

14215

No. \_\_\_\_\_

# Supreme Court of Illinois

Mississippi & Atlantic R.R.Co

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vs.

People

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any real estate and personal property, whatever, necessary for the construction of their road and for the erection of all necessary buildings, yards and appurtenances for the use of the same; yet, in consequence of the reservation contained in the 2<sup>d</sup>. section of the said act, the defendants cannot construct their road, nor even commenced it, without the express sanction of the legislature of the state of Illinois by a law passed for that purpose, and that no such sanction has been given.

### III. The points against the quo warranto.

1. The defendants became a body politic and corporate upon the filing their articles of association in the office of the Secretary of state as directed by the said act of 8<sup>th</sup> Nov 1849.

2. As a body corporate under said act, they were invested with all the powers, rights, liberties, privileges and franchises absolutely given by said act; and also the right to petition the legislature to decide by law whether their road be of sufficient public use to justify the taking private property, upon compensation as directed by said act, for the construction of the same.

3. As a body corporate under said act, they can, by a special law of the legislature, be authorized to enter upon and take possession of and use all such lands as may be required for the construction, and maintenance of their road, and the convenient accommodations appertaining to the same, making compensation therefor

as provided by said act.

4. If the defendants have acquired by purchase, gift or grant all lands required for the construction, maintenance and accommodations of their road, then, they have no need to petition the legislature to grant power to take lands upon upon compensation made, and may proceed by force of the act without any further legislative sanction.

5. The defendants have not only the right to proceed in the construction of their road, if they have acquired the lands necessary for its construction so, but are bound to do it, within five years after they became incorporated, and have it in full operation in ten years thereafter, or lose their incorporation under said act.

6. The act of 3 Nov 1849, reserves to the legislature no right to indicate the route and termini of roads, nor does it prohibit the construction or commencement of roads without express legislative sanction by law passed for that purpose, except only, when, power to take lands upon compensation made is invoked, when, the legislature may not only decide upon the public utility of the road, but may indicate its route and termini.

7. The act of 3 Nov 1849 points out no mode, by which a company organized under it can procure the legislature to indicate the route

and termini of its road, unless it applies for power to take private property, for the construction of the same, and hence it is deduced the act intends no legislation to enable such company to proceed in the construction of its road, if it do not require power to take private property upon compensation made.

8. The reservation to indicate the route and termini of roads closing the 22<sup>nd</sup> section of the act of 5 Nov 1849 is but a proviso, limiting, qualifying and restraining the powers given by said act to all companies organized and reorganized, seeking legislative aid under the provisions of said section, and in no way limits, qualifies, nor restrains any other company organized under said act.

#### IV. Construction of Statutes, &c.

The rules for the construction and interpretation of all written instruments, and especially deeds, wills, statutes, &c, are so familiar to us all, that it would seem to be scarcely necessary, or even proper to embody them, or any of them, upon an occasion like this, yet, as we view the questions raised by the present issue to be entirely dependent upon the proper construction and import of the act of 5 Nov 1849, taken in connection with the provisions of the constitution of Illinois, which declares, that corporations not possessing banking powers or privileges

may be formed under general laws, but shall not be created by special acts, except for municipal purposes, and in cases where in the judgment of the general assembly, the object of the corporation cannot be attained under general laws; and that the General Assembly shall encourage internal improvements, by passing liberal general laws of incorporation for that purpose, we shall for convenience present a few of them.

1. Where the manifest intention of the legislature may be gathered from the prevailing tone of other sections of an act, conflicting words may be diverted from their literal meaning in order to harmonize with the more explicit portions; and they may be restrained, enlarged, limited or qualified, so as to give effect to the obvious intention of the law. 1 Iowa Rep 323; 1 Ohio Rep 479; 6 Barbours Rep 60, 74; 1 Pick Rep 248, 254, 258.

2. If the language in different portions of a statute be inconsistent, it should be so construed as to accord with the leading object of the enactment. 1 Iowa Rep 323; 2 Scammon Rep 223; 10 Pick Rep 235; 20 Pick Rep 267.

3. A statute should be so construed, if possible, that no clause, sentence or word should be superfluous, void or insignificant. 1 Leon Pet. Rep 346; 19 Leon

Rep. 299; 8 Pick Rep 370, 514; 22 Pick  
Rep 571; 6 Cush Rep 383; 4 Blackford  
Rep 148.

4. The intention of the legislature is to be gathered from the statute itself, and the words used must be taken according to their fair and natural import. The statute is its own expositor, and the legislature declares its intention through it. 1 Conn. Rep 346, 421; 1 Brocken. Rep 162; 6 Pitt Rep 102; 19 Vermont Rep 131; 1 Pick Rep 261; 7 Mass Rep 323.

5. Statutes in pari materia are to be construed together, so that no word or clause may be superfluous or insignificant. The entire corpus of the act must be considered, and must not be taken in fragments or sections. 3 Howard Rep 556; 4 Gilman Rep 221; 19 Vermont Rep 230; 1 Story Rep 231; 1 Pick Rep 248, 254; 10 Pick Rep 233; 6 Barbour Rep 69.

6. Statutes, or sections of a statute seemingly repugnant should if possible be so construed, that all may stand together. 3 Monroe Rep 77, 80; 4 Howard Rep 37; 2 Blackford Rep 249; 6 Barbour Rep 71.

7. When the literal interpretation of a statute would lead to a gross absurdity,

of restriction, its application will be extended to cases within the same equity, though at the expense of forcing the construction of the words. 17 Vermont Rep 479; 3 Howard Rep 556; 4 Cushing Rep 316; 21 Wren Rep 211; 1 Leon Pet Rep 346; 4 Leonstock Rep 418.

8. In construing statutes, an interpretation must be adopted, that will not defeat its own purpose, if it will admit of any other reasonable construction. 3 Mass Rep 523; 8 Mass Rep 38; 7 Mass Rep 458; 15 Mass Rep 205; 19 Leon Rep 299; 2 Pet Rep 369.

9. It is always to be presumed the legislature intended the most reasonable and beneficial construction of their acts, when, the design of them is not apparent. 4 Mass Rep 534, 537; 12 Mass Rep 383, 385; 13 Mass Rep 324; 6 Barb. Rep 71; 8 Pick Rep 371; 4 Cushing Rep 36.

10. Statutes must be reasonably construed in reference to the subject matter; and in cases of doubtful meaning reference may be had to extrinsic circumstances to ascertain the intent of the legislature in the use of particular words. 7 Barbours Rep 416; 4120; 4 Leonstock Rep 144.

11. Where the construction of a statute is doubtful, an argument from convenience

will have much weight, but not otherwise.  
3 Mass Rep 215; 221, 523, 539; 7 Mass  
Rep 304; 11 Pick Rep 487, 490.

12. In construing statutes we must consider  
their policy and give them such an inter-  
pretation as may be best calculated to  
advance the policy intended. 3 Ohio Rep  
198; 4 Connstock Rep 144.

13. In construing statutes that have for their  
end, the promotion of important and  
beneficial objects, a large construction is  
to be given, when it can be done without  
doing actual violence to its terms. 19 Conn  
Rep 604.

14. In construing statutes, the terms of a proviso  
may be limited by the general scope of the  
enacting clause to avoid repugnancy. A pro-  
viso does not enlarge, but qualifies or lim-  
its that to which it is applied. 19 Ver-  
mont Rep 129.

With these rules for our guide, ~~and~~ others  
that readily present themselves, it seems there is  
but little or no difficulty in arriving at the  
obvious intent of the entire scope of the act of  
8 Nov 1849, now under consideration.

#### V. Consideration of the points presented.

The point for the quo warrants rests entirely  
upon the sweeping application of the reserva-

tion contained in the close of the 2<sup>d</sup> 2<sup>nd</sup>. section of said act; whereby it is claimed no company organized under it, can ever commence the construction of its road without the express sanction of the legislature by a law specially passed for that purpose. If this be so, then, the defendants must be stopped, as no such legislative sanction has been given to them. This leads us to consider the points raised against the quo warrants, involving the solution of this proposition.

1. When did the defendants become a body politic and incorporate? It is admitted, they are duly and properly incorporated, but the question is when were they so incorporated, and from what period do they date their existence. The act is its own interpreter. Let it speak. Section 1. declares, they shall be a body politic upon the filing of the articles of association in the office of the secretary of state. Section 4. declares, when the certificate (meaning articles of association) shall be filed as in said act directed, the subscribers thereto shall be a body politic and corporate. And section 44. declares, such corporation shall within five years after its incorporation begin the construction of its road.

This seems to be plain enough. But how is it? Here is a corporation perfectly organized, endowed with full powers and all the functions of life, and has all the means of action; the commencement of its

life and being is fixed, and it is compelled to act under the law according to the powers given within a prescribed time, or its life is taken away, and yet it is said it cannot act without the express sanction of the legislature, and that too, when no mode is given by the act to obtain that sanction. This conclusion is surely unreasonable, if not grossly absurd, and cannot be maintained.

2. The defendants became a body politic and corporate upon the filing of the certificate or articles of association in the office of the secretary of state as provided by said act, but to what use, or for what purpose?

They thereby became invested with all the powers, privileges, liberties, franchises &c. reserved by said act both absolute and potential. They have the powers given by the 4th. section, certainly, for the act so declares in *hac verba*. They are thereby endowed with capacity to purchase and hold all kinds of property necessary for their road. Can they not open books for stock under the 5th. section, elect directors under the 6th. and 7th. sections, call general meetings of the stockholders under the 8th. and 9th. sections, make calls on stock under the 11th. section, pass by-laws under the 12th. section, &c.? Does not the individual liability clause attached under the 14th. section, and do not the defendants by the very terms of the act become possessed with the general powers, and subjected

to the general liabilities enumerated in 21st. section? Have they not the right of petition given by the 22nd. section, and the potential powers and privileges thereby intended; as well as all the other liberties and franchises given by said act, subject at all times to the liabilities and restrictions therein contained? It seems to us, they can do all things authorized by said act, and are subject, certainly, to the restrictions and liabilities therein contained. They are the creatures of the act, and are just what it has made them, nothing more, and nothing less. They move and have their being just as the act prescribes and no otherwise. 6 Howard Rep 322; 14 Pet Rep 129; 13 Pet Rep 587; 4 Cow Pet Rep 543; 2 Cramer Rep 127. But they move, act and have their being, according to the entire corpus of the act, and not according to fragments or sections of it. The whole act, in every part and every word declares their being, their capacity, and their actions; and if by chance, there be any apparent inconsistency, it must be reconciled, if it can be, by any practicable construction, so that the whole act in all its parts may stand. All those powers entered into this political embodiment, and took their stand, when, its organization was perfected by the filing of the certificate of association as directed by said act, and are in full force

and efficiency, and belong of right to the defendants to use and exercise in the mode and manner authorized by the said act.

3. Have the defendants any ability, upon special leave granted by the legislature to enter upon, and take, and use any lands needed for the construction, &c, of their road? The 22nd. section of the act of 8 Nov 1849 authorizes any number of persons, not less than thirteen, intending to organize under it, and every company, that may organize under it, to present a petition to the legislature, stating the termini of the road to be constructed, its location, route, &c, and praying the legislature to determine whether the construction of the proposed road will be of sufficient public use to justify the taking private property for the construction of the same; and when the legislature so determine, then such company ("when organized" if of the first category) may enter upon, take and use such lands, as may be needed for the construction &c of said road, making compensation therefor as provided for in said act. Here we have power or ability given by this act to two classes of persons, first, to a company of thirteen or more intending to organize under said act, and secondly, to corporations duly organized under said

Either can petition for the right to take lands, and if the petition be granted, the right to take is complete by the act. This potential right is given fully to the defendants, and the moment their petition is granted by the legislature, they can enter upon, take and use the lands needed for their road, not voluntarily obtained, making due compensation therefor as required by said act. But this right, though granted, does not authorize the construction of the road, without express legislative sanction, because the act declares, the same shall not be constructed, nor commenced without such sanction given by law passed for that purpose, because it reserves to the legislature the right to indicate the route and termini of said road, and this leads to the consideration of the next point against the *quo warranto*.

4. If the defendants have acquired by voluntary grant, purchase or gift all the lands needed for their road, can they proceed in the construction thereof without further legislative sanction? We maintain the affirmative of this proposition. The act of 3 Nov 1849 was doubtless passed to meet the behests of the constitution, and must be construed in all its parts, as having been enacted to fulfil its commands. Every legislative act ought, if possible, to receive a construction

tion consistent with the constitution, 5 Ohio  
Rep 417; and according to its subject matter.  
6 Ohio Rep 440. The design of this act is  
manifest upon its face. It intends to encourage  
and promote the construction of railroads  
by voluntary associations upon lands acquired  
by voluntary grant or purchase, or latterly  
by the power of the state. The subjugation  
of private property to public uses is ever a deli-  
cate power, and hence the voluntary grant  
of land by the owner for railroad purposes  
is among the most prominent designs of this act.  
The involuntary mode by the coercive power  
of the state is the last alternative, and  
then only to be exercised by special legislative  
permits induced by the great public benefits  
to flow therefrom. To these ends the legisla-  
ture must be presumed to intend the most  
reasonable and beneficial construction of  
their acts, to accomplish the great design  
in contemplation in the one way or the  
other. The policy of the act is to promote the  
construction of railroads upon lands acquired  
by voluntary grant, or if needed be, to them  
by the strong arm of the state. This policy  
requires such a construction to be given to this  
act as will advance, not retard its ends.  
It is a great and important object not only  
to Illinois, but to her sister states, and the  
act to promote it must have an enlarged  
and liberal construction. By these rules  
and others of a kindred import, we are now  
to meet the proposition under considera-  
tion, and let us examine it well.

Suppose the 22nd. section struck from this statute, could not, then, this road be constructed, equipped and run? The act gives ample power for these purposes. It authorizes the organization of a political body, and endows it with every power necessary for the ends contemplated. It can acquire and hold lands, make surveys, contract and be contracted with, pass over public highways, acquire the domain of the state, the right of way in towns, borrow money, equip, and run its road, regulate tolls and charges for freight and passengers &c. All can be done fully and amply without the aid of the 22nd. section, where the lands, on which to construct the road, are obtained by voluntary grant &c. In fact the 22nd. section is given as the dernier resort in obtaining the right of way. It is a political necessity, to be invoked only when all other means fail. Railroads are the order of the day and must be constructed, without the exercise of this imperious power, if it be possible, but if it be not possible, then, it may be invoked by Special Legislative leave. It will be seen by an analysis of the act, the legislative mind has been occupied upon other subjects prior to the introduction of the provisions of the 22nd. section, totally distinct and independent of it. But by the 22nd. section it is directed to a new purpose, and is turned to another subject. By this section the condemnation of private property, upon compensation is the subject matter of consideration,

and every word and line in the sections are to be construed in reference to this subject matter according to the rules of correct and rational interpretation.

If lands sufficient for the road have been acquired by voluntary grant or purchase, the defendants, not only, have no occasion, but no power to petition the legislature to sanction their road, or grant the right to take lands. They can only petition to take lands, when they fail to obtain them by voluntary purchase, &c. They are the creatures of the act. It gives them no power to petition the legislature except to take private property. The act giving the power of petition in one case, excludes all necessity for a petition to the legislature in any other case. If it contemplated such a necessity, it would have provided for it. If the act intended the legislature should in all cases expressly sanction the construction of all roads before they should be commenced, it certainly would have pointed out the mode and manner, in which such sanction might be had. Having pointed out no mode to obtain such sanction, except when the right of condemnation might be sought, and having given all essential powers necessary for the construction, equipment and running roads built upon lands acquired by voluntary grant, gift or purchase, it is the irresistible intendment of such act, that no such sanction is required for such roads, and the defend.

ents are fully authorized to proceed without it.

5. The defendants are not only authorized to proceed, but must do it, or submit to the consequences, which next come under consideration. If they let five years pass, before they begin the construction of their road after their organization, they forfeit their franchises, and their incorporation is at an end. They have all the stocks taken necessary for the construction of their road, and all the lands needed for its construction are obtained by voluntary grant, gift or purchase, and if they cannot proceed without legislative sanction, and it be withheld capriciously or wrongfully, then, all is lost. No mandamus can go to compel the legislature to act upon a matter that rests in their discretion, and it seems to us, the court will pause before it will give a construction to this act, that will lead to consequences so disastrous, and so inconvenient, if it be possible to give it any other construction. The legislature cannot be presumed to have intended such results upon even a doubtful enactment, much less upon one that is plainly susceptible of another and a beneficial interpretation entirely consistent with the general scope and policy of the entire act.

6. But again, the act of 3 Nov 1849 reserves to the legislature no right to indicate the route and termini of all roads au-

thousand miles it; nor does it prohibit the construction, or commencement of any road without legislative sanction, except only, when the power of the state to take lands forcibly upon compensation is involved to be conferred. In all such excepted cases, the legislature reserves the right to decide upon the public utility of the road, before they grant the extraordinary power belonging to the government of taking private property for public purposes. This right is not only reserved, but the further right to indicate the route and termini of all such roads, so as to make them the better subserv the public welfare.

In fact and in truth, this right of eminent domain can be exercised by the state only for public purposes; and hence it seems peculiarly proper, that the legislature should not confer it upon any corporation except for purposes of ascertained public utility, and of which they should judge specially before the grant. Under this act roads may be projected of purely a private character, leading to coal pits, iron beds, &c, when it would be not only wrong but unconstitutional to confer this eminent right. If the legislature have reserved this right in the excepted cases by special enactment, it is just and reasonable to presume they did not intend to reserve it in any other case.

If the 22nd. section of the act did not contain the proviso at its close re-

reserving the right to indicate the route & termini of the roads, then upon the legislative mind and prohibiting their construction or commencement without express legislative sanction by law, no one could doubt, but, that a road might be constructed upon lands obtained by voluntary grant, gift or purchase without any such sanction. The legislature, it may be, could have prohibited the construction of any road until its route and termini were approved by them, but have they done it? If such had been the intention, would it not have been expressed in clear and explicit language, and not left in doubt or uncertainty?

7. But again, the act of 8th. Nov. 1849 points out no mode, by which a company organized under it, can procure the legislature to indicate the route and termini of its roads, unless it applies for power to take private property, by force under the authority of the state. If it had been intended that such indication should be procured in all cases, then, most certainly a way would have been provided to obtain it. Such indication is reserved in a given case, and in that case, a way is provided to obtain it. How the legislature show how they understood the matter. Having reserved this right to indicate the route & termini of the road

in the given case, they provide the way to procure it; and having made no such provision in other cases, it is inferable none was needed, because there were no such reserved rights to provide for. If such rights had been reserved in all cases, why not provide the way to exercise them, as well as in the given case.

We see the legislature conceived it proper, if not necessary, in the given case to provide the way in which their sanction could be obtained; if then, their sanction be necessary in all cases, why did they not provide the way to obtain it in all?

The answer is, they require no such sanction except in the given case, and therefore provided no way to obtain it.

In the given case, they prohibit the construction of the road until sanctioned, because there is a question of public utility to be settled, and they reserve the right to that end to indicate the route and termini of the road, and therefore no road should be constructed nor commenced until this question of public utility be settled, and this right to indicate exercised.

8. This right to indicate the route and termini of a road, is but a proviso affixed to the imperative enactment of the 22nd section. It operates as a limitation upon the construction of the roads, then under consideration

and now other. All roads, that could be constructed, without the condemnation of private property, are without the purview of the proviso, and in fact of the 22nd. section; as much so, as if the provisions of the 22nd. section were contained in a distinct and independent act. We therefore maintain in any view that can be taken of this act upon the rules of construction governing such cases, the defendants cannot be considered as usurpers of the rights, privileges, liberties, franchises, &c. they have been exercising, and claim to exercise, but must be justified in the use thereof, and quieted in their enjoyment.

In the consideration of this case, we ask the court's attention especially to the cases in 1 Leon. Rep. 346, 421; 19 Leon Rep 299, 604; & Leach. Rep 383; upon the construction of statutes. They seem to us to be safe guides in evolving the true intent of the act now under consideration.

## VI Conclusion

The court can but perceive from the pleadings, that the defendants now assert no power to construct their road upon lands acquired otherwise than by voluntary grants &c. In no case do they assert the right of eminent domain. This right unquestionably is granted in certain cases without any further legislative sanction. But the propriety of its use is not involved

in the present issue, and "sufficient for the day are the evils thereof." We now claim to proceed under the authority given to acquire lands by gift, grant or voluntary sale, and whatever obstacles may be interposed, if they can be removed without the expense of the strong arm of the State, we can remove them and proceed in the construction of our road. To this end our powers are full and complete.

Upon the organization of the company by filing the certificate in the office of the secretary of state, it becomes a perfect corporation endowed with all the powers authorized by the act. Those that are absolute vest at once, and those that are potential or dependent upon some condition or further action of the legislature vest upon the happening of the event contemplated. Capacity is given to receive the power when it falls in, and it vests when the event happens. It is strange to suppose the corporation is suspended, because a non-existent condition or power does not vest absolutely, but may vest at a future day if willed upon legislative leave, and more especially when it does vest, it can only be rejected as a devious resort, all other means failing.

The great object of the act of 9 Nov 1849 in accordance with the command of the constitution is to produce the construction of railroads by voluntary association upon lands acquired by voluntary

grant. This object paramount to all others must be carried out under this act, if it can be upon any reasonable construction.

The act is a general public law, and must be liberally construed to advance the objects intended. It is not a special act, nor to be interpreted upon rules applicable to strict rights. It cannot be presumed that a legislature, meeting but once in two years, could intend that the terms of their act should in fact remain in abeyance, when they declare it shall operate from its passage, and no road should be constructed without special legislative sanction, when all other things were secured. The act took effect upon its passage by its own terms. Associations might be formed and roads immediately, but it is said they must delay the construction of their roads until sanctioned by the legislature two years thereafter. Such never could have been in fact the intention of the legislature, and never is not the intent of this law. No. The act intends to authorize the immediate construction of all roads that can be constructed without the exercise of the eminent domain or the right in the state to take private property for public purposes. It says to all you can and construct your roads if you can without this power, but if you cannot, apply to the legislature and it will be given, if your roads be of sufficient public use to justify it, reserving only the right to charge your

route need termini if need be i.e.  
P. Northington atty  
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Albion Sup. Court

Miss. & Atlantic Railroad Co

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The property of Albion La.

Brief

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