to all affected by it. And when the rights and interests of minors are to be affected and prejudiced, the Courts will closely inspect all the steps taken, and ascertain for themselves, whether or not their interest has been properly protected and looked after.

Yet all these plain, well-known, and settled rules and principles of law and justice have been disregarded by the Plaintiffs in Error, in this cause, in the proceeding had to condemn the Lands of the Defendants in Error, and by that condemnation to clothe themselves with the title, and now they implore the aid of this Court, in confirmation of their acts, in the premises.

J. H. MAYBORNE,

Attorney for Defendants in Error.