

No. 14684

Supreme Court of Illinois

Pittsburg, Fort Wayne &
Chicago, R. R. Co.

vs.

Price.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No.

172

J. W. Moulton & Co., Stationers, 196 Lake St.

Pittsburg

J. W. Moulton

7

Price

14687

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1884.

PHILIP J. PRICE, IMPEADED WITH
DAVID MORRIS, SURVIVING PARTNEES OF
WILLIAM J. PRICE,
Appellant,
vs.
PITTSBURG, FORT WAYNE & CHI-
CAGO RAILROAD COMPANY,
Appellee.

This action was brought in assumpsit for the use and occupation by the defendants of two lots, Nos. Three (3) and Two (2), in Block No. Seventy-one (71), in School Section Addition to Chicago. These lots are situated on Canal Street, between Monroe and Adams Streets, and running back to the South Branch of the Chicago River, being from two hundred and sixty (260) to two hundred and seventy-five (275) feet in depth. These lots were purchased by the plaintiff in the spring of 1860, for the price of thirty-nine thousand one hundred and seventy dollars each. Lot No. Three was purchased of Lemuel Crawford and conveyed by warranty deed bearing date and acknowledged on the 20th day of April, 1860.

Lot No. Two (2) was purchased by Singer & Talcott, and conveyed by warranty deed bearing date May 1st, 1860, and acknowledged on the 14th day of May, 1860.

These deeds were soon after their execution and acknowledgment placed in the hands of F. H. Winston, the solicitor of the plaintiff, and having charge of all its legal business in Chicago, to be retained by him, and not placed on record until the bonds and mortgage,

securing the purchase money of the property (for all of which credit was to be given), should be prepared and executed by the plaintiff, and sent from Pittsburg.

By the agreement between the parties (the plaintiff and its grantors before mentioned) the purchase of these lots was to take effect on the 1st day of May, 1860, at which time the lots should cease to be the property of the sellers, and should belong to the company. The sale and purchase *were absolute without reference to the deeds*, and the plaintiff became bound for the purchase price from the time the sale was made, and became the owner of the land to all intents and purposes from that time. (See Winston's testimony, page 23; Talcott, page 28, and Cobb, page 31).

The same witnesses also swear that the plaintiff was to have the rents of these lots from the time the purchase took effect (the 1st May, 1860).

Foss, also, who acted for the R. R. Co. in making the purchase, swears that the purchase was to take effect May 1st, 1860. (See Foss, page 32.)

The deeds were drawn up and executed in accordance with the agreement of the parties; one of them (Crawford's) having been dated and executed on the 22nd day of April, and the other on the 1st day of May. Immediately after their execution these deeds were placed in the hands of Winston, as before stated.

It further appeared in evidence that the firm of the defendants had occupied the lots conveyed to plaintiff, under plaintiff's grantors, since 1856, as a coal yard, at a rent varying from \$4,000.00 to \$1,200.00 for each lot; and that for the year ending May 1st, 1860, they had paid for said lots \$1,200 each; that the lot sold by Singer & Talcott to the plaintiff, was occupied by the defendants during said year under a written lease from them, and the lot sold by Crawford under a verbal lease from him.

The defendant's firm held over under these leases for the year terminating May 1st, 1861, with an understanding, however, as to the lot owned by Singer & Talcott that the rent of that lot for the year 1860 should be a reasonable one. (Talcott, page 27.)

As to the lot bought of Crawford, however, there was no such understanding; but there was an absolute agreement between Cobb (Crawford's agent) and defendant that the rent should be \$1,200 for the year 1860, with the right reserved for the Railroad Com-

pany to run through it, the rent being fixed thus low, as Cobb swears, being less than the property was worth, on account of that reservation. (Cobb, page 30.) The same reservation had been made for the previous year, 1859. There was evidence that the condition of the dock of the Crawford lot was bad, but it is also shown that it was in like condition when it was rented to defendants in the spring of 1859; that Price complained of it, and that Crawford refused to repair, but insisted that Price must fix it, and that the condition of the dock may have had something to do with fixing the rent as low as \$1,200. (See Cobb, page 30.)

The dock of the other lot was in good condition. (See Talcott, page 29.)

The bonds and mortgage securing the purchase money of these lots arrived from Pittsburg in October, 1859, when they were delivered to the sellers, and the deeds were placed upon record. These bonds and mortgage were dated May 1st, 1860, and drew interest from that date, which has been paid by the plaintiff to the sellers. (See Cobb, pp. 30 and 31.)

The plaintiff in the fall of 1860 entered upon and occupied for the rest of the year of the lease a strip of land extending thirty feet in width across both of the lots.

This was in accordance with the understanding had with the defendants before the commencement of the year, and, as to the lot owned by Crawford it was taken into consideration by the parties in fixing the amount of the rent (see Cobb, page 30); and as to both of the lots such understanding was had between Foss acting for the Railroad Company and Barnard, the agent of and acting for the defendants.

Foss swears (pp. 32 & 33) that he told Barnard, in answer to his application in behalf of the plaintiffs to be allowed to remain on the lots another year; that the tracks would be laid in the fall and that they could stay; and swears that he (Foss) had authority from the President of the Railroad Company to that effect.

VALUE OF THE LOTS FOR THE YEAR ENDING MAY 1st, 1861.

It makes but little difference in determining this question upon the evidence whether the defendants be regarded as tenants holding over under a lease at a fixed rate, as in the case of the lot

bought of Crawford, or whether the testimony of the witnesses upon such value be the criterion. In either event the verdict is sustained by the testimony.

The plaintiff's witnesses upon the question of value of the lots for that year were as follows :

RUSSELL GREEN: *Occupied lumber yard on adjoining lot through which the railroad track ran.* Estimates value at \$1,600 per lot, making-----\$3,200 00

Would deduct for interruption by railroad use of strip $\frac{1}{8}$ --- 400 00

Making net value of both lots-----\$2,800 00
for the year ending May 1st, 1861.

R. H. FOSS: *Occupied a lot similarly situated in same block, through which railroad track ran.* Lots worth per annum for that year, \$1,250 each, without track, and under circumstances with track, \$1,000 each.

JOHN SHERIFFE: *Occupied a lot similarly situated, with railroad track running through.* Lots worth from \$1,000 to \$1,200 for that year; $\frac{1}{8}$ a fair deduction for railroad track.

JAMES H. REES, real estate agent: Lots worth from \$10 to \$12 per front foot, being 99 feet front.

For defendant, as to value of use of lots, the following witnesses testified:

W. E. JOHNSON: \$1,000 per lot a fair rent without obstructions and with good dock.

ALEXANDER OFFICER: *Occupied an adjoining lot for lumber business from May 1st, 1860, to May 1st, 1861, similarly situated, and with railroad track running through, for which I paid \$1,000.* Was allowed \$150 for use of part by railroad.

These lots, worth \$1,000 each, or taking dock in consideration, \$800 each.

JACOB BEIDLER: Paid \$800 for that year for lot similarly situated, about one block south of lots in question, with right reserved for railroad to run through. Thinks \$800 each a fair rent for these lots.

DICKINSON: \$800 per lot a fair rent, if dock in good order.

*Evidence conflicting
The only question of law before is, under the constitution of the State.*

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SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

PITTSBURG, FORT WAYNE & CHICAGO RAIL
ROAD COMPANY, Plaintiff in Error,

v s.

PHILIP J. PRICE AND DAVID MORRIS, SURVIVING
PARTNERS OF WILLIAM J. PRICE,
Defendants in Error.

APPEAL FROM SUPERIOR COURT OF CHICAGO.

ABSTRACT OF RECORD.

Placita.

1-2 **Præcipe.**

2-3 **Summons.**

3, 4, 5, 6, **Declaration in Assumpsit** on common counts for use and
7, 8, 9, occupation of lots 2-3, block 71, school section addition to Chicago.

9-10-11 **Pleas.** 1st, General issue; 2nd, *Nul tiel* corporation.

Trial by Jury.

16-17 VERDICT March 6, 1863, finding issues for plaintiff, and assessing damages against the defendant, Philip J. Price, impleaded with David Morris, (who was not served) at \$1800.00.

17 MOTION FOR NEW TRIAL made.

18 NEW TRIAL denied, March 18, 1863.

19 EXCEPTIONS by Philip J. Price to order of Court, overruling motion for new trial.

19 JUDGMENT on verdict.

19-20 APPEAL prayed and allowed March 27, 1863, on filing bond in penalty of \$3000.00, with bill of exceptions, within ten days.

21 **Bill of Exceptions.** On the trial of the case, and to sustain the issues on their part, the plaintiffs introduced the following testimony, to wit :

1. WARRANTY DEED, Lemuel Crawford and Louisa, his wife, dated *April* 20, 1860, acknowledged same day, and filed for record on the *5th day of November*, 1860, in the Recorder's office of Cook Co., Illinois, purporting to convey to the plaintiffs lot 3, aforesaid.

21-22 2. WARRANTY DEED from Horace M. Singer and Harriet A., his wife, and Mancel Talcott, and Mary H., his wife, of Chicago, to the plaintiff of lot 2, aforesaid, dated *May* 1, 1860, acknowledged *May* 14, 1860, and filed for record in Recorder's office of Cook County, *Oct.* 18, 1860.

22-23 3. **Frederick Winston**, a witness for plaintiff, testified :

That he had been solicitor for plaintiff since January 1st, 1859 ; that lots 2 and 3, above described, were bought in Fall of 1859 and Spring of 1860, of Crawford, and Singer, and Talcott ; by the understanding between the parties, the trade was to take effect May 1, 1860 ; the deeds for the lots, as above described, shortly after their execution were left

with him (the witness), with the understanding that when the bonds and mortgage of the railroad company, to be given in payment for the lots, and which had to be executed in Pittsburgh, were returned from there, the deeds were to take effect, as of May 1, 1860, and *if the bonds were not returned, the deeds were not to take effect at all; that the bonds were not returned to him (the witness) from Pittsburgh until the Fall of 1860; that he (the witness) should not have delivered or recorded the deeds until the bonds came*; blocks 70 and 71 were purchased at \$340,000; the bonds and mortgage are dated and bear interest, and interest has been paid on them, from May 1, 1860; that there was a negotiation for the sale of said blocks 70 and 71 in the Fall of 1859, but it fell through; it was in writing.

25-26 4. **J. H. Moore**, a witness for plaintiff, testified :

That Price, Morris & Co. occupied said lots for coal, and as coal dealers in 1860; that he (witness) as agent of plaintiff, saw Price about Nov. 1st, 1860, and wanted him to pay at the rate of \$1200.00 per year for each lot, but witness and Price did not agree upon terms; that in the Winter of 1860, the President and Vice President of the Company offered to Price to take of him \$1800.00, but he declined, said \$1200.00 was the best offer he would make, and wanted a deduction on account of the part the Company had taken and occupied; that in Summer of 1861 witness offered to Price to take \$1500.00, and, upon Price declining, witness offered to take \$1200.00; that the railroad took possession of a strip 30 feet wide across the lots, about the *middle of November*, 1860, but didn't use it for railroad purposes until December or January following; that the strip was 114 feet from Canal street—lots from 260 to 275 deep.

QUESTION BY PLAINTIFF'S COUNSEL: How much did it interfere with the use? ANSWER. I took a strip 30 feet wide, and reduced the room for storage to that extent; I think he had plenty of store room without that; saw vessels unloading, I think, there; most of the coal was on the east side, and to get out coal from the yard, the defendants had to pass over the track.

Cross-Examination.

That the interview between Price and the President and Vice President took place in the Winter of 1860-1861 ; it (the use by the railroad) may have been an inconvenience, but no special damage ; that Price told witness at their first interview that he had told Talcott he was not going to pay as much rent for the next year, 1860, as he had for the year preceding.

27-8-9 5. **Mancell Talcott**, a witness for plaintiff, testified :

I am grantor in deed of lot 2 to plaintiff ; that defendants occupied lot 2 since 1856, and were in occupation in 1859, and paid, for 1859, he thinks, at the rate of \$1200.00 ; that, after the arrangement with the railroad company, by us, to sell to them, he had a talk with defendants ; told defendants *he wanted them to occupy the lot the same as though no trade was in contemplation with the railroad company, and pay a reasonable rent ; that one trade with the company had fallen through, and this might,* and I wished them to pay us a reasonable rent ; defendants thought the lot would not be worth as much the coming, as it had been the past year, on account of the depression of the times ; we told them they must pay us a reasonable rent ; no rate was fixed ; this was the conversation. *Nothing agreed about the rent, except it was to be a reasonable one ;* lots in neighborhood were renting for from \$1000.00 to \$1200.00, without any obstructions ; I think that it was *not in contemplation* in the *Spring* of 1859, that the *railroad* should *pass through* the lots, as there was *no provision for abatement* in the lease ; that the deed from witness and Singer was intended to take effect from May 1, 1860 ; Crawford's lot was worth the same rent as ours for the year 1860.

Cross-Examination.

That it was expressly agreed between Winston and witness, *that Winston should hold the deed and not record it, nor make any use of it, nor do anything with it, until the bonds and mortgage came from Pittsburgh ; if the bonds didn't come, the deed was to be returned to witness ; if they*

did, and were given to witness, the deed was then to take effect from May 1, 1860; Winston was to do nothing with the deed until the bonds came and were given to me. It was agreed at the Briggs House meeting, between the owners of the lots and the company, that the papers should be dated and take effect from May 1, 1860; that if the bonds and mortgage were not executed and returned, the owners of lots were to have rents; if the railroad company perfected their trade, they were to have the rents; if not, we were to have them. There was no special agreement with defendant as to amount or time of payment of rent; the former lease had been for quarterly payments. I remarked to defendants that we should collect no rent until we found out whether the trade would stick. I should not be willing to give more than half price for the rent of lot with railroad through it. I am in the stone business. The deed from Singer & Talcott was not deposited with Winston until after its acknowledgment. I think the conversation with Price was about May 1, 1860.

Examination-in-chief, resumed.

That he (witness) had doubts about the company going through, as they had backed out once, and might again, and we had lost by it and felt sore about it. The dock was in fair condition.

9, 30, 31, 6. **Zenas Cobb**, witness for plaintiff, testified: Price, Morris & Co. had occupied lot 3 previously; I think they paid in 1856 and 1857, \$4,000.00, for 1859, \$1,200.00; there was a deduction made in 1859 on account of a decrease of rents in the city, and because it was anticipated that the railroad would occupy a portion. At the time I made the bargain with Price, I supposed the lot was then or would be soon sold to railroad company, and my reason for placing the price at \$1,200.00 was the expected sale to the railroad, and occupancy by them. I said to him I did not want to settle with two parties; that, if I sold to railroad company, they should have the right to go through without deduction of the rent. I supposed the lot would be taken by the railroad company in 1859, or before May, 1860. He was to pay for that year at the rate of \$1,200.00. He, however, stipulated that if he was obliged to move his

coal, he should have pay for moving it, which I assented to. The south end of the dock was very much dilapidated and out of repair ; no deduction on that account was made ; think Mr. Price said something about repairing the dock ; I answered that Crawford would not invest a cent on it ; that, if it was out of repair, he must fix it ; that may have had something to do with fixing the rate at \$1,200.00, as I think it less than the property was worth. The deed to railroad company was to take effect from May 1, 1860 ; papers to be made and dated as of that day, and interest was to run from that day. I collected the first six months interest, due Nov. 1, 1860, amounting to \$1,110.00.

Cross-Examination.

That conversation was in Fall of 1859, with Price ; that deed from Crawford to the railroad company was left with Winston as *an escrow*, and was not to pass out of his hands until the bonds for their purchase came back ; that the contract was not consummated until the bonds came, and were delivered to witness ; we had to give them time to make out the bonds and mortgage ; that they (the vendors of the lots) did not call for the bonds until October or November, when they got them ; that he (witness) understood the sale to be a positive one, but *the title was not to pass until the bonds were delivered* ; that he (witness) might have told Price that it was not probable the railroad would go through, but distinctly reserved the right for them to go through if they wished to.

31-32 7. **Russell Green**, a witness for plaintiff, testified :

That he knew lots in question ; had a lumber yard on adjoining lot, through which railroad track ran ; that he estimated rent from May 1, 1860, to May 1, 1861, at \$1,600 each lot ; railroad track put through in Fall of 1860 ; that one-eighth ought to be deducted on account of track going through from time occupants were incommoded, which time witness supposed to be six months.

32-33 8. **R. H. Foss**, a witness for plaintiff, testified :

I had an agency to purchase some lots on West Side ; the purchase of the lots was to take effect from May 1, 1860 ; at the time of the negotia-

tion for the purchase I occupied lot 1, block 71, and I made an arrangement with the railroad company that they should come through 114 feet East of Canal street, and take 30 feet of my lot, and I was to occupy the balance. Mr. Barnard was doing business for Price, Morris & Co. I don't know whether he was a partner there; I knew he was afterwards. I told him the arrangement I had made with the railroad. He asked if he could stay there. I told him when the track would come through, and that he had better go and see the President. I told him the track would not be laid till Fall. I afterwards saw the President of the railroad, and told him what I had said to Barnard, and he said it was all right. I told him (Barnard) they could have the lots for a fair rent, amount not stated; I told him to go to the railroad folks; that he had better see them; that I had seen them, and they said he could stay. I learned afterwards that he did not call. I had a lot there and rented one; I think if the track had not gone through, rent was worth \$1,250.00 apiece; under the circumstances of their knowing that the track was to go through, they were worth \$1,000.00 each a year. This conversation was about May 1, 1860, or along in May; can't tell which.

Cross-Examination :

That he (witness) was acting to get railroad located there; that railroad agreed to pay \$340,000 for the two blocks, and witness got the owners to agree on the price.

33-34 9. **John Sheriff**, a witness for the plaintiff, testified :

That they (witness and somebody else) paid \$1,000 a lot; that the said lots were worth from \$1,000 to \$1,200; that we were allowed one-eighth deduction for the railroad track; that the railroad ought to pay expenses of moving coal; that the deduction should run from the time the railroad went through; that his (witness') lot was 400 feet deep.

Cross-Examination :

That the lots would be worth from \$1,000 to \$1,200 when *in good condition* with a good dock fit to do business on; that \$250 is a fair allow-

ance, in absence of any interruption except the railroad track, if the docks were good.

34-35 10. **James H. Rees**, witness for plaintiff, testified :

That he was real estate broker, and did not *know*, but thought, from general knowledge, that lots in that vicinity would rent for from \$10 to \$12 a foot front ; that the said lots are 99 feet front each.

Cross-Examination :

That his said estimate is on the usual depth of 300 feet ; if the lots were only 260 or 275 feet deep the rent would be diminished in that proportion ; *that if 30 feet of the dock was gone of one lot, and 30 feet of the other lot was in poor condition, it would diminish the value from his estimate 25 to 30 per cent. ; that the taking of 30 feet for a railroad track would, in his opinion, further diminish the value of the rent materially, say as 60 is to depth of the lots ; that his estimate of from \$10 to \$12 is based on a lot in good condition, with a good dock, and without any interruption.*

37-3 8 1. **W. E. Johnson**, a witness for defendant, Philip J. Price,
39-40 testified :

I was in the employ of Price, Morris & Co. in the Fall of 1860 ; am now in business for myself ; I know where property is ; I was employed on the property in 1859 and 1860 ; I think about \$1000.00 each was a fair rent if the lots had *had good docks*, and there was *no railroad track* through them ; one of these lots had no dock at all, and the other was a mere skeleton of a dock ; we were at very great inconvenience in hauling coal ; we made a temporary dock in the spring, which soon after was washed away ; we managed to unload coal on these lots, but it took more time to unload ; many of the spiles were gone or rotten, and there was water for *thirty feet from the east end of the lot or dock* ; we put in some new timber, which cost \$250 ; the skeleton dock also needed a good deal of planking and repairing, so that the horse could walk on it in unloading ; we could put no coal on either of them ; they were useless

for that purpose ; we were obliged to build up from the water a temporary staging every time a vessel came in, in order to unload her ; it was a temporary staging, and the water would wash it away ; the railroad track was put through about November 1, 1860 ; I was notified by the President of the railroad company that they wanted the property to put down the track ; this was at the time they were laying the track, and they had got up near the lots ; I went to dinner, and when I got back they were taking down the stable on the lots ; I got them to wait until we could move the barn on the lots ; we moved the building and they put the track through ; they broke the building down that was on the south line. After the track was laid down, it was a great interruption ; the scales were on the west side and the coal on the east side, and all the coal had to be drawn across the track ; they were almost continually switching there and making up trains on the lots ; the cars were frequently left on the lots, and we had to move them, or, when we could not, wait until they were moved by the engine.

[The witness was here proceeding to state the extent of interruption, on account of the passing and standing of the cars on the lots, and the damage by this delay to the business of the defendants, Price, Morris & Co., when the counsel for the plaintiff objected thereto, and the court sustained the objection and excluded the evidence on this point, to which ruling of the court, the defendant, Price, by his counsel, then and there excepted.]

Witness proceeded and said : That he would not give anything for lots in their condition for such business as Price, Morris & Co. were then in.

Cross-Examination :

That they had occupied the lots in 1859 ; that he (witness) received notice in August, 1860, that the railroad were going to put the track through ; that on that account they sold coal at less than the market price to get it out of the way, and moved 30 or 40 tons to make room ; that they had 8000 tons on hand ; in the Spring had sold nearly all, and had 100 tons left.

Direct Examination, resumed :

That there may have been a vessel unloading that day ; that they sent

the vessel up to another coal yard they had hired on 1st November, 1860, at about the time the track went through, on account of the railroad taking the lot for a track ; that they hired a man to take charge of the other yard and sell coal, and sent several cargoes there after November 1, 1860, and received no more on the lots in question.

40 2. **Alexander Officer**, a witness for defendant, testified :

That from May 1, 1860, to May 1, 1861, he rented lot adjoining lots in question for a lumber yard, and paid **\$1000.00** for it that year; that his lot was *in good condition, had a good dock*, and was **290** feet deep ; that they (the company) paid him \$150 that year for the interruption ; that *coal business would be more injured by such interruption than the lumber business* ; that rent of said lots was not worth more than \$800 for that year, considering the docks, and this value is without taking into consideration the interruption by the railroad ; that lumber yards were more plentiful than men that year ; that he (witness) had paid \$3000.00 for the lot he hired in '60 and '61 for \$1000.00.

40-41 3. **Jacob Rudler**, witness for defendant, testified :

That from May 1, 1860, to May 1, 1861, he rented a lot one block south of lots in question, as a lumber yard, for \$800.00 : that it *was a corner lot and had a good dock* ; that there was reservation of the part the railroad company took, from his lease ; that he was told where the track would be put through, and piled nothing on that part of the lot.

Cross-Examination :

That \$800 would be fair rent if dock was *in good condition, if not, rent would be much less* ; a poor dock is a very serious objection ; *it is the dock which gives value to such lots*, and neither coal nor lumber can be unloaded without very great expense and inconvenience where there is no dock ; that coal business would be injured as much as lumber business by a bad dock.

41-42 4. **Edward Dickinson**, witness for defendant, testified :

That he was in *coal business* in 1860 and 1861 ; that the rent of said lots for that year would be worth \$800, *if docks were good and no track ran through them* ; that with *one dock gone and the other out of repair*, there *ought to be a deduction of from one-third to one-half* from the rent ; that he would not have the lots in question, nor *consider them of any value in the coal or wood business in the condition they were in.*

42 5. **Himrod**, witness for defendant, testified :

That \$900.00 would be fair rent for said lots for year from May 1, '60, to May 1, '61, *if they were in good condition* ; that there should have been a deduction of \$100 from each lot on account of the poor condition of the docks.

43 6. **Howard**, a witness for defendant, testified .

That he rented a lot a few blocks south of lot in question from May 1, 1860 to May 1, 1861, for the lumber business, for \$5.00 per front foot ; that he had been renting lots on both sides of the river for his business for 14 years ; that ~~\$800.00~~ a lot were all the lots in question were worth for that year *if the docks were in good condition* ; that *if one dock was gone*, the lots would not be worth *much of anything* ; that it is the *dock* which gives value to *river* lots ; that the railroad track running through, would impair their value very much. Rents were very low that year.

43-44 7. Testimony of **M. DeClerque**, taken on a former trial and admitted by consent, as follows :

That he knew lots in question and had rented many wharf lots ; that from may 1, 1860, to May 1, 1861, lots in question would rent from \$600 to \$700 a year ; that loss of docks would injure them one third ; that the track running through them would injure their value as a coal yard from 25 to 40 per cent of their value.

The foregoing was all the evidence in the case.

53 **Verdict** for plaintiff.

53 **Motion for new trial**, upon the following grounds:

53-54 **1.** The verdict was excessive, and against law and the evidence given on the trial.

2. The court erred in giving on the trial of said cause certain instructions asked for by plaintiffs, as well as its own, and refusing to give certain other instructions asked for by the defendant, and in admitting certain evidence on the part of the plaintiffs, and refusing to allow certain evidence as to the interruption and damage to defendant's business in consequence of the railroad track across the lots in controversy, and the blocking up of the passage from one end of said lots to the other, by the cars of the plaintiffs, in standing on the track, and the making up of trains on said lots, &c.

3. The verdict is informal, improper, uncertain, and insufficient.

55 **Motion denied.**

55 **Judgment on Verdict.**

55 **Exception** to order overruling motion for new trial and rendering judgment on verdict.

56 **Appeal Bond.**

57 **Certificate of Clerk.**

Philip Price imp^rte
 vs
 Pittsburgh & Wayne
 Chicago R.R. Co. } Appeal from
 Superior Court
 of Chicago

Now comes the said Appel-
 lee by Winston its Atty and
 enters its motion herein to
 dismiss the said appeal herein
 and for cause assigns

By the Record pages 19 + 20 - it
 appears that on the 27th day
 of March 1863 the Def^t be-
 low prayed an Appeal to
 this Court which was then
 there allowed upon the
 filing of an Appeal Bond
 within ¹⁰ days thereafter
 which time would elapse
 upon the 6th day of April
 1863 -

And by page 21. of Rec-
 ord it appears that said
 Bond was not filed until
 the # 7th day of April 1863
 which was not until the

12th day or 11 full days
after the allowance of the
appeal Compting from the
date of the order

Carson v. Mink & Co 3. Scam. 168.

Winston for
Appellee

¹⁷² Philip ¹⁷² Price

vs

Pittsburgh & L. Wayne
Chicago R.R.

Motion to Dismiss
Appeal

Filed May 11, 1864

L. L. M. & W.

Winston

Supreme Court of Illinois.
Third Grand Division.
April Term A.D. 1864.

Philip D. Price, unpladed &c
Appellant

vs

Pittsburg & Fort Union
Chicago Rail Road Co.
Appellee.

It is hereby stipulated and agreed
that the abstract, as amended and
filed in above Entitled cause said
amendments having been made in
writing before such filing, shall be
considered as the correct abstract in
said cause and that the other abstracts
filed shall be made to correspond
therewith, and it is further stipulated
that the ^{consideration of the} debts referred to in the Record
~~were~~ was the sum of thirty nine —
thousand one hundred and twenty
dollars each

Wm. F. Bailey

Chicago April 23^d 1864. Counsel for Appellant

J. H. Winston

Counsel

for appellee

172 172
Supreme Court of Ill
Third Grand Division

Philip J. Price, complainant
vs Appellant
172 vs

Pittsburg & Fort Wayne
& Chicago R.R. Co
Appellee

Stipulation

Filed April 25, 1864.
L. Seland
clk.

Philip S. Price
imprudent & Co. Appellants.

vs

Pittsburgh, Fort. Wayne,
& Chicago R. R. Co.

Appellees

Supreme Court
of Illinois

April Term

1884

It is desired in answer to a suggestion
in the brief of Appellant's Counsel
that one of the deeds conveying title
to the Rail Road Company of part
of the premises for the occupation of
which by Appellant a recovery was had
below was not acknowledged till
May 12th and consequently that
the ruling of the Court below recognizes
the principle that the title to land
can be carried back by parol - today
that the point as to the time when
that deed was acknowledged was not
made in the Court below and is not
determined by the instructions

The
particular attention of this Court to the
instructions which were given for
the Appellees and which were referred
to the Appellant is respectfully invited
It will be seen that the former makes

no point as to the time when the title
of the Plaintiff accrued - and the
latter expressly limit the right of
recovery to the time which elapsed
after the Bonds and Mortgages were
delivered and the Deeds placed
upon records and ignore the effect
of the agreement of the parties as to
the time when such delivery should
take effect - which latter element
is conceived to be material -

The point is
also insisted upon that the delivery
to the Solicitor of the Rail Road
Company accompanied simply by
instructions not to record the deeds
or make use of them till the Bonds
and Mortgages should be returned
from Pittsburgh made the delivery
in the first instance absolute to
the Company - and we refer to the brief
already filed as to this point

Attention is
also called to the stipulations filed
as to the value of the lots and the
lease of one of them by Singer & Talbot
to the Appellees for the preceding year

J. R. Winston
of Counsel
for Appellees

Supreme Court 172
of Illinois
No. 172.

Philip S. Price
impeached &c
vs

Pittsburgh & Fort Wayne
& Chicago R. R. Co.

Suggestions for Appellee

Given May 18. 1864
J. Nelson &c

J. R. Winston
of Counsel

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Second day of March in the year of our Lord One Thousand Eight Hundred and Sixty seven and of the Independence of the United States of America the Eighty ninth

Present, The Honorable

Chief Justice of the }
Superior Court of Chicago. }

William H. Lyman
Grant Gordon

Judges.

Joseph H. May Prosecuting Attorney.

Daniel J. Hammond Sheriff of Cook County.

Attest, James H. Carter, Clerk.

Be remembered that heretofore to wit, on the Twentieth day of August in the year of our Lord one Thousand Eight Hundred and Sixty one the Pittsburgh Fort Wayne and Chicago Rail Road Company by Charles Wmston their attorneys filed in said Clerk's office of said Court this Process for Summons which in words and figures following to wit

Pittsburgh Fort Wayne }
Chicago Rail Road Company }
73 }
Philip J. Price and David Morris }
Sole Proprietors of }
Chicago }
Superior Court of Chicago }
Sept Term 1867 }
Summons }
Damages \$5000 }

2
to shut me please I am summons as
above and lay the damages at Ten thou
sand Dollars.

Allegedly Minton
Piff. ally

Chicago Aug 19. 1861.

and afterwards to put on the day and year
aforesaid were issued out of the Clerk's office
of the said Court. the Peoples writ of summons
which unto the Sheriff return thereon is
in Words & figures following to wit,

State of Illinois } ss
County of Cook.

The People of the state of
Illinois to the Sheriff of said County. Greeting
We Command you that you summon
Charles S. Price and David Morris persons
parties of William S. Price & they shall
be found in your County. personally to be.
and appear before the Superior Court of
Chicago of said Cook County on the next
term thereof to be holden at the Court House
in Chicago in said Cook County. on the first
Monday of September next. to answer unto
Edmund Holt Wayne & Chicago Rail Road
Company in a plea of Trespass on the case
upon promises & the damage of the said

3.

3.

Plaintiff is said in the sum of Two Hun-
dred Dollars

And have given them and due this
note with an endorsement thereon in what
manner you shall have executed the same

Witness Nathl. Kimball Clerk of our
said Court and the seal thereof at Chicago
aforesaid the 23rd day of August 1861.

Nathl. Kimball Clerk

Given by reading from Court to the witness
named Philip J. Oliver the 23rd day of
August 1861. (the other defendant not found
in my C)

A. C. Keating Sheriff
by J. Sumner & Deputy.

And afterwards by it on the twenty third day
of August in the year aforesaid the said
Pittsburgh Fort Wayne & Chicago Rail Road
Company by Blodgett & Winston its attorneys
filed in said Clerk's Office of said Court this
declaration which is in words & figures following
to wit,

State of Illinois
County of Cook } 00

Superior Court of Chicago
of the September Term 1861
The Pittsburgh Fort Wayne

and Chicago Rail Road Company Plaintiffs
 in this suit by Blodgett & Austin its attorneys
 Complainants J. Philip I. Puel and David M. Puel
 who are surviving partners of William Puel
 who were summoned & c. in a plea of trespass
 on the case upon promises

For that whereas heretofore on the first
 day of May in the year of our Lord one thousand
 Eight hundred and Sixty one the said defend-
 ants at Cook County of said state were indebted to
 said Plaintiffs in the sum of Four thousand
 Dollars, lawful money of the United States for
 the use and occupation of certain messuages
 and premises with the appurtenances of the Plaintiffs
 by the said defendants and at their special
 instance and request and by the suffering and im-
 ployment of the said Plaintiffs for a long time be-
 fore then elapsed, had used occupied &
 possessed & enjoyed, and being so indebted
 the said defendants in consideration
 thereof afterwards on the day and
 year aforesaid at Cook County of said state, in-
 debted to and then and there faithfully promised
 the said Plaintiffs to pay at the last mentioned
 sum of money when they should be thereto
 after and requested.

And whereas also the said defendants, ^{afterward}
 on the day and year last aforesaid at

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Cook County of said were indebted to the said Plaintiff in the further sum of Five Thousand Dollars, of like lawful money for the use and occupation of certain other premises mortgage and tenements with the appurtenances of the said Plaintiff by the said defendants and at their special instance and request, and by the difference and permission of the said Plaintiff for a long time before then elapsed and were occupied property and by the said Plaintiff being so indebted they the said defendants in consideration thereof after wards to wit on the day and year last of said at Cook County of said undertook and then and there faithfully promised the said Plaintiff to pay to the said sum of money last mentioned when they should be thereunto afterwards requested

And whereas also afterwards to wit on the day and year last of said ^{at Cook County of said} in consideration that the said Plaintiff at the like special instance and request of the said defendants had before that time suffered and permitted the said Defendants to have hold use and occupy property and in of certain other mortgage tenements and premises with the appurtenances of the said Plaintiff and that they the said Defendants had according to the last men-

and sufficiency and permission of the said
 Plaintiff had holden ^{occupied} used, and enjoyed,
 the same for a long space of time then elapsed
 by the said defendants, undertook, and,
 then and there faithfully promised the said
 Plaintiff to pay it, so much money as it
 therefor reasonably deserved to have, of the
 said defendants, and when they the said
 defendants should thereunto afterwards re-
 quested And the said Plaintiff avers
 that it therefor reasonably deserved to have,
 of the said defendants the further sum of ^{Five} ~~Five~~
 Thousand Dollars like lawful money at Cook
 County aforesaid whereof the said defendants
 afterwards paid on the day and year aforesaid
 at Cook County aforesaid had notice

And Whereas also the said defendants
 afterwards took on the first day of May in
 the year of our Lord one thousand Eight Hun-
 dred and Ninety one to wit at said Co-
 unty aforesaid were indebted to the Plaintiff
 in a large sum of money to wit Five Thousand
 Dollars for lawful money, before that time lent
 and advanced to said defendants by said Plff.
 at said defendants request and also in the like
 sum for money before that time paid laid out
 and expended for said defendants by said
 Plaintiff at the like special request of said

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defendants, and in the like sum of money before that time had and received by said defendants to and for the use of said Plaintiff and also in the like sum for goods wares and merchandise before that time sold and delivered by the said Plaintiff to said defendants at the like special instances and request and also in the like sum for the labor care and diligence of the said Plaintiff before that time done and performed by said Plaintiff for said defendants and in the like instances and request of said defendants and bring so indebted said defendant in consideration thereof then and there undertook and promised to pay said Plaintiff said several sums of money above mentioned when the same afterwards requested.

And whereas also the said defendants afterwards went on the same day and year last aforesaid at the place aforesaid accounts together with the said Plaintiff of and concerning divers other sums of money before that time due and owing from the said defendants to the said Plaintiff over then and there being in arrears and unpaid and upon such accounting the said defendants were found to be in arrears and indebted to the said Plaintiff in the further sum of Four thousand dollars and bring so

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formed in great and indebted to the said
 Plaintiff the said defendants in consideration
 thereof afterwards lived on the same day and
 year last aforesaid and at the place aforesaid
 undertook and then and there faithfully pro-
 mised the said Plaintiff to pay into the said
 Plaintiff the said sum of money last above
 mentioned, when they the said defendants
 should be thereunto afterwards requested,
 yet the said defendants not regarding their
 said promise and undertakings but continuing
 &c. although often requested do to have not
 paid said Plaintiff either of said sums of
 money above mentioned or any part thereof
 but do to do have neither wholly neglected and
 refused and still do neglect and refuse to do
 damage of said Plaintiff of. Jure Honors and
 Dole. *How they bring this suit &c.*

Copy of account owed on
Price & Mingo's purchasing partner of J. Price
To. Pittsburgh Port Wayne & Chicago Rail R. Co.
By one year rent of Lovers Lot on Canal Street
Chicago being Lot No. 13, Block 71, school section
Addition to Chicago = \$5000.⁰⁰/₄

9 Price & Morris vs. P. & W. & B. R. Co. Dr.

To money lent & advanced	\$5000.00
To money paid laid out & expended	\$5000.00
To money had & received for the use of said Plaintiff	\$5000.00
To goods & wares & Merchandise sold & delivered	\$5000.00
To labor and services	\$5000.00
To balance due on account of	\$5000.00

And it is further ordered that the Third day of September of the year of our said the same being one of the days of the September term of said Court the following among other proceedings were had and entered of record in said Court to wit

Pittsburgh & West Va. and
Chicago & Lake Road Company

vs.
Philip I. Price and David Morris

Respondent.

On motion George F. Baily defendant's attorney it is ordered that the rule to plead herein be and is hereby extended from this day till the third Monday of the present term of the Court.

And afterwards to wit on the sixteenth day of the month and year aforesaid, the said Philip I. Price impleaded &c by George F. Baily his

attorney filed in said. ¹⁰bluffs office of said
 Court. In affidavit of merits, and. Pleas
 which are in Words and figures following to wit

State of Illinois }
 County of Cook } ss

Pittsburgh Fort. Wayne.
 Chicago Rail Road Company

Superior Court of
 Chicago

^{vs}
 Philip J Price. David Morris

I Philip J Price. one of
 the defendants in the above entitled cause do hereby
 say that said defendants have a good defense
 to said action on its merits as I believe
 and entreat you to this.

Wth done at Chicago Ill. 1867 P. J. Price

Pittsburgh Fort. Wayne &
 Chicago Rail Road Co

Superior Court of
 Chicago

Septem^r 1867

^{vs}
 Philip J. Price impleaded
 with David Morris.

And now comes the
 said Price by Geo H Bailey his attorney and

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11

defends the wrong and injury, where it says
that he together with the said David Monro
did not undertake or promise in manner &
form as set forth in the Plaintiffs declaration
& of this he puts himself on the Country &c;
And Pleff doth the like by
Blodgett & Munster his attys

For a further defence on the behalf of the
defendant it is shewn that he had and obtained
the same license says actio non because
he says that at the time of the commencement of
this suit there was no such corporation as the
Pittsburgh Port Wayne & Chicago Rail Road
Company

And of this the said Price puts
himself upon the Country &c

By Geo. F. Bailey
And Plaintiff doth
do like by
Blodgett & Munster
his attys

And afterwards to wit on the ninth day
of January in the year of our Lord one thousand
eight hundred and sixty two the same
being one of the days of the January Term of
said Court the following among others

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preudenge now had and intend of record in
said Court to wit

Pittsburgh Fort Wayne and
Chicago Rail Road Company.

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do sumpt

Philip L. Puce and David Harris sworn &c.

This day the cause being called for trial
comes said plaintiff by Blodgett Quistow to attor-
neys and said defendants by George H. Bailey
their attorney also come. and gives being found
herein, it is ordered that a jury come, where
upon comes do Jury of good and lawful men to
wit: Amen Doyle, Jacob Sharr, Ira Snow, John
Carpenter, William Wauto, John O. Vogt, Herman Snow,
Frederick Ringel, John Grand, Robert C. Clark, Walter
Arthurland and O. H. Alger, who being duly
elected by the jury the jury being sworn as
before and sworn back of the testimony &
the same being read and being sworn it is
ordered that the jury deliberate and meet
in Court, to begin on coming
in and opening trial of

And afterwards took on the Tenth day of the
month and year aforesaid. the same being
one of the days of the January Term of said
Court the following among other proceedings

more had and Culma & per ordm said Court.
work.

Pittsburgh & Wayne
Chicago Rail Road Co

⁷⁵
Phillip I Price & David Harris
Sims & Co

Accountant
"

This day a grand jury comes do
Plaintiff H. J. Bailey & Co. vs. H. J. Bailey & Co. and
the defendant H. J. Bailey & Co. and
also the grand jury comes do
on yesterday for the trial of said cause. also
comes and after hearing all the ~~testimony~~ evi-
dence, arguments of counsel and motions of
the Court retire to consider of their verdict. and
the hour of adjournment having arrived it is order-
ed upon agreement of the parties that when
they shall have agreed upon a verdict
they shall reduce the same to writing sign
and seal the seal the same. and after said
separate and be discharged from further attend-
ance.

And afterwards to wit on the Eleventh day
of the month of year last aforesaid the
same being one of the days of the January
Term of said Court. the following among
other proceedings were had and returned.

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of record in said Court book,

Pittsburgh Fort Wayne &
Chicago Rail Road Company

vs.

Phillip I Price and David Mott
Defendants

Assumpsit

This day again comes said
plaintiff by Blodgett & Mott to attorney and
said defendants by George J. Bailey attorney
also come, and the jury having submitted their
verdict say we do pay fine and costs for said
plaintiff and award to damages herein
against both said defendants the sum of
Eighteen hundred dollars.

And thereupon, the said defendants submit
their motion herein for a new trial in said
Cause.

And it is ordered that the twenty first day of
February next be appointed, the same
being one of the days of the February term of said
Court, the following among other proceed-
ings were had and entered of record in said
Court book.

Pittsburgh Fort Wayne, and
Chicago Rail Road Company

vs.

Assumpsit

Philip S. Price vs David Morris and wife

This day again comes said Plaintiff by Blodgett
 Norton to attorneys and said defendants by
 George F. Bailey their attorneys also come and
 the cause coming on to be heard upon the
 motion of said defendants heretofore submitted
 herein at do January Term last past of this
 Court and the Court in said cause and
 the Court in said cause and the Court
 in said cause in premises of do opinion
 that the answers filed by said defendants in
 support of their said motion are sufficient &
 therefore considered that defendants motion
 be sustained and it is ordered that a new
 trial be allowed said defendants in said cause

And afterwards to wit on the fifth day of
 March in the year of our Lord one thousand
 Eight hundred and sixty three the same being
 one of the days of the March term of said
 Court the following among other proceedings
 were had and entered of record in said
 Court to wit

Columbus Fort Wayne and
 Chicago Rail Road Company

Philip & Pnce & David Mays Surviving
Partners of William Pnce

The cause being brought forth as comes
said Plaintiffs by Blodgett & Austin their
attorneys and said defendants by George
H. Pally. their attorney also come and goes
being joined herein of the said ^{defendants} Philip Pnce
only the other defendant not being served. It is
ordered that a jury come, whereupon comes the
jury of good and lawful men to wit Gustavus
Chubb, L. Van Orsdel G. W. Brooks Alexander
Roberts, H. P. Hatch D. P. Jacobs John Kelly Robert
Bergus G. E. Gerts A. H. Heard J. H. Jewell
and Patrick O'Neill who being duly elected
and did swear to try the issues joined herein
as aforesaid after hearing part of the testimony
and finding a disagreement having arrived it is
ordered that the agreement of the parties that
the jury should be discharged from the Court on com-
ing in and opening during common morning

and afterwards brought on the sixth day of
the month and year aforesaid the cause
being one of the days of the said March
Term of said Court the following among
other proceedings were had and entered
of record said Court to wit,

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Pittsburgh Fort Wayne and
Chicago Rail Road Company

vs. ^{re} ^{assumpsit}
Philip J Price and David Morris
Selling Partners of Melian J Price

And on that day again comes said Plaintiff
by Blodgett Smith the attorneys and the said
Philip J Price and David Morris and the said
all my ^{for the use of said cause also come up on request} and the other defendant
D. J. Price having been served with
process and the jury impanelled herein on
yesterday, and after hearing all the evidence
arguments of counsel and the instructions of
the Court, retire to consider of their verdict
and afterwards return into Court, submit
their verdict and say, we the jury find
and award herein unto the said Defendant
Philip J Price for the said Plaintiff and
my assess Plaintiffs damages herein against
the said Defendant Philip J Price implead
ed with David Morris the sum of Eighteen
Thousand Dollars.

And thereupon the said defendant, Philip
J Price submits his motion herein for a new trial
in said cause.

And afterwards on the Eighteenth day

of the month and year last aforesaid the
 Court being yet of the March term of said
 Court the following among other proceed-
 ings were had and entered of record in said
 Court book.

The Pittsburg Fort Wayne and
 Chicago Rail Road Company,

vs. ^{for new trial w apt.}
 Phillip Price and David Morris
 surviving partners of Melan Price.

And now at this day again comes said Plain-
 tiff by Braggett & Watson its attorneys and
 the said defendant Phillip Price implea-
 ded &c by George H Bailey his attorney
 also comes, and this cause coming on now,
 to be heard upon the motion of the said
 defendant Phillip Price, heretofore submitted
 herein, on the 12th day of March. 1863, for
 a new trial, and counsel being
 heard thereon and the Court being fully ad-
 versed in the premises it is considered by the
 Court, that the motion of said defendant,
 for and is hereby overruled, and that a new trial
 be refused to said defendant, in
 said cause to which ruling of the Court is
 overruling his said motion for a new trial, said

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Phillip J Price then and there expected,
thereupon said Plaintiff ought to have had
judgment on the verdict of the jury against
said defendant, Phillip J Price impleaded into
David Morris for its damages rendered herein
as aforesaid

Therefore it is considered that the said
Plaintiff do have and receive of, and from,
said defendant Phillip J Price impleaded
into David Morris damages of Eighteen
\$1800.00 Dollars and costs thereof by do buy
here judgment and do assessed and assess costs
and charges in this behalf expended and
have execution therefor

And afterwards brought out the Twenty seventh
day of the Month and year aforesaid and
being that of the said March Term of said Court
the following among ^{other} process were had,
and entered of record in said Court town,

The Pittsburgh Fort Wayne
Chicago Rail Road Company

vs
Phillip J Price & David Morris

And now at that day comes said Phillip
J Price impleaded &c by George L Bailey
his attorney and prays an appeal herein

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to the supreme Court of this state from the
judgment of this Court, which is allowed
- him on filing his appeal bond in the penalty
of Three Thousand Dollars, with security to be
approved by one of the Judges of this Court, and
to file with his Bill of Exceptions within ten
days from this day.

and afterwards to wit on the 7th day of
April in the year aforesaid the said ~~Defendant~~
Defendant by Geo. H. Bailey his attorney filed
in said Court his Bill of Exceptions and
appeal bond which are in Words and figures
following to wit,

The State of Illinois vs
Geo. H. Bailey
Chas. S. Lee

This cause coming on to be heard on the
8th day of March A.D. 1863 before the Hon.
Jas. H. Higgins one of the Judges of the Supreme
Court of Chicago the Plaintiffs to said cause the
juries on their part introduced the following
evidence.

1. Nanahy Dred. Lemuel Crawford & Louis a
his wife stated 20th April A.D. 1860. acknowledged same day and filed for record on the
5th day of November A.D. 1860 in the Recor-
der Office of Cook County Illinois purporting to
Convey to the Plaintiffs Lot Number 3. of
Block Twenty one School Section Addition to
Chicago

1. Nanahy Dred from Horace M. Singer &

Daniel & his wife & Mancel Lulcott & Mary & his wife of Chicago to the Plaintiff of Lot 2 in Block 7 in School Section Addition to Chicago dated the 1st day of May A.P. 1860. acknowledged on the 14th day of May A.P. 1860. & filed for record in said Recorder's office of Cook County on the 18th day of October A.P. 1860

The plaintiff then called Frederick H. Thuston who testified as follows. I am the solicitor of the Plaintiffs Corporation and have been such since January 1st 1859. I know of the purchase of Lots 2 & 3 in Block 7 in School Section Addition to Chicago from Crawford and Singer & Lulcott. They were bought in the fall of 1859 and Spring of 1860. By the understanding of the parties the deed was to take effect on the 1st day of May A.P. 1860. The Deeds for the Lots of Crawford & Singer & Lulcott shortly after were received. With me was the understanding that when the bonds & mortgage of the Pull Road Co. to be given in payment for the Lots & which had to be executed in Pittsburgh were returned from there the deeds were to take effect as of the 1st day of May A.P. 1860. (If the Bonds were not returned the deed was not to take effect at all.)

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The bonds were not returned to me from Potts
 until the fall of 1860. I should not have
 delivered or recorded the deeds until the bonds
 came. The bonds & mortgage dated & bear
 interest & interest has been paid on them
 from May 1 1860. Blocks 70 & 71 were purchased
 by the Plummers at \$340.00.

There was a negotiation for sale of these
 blocks in the fall of 1860. It fell through it
 was in the hands of the Plummers.

The law Commission here calls for the agree-
 ment & it is produced and is as follows.

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Plaintiffs then called J. H. Moore who
 being duly sworn said. I am now and was
 in 1860. General & Commercial agent of
 Plaintiffs & as such have charge of their
 Real Estate Price Mm & Co occupied
 the Lots in question for coal & as coal
 dealers. I called on them about the 1st of
 Nov. 1860. about the 1st of Nov. rent was
 due. I ~~asked~~ ^{asked} them on the premises
 to ~~pay~~ ^{pay} ~~me~~ ^{me} I wanted ~~to~~ ²⁴⁰⁰ a lot or at the
 rate of \$1200 a year for each lot. Mr Price
 & I did not agree he did not want to pay
 so much. Matter remained unsettled until
 some time in the Winter when when the President
 and Vice President were here and I got.
 them & Mr Price together he wanted something
 deducted for the use of the part of the Rail
 Road. had taken & occupied they offered to
 take \$1800. and he offered \$1200. for the Lots
 that was the best offer he would make. In
 Summer of 1861. by direction of the President.
 I offered to take \$1500. He declined that and
 after more talk I offered to take \$1200. Rail
 Road took possession of a strip 30. feet wide across
 the Lots about the middle of November 1860. Did not
 use it for Rail Road purposes until Dec. or
 January following. The strip was 14 feet from

Canal shut Lots about 275 feet deep from 260 to 275 feet deep. Had not taken possession nor interposed with possession before the 1st day month of June

Question by Plaintiff's Counsel

How much did it interfere with the use of the lot? I took a shop 30 feet wide and reduced room for storage to that extent I thought he had plenty of store room. Without that I saw vessels unloading I thought them that of the canal was on the East side and to get out canal from the yard the defendants had to pass over the back

On Cross Examination he said, It was on the 1st of June when the interview took place between Price & Priest, & Vice Priest. It may have been in January or February Price sold all the canal. May have been an interference with special damage from the interference with the canal up to the present time over the canal. Mr Price told me at our first interview that he had told Mr Galeotti he was not going to pay so much rent for the next year (1860)

Mr Weston is solicitor for the company & was at that time he has charge of their legal business

The Plaintiff next introduced

I am grantor in the deed of Lot 9. to
 the Plaintiffs. Defendants had occupied
 the Lot since 1856, & were in occupation
 in 1859 and paid I think for that year
 at the rate of \$1200. After the arrangement
 had been made with Plaintiffs by me to
 sell to them, I had a talk with the defendants
 & told them that I wished them (Defendants)
 to occupy the Lot the same as you had
 until the Rail Road was in contemplation
 and pay us a reasonable rent. That the trade
 with the Co. had fallen through & thus might
 & I wished them to pay us a reasonable rent.
 They thought the lot would not be worth as
 much for the next year as the preceding
 one, on account of the depression of the
 times. We price fixed & told them they
 must pay us a reasonable rent according
 to the property in the neighborhood. This
 was the construction I am acquainted
 with rents in that vicinity worth from
 \$1000. to \$1200 without any restrictions nothing
 agreed about rent only it was to be a reasonable
 rent. I think it was not in contemplation
 the Spring of 1859 that Rail Road should
 go through as there was no provision in the
 lease for abatement. The Deed from us to

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R R Co. was intended to take effect from May 1st 1860 Crawford Lot. worth the same rent as ours for year 1860.

In his Crop Examination he said,

There was an express agreement between Mr. Winston & myself, that the deed should be held by ~~him~~ him & not recorded, & nothing done with it. And no use to be made of it until the bonds & mortgage came. If the bonds did not come the deed ~~would~~^{was} to be returned to me, if they did & were given to me the deed was then to take effect from the 1st May 1860. Winston was to do nothing with deed until the bonds came & given to me. It was agreed at the Briggs House meeting among Messrs. Lot & Company that the papers should be dated and take effect from 1st May if Bonds & mortgage were executed & returned. When we ~~to~~ ~~the~~ ~~deed~~ I should not be willing to give more than half price for the rent of Lot. with R. R. Road. through it. I am in the stone business. The deed from Prager & Talcott was not deposited with Winston until after ~~his~~ acknowledgment. There was no special agreement with defendant as to amount or time of payment of rent. The former lease had been for quarterly payments during

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to them that we should collect our rent. until we found out whether the trade would stick. If the mail to the Rail Road had not been closed within a year I should have called on Defendants at the end of the year for the rent at a reasonable rate. I should not have called on them until then if the trade had not been closed. If the Rail Road Company persisted in this, had they were to have the rent or not, we were to have them and I did not consider I had any right to call for the rent until the trade with the Company was closed if it was done within one year. I think the conversation with Price was about 1st May 1860.

Examination in Chief resumed. I had doubt about the R. Road going through they had backed out once & might again & we had lost by it & I felt sore about it.

The dock was in good form condition.

The Plaintiff then called Genas Cobb, who testified as follows. Price, Morris & Co. had occupied Lot Three previously I think they paid in the year 1856 or 1857 \$4000, for 1859 \$1200. They paid part of the rent for 1859 & part to Crawford. There was a deduction made in 1859 on account of a decrease in rents in the city and also because

it was anticipated that the Rail Road men
 occupy a portion of the time I made the
 bargain with Price I supposed the lot was
 then or would be soon sold to Rail Road Co
 and my reason for placing the price at \$1200
 was the expected sale to the Rail Road. & oc-
 cupancy by them I said to him I did not
 want to settle with two parties that if I sold
 to Rail Road Co. they should have the right to
 go through without deduction of the rent I suppos-
 ed the lot would be taken by the R R Co. in 1879
 or before May 1880. He was to pay for that
 year at rate of \$1200. He however stipulated
 that if he was obliged to move his load he
 should have pay for moving it which I
 assented to. The south end of the dock was very
 much dilapidated and out of repair no deduction
 on that account that I am aware of. I told Mr.
 Price said something about repairing the dock.
 I answered that I would not incur
 a cent. on it that if it was out of repair he must
 fix it that may have had something to do
 with fixing the rate at \$1200. as I think it
 left them the property was worth the deed
 was to take effect from the 1st May 1880.
 papers to be made & dated as of that day
 and interest was to run from that day I
 collected the first six months interest due

Nov. 1860. amounting to \$1110.

On his Cross Examination he said

The conversation with Price was in the fall of 1859. The Deed from Crawford to Price & the Rail Road Co was left with Mr. Austin as an escrow & was not to pass out of his hands until the bonds for their purchase came back.

The contract was not consummated until the bonds came & were delivered to me. We had to go to him to make out the bonds & mortgage. We did not call for the bonds until October or November when we got them. I understood the sale to be a private one but the title was not to pass until the bonds were delivered. I might have told Price that it was not probable the R.R. would go through but distinctly reserved the right for them to go through if they ~~wished~~ wished to.

Russell Green then being called for the Plaintiff's testified as follows:

I am acquainted with the property in question and with Price of rent in vicinity for 1860 & 1861. I estimate rent from May 1. 1860. to May 1. 1861. at \$1600. each lot. R.R. Road house was put through in fall of 1860. There ought to be one eighth deducted for R.R. Road

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 back from time they were inclosed by it
 which I suppose to be about six months, I
 occupied a lot on the Black Stone. The back
 went through it in same way I occupied it
 for a lumber yard.

R. St. Fop. a witness produced & sworn on
 part of Plaintiff said, I had an agency
 to purchase same lot on West side. The
 purchase of the lot was to take effect from
 the 1st May 1860. At the time of the negotiation
 for the purchase I occupied lot 1. Block 71
 and I made an arrangement with the R.
 R. Co. that they should come through 11 ft.
 feet East of Canal street & take 30 feet of my
 lot & I was to occupy the balance. Mr.
 Barnard was doing business for Price, Minis
 & Co. I don't know whether he was a partner then
 & I knew him afterwards. I told him the
 arrangement. I then made up the R. R.
 Co. asked if he could stay there I told
 him when the back would come through
 and that he had better go and see the Pres.
 I told him the back would not be laid
 till fall. Afterwards saw the President of
 the R. R. Co. & told him what I had said
 to Barnard & he said it was all right. I told
 him Barnard they could have the lot for

a fair rent, amount not stated. I told him to go to the Rail Road folks that he had better see them. That I had seen them & they said he could stay. I learned afterwards that he did not call. I had a lot done and sent one. I think if the tract had not gone through rent was worth \$1250 a piece. Under the circumstances of then knowing that the tract was to go through they were worth \$1000 each a year. The valuation was about 1st May 1886 or a year may count, which

On his Crop Examination he said. I was aching to get R Road located here. The Citizens of the West side wanted depot here but I didn't. I took hold to get it located here. The R Road Co. offered \$345000 for the two blocks. I got the owners together to agree on the price of the respective lots we agreed

John Sheriff being called by the Plaintiffs.
Testified as follows.

We paid \$1000 a lot, think the lots in question worth \$1000 to \$1200. We were allowed 1/8 deduction for the Rail Road track. Rail Road ought to pay Expenses of moving coal and the deduction should run from the time the Rail Road went through my

lot is 400 feet deep.

on cross Examination Mitnef said
When I speak of Lots being worth 10 to 1200
dollars I refer to lots in good condition with
a good dock in condition to do business on. \$250
is a fair allowance in absence of any in-
surrection except the fact of the docks
were good.

James O'Rue introduced on the part of the
Plaintiffs testified as follows.
I am a Real Estate Broker I don't know what
Lots rented for in that vicinity from personal
knowledge worth I think from 10 to 12 dollars
a foot front. They are 99 feet front each

on cross Examination Mitnef said,
my calculation is made on the usual
depth of 30 feet. If the Lots were but
20 or 25 feet the rent would be de-
minished in that proportion. Where 30 feet
of the dock was gone of one Lot, & 30 feet of
the other Lot. was in poor condition would
diminish the value from my estimate mat-
terially 25 to 30 per cent.

In my opinion the taking of 30 feet for a
Rail Road track would further materially
diminish the value of the rental pay as 60

35.

or to the depth of the Lot.

My estimate of from 10. to 12. dollars a foot. is based on a lot. in good condition with a good dock and without any interruption.

The Plaintiffs have introduced in evidence the following articles of Consolidation, and acts of incorporation & stated his case.

No point arising on these articles it was agreed by the Council that they might be omitted in this Record. It is admitted that the Plaintiffs are a corporation.

Geo. D. Bailey Dist. Atty.
J. H. Winston

Plffs atty.

The defendant Phillip J Price then called Mr. E. Johnson. who being sworn on the part of said defendant, testified as follows.

I was in the employ of Price & Myers Co. in the fall of 1860 and now in business for myself. I know where property is. I was employed in the property in 1859 & 1860. I think about \$1000 each was a fair rent if the lots had ~~been~~ had good docks & there was no rail Road track through them. one of these lots had no dock at all. & the other was a mere skeleton of a dock. we were at very great inconvenience in handling coal. we made a company dock in the spring which ~~was~~ soon after was away. we managed to unload coal on these lots but it took more time to unload many of the piles were gone, or rotten & there was water for thirty feet from the East End. of the lot. a dock. We built in some new timbers which cost \$200. The skeleton dock also needed a good deal of planing & repairing so that the horse could ^{walk} ~~pull~~ on it. in unloading we could put no coal on either of them they were useless for that purpose. we were obliged to build up from the water a temporary staging every time a

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The mill came in in order to unload the. It was
a temporary staging & the water would wash it
away. The Rail Road track was put through
about 1st November 1860. I was notified by the
President of the Rail Road Co. that they wanted
the property & put down the track. This was
at the time they were laying the track and they
had got up near the lot. I went to Dinner &
when I got back they were taking down the
stake on the Lot. I got them to wait till we
could move the barn on the lot. We moved the
building and they put the track through. They
broke the building down. That was on the south
line. After the track was laid down, it was a
great interruption. The scales were on the West
side & the scales on the East side & all the scales
had to be drawn across the track. They were
almost continually switching the & making
up hams on the lot. The cars were frequently
left on the lot and we had to move them &
when we could not wait until they were
moved by the engine.

(The Gutne was here pro-
ceeding to state the extent of interruption on
account of the passing and standing of the
cars on the lot and the damage by this delay
to the business of the defendant Price Mann Co.
when the Court for the Plaintiff's objection.

to, & the Court sustained the objection & excluded the evidence on this point to which ruling of the Court, the defendant Price by his Counsel then & there excepted)

The Witness then proceeded as follows.

I would not pay any thing for such lots in the condition these were in such business as P. Mansfield were engaged in.

On a Cross Examination he said we had secured these lots in 1859 in August 1860. I had notice that they were going to put the track through we sold some coal under the market price in order to get it out of the way and moved 30 or 40 tons to make room & get on the switch in the spring we had sold nearly all in the yard had 100 tons left. we had perhaps 600 tons on hand.

On the direct examination being resumed he said there may have been a vessel unloading there that day we sent it up to the other yard where we hired out the 1st Northmen. At about the time the track was cut through in consequence of the Rail Road taking the lot for a track Price & Sons Co also employed another man to take care of our yard & sell the coal we submitted

Carroll & that yard after the 1st November
1860. & record no more on do Lot or yard
in question

Alexander Officer a Witness produced
oath & examined
by the defendant Price
said as follows,

I was engaged in the Lumber
business in Chicago at the corner of Adams
& Canal street adjoining the Lot in question
& next Block South. from May 1 1860 to
May 1 1861. I paid \$1000. for my lot that
year. It was in good condition & had good
dock. and was 890 feet deep. They paid
me \$150 for the interruption that year the
sawing to the Coal business & thought would
be greater than the Lumber business & would
not estimate the Lot worth more than \$800. for
that year taking the dock into consideration
The value is without the Canal Road inter-
ruption Lumber yards were plenty that
year. more yards than now I had
paid \$2000. for same lot. that in 60 let I
hire for \$1000.

Jacob Rudler King produced oath
& examined on the part of
the defendant Price testified

as follows.

I am now and was engaged in the Lumber business from May 1. 1860 to May, 1861 on the corner of Canal & Jackson streets about one block & a half of the lot in question I rented my lot for that year for \$800 It was also a corner lot, and had a good dock, Mr. Morgan made a reservation of the part the Rail Road Company took from my ~~year~~ Lease we were told by him that when the track was put through and a pilea nothing on that part of the lot.

On Clop Examination, the witness said \$800. would be a fair rent, if docks were in good condition & not they would be. rather considerably less a poor dock is a very serious objection. It is the dock which makes such lot valuable. It would be a great inconvenience & expensive to unload & carry lumber or coal if there was no dock. I think coal business would be as much injured as the Lumber business by a bad dock. Coal would suit.

Edward Dickinson produced sworn & examined by de
fendant Price testifies

as follows

I was in the Wood & Coal business in 1860 & 1861. If the lots in question had good docks & there was no Rail Road track through them they would have been worth for rent \$500. for that year. If one dock was entirely gone, and the other out of repair - there should be a deduction from that of $\frac{1}{3}$ to $\frac{1}{2}$. I would not have lots without the docks in that condition & a Rail Road track through them for my business. I should not consider them of any value in the Coal & Wood business in the condition these lots were.

Himrod, produced sworn & examined by Defendant Price testified as follows:

I should think about \$900. would have been a fair rent for year 1860 & 61. from May 1. 60. to May 1. 61. for the lots in good condition. Should think there should be a deduction from that of \$100. each lot on account of poor condition of the docks.

The Rail Road track I do not consider damages my business. What the property would be to the Coal business or other kinds of business I cannot say.

Howard 43

I have & have been for several years past in the Lumber business in Chicago. In the past fourteen years have occupied lots on the River on both sides and in a great many different Blocks. During the year from May 1st 1860 to May 1. 1861. I rented a lot, corner of Polk & Beach streets few Blocks south of these lots at \$5 per foot. rent. Rent was very low that year \$800 a lot, for that year was all the lot in question and worth of day had good dock if the dock was entirely gone it would not be worth much of anything. If it had dock which gives value to these lots on the River. In my opinion the same land had it would also improve - this value very much.

The following Affidavit of M. De Blaque given in a former trial of said Cause was by consent of Counsel of both parties read to the Jury and agreed upon as his testimony on this trial.

I know the property in question. I have had considerable Experience in valuing Wharf Lots their value from May 1. 1859 to May 1st 1860 would be to 700 a year. The top of the dock would improve &

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thing in my opinion $\frac{1}{3}$ The laying of
the New Road track & its use by the RR
would also materially impair their value
as a Coal yard say from 25 to 40 per
cent. of their full value,

The foregoing was all the ~~testimony~~ Evi-
dence in the case,

On the Trial of said Cause the Court gave
the following instructions to the jury on behalf
of the Plaintiff to the giving of which said in-
structions the defendant did and did except to

As to the Lot purchased by the Plaintiff
of Lemuel Crawford of the jury believe
from the evidence that the defendant
had before the purchase of said Lot
of said Crawford by the Plaintiff oc-
cupied the same under a parole lease at a
rate agreed upon between Crawford and
Defendant and with the Express under-
standing that if the Lot should be sold
to the Plaintiff at any time during the
Lease no deduction should be made for the
occupation by said Company of the right
of way across said Lot for the remainder
of the Term and that the defendant had

over after the expiration of said term, with no
 any new agreement then the law implies and
 the jury will find that the same sale of
 rent shall be paid for said Lot by the defendant
 after as before said purchase and the
 jury will not take into consideration the
 alleged condition and want of repair of
 the doct of said Lot, without proof of an
 Express Covenant to put or keep the same
 in repair by the Plaintiff or its grantor.

As to the Lot purchased by the Plaintiff of
 Singer & Talcott of the jury believe from
 the evidence that the defendant occupied the
~~said~~ said Lot, after the purchase of the same,
 by the Plaintiff then the Plaintiff is entitled
 to recover for such use and occupation in
 this action what the evidence shows the
 same to have been worth if that was the
 agreement with Talcott & they were hold-
 ing under such agreement, and if the evi-
 dence shows that during the time the said pre-
 mises were occupied by the defendant the
 Plaintiff had occasion to use, and did use a
 part of said Lot for tracks for its road, then the
 jury will allow to said Plaintiff the full value
 of the whole lot up to the time of such occupation
 by part and for the remainder of the time during

which the lot was occupied by the defendant they will allow whatever the same was worth after such occupation of part. This is so if it was the understanding that in case the Rail Road should conclude the trade & give the bonds that then they might take the possession of such parts of the Lot as they might need allowing to the tenants the right to occupy the balance of the lot paying therefor a reasonable rent.

The defendant Price asked the Court to give the following instructions to the jury on his behalf which the Court refused to do. To which refusal the defendant then and there excepted.

If the jury believe from the evidence that on or about the 15th day of November 1860 the Plaintiff entered upon and took possession of a strip 30 feet wide running through the premises in question which were then occupied by the defendants of the City and excluded the defendants from the similar use & occupation of said premises except the privilege of crossing & a right of way over the same and that the defendants after said entry by the Plaintiff continued to retain possession of said premises until the first day of May 1861 then said defendants are liable to pay said

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Revised

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Plaintiffs to pay agent for the residue of said purchase what the same were reasonably worth during the time they continued to occupy the same after said Entry by the Plaintiff.

Revised

That if the deeds conveying the Lots in question were delivered to Whiston upon conditions not to take effect until the Bonds for the purchase money were delivered then the Plaintiffs can not recover any Compensation for the use and occupation of either of the Lots before the bonds given for such Lots respectively were delivered. No other trade than the Plaintiffs can only recover for the time that they had the title & that their title only dates from the time at which the Conditions upon which the deeds were delivered were performed.

Of the Jury believe from the evidence that no price nor time of ~~the~~ payment was agreed on between the owner of the Lots & the defendant for the rent for the year in question but that the understanding was that it was to be a reasonable rent and if they further believe from the evidence that the deeds for the respective lots in question were deposited with Mr Whiston on condition that they were not to become operative to convey the title nor to be delivered to the Company

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by
paid

or put on record, nor any use made thereof
until the bonds to be given by the
company for the Lots were made, and delivered
to the respective owners of the Lots but were held
as an escrow by Mr. Winston until that event.
then the plaintiffs can not recover for any rent
which had accrued previous to that time although
the deeds were, when the bonds were delivered
to take effect as of the 1st May 1860

Refused

If the jury believe from the evidence that the defendants
were in the fall of 1859 at the time of the commission
expirion of the cotts. tenants from year to year, and
were then holding over with the assent of Crawford,
for the year from May 1. 1859 to May 1. 1860 and
entitled to the possession of said lots for that time that
the rate of 1200 a year, and Cobb, and Price did
make, an agreement for that year, at 1200, and Price
agreed the R. R. Co. might go through without charge or
deduction, such an agreement would not bind Price
to let the Road go through without charge or deduction
nor would not control the right of the defendants in that
respect. for the year from May 1. 1860 to May 1.
1861.

The defendant also further asked the Court to give the Jury the following instructions which it refused to do. but modified the same, without the assent of the defendant, and gave them so modified to the Jury. The modifications are embraced in parentheses and written in red ink. To giving of which instructions so modified and the refusal to give them without modification the defendant then and there excepted.

If the jury believe from the evidence that Mr. Jones ~~from May 1860 to May 1861~~ told the defendants that they might occupy the property in question for a fair or reasonable rent for the year from May 1, 1860 to May 1, 1861 and that he was authorized by the Plaintiffs to do so, & the defendants assented thereto then the defendants are not liable to pay the sum of \$1200.

9-2-1861
H

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Givin

a year for the Crawford Lot if its rent was not reasonably worth that for said year although they may believe from the evidence that Price did in the fall of 1859 agree with Cobb to pay \$1200 a year

Refused

If the Jury believe from the evidence that the defendants were in fall of 1859 at the time of the conversation spoken by Cobb, tenants from year to year, & were then holding over with the rest of Crawford for the year from May 1, 1859 to May 1, 1860, and entered into possession of said lot for that time, that the rate of \$1200 a year, and Cobb & Price did make an agreement for that year at \$1200, & Price agreed the R.R. Co. might go through without charge or deduction, such an agreement would not bind Price to let the Road go through without charge or deduction, would not control the right of the defendants in that respect for the year from May 1, 1860 to May 1, 1861

That if the Jury believe from the evidence that the defendants occupied the Lot in controversy from May 1st 1859 to May 1, 1860 under a lease for that year from the then owner of the Lot and that the defendants continued

G. W. M.

W. M. M.

to hold or occupy the premises after the 1st May 1860. (with the assent of such persons) without any agreement before that time as to how long they should occupy the lot. the defendant would be entitled to hold the premises for another year from the 1st May 1860 and in the absence of any understanding or agreement permitting it the Plaintiff could not lawfully expel or dispossess them until May 1. 1861.

That if the Lrd Land lord, before the expiration of the Lease or tenancy against the Consent of the Tenant, evict or Expel the Tenant from all or any substantial part of the premises leased the Tenant is discharged from the payment of any rent from the time of such eviction and is not bound to pay rent for what he continues to occupy after such eviction. That if there was agreement to the contrary, the Tenant is entitled to the possession of the premises without interruption or molestation by the Land Lord and that if the Jury believe from the evidence that the defendant was Tenant from year to year, & was entitled to the possession of said premises in question from May 1st 1860 to May 1 1861, and that against defendant's consent, & in the absence of any (understanding or) agreement, permitting

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Gavin

It, the Rail Road Co. (wrongfully) took possession of part of said lot for their Rail Road track & continued to hold & use the same until May 1. 1861. (or erected defendant thereupon) then such an erection by the Rail Road Co. amounts to an extinguishment of all rent for said premises from the time of its recurrence notwithstanding the defendant continued to occupy the residue of said Lot until May 1. 1861. (But if it was the understanding that the Rail Road might pass but their track across the Lot in the event of their electing to do so on completing their purchase, and defendant held under that understanding - then putting down the track after such purchase would not amount to an erection.)

Gavin

That Physical & forcible expulsion is not necessary to produce an eviction but any act on the part of the Landlord which deprives the tenant of the beneficial enjoyment of the premises amounts to an eviction (This is so if the act was done in violation of the rights of the tenant.)

If the Jury believe from the evidence that the defendant occupied the Lot in question from May 1. 1860 to May 1. 1861, under an understanding

G. W. M.

ing or agreement with the owner of the Lot, that they should pay only a fair & reasonable rent for their lot. The Jury in determining what was a fair or reasonable rent, should take into consideration the condition of the dock & the occupation by the Rail Road. for their tracks & switches.

If the Jury believe from the evidence that no price or time of payment for rent, was agreed upon, but the defendant agreed, that the rent was to be for the year in question only a reasonable rent, & that the defendant, occupied the premises in question on the 1st May 1880 & thereafter till May 1st 1881 for a local yard, & for the local business and used the lot for that purpose. & the owner of the lot, knew when they rented the premises that they were to be used in that business then the Jury in determining what the rent should be. should consider ^{what the rent} the rent of the premises was worth in that particular business & may take into account such inconvenience or interruption if any to that kind of business as occurred in consequence of the condition of the dock & the use of the portion of the lot by the Rail Road Company for a track.

G. W. M.
not read

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The Court at the request of the defendant Price gave the following instructions to the jury.

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G. W. M.

If the jury believe from the evidence that the defendant occupied the Lot in question from May 1. 1860 to May 1. 1861 under an understanding or agreement with the owner of the Lot - that they should pay only a fair and reasonable rent for their Lot. The jury in determining what was a fair or reasonable rent, should take into consideration of the value of the occupation by the Rail Road for that track & switches.

G. W. M.

If the jury believe from the evidence that Mr. Fox on 1st May 1. 1860 told the defendants that they might occupy the property in question for a fair or reasonable rent for the year from May 1. 1860 to May 1. 1861 and that he was authorized by the plaintiffs to do so and the defendant assented thereto then the defendants are not liable to pay the sum of \$1000 a year for the Crawford lot, if its rent was not reasonably worth that for said year. Although they may believe from the evidence that Price did in the fall of 1859 agree with the defendants to pay \$1200 a year.

G. W. M.

That if the jury believe from the evidence that the defendants held no contrary from May 1st 1859 to May 1. 1860 under a lease for that year from the then owner of the lot and that the defendants continued to hold on and occupy the premises after 1st May 1860, then the assent of such owners without any agreement before that time as to how long they should occupy the lot the defendant would be entitled to hold the premises for another year from 1st May 1860 and in the absence of any understanding or agreement permitting if the plaintiffs could not lawfully expel or dispossess them until May 1. 1861.

If the jury believe from the evidence that no price or time of pay-

occupation by the Rail Road for their track & switches

Given

If the jury believe from the evidence that Mr. Top. on 1st May A.D. 1860 told the defendants that they might occupy the property in question for a fair or reasonable rent for the year from May 1 1860 to May 1861. and that he was authorized by the plaintiffs to do so and the defendant assented thereto then the defendants are not liable to pay the sum of \$1200 a year for the Crawford lot, if its rent was not reasonably worth that for said year. although they may believe from the evidence that Price did in the fall of 1859 agree with lots to pay \$1200 a year.

Given

That if the jury believe from the evidence that the defendants do not in controversy from May 1st 1859 to May 1 1860 under a lease for that year from the then owner of the lot and that the defendants continued to hold on and occupy the premises after 1st May 1860. then the assent of such owner without any agreement before that time as to how long they should occupy the lot the defendant would be entitled to hold the premises for another year from 1st May 1860 and in the absence of any understanding or agreement permitting if the plaintiffs could not lawfully expel or dispossess them until May 1 1861.

If the jury believe from the evidence that no price or time of payment for rent was agreed upon. but it was understood or agreed that the rent was to be for the year in question only a reasonable rent; that the defendants occupied the premises in question on the 1st May 1860 and thereafter till May 1st 1861. for a coal yard & for the coal business and rented the lots for that purpose and the owners of the lots knew when they rented the premises that they

And thereupon on the 6th day of March 1863
it being one of the days of the March
Term 1863 of said Court the Jury retired
for the consideration of said cause and on
the following morning it being still one of the
days of the March Term of said of said Court
the Jury returned a verdict in favor of the
Plaintiffs.

Whereupon the Defendant Price by his counsel
moved said Court for a new trial of said cause
and filed his motion therefor as follows.

Pitts. J. W. R. B. Co.	} Superior Court of Chicago
vs	
Philip J. Price	March 7. 1863

Geo

me to be used in that business, then the jury in determining what the rent should be, should consider & what the rent of the premises was worth in that particular business & may take into account such inconvenience or interruption if any to that kind of business as occurred in consequence of the condition of the docks & the use of the portion of the lots by the Race Road Company for a track

5-4
5-4 Now comes the said P. J. Price by his atty Geo. H. Bailey & moves the Court for a new trial in said Cause for the following reasons:

1. The verdict was excessive & against Law, & the evidence given on the trial
2. The Court erred in giving on the trial of said Cause, certain instructions asked for by Plaintiffs as well as to own and ~~ext~~ refused to give certain other instructions asked for by the Defendant, and in admitting certain evidence on the part of the plaintiffs & refusing to allow certain evidence as to the interruption & damage to defendant's business in consequence of the Race Road dock and the blocking up of the passage, from one end of said lots to the other by the cars of the R.R. Co. standing on the track and the making up of teams on said lots &c.

3. That verdict is informal improper and

54 ⁵⁻⁴ Now comes the said P. I. Price by his atty
Geo. J. Bailey & moves the Court for a new
trial in said Cause for the following reasons

1. The verdict was excessive & against Law,
& the evidence given on the trial
 2. The Court erred in giving on the trial of said
Cause. Certain instructions asked for by
Plaintiffs as well as its own and ~~ext~~
refused to give certain other instructions asked
for by the defendant, and in admitting cer-
tain evidence on the part of the plaintiffs
& refusing to allow certain evidence as to the
intention & damage to defendant's premises
in consequence of ~~the~~ ^{the} road-back across
said lots in connection & the blocking up
of the passage, from one end of said lots to
the other by the City of the Plffs. in standing
on the back and the making up of hams
on said lots &c.
 3. That verdict is informal improper uncertain &
manifestly
- Geo. J. Bailey
Atty for said Price

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3-5-

and on the 18th March 1863, it being one of the days of said March Term of said Court, the Court having fully considered said motion for new trial and the reasons assigned therefor, overruled said motion & rendered judgment on said verdict for the Plaintiffs

In which said judgment overruling said Motion & rendering judgment on said verdict, said Defendant Price then & there excepted & prays, that his bill of exceptions may be allowed & signed by said Court & made part of the record in this case which accordingly done, this 18th day of March, A.D. 1863.

Wm H Higgins Clerk
Judge

(Appeal Bond)

Know all Men by these presents that Wm Phillips Price as principal and Erasmus Brown as a surety, jointly and severally bind to the Pittsburg & Fort Wayne & Chicago & Lake Road Company in the sum of One thousand Dollars for the payment whereof to the said Pittsburg & Fort

Wayne & Chicago Rail Road Company duly
successor & assigns who hereby bind ourselves our
heirs executors and administrators jointly by these
present. Witness our hands and seals this 28th day
of March A.D. 1863.

The Condition of the foregoing
obligation is such that Whereas the said Philip J.
Price has taken an appeal to the Supreme Court
of the State of Illinois from a Judgment of the
Superior Court of Chicago rendered against him
at the March term A.D. 1863, in favor of the said
William Fort Wayne & Chicago Rail Road Com-
pany for the sum of Eighteen Hundred Dollars
under lease of said. Now therefore the said
Philip J. Price shall pay the Judgment with
interest and damages thereon the said Judgment
shall be affirmed and he shall also duly prosecute
his said appeal - then the foregoing obligation
shall be void, otherwise to remain in force.

approved in open Court.

June 7/63

Grant Gordon
Judge of the Superior Court of
Chicago.

P. J. Price

E. Rawson

Attest

Attest

State of Illinois }
County of Cook } ss

I Thomas B Carter Clerk
of the Supreme Court of Chicago within and
for the County and State aforesaid do
hereby certify the above and foregoing to
be a true perfect and complete transcript
of all the papers now on file in my office to-
gether with all the orders and judgments
made and entered of record in said Court
in a certain cause lately pending in said
Court do *Common Law side* *trial of* +
wherein The *Pellegrin* *at* *Traine* and +
Chicago Rail Road Company were plam-
tiffs and Philip J. Price, and David Monro
surviving partners of William J. Price were
Defendants;

In Witness Whereof I have here
unto set my hand and affixed the seal of
said Court at Chicago on 20th day of
March A.D. 1864

Thomas B Carter

blet



No. 413.55

Builing

Recd. \$13.55.

Mail by George Bally Esq
W. B. Clark.

State of Illinois
Third Grand Division } ss

In Supreme Court
20 April Term AD. 1864

Pittsburg, Fort Wayne & Chicago
Rail Road Company
vs Appellant

vs
Philip I. Price and David
Morris, Surviving partners of
William I. Price
Appellees

Assignment
Of Errors

And now the said Philip I.
Price, appellant, comes and says, that
in the record and proceedings aforesaid,
there is manifest error in this, to wit:

1. The Court erred in giving the instructions, which were given on behalf of the plaintiffs
2. The Court erred in refusing the first, second, and third instructions, asked on behalf of the defendant, and in modifying the fourth and fifth instructions asked on behalf of defendant
3. The Court erred in overruling the motion

for a new trial, and rendering judgment in favor of plaintiffs against the defendant.

4. The court erred in admitting certain evidence on the part of the plaintiffs, and in refusing to allow certain evidence as to the interruption and damage to defendant's business in consequence of the Rail Road track across the lots in controversy, and the blocking up of the passage from one end of the said lots to the other by the cars of the plaintiffs standing on the track, and the making up of trains on said lots &c.
5. The verdict was ~~excessive~~ and against the law and evidence given on the trial.
6. The verdict is informal, improper, uncertain and insufficient.

By reason whereof the plaintiff prays that said judgment maybe reversed &c.

By George F. Bailey
Att'y for Appellant

Pittsburgh Fort Wayne
 & Chicago Rail Road } In the present
 Co Appellee } To April Term 1864
 at
 Philip L. Rice }
 Impleaded & Appellee }

And the said
 Pittsburgh Fort Wayne and Chicago
 Rail Road Company defendant in
 Error now comes and says that there
 is no Error either in the record and
 proceedings aforesaid or in giving
 judgment aforesaid in manner
 and form as above assigned and
 therefore it prays that the said
 Judgment may be affirmed
 and that its costs may be adjudged
 to it &c

~~Blair & Burton~~
~~Attorneys~~
~~for~~

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Pitt. & F.W. R. B.
R.

P. J. Price

Reams & Co.

Feb. 19, 1864.
Ireland
Col.

Geo. D. Parley
Atty for Price.

Philip A. Price
imprisoned &c

In Supreme Court
To April Term A.D. 1884

vs
Pittsburgh & Fort Wayne
& Chicago Rail R Co

3
3
3

And the said

Pittsburgh & Fort Wayne & Chicago Rail
Road Company defendant in error comes
and says that there is no error either in the
Record and proceedings aforesaid or in
giving Judgment aforesaid in manner
and form as above assigned and therefore
it prays that the said Judgment may be
affirmed and that its cost may be
adjudged to it &c

Blodgett & Winston

Attys for
Dft in Error

Supreme Court
of Illinois

Philip D. Price
implied &c
vs.

Pittsburgh Fort
Wayne & C.R.R.

Under an Error.

Filed May 12, 1864
L. Lelandwell