Schedule No 3

Whereas. the tracks of the Illinois Central Rail Road Company. and of the Northern Indiana and Chicago Rail Roads Company as now constructed cross. each other at a point near the city of Chicago—

And Whereas said companies cannot agree upon the points and manner in which said crossing should be made. and shall hereafter be maintained, nor upon the compensation if any to be paid on account thereof

The Illinois Central Rail Road Company doth hereby propose to the Northern Indiana and Chicago Rail Road Company that the points and manner of said crossing. and the compensation if any to be made therefor shall be ascertained and determined by three commissioners. in conformity to the provisions of the eleventh section of the Charter of the Illinois Central Rail Road Company—

No 32

And the Illinois Central Rail Road Company doth propose if the Northern Indiana and Chicago Rail Road Company. assent thereto that the three gentlemen holding the office of Judge of the Supreme Court for the State of Illinois shall be the three commissioners who shall act. and decide in the

premises in the same manner and with the same powers as if Chosen in the precise manner indicated in the said Eleventh section of the said Charter

If the Northern Indiana and Chicago Rail Road Company prefer the Commissioner for the purpose aforesaid shall be chosen in the manner specified in said Charter the Illinois Central Rail Road Company will on being so informed be prepared to choose one Commissioner as provided in said Charter —

Office of the Illinois Central Rail Road Company.
New York August 5th 1853.

The Illinois Central Rail Road Company by its President

Wm. P. Ingraham

Schedule No 4.

Office of the Michigan Southern and Northern Indiana Rail Road Company.

No 74. Beaver Street

New York August 8th 1853

W. P. Burrall Esqr
Prest.

Dear Sir.

Your favor of the 5th is received. You propose a submission to the Judges of the supreme Court of Illinois instead of the commissioners heretofore mutually agreed on by us. We do not believe that it is probable the Judges would act in the premises: as it will require a long and protracted investigation: and we are very anxious to have the matter speedily settled. As we understand you to decline the first stipulation proposed by us, which embraced the stipulation of your attorneys and on the execution of which Judge Morris withheld the injunction prayed for by us, we still prefer that the question should be settled, by the three gentlemen in whom we both have entire confidence and on whom we agreed: but if this is declined we then tender to you a stipulation in precise conformity to the Eleventh section of your Statutes and the stipulation of your attorneys on which the injunction was withheld. In the stipulation made by your attorneys at Chicago, is repudiated we have no other alternative than to apply to the Judge to enforce his decision. Very resfly

Your obedt Sot

(Signed) John B. Jervis Prest

[12803-69]

Schedule No 3.

"No 2" It is hereby stipulated and agreed by and between the Northern Indiana and Chicago Rail Road Company and the Illinois Central Rail Road Company that William H Swift John Wilkinson and Edward H Broadhead (mutually agreed upon) be and they are hereby appointed the commissioners who pursuant to the eleventh section of the act entitled "an act to incorporate the Illinois Central Rail Road Company" shall ascertain and determine the compensation which the Illinois Central Rail Road Company shall make to the Northern Indiana and Chicago Rail Road Company and the points mode and manner in which the work of the Illinois Central Rail Road Company shall be allowed to cross the track of the Northern Indiana and Chicago Rail Road Company at the point where the lines of the road of the said companies intersect and cross each other in the State of Illinois and that if for any reason any one of the said commissioners shall decline or be unable to serve as such commissioner, then Edwin F Johnson shall be and is substituted as such commissioner in his stead, and each of the said Rail Road Companies hereby stipulate to confirm to, and comply with the order decision and awards which the said commissioners shall make in the premises as by the said law is provided the same as if the said commissioners were appointed

in precise conformity with the provisions of the said Eleventh Section of said act

In Witness whereof each of the said respective companies hath caused the signature of its President to be hereunto subscribed this Eighth day of August A.D. 1855.

John B. Jervis
Pres't. N.I. & Chi R. R. Co

Schedule No 6

No 3

Pursuant to the Eleventh Section of the act entitled. "An act to incorporate the Illinois Central Rail Road Company." The Northern Indiana
No 33 and Chicago Rail Road Company hereby appoints Edward H. Brodhead a commissioner on the part of the Northern Indiana and Chicago Rail Road Company and the Illinois Central Rail Road Company hereby appoints.
a commissioner on the part of the Illinois Central Rail Road Company, which commissioner shall appoint a third commissioner; and which three commissioners pursuant to the said Eleventh Section of the said act shall ascertain, and determine the Compensation which the
[1855-78] Illinois Central Rail Road Company may shall make to the Northern Indiana

and Chicago Rail road Company. and the points, mode, and manner in which the tracks of the Illinois Central Rail Road Company shall be allowed to cross the track of the Northern Indiana and Chicago Rail Road Company at the point where the lines of the road of the said Companies intersect and cross each other in the State of Illinois.

In witness, whereof the said respective Rail Road Companies have caused their respective Presidents to subscribe their respective names, hereto this 8th day of August A.D. 1853.

John B. Jarvis
Prest. N. I. & Co. R. R. Co

Schedule No. 7

Office of the Illinois Central Rail Road Company.

New York. 12th August 1853

Dear Sir

Yours of the 8th inst was delivered at our office on the afternoon of the 9th. We do not concur with you in the belief that the gentlemen holding the office of Judge of the Supreme Court

for the discussion in case the form of the submission should be agreed on.

It seems however quite idle to discuss the subject of agreement upon a selection of commissioners if we cannot agree as to the terms of submission.

The law provides among other things that in case the said Companies cannot agree upon the compensation to be made therefor or the points and manner of such crossings &c. "the same shall be ascertained and determined by three commissioners &c&c" We have proposed to submit the precise subjects specified in the charter.

You send us to forms of stipulation both executed on your part and prepared for execution by us, in each of which among other objectionable features, the only question submitted regarding compensation is "the compensation which the Illinois Central Rail Road Company shall make to the Northern Indiana and Chicago Rail Road Company" and the only question in regard to the crossing submitted is "the points mode and manner in which the tracks of the Illinois Central Rail Road Company shall be allowed to cross the tracks of the Northern Indiana

and Chicago. Rail Road Company"
Thus asking us to execute an agreement which departs materially from the provisions of the Law. and contains at last by fair inference admissions on our part if executed by us. of facts or conclusions which are material to the very issue to be ascertained and determined by the commissioners, and which we deny to be correct — If I. correctly understand the concluding paragraph of your letter you will decline to submit the matter except upon a stipulation containing these objectionable features and if we
No 34 refuse to execute such an one you will apply to the Judge to enforce his decision

We cannot believe that the Judge intended to require or our counsel to agree that the questions should be submitted in such a one sided manner as is contemplated by those stipulations and we therefore decline to execute either of them

I. am Respectfully &c
W. P. Burrall Prest
Illinois Central R. R. Co

John B. Jarvis Esq
Prest Nor Indiana & Chicago R. R. Co
New York

[illegible]

To W Braymen Esqr & Blackwell & Beckwith
Solrs for the Illinois Central Railroad Com-
pany.

Take notice that on tuesday
the 20th day of September instant at 9 o'clock
in the forenoon of that day we shall make
a motion in the cause entitled in the fore
going affidavit before the Hon B. S. Morris
at the Judges room in the Court House at
Chicago for an injunction restraining the
defendants as prayed in the bill of Complaint
on file in said cause said motion will be
based upon the foregoing affidavits & exhibits
and the files and orders in said cause

Yours &c

Judd & Frank
Solrs for Complt.

Chicago Sept. 17. 1853

And afterwards to wit on the 3d day being the first Monday of October in the year last aforesaid in vacation the same being a regular motion day appointed as such by said Judge the following among other proceedings were had to wit:

Northern Indiana and Chicago R.R. Co
vs
The Illinois Central R.R. Co } In Chancery.

And now to wit this 3d day of October A.D. 1853 came again the parties by their respective solicitors being one of the days designated at the last term of the 7th Judicial Circuit Court of this State as motion days for the hearing of matters contemplated by the act respecting the practice in Chancery cases in said Circuit approved February 12. 1853. as required by the third section thereof and upon reading the affidavit of John Stryker and the exhibits referred to and made part thereof which was filed in this cause the 19th day of September 1853. and on motion of the complainants Solicitors after agreement and consideration of the premises, do now order and direct the Clerk of this Court to issue in this cause on the 19th instant the preliminary injunction heretofore ordered and

Stayed. till the further order of this Court in the premises

B.S. Morris

Judge of 7th
J. Cir. Ct. Ills

And afterwards to wit on the 6th day of October 1853. there was filed in said Clerks office a certain. appointment. in words and figures following to wit:

Northern Indiana & Chicago Railroad Company
vs.
Illinois Central R.R. Company

In the Circuit Court of Clerk County
In Chancery

For the purpose of organizing the Commission contemplated by the said Court in accordance with the Stipulation filed by the said defendant in the above entitled cause on the 18th day of June A.D. 1853. and the various orders of the Court herein, the said, the said Illinois Central Railroad Company hereby nominate and appoint John Van Nortwick the Commissioner on their part. The nomination of John B. Turner for the same purpose. not having been

accepted. is withdrawn

Oct 4th 1853.

N. Grayman
Solr. Ills. C. R.R. Co

Blackwell + Beckwith
of Counsel

and on the same day and year last aforesaid
to wit the 6th day of October. 1853. there was
filed in said Clerks Office. an acceptance
of the aforesaid appointment, in words and
figures following to wit

Chicago Oct 5 1853.

No 25

N. Grayman Esqr
Atty Ills C. R.R. Co

Sir. I have
this day received notice of my appoint-
ment on the part of the Ills C. R.R Co a
Commissioner to join such others as may be
appointed by the Northern Indiana & Chicago
R.R. Co for the purpose of settling certain
questions to be submitted under an order
of Hon B. S. Morris Judge of the Circuit
Court of Cook County relative to the crossing
of the roads of said Companies
I hereby accept the said appointment
and shall be prepared to meet such others
as may be appointed. at two O'Clock

P. M. on Friday the 7th inst for the purpose of carrying out the objects of such commission

Yours Obt Servt.

John Van Nortwick C

And afterwards to wit on the 19th day of October A.D. 1853. came the said complainants by Judd & Frank their Solicitors and file in said Clerks Office a certain affidavit which is in words and figures following to wit:

Cook Circuit Court
In Chancery.

Northern Indiana and Chicago Rail Road Company
vs
The Illinois Central Rail Road Company.

State of Illinois
Cook County S.S.

Norman G. Judd being duly sworn saith that he is one of the solicitors of the complainant in the above entitled cause and in connection

with his partner M. Strinko. and James H Collins Esqr counsel in the matter has had full and exclusive control and management of the proceedings connected with the commission to settle the crossing question between said parties since the last postponement of the granting of the injunction. and the following is a full history of the proceedings had since that time. On the third day of October inst. about four O'clock PM a paper of which. the following is a copy. was delivered to this deponents partner at our office

Northern Indiana and
Chicago Rail Road Company

vs

Illinois Central Rail Road Company

In the Circuit Court
Cook County In Vacation
Oct 3d 1853.

The above cause coming on to be heard on the complainants. application for an injunction thereon. and the Court having ordered. adjudged and decreed among other things that the said Illinois Central Rail Road Company do forthwith nominate and appoint. a commission on their part and behalf to settle

and determine the several matters and things to be by commissioners settled and determined, specified in a stipulation entered into by said Illinois Central Rail Road company and filed in this cause by and under the order of said Court. Now the Illinois Central Railroad company do hereby nominate and appoint John B. Turner a commissioner on their part and behalf in pursuance of said order to do and perform all the act and things required of such commissioner by said order and Stipulation.

Blackwell & Beckwith
of Counsel

W. Graymon
Solicitor

That between the hours of eight and nine O'Clock A. M. of the forth day of October inst this deponent called at the office of W. Graymon Esq the solicitor who signed the foregoing Notice for the purpose of serving a stipulation upon said Solicitor being informed by a Clerk in said Graymons office that he was absent from town this deponent left with said Clerk a stipulation of substantially like the following is a copy. Pursuant to the tenth and eleventh

sections of the act entitled "an act to incorporate the Illinois Central Rail Road Company; The Northern Indiana and Chicago Rail Road Company hereby appoint Edward H. Brodhead a commissioner on the part of the Northern Indiana and Chicago Rail Road Company, and the Illinois Central Rail Road Company appoint

a commissioner on the part of the Illinois Central Railroad Company which commissioners shall appoint a third commissioner, if they can agree upon any person
85½ to act as a third commissioner and in case they cannot agree then said third commissioner shall be appointed by the Judge of the District Court of the United States for the District of Illinois and which three commissioners pursuant to the tenth and Eleventh sections of said act shall ascertain and determine the compensation which the Illinois Central Railroad Company shall make to the Northern Indiana and Chicago Railroad Company and the point mode and manner in which the track of the
£12203-76 Illinois Central Rail Road shall be allowed to cross the track of the

Northern Indiana and Chicago Rail Road Company at the point where the line of the road of said companies intersect and cross each other in the State of Illinois

Judd & Frink Attorneys for the Northern Indiana & Chicago R. R. Co

that this deponent was informed by said clerk that said Brayman would probably be home in evening train — that in the forenoon of the fifth October instant, this deponent called at the office of said Brayman and was informed that he had not yet returned that this deponent called again at said Braymans office on the sixth of October inst. at about ten o'clock and found said Brayman in — that said Brayman declined filling the blank in said stipulation or signing the same and thereupon said Brayman handed this deponent an appointment of John Van Aortwick and a copy said Van Aortwick's acceptance, and a letter addressed to the firm of Judd & Frink of which the papers the following are copies —

Northern Indiana & Chicago
Railroad Company

vs.

The Illinois Central
Railroads Company.

In the Circuit Court of
Cook County — In Chancery

For the purpose of organizing the commission contemplated by the said Court in accordance with the Stipulation filed by the said Defendants in the above entitled cause on the 18th day
No 36 of June A.D. 1853 and the various orders of the Court herein the said Illinois Central Railroad Company hereby nominate and appoint John Van Antwick the commissioner on their part — The nomination of John B. Turner for the same purpose not having been accepted is withdrawn

Oct 4th 1853.

N. Grayson
Sol. Ill. C. R. R. Co

Blackwell & Beckwith
of Counsel.

[12803-17]

Chicago. Oct 5 1853.

M. Grayson Esq
atty Ill. C. R. R. Co

Sir,

I have this day received notice of my appointment on the part of the Illinois Central Railroad Company as a commissioner to join such others as may be appointed by the Northern Indiana and Chicago Railroad Co. for the purpose of settling certain questions to be submitted under an order of Hon. B. S. Morris Judge of the Circuit Court of Cook County relative to the crossing of the roads of said companies

I hereby accept the said appointment and shall be prepared to meet such others as may be appointed at two o'clock P. M. on Friday the 7th inst for the purpose of carrying out the objects of such commission

Yours Obt Servt

Signed. John Van Santvoord

Solicitors Office Illinois Central
Railroad Company
Chicago Oct 5th 1853.
Messrs. Judd Finch & Collins
Solrs Northern Ind & Ch.
R. R. Co
Gentlemen The
Nomination of John B. Turner as commissioner on the part of the Illinois Central Railroad Company for the purpose of adjusting the questions pending before his honor B. Shipman between said Company and the Northern Indiana and Chicago Railroad Company not having been accepted has been withdrawn and John Van Arsdale Esqr duly appointed who has formally accepted said appointment and will be prepared to meet the commissioner named on your part at 2 o'clock P.M. on Friday next the 7th instant I herewith submit to you copies of his appointment and acceptance both of which have been filed with the Court
I take pleasure in notifying you that the Illinois Central Rail Roads Company will be ready to appear before said commissioner at the earliest possible moment after its organization
Yours &c
W Brayman
Solr. Ill. C. R. R. Co

(12803-18)

that in the forenoon of the 7th of October inst this deponent caused to be delivered to said Brayman the appointment of Edward H. Broadhead Esq and also a letter of which the following are copies –

Chicago 7th October 1853

M. Brayman Esqr
Solr. Ill Central R.R. Co –

Dear Sir Your favor announcing the selection of John Van Nortwick as commissioner on the part of the Illinois Central Railroad, was handed us during the forenoon of the 6th inst – We hand you herewith the nomination of Edward H Broadhead Esqr Chf Engineer of the Milwaukie and M. R. R. as commissioner on the part of the Northern Indiana and Chicago Rail Road Company – Mr Broadhead resides at Milwaukie and we have endeavoured to select a person whose known associations and Railroad interests would render him free from bias and such an one as public sentiment would say "was" fit to be made –

We have informed him by mail of his appointment and also dispatched

a special messenger to procure his attendance as soon as we are advised of his answer and the time when he can be here we will advise you — We have no idea that you expected we could or intended we should be able to obtain the attendance of a commissioner within twenty four hours after you gave us notice of your selection — We take pleasure in informing you that we shall complete the commission on the part of the Northern Indiana and Chicago Railroad Company at the soonest practicable moment and that as soon as completed, we shall be ready to proceed forthwith in the matter

No 37

Respectly Your
Obdt Servt
Indd & Frank
Attys. for Northern Ind
& Chicago R.R. Co

For the purpose of completing on the part of the Northern Indiana and Chicago Rail-Road. company the commission. desired by the Illinois Central Railroad Company to settle the question as to the compensation to be made to the Northern Indiana and Chicago Railroad. and also the points made and manner in which the Illinois Central Railroad shall be allowed to cross the tracks of the Northern

[12003-79]

Indiana and Chicago Railroad Company in pursuance of the Eleventh section of the act incorporating the said Illinois Central Railroad Company and upon the terms and condition contained in the Stipulation filed on the eighteenth day of June 1853 in Cook Circuit Court in a cause in Chancery therein pending wherein said Northern Indiana and Chicago Railroad Company were Complainants and said Illinois Central Railroad Company were defendants. The Northern Indiana and Chicago Rail Road Company hereby nominate Edward H. Brodhead as Commissioner on their part

Oct 6th 1853

Endd Fink
for N. I. & C. R. R. Co

that immediately upon making such appointment this deponent wrote to said Brodhead informing him of his appointment and requesting him to act and also dispatched a special messenger to ascertain whether said Brodhead could serve. That in the forenoon of the tenth October inst. this deponent was notified that said Brodhead would be sure and this deponent immediately addressed a note to said Braymon of which

the following is a copy —

Chicago 11 October. 1853

Mr Brayman Esqr
Solr. Ill Cent R.R. Co

Dear Sir

We have received notice that Mr Broadhead the commissioner on behalf of the Northern Indiana and Chicago R.R. Co will be in Chicago to meet the commissioner on behalf of the Illinois Central R.R. Co. to-morrow morning (Oct 11) at ten A.M.

Respectfully
Yrs Obt Servts
Judd & Frink
Solr. for N. I. & C. R.R.

This deponent further saith that said Broadhead arrived on the evening of the 11th inst and had an interview with said Van Antwick. that they failed to agree upon a third commissioner — That in the forenoon of the eleventh inst said Van Antwick and Broadhead agreed upon. Edwin S. Leland as third commissioner, the said Leland's name having been presented by said Van Antwick — That the appointment of said Leland was made by said commissioners

12803-80

and the following is a copy of such appointment—

Pursuant to the authority vested in us as commissioners, we hereby select choose and agree upon the Hon Edwin S. Leland of Ottawa, in the State of Illinois as third commissioner to act with us in the matter of the crossing of the Northern Indiana and Chicago Rail Road and the Illinois Central Rail Road—

Witness our hand this eleventh of October 1853

John Van Arsdale
Commissioner on the part of the
Illinois Central R. R. Co.
Edwin H Broadhead
Commissioner on the part of
the N. I. & Chicago R. R. Co

Chicago 11 Oct. 1853.

Hon. Edwin S. Leland
Ottawa

Dear Sir

We have selected you as third commissioner to settle the crossing question now pending between the Northern Indiana and Chicago Rail Road Co, and the Illinois Central

Rail Road Co - It is important to the interest of the parties that we must as early as Friday of this week, and that a final action be had on or before the 19th inst -

Will you inform us by return mail and also by telegraph at what time you can meet with us at Chicago -

Address A. B. Andrews Esqr. Chicago, who will inform Mr. Broadhead of the time and place of meeting and also Mr. Van-Antwerp. Chicago

We enclose you a copy of the

No 26 appointment

Very Respectfully
Edward W Broadhead
John C Van Antwerp

That the said commissioners addressed a joint letter to said Leland of which the foregoing is a copy -

And this defendant further saith that he has been informed by said Broadhead and believes, that he was compelled to return to Milwaukie to meet the Board of Directors of the road of which he was a member, on Wednesday -

That it was understood that no report could be had from the special messenger sent to Judge Leland until Wednesday afternoon. and that the said Broadhead

S12603-B11

was to return on Thursday if the said Leland
conducted in the premises that it was distinc-
tly understood that the said Broadhead
was to be governed in his return to Chicago
by the information to be given to this depo-
nent as provided in said letter; that the
letter notifying the said Lelands of his
appointment was delivered to said Van Ant-
wick to be sent by said defendants by
a special messenger

And this deponent, further saith that
about ten o'clock A.M. of Friday the fourteen-
th inst said complainants counsel handed
to this deponent a letter of which the follow-
ing is a copy.

Chicago Oct 11th 1855.

Messrs Judd & Frinks
Solicitors of Ill. Ind &
Chicago R. R. Co
Gents

The messenger
sent to Judge Leland returned without
seeing him. the Judge being absent at
Princeton holding Court. On Monday
next he holds Court in Marshall Co
Not being informed of the arrangement between
Mr Van Antwerp and Mr Broadhead

as to a second conference, and knowing that Mr. Broadhead had promised to return to Chicago by last evening. I have not communicated with you upon the subject — Mr Van Antwick is now in the City prepared to meet Mr Broadhead — Will you inform me when Mr B will be here, and if you are ignorant of his intention, will you be kind enough to telegraph him on the subject?

Yours Respectfully
R. S. Blackmer
One of the counsel of the Ill
Cen R. R. Co

And this deponent further saith, that he has been informed, and believes that the counsel of said complainant had notice of the circumstances of Bridge Leland nearly forty eight hours before the service of notice on this deponent.

And this deponent further saith, that as soon as the above notice was handed him, he immediately telegraphed the said Broadhead to come to Chicago and received for answer, that said Broadhead would arrive by the next conveyance from Milwaukie: That upon receiving such information, this deponent addressed a note to the Council of said Defendants

[illegible]

of which the following is a copy—

Chicago 14 Oct 1853

N. B. Blackwell

Dear Sir Immediately on the receipt of your note of this forenoon I telegraphed Mr Broadhead — It was too late for the Days boat. but he will be here in the boat of. to-morrow

Yours N B. Judd
for Judd & Frantz

That about four O'clock of the same day a note was received from the counsel of the Defendants of which the following is a copy

Chicago Oct 14. 1853.

Messrs Judd & Frantz
Counsel of the Northern Indiana
and Chicago R. R. Co.
Gent.

You are hereby notified that we shall apply to Hon. Thomas Drummond Judge of the District Court of the U.S. for Illinois at Chambers, this evening at 7½ o'clock P.M. for the appointment of a third commissioner in pursuance of Sec 11. of the Illinois Central Railroad Charter to settle the existing question between the Northern Indiana

and Chicago R.R. Co. and the Illinois Central R.R. Co. now pending in chancery before the Circuit Court of Cook County Illinois

Yours Respectfully
Blackwell & Beckwith
Counsel for Ill. Central
R.R. Co.

That in reply to said note this deponent handed to the counsel of said complainants a note of which the following is a copy

Chicago 14th Oct. 1853

No 39 Messrs Blackwell & Beckwith
Counsellors &c.

Gent.

You Notice that you shall apply to Judge Drummond this evening for an appointment of commissioner is this moment received

You are well aware that the Court selected by the respective parties, and who only have the power, to certify to Judge Drummond a disagreement, and upon whose certificate alone the Judge can act, have agreed upon Hon. E.S. Leland as their third comr. You are well aware that Mr Broadhead, after agreeing upon the third person and after joining

[12802-83]

us in notice to Judge Leland left for Miller to be here again. as soon as informed of Judge Leland's acceptance or otherwise upon the receipt of your note of this afternoon, stating that Judge Leland was absent we telegraphed to Mr. Broadhead and he will be here by the first conveyance & if it shall be ascertained when he arrives that no agreement can be had between the Coms we have no doubt he will instantly join us in a proper application to Judge Drummond & We have no authority to make such an application or join in the making of it. That such application is the business of the Coms and of them alone. and until we are directed by the coms we can take no action in the matter & We do not suppose that you believe that you have any power to make such an application and we regard the notice as only a part of that system of strategy. that has been acted upon by you from the day that Judge Morris gave you an extension until the present time & You can place this note before Judge Drummond with your application

Yours

Judd & Frink

And this deponent further saith

that Mr Broadhead arrived at Chicago Saturday evening the fifteenth instant at about six O'Clock P.M. this deponent further saith that Mr. Broadhead called at this deponents office about half past six that said Broadhead informed this deponent that he met Mr. VanArtwick as Mr V. was going to tea & informed him that he wished to confer with him, that Mr Broadhead left this deponents office about seven o'clock for the purpose of going to the Tremont House to meet Mr. VanArtwick. And this deponent further saith that he has been informed and believes that Mr. Broadhead returned to the Tremont House sent to Mr VanArtwicks room and could not find him, sent to Mr. Days room to ascertain if he had seen him. and word was brought back that Mr VanArtwick was somewhere in the house - That Mr Broadhead waited until about nine O'Clock without seeing Mr VanArtwick - That he saw Mr Day and told him he was anxious to see Mr VanArtwick, and if there was no agreement, they might certify that fact to Judge Drummond, that evening so that the Judge might have the subject before him as soon as possible. Mr Day then presented to said Broadhead a -

Communication signed by Mr. Van Antwick requesting Judge Drummond to make the appointment of a third person as there was some statements in it that Mr Broadhead did not know about he told Mr Day he wanted to see Mr. Van Antwick, and they could fix upon the proper terms — and Mr. Broadhead expressed his surprise that Mr Van Antwick could not be found — Mr. Broadhead then handed Mr Day a letter of disagreement signed by himself and addressed to Judge Drummond Mr Day said it was satisfactory and took it saying that Mr. Van Antwick and Mr Broadhead could still agree it need not be presented — that Mr Broadhead continued to wait until half past ten. when Mr Van Antwick came in — that said Broadhead told Van Antwick that he had been waiting all evening to see him, and that nothing had been accomplished in consequence of his absence — Mr. Van Antwick said that he had signed an communication stating that they could not agree; that was all he supposed was necessary, to which Mr Broadhead replied that he had last one day simply that something might be done

that evening. And this deponent further saith. That he remained in his office from the time Mr Broadhead left until nearly eleven o'clock expecting to be informed of the application to Judge Drummond.

That on Monday morning about one quarter before nine A.M. a notice was served on this deponent of which the following is a copy

Chicago Oct 17th 1853.

Messrs Judd & Frank.

Gent. We shall apply to Judge Drummond to appoint a third commissioner in the cropsey case this morning at nine o'clock A.M. at the Judges room. at which time & place you are requested to attend

Yours truly

Blackwell & Beckwith

And this deponent further saith that soon after the receipt of the last above communication another was handed this deponent of which the following was a copy

Chicago Oct 17 1853.

Gent.

Your note under date of the 14th inst was duly placed in our hands

but owing to the indisposition of the writer of this, has not sooner been replied to — For that rate, you were courteous enough to say of our motives and conduct as counsel of the Illinois Central Rail Road Co. in the crossing case, and in reference to our intention to apply to Judge Drummond for the appointment of a third commissioner in pursuance of the notice we had given you, that "We (Judd & Frank) do not suppose that you (Blackwell & Beckwith) believe that you (B & B) have any power to make such an application, and we regard the notice as only a part of that system of Strategy that has been acted upon by you from the day that Judge Morris, gave you an extention, until the present time" — Whatever may be the grounds upon which you base your charge it is unfounded in point of fact, and at the same time we must be permitted to say that a proper regard for professional courtesy should have restrained an expression of your opinion until you had at least some foundation for your assertions — From the time Judge Morris decided to grant an injunction on the 19th inst we have in good faith —

endeavored to perfect the organization of the commission contemplated by the Judge, so as to stay the threatened injunction & we acknowledge no right in you to question our motives. When Messrs. Broadhead and Van Antwerp conferred together and agreed upon Judge Leland it was conjectured that Judge L. might be engaged upon his circuit. A joint letter was agreed upon to Judge L. and a Special Messenger returned next day without seeing the Judge. In the meantime Mr Broadhead announced his determination to return home, which was strenuously opposed by the counsel of the Illinois Centrals. Mr. B. then concluded to stay, and again changed his mind, but with an express understanding to return on Thursday night. It was also understood that if Judge Leland could not act no further Conference was necessary as the Commissioners could agree upon no other person.

Friday evening came and Mr Broadhead had not returned. Having but a few days to conclude the organization and action of the Commissioners, we concluded to apply to Judge Drummond, and accordingly gave you notice of our intention. The evidence of disagreement

(12863-66)

endeavored to perfect the organization of the commission contemplated by the Judge, so as to stay the threatened injunction & we acknowledge no right in you to question our motives. When Messrs. Broadhead and Van Antwerp conferred together and agreed upon Judge Leland it was conjectured that Judge L. might be engaged upon his circuit. A joint letter was agreed upon to Judge L. and a Special Messenger returned next day without seeing the Judge. In the meantime Mr Broadhead announced his determination to return home, which was strenuously opposed by the counsel of the Illinois Centrals. Mr. B. then concluded to stay, and again changed his mind, but with an express understanding to return on Thursday night. It was also understood that if Judge Leland could not act no further Conference was necessary as the commissioners could agree upon no other person.

Friday evening came and Mr Broadhead had not returned. Having but a few days to conclude the organization and action of the commissioners, we concluded to apply to Judge Drummond, and accordingly gave you notice of our intention. The evidence of disagreement

(12863-bb)

upon which we based our application was a certificate of Mr Van Antwerp that that an agreement was impossible — Such are the facts Now for the legal question — We find no warrant in the law for the opinion, that a joint certificate of disagreement is necessary — One of two persons authorized to select a third person to join them in the decission of any matter in controversity, submitted for their adjudication can determine the question of disagreement, as well as both —

Besides if one of the two refused to certify in a case of this emergency, are the parties in interest to wait the slow process of a Mandamus, or are they without remedy.

You thus see the grounds of our legal opinion — If we have erred in judgment we still see no reason why our motives should be impugned

Respectfully &c

Blackwell & Beckwith

and this deponent further saith that he has been informed and believes, that there was no agreement or understanding between said Broadhead and Van Antwerp, that in case Judge Leland did not accept, that they could not agree as to a third commissioner

A. B. Broadhead

Subscribed, Sworn to before me this 19th day of October 1853. B. S. Morris Judge 7th C. C. Dy

And on the same day and year last aforesaid to wit: the nineteenth day of October in the year aforesaid come the said defendants by Blackwell & Beckwith their counsel and file in said Clerks office a certain affidavit which is in words and figures following to wit:

Northern Indiana and Chicago Railroad Co
"Vs"
Illinois Central Railroad Co

In the Circuit Court of Cook County. Ill.
Application for an Injunction

Robt. S. Blackwell being duly sworn deposes and says that he is one of the counsel of the defendants in the above entitled cause. That on the third day of October A.D. 1853. the renewed motion of the said complainants for an injunction herein came on to be heard and the Judge of said Court after the hearing by an order suspended the issuing of said injunction until this day for the purpose of enabling the parties to form the commission and have a hearing of the matters in difference and an award of such compensation made in pursuance of the stipulation of the said defendants, and the order of said Court made on the 18th day

of June last And this affiant further
says that on the said 3d day of October
the said defendants by their counsel, nom-
inated John B. Turner President of the
Galena and Chicago Union Rail Road
company a commissioner on their part
and behalf in pursuance of the Stipu-
lation and order aforesaid of which
the said complainants by their counsel
had immediate notice And this affi-
ant further says that the Solicitor and agents
of the said defendants during said day
called at the residence and place of
business of the said John B. Turner for the
purpose notifying him of his appointment and
to request his acceptance thereof & that the
said Turner could not be found that
message was left at the residence and
office of the said Turner requesting him
to call upon the counsel of said defendants
at as early a period of time as was possible
that about 8 o'clock of the night of said
day the said Turner did call upon this
affiant and his partner Wm C. Beckwith
in compliance with the message aforesaid
that Mr Turner was urged to accept said
appointment upon the commission aforesaid
said and that said Turner left the office

of this affiant. promising to deliberate upon the subject and give a definite answer the next morning. And this affiant further deposes and says, that at Eleven o'Clock A. M. of the 4th inst the said Farnum not having given the expected answer, this affiant visited the office of the said Farnum in Chicago and then and there endeavored to persuade upon the said Farnum to accept said appointment, that they conversed together for probably a half an hour upon the subject and that the said Farnum finally determined not to accept said appointment and addressed to the firm of this affiant a letter declining the same. And this affiant further deposes and says that on the same 4th day of October the said defendants by their counsel and solicitors appointed Wm John Van Antwerp a commissioner on their part in the place of the said John B Farnum, that the said Van Antwerp was then and is now the Engineer in Chief on the Galena and Chicago Union Railroad that he resided in Kane County Illinois at Batavia that he was most of the time along the line of said Railroads, that on the same day this affiant in the name of Blatchford & Beckwith addressed a letter to the said Wm Antwerp notifying him of his said appointment

[1288-89]

requesting his acceptance and urging him to appoint an early day for a meeting between himself and the commissioner who should be selected by the said complainants, that said letter was despatched by a special messenger to Mr Van Antwerp, that in the afternoon of the 5th day of October Mr. VanAntwerp reached this City and accepted in writing said appointment, that the counsel of the said complainants were immediately informed by letter of the appointment and acceptance of Mr. Van Antwerp as the commissioner on the part of the said, defendants and were also notified in the same letter that Mr Van Antwerp would be prepared to meet the commissioner to be chosen by the complainants on Friday, the 7th day of October instant at 2 o'clock P. M. — And this affiant further says that said last mentioned letter was answered by Messrs Dodd & Frink Counsel of the said complainant on the morning of the 7th instant, who notified the Solicitor of the said defendants that the complainants had solicited as the commissioner on their

post. Mr. Edward H Broadhead of Mil-
waukie in the State of Wisconsin, that
No 51 they had notified Mr Broadhead
by mail of his appointment and also
despatched a special messenger to procure
his attendance and that when Mr B.
arrived that they would notify the
said solicitor of the defendants —
And this affiant further deposes that in
the afternoon of Monday the 11th inst
Mr Judd one of the counsel of the
said complainants, transmitted a note
to Mr Brayman the solicitor of defendants
notifying him of the arrival of Mr. Broa-
dhead and requesting Mr Brayman to
No 42 inform Mr Van Antwerp of the fact
and request him to meet Mr Broadhead
that evening. And this affiant
further deposes that a conference took
place between Mr Broadhead and
Van Antwerp, on the said evening
of the 11th inst and they were unable
to agree upon the selection of a third Com-
missioner that a second conference
took place between said commissioners
on the morning of the 11th instant and
that at such conference they agreed upon
the Honorable Edwin S. Leland of Ottawa
Illinois as the third Commissioner

[12803-84]

and by joint letter notified the said Leland of his appointment and requested his acceptance of the same. that a special messenger was dispatched to Judge Leland. with said letter, who left Chicago on the train of the Chicago & Rock Island Rail Road Co. which left at 4.1/4 o'clock. P.M. of the said 11th inst. which was the first train which left Chicago for Ottawa after the agreement aforesaid. And this affiant further deposes that said messenger returned from Ottawa at noon on the 12th instant and that having seen Judge Leland who was absent at Princeton holding one of the Courts of his circuit and that said messenger was informed by the wife of the said Leland that her husband was to hold the March all circuit court on the Monday then following. And this affiant further deposes that after the second conference aforesaid. Mr Broadhead returned to Milwaukie, that he was urged by one of the counsel of the defendants not to leave Chicago until the commission should be fully organized as this affiant is informed & believes that notwithstanding

standing such request Mr. Broadhead did leave the City, but promising that he would return to Chicago by the evening of Thursday the 13th inst – That this affiant informed Mr Judd of Judge Lelands abscence and engagements and requesting him to telegraph Mr Broadhead to return; this was in the morning of the 14th instant, that Mr Judd promised to do so, and afterwards informed this affiant that "he" had done so, but that Mr Broadhead could not reach Chicago that evening because he would not receive the despatch in time for the Steamer which was to leave Milwaukie for this City on the morning of said day – but that he would reach the City on the 15 instant – And this affiant further deposes, that the counsel of the defendants fearing that the time limited by this Honorable Court for the organization and action of the commission would expire before that object could be accomplished & for the purpose of expediting such organization and action this affiant in the name of his firm notified the counsel of the complainants that they would apply to the Judge of the district Court of

S12803-90

the United States for Illinois for the appointment of the third commissioner And affiant further deposes that the foundation of such proposed application was the certificate of Mr VanArtsdalen the commissioner Chosen by the said defendants, that he and Mr Broadhead could not agree That said notice stated that such application would be made at 7 1/2 o'clock in the Evening of the 14th inst at the Chambers of the Judge And this affiant further deposes and says. that he received a letter from the counsel of the said complainants denying the power of the judge to appoint under such circumstances and requesting affiant to lay said letter before the U.S. Judge. that this affiant complied with said request and the said Judge feeling some delicacy about making the appointment under such circumstances. postponed the application indefinitely. And affiant further deposes and says. that Mr VanArtsdalen who had been out of the City returned about 4 o'clock. P.M. on the 15th inst and Mr Broadhead reached the City about 5 o'Clock. P.M. of said day that the said commissioners confered

together again in the evening of that day but being unable to come to any agreement, signed, seperate certificate of disagreement — And affiant further says that on Monday morning the 17th inst the defendants notified the complainants that they would apply for the appointment of the third commissioner at 9 o'clock — A.M of that day before the said U.S. judge — That about noon of that day the said judge appointed as such commissioner the Hon Lyman Trumbull of Alton in this State and

No 42½ immediately notified the said Trumbull of his appointment by telegraph and urged him to accept of the same, that at the same time the counsel of the respective parties joined in a similar, notification to Mr Trumbull and despatched the same by telegraph — And affiant further deposes & says that not having received any reply to said despatches during the day and night of the 17th inst — the affiant made arrangements to send a special messenger to Judge Trumbull; that messenger left in the morning train of the 18th inst for La Salle with instructions to proceed, thence to Alton by

[12803-41] said rail road via Bloomington

and Springfield, see judge Trumbull deliver notification of his appointment and urge his acceptance and as soon as his, determination should be made known to send affiant the result by telegraph Affiant further says that, Alton is distant from Chicago, about two hundred and ninety miles and that said messenger cannot return before to morrow - and further affiant saith not

Robert S. Blackwell

Subscribed & Sworn to before me this 19th day October A.D. 1853.

B. S. Morris
Judge 7th
Civ. Ct. Ill

And on the same day and year last aforesaid to wit. the 19th day of October in the year last aforesaid. there was filed in the office of the said Clerk an order of Hon. B.S. Morris Judge of the Circuit Court of Cook County in the words and figures following to wit.

Northern Indiana & Chicago R.R. Co
vs.
Illinois Central R.R. Co
} In Circuit Court Cook Co.

The Clerk will not issue the writ of injunction in this cause until the further direction of the Judge

Chicago Oct 19. 1853 B.S. Morris

And afterward to wit; on the 21st day of October A.D. 1853. came the complainants by S.B. Judd. their Solicitor and filed in said Clerks office a certain Replication in words and Figures. following to wit;

State of Illinois
Cook County } S.S.
The Northern Indiana and Chicago Rail Road Company
vs.
The Illinois Central Railroad Company

In the Circuit Court of County
In Chancery

The replication of the Northern Indiana and Chicago Railroad Company. complaint to the answer of the Illinois Central Railroad Company Defendants.

The repliant saving and reserving to himself. all and all manner of advantage of exception to the manifold Errors-uncertainties. and insufficiencies of the answer of the said Defendants for replication thereunto saith; that he doth and will aver. maintain and prove his said bill to be true. certain, and sufficient in the law to be answered unto by the said defendants and that the answer is very uncertain evasive and insufficient in the law to be replied unto by the repliants; Without that. that any other matter or thing in the said answer contained. material or effectual, in the law to be replied unto and herein and hereby well and sufficiently replied unto confessed or avoided, traversed or denied is true. All which matters and things this repliant is ready to aver maintain and prove as this Honorable

shall direct, and humbly prays. as in and by his said bill he hath already prayed

Northern Indiana & Chicago
Rail Road Company.
By A. B. Judd
Solr for said Cr.

* And afterward to wit: on the 9th day of November A.D. 1853. there was filed in the office of the said Clerk. a Notice in the words and figures following to wit:

Northern Indiana and Chicago Rail Road Company
vs.
Illinois Central Railroad Company.

In circuit Court
Cook County
In Chancery

Messrs. Judd & Frink
Solrs. for Orators

Please take notice that a motion will be made in the above entitled case before his Honor B. S. Morris at the Circuit Clerks office at the Court House on the 9th day of November inst at nine o'clock A.M. for an order of said Court requiring the orators to file in said

* And afterwards to wit on the second day of November it being one of the days of the October term of said court the following proceedings were had to wit:

Northern Indiana & Chicago Rail Road Company
vs
Illinois Central Rail Road Company

In Chancery This day again came the said complainant by its Solicitors and on their motion it is ordered by the Court that leave be given to the said complainants to amend the prayer of said Bill of complaint by adding a prayer for a preliminary injunction

[12002-93]

cause the report of Edward H Broadhead and Joseph Gillespie made in pursuance of the Stipulation filed therein

Chicago Nov. 8th 1853

Joy Blackwell & Beckwith
Counsel for Defts

And on the same day & year last aforesaid to wit. the 9th day of November in the year aforesaid. there was filed in the said Clerks office the report of the Commissioners, in words & figures following to wit:

Whereas a controversy exist between the Illinois Central Rail Road Company and the Northern Indiana and Chicago Rail Road company, and the said companies are not able to agree upon the amount of compensation to be made for expenditures &c &c as to the points and manner of crossing of the two roads. connections &c (being such a controversy as it was contemplated might arise. between the said Central Company and Northern rail road Company by the 11th Section of the Charter of the Illinois. Central

Rail Road company) and it has been necessary to settle such controversy by a commission according to the provisions of the said section; and one of said companies has appointed Edward H Broadhead Esq and the other John Van Nortwick Esq as commissioners, and the said commissioners have certified as is hereto annexed, that they were made to agree upon the choice of a third commissioner, and thereby the contingency has accrued provided for in said section, by which the appointment of a third commissioner has devolved upon the

No 44 Judge of the District Court of the United States for the District of Illinois, now I the undersigned judge of said Court in pursuance of the authority vested in me, by the said 11th Section, do hereby nominate constitute and appoint the Hon Joseph Gillespie of the County of Madison, and State of Illinois, such third commissioner, hereby conferring upon him the same power and authority to act in the premises, as the other commissioner has by virtue of the appointments made by the two companies respectively —

In witness whereof I have hereunto set my hand and seal

Thomas Drummond, U S

Chicago this 22d day of October 1853 Judge for Illinois

[12803-9]

Chicago 15 Oct. 1853

Hon. Thomas Drummond
Judge of the District Court
of the U.S. for the State of Illinois

The undersigned commissioners selected by the Northern Indiana and Chicago R. Road Company, and the Illinois Central Rail Road Company, to settle the question of the crossing between said companies, being unable to agree upon the third Commissioner hereby request you to exercise the power conferred upon you in the eleventh section of the act incorporating the Illinois Central Rail Road Company by selecting a third person to act as commissioner with us

Edward H Broadhead
Commissioner on the part of the
Northern Indiana & Chicago R R Co

Chicago Oct 14th 1853

The undersigned commissioners appointed by the Northern Indiana & Chicago Railroad Co. and the Illinois Railroad Co. to determine the several matters in controversy in reference to the crossing of said Roads in Cook County selected the Hon. Edwin S. Leland as the third commissioner as the

third commissioner - A messenger was sent to the residence of said Leland with the notice of his selection, who having returned reports that said Leland is absent holding the Courts of his Circuit and consequently would not be able to serve - The said appointment is therefore revoked -

Being satisfied that we cannot further agree upon the selection of a commissioner - We report this fact that a commissioner may be appointed by the Judge of the district Court of the U.S. for the District of Illinois. in pursuance of the act under which we have been Chosen commissioners by the parties in interest -

John Van Antwerp
Comr on the part of the
I.C. R.R. Co

For the purpose of compelling on the part of the Northern Indiana and Chicago Railroad Company, the commission desired by the Illinois Central Railroad Company. to settle the question as to the compensation to be made to the Northern Indiana and Chicago Railroad Company and also the points made and manner in which the Illinois Central Railroad shall be allowed to cross the tracks of the Northern Indiana and Chicago Railroad

[12803-95]

company. in pursuance of the eleventh section of the act incorporating the said Illinois Central Railroad Company, and upon the terms and conditions contained in the Stipulation filed on the Eighteenth day of June 1853 in the Cook Circuit Court in a cause in Chancery, therein pending wherein said Northern Indiana and Chicago Rail Road company were complainants and said Illinois Central Railroad Company were defendants The Northern Indiana and Chicago Railroad Company hereby nominate Edward W Brookhead as commissioner on their part —

Oct. 16th 1853.

Lord & Smith
Attys for Northern Ind & Chicago R. R. Co

Cook Circuit Court
Northern Indiana & Chicago
Rail Road Company
vs.
Illinois Central Railroad
Company
} In Chancery

The motion for an Injunction in the above entitled cause having been heard by the Hon B. S. Morris

Judge of the Seventh Judicial Circuit at the suggestion of the Court the proceedings in said cause are suspended until the further order of said Judge upon the defendants entering into the following Stipulations

1st That said defendants will forthwith and without unnecessary delay take all such lawful proceedings as may be necessary to ascertain the compensation to be made to said complainants and the point & manner in which said Defendants shall be allowed to cross the tracks of the said complainants at the point named in the bill of complaint filed herein in pursuance of Section Eleven of the act incorporating said defendants & without delay prosecute such proceedings to a final conclusion according to the provisions of said act & that upon the determination of the commissioners, the said defendants will forthwith and without unnecessary delay comply with any lawful decision & award of said Commissioners

"2d" That until such final determination & the further order of said Judge, trains of cars passing both ways upon the road of the said defendants shall keep out of the way of all trains

passing upon the Northern Indiana & Chicago Railroad at the crossings mentioned in the Bill, so that the trains passing upon the Northern Indiana and Chicago Rail Road shall at all times have the Road and the precedence in crossing, which is to be exercised without any unreasonable delay and that each train passing upon the Illinois Central Rail Road shall come to a full stop at said crossings and send the conductor or fireman on the track so as to see that the same is clear before proceeding. This regulation to be in force on and after the 25th day of June A.D. 1853, all of which said defendants hereby stipulate to do and perform

Dated this 18th day of June A.D. 1853

M. Brayman
Sols. Ill. Central Rail Road Company

Blackwell & Beckwith
of Counsel

State of Illinois
Cook County } S.

I. Certify the
foregoing to be a copy of the Stipulation
of the Illinois Central Rail Road
company filed by them as Defendants
in a certain suit in Chancery

Given under my hand
and the seal of said Court
this 31st day of Oct. A.D. 1853

L. D. Wood
Clk

The Northern Indiana
& Chicago Rail Road Co
vs.
The Illinois Central
Rail Road Co

In Chancery in
the Circuit Court
of Cook County
Illinois

To the Honorable Buckner S. Morris
Judge of said Court

The undersigned
Edward H Brookhead & Dwight Gillespie
associated with John Van Antwerp
Commissioners selected and appointed
by virtue of a Stipulation entered into
in conformity with the provisions of an
order of said Court. herewith annexed
beg leave respectfully to report to said

[12603-93]

Court that they, together with the associate Commissioners have heard evidence and argument of counsel of said parties respectively in regard to all the matters submitted in said stipulation and carefully considered the said matters, and that the undersigned have agreed determined and do hereby award that the point of crossing of the railroad of the defendants over the railroad of said complainants should be at the point named in said stipulation and that the manner in which the said railroad of the said Defendants shall be allowed to cross the said railroad of the complainants shall be by Bridges to be built by said defendants at least eighteen feet in the clear above the surface of the rails of the railroad of the complainants and of a width of not less than thirty feet in the clear. Said Bridge and the approaches thereto to be effectually commenced within thirty (30) days from this date and prosecuted with all due diligence to a final completion and after the construction of said Bridge and the approaches thereto the crossings of the railroad of the defendants over

the railroads of the Complainants shall be by said bridge. and not otherwise — In the meantime and during the construction of said works the Rail road of Defendants may cross the railroad of Complainants at grade at or near the present crossing for the purpose of operating their said rail road and constructing said works —

The undersigned have also awarded that the said defendants shall pay to the said Complainants on demand one dollar for damages on account of the crossing in the Manner above prescribed

In witness whereof we the undersigned, do hereby affix our hands and seals at Chicago this 5th day of November 1853

Edward H Brookline Esq
S. Gillispie Esq

And on the same day & year last aforesaid to wit: the 9th day of November in the year aforesaid: there was filed in the said Clerks office the report of one of the commissioners in words & figures following to wit:

To the Hon. B. S. Morris Judge of the Circuit Court for the County of Cook

The undersigned one of the commissioners selected to ascertain and determine in pursuance of section eleven of the Charter of the Illinois Central Rail Road Company, the point and manner in which the rail road of said Company should be allowed to cross the rail road tracks of the Michigan Indiana and Chicago Rail road company, and the compensation to be made to the last named company.

Respectfully reports that having in conjunction with his associates in the commission. Joseph Gillespie and Edward H. Brookhead) examined the point of crossing in question. heard the testimony, and the arguments of attorneys learned of the parties in interest and having maturely considered the matters submitted, he has been unable to agree with his associates

in their report. He further respectfully states that by the Charter of the Illinois Central Rail Road Company, the said company have the right to cross the track of any other Rail Road. and by section Eleven of said Charter it is provided that when the route of the said road or either of its branches, shall intersect, cross or connect with, or run along or upon the line of any other railroad now constructed, or now in process of construction by any other company, it shall join with such other company, in making all necessary tunnels, sidelongs and switches, and other conveniences, necessary to further the objects of such connection and that all railroads so constructed or in process of construction, intersected as aforesaid, and connections made with the roads authorised to be built by this act, shall be made and facilities in the transhipment, of freight and passengers, and, interchange of cars afforded by each, over the respective roads, upon fair and equitable terms, and if the companies cannot agree, upon the points and manner of such crossings and connections, the transhipment of freight and passengers and interchange of Cars, the same should be ascertained and determined by three commissioners. It was also provided

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by an amendment of the Charter of the Illinois Central Rail Road Company that the roads of other companies might cross their road and that when so crossed the two companies should join in making and affording business connections on the same terms and conditions as is provided by section Eleven above referred to. These acts in my opinion were intended to secure to the Illinois Central Rail Road Company the right to connect its road with any other road upon its route constructed or constructing at the time its Charter passed the right to have an interchange of business both freight and passenger as well as cars from one road to the other and to secure to all roads which cross its track the same rights and to the public the benefit that would be derived from such business connections. These are important and valuable rights to the public and generally to the companies, and in my opinion being secured by legislative enactments renders it imperative on the companies to join in making such connection and affording the business facilities to the public. On intersection of one road with another

can only be made at grade or when the tracks are upon the same level. The rights and privileges above mentioned would be practicably cut off and destroyed at the point in question unless the crossing be at grade or upon the same level

To require the track of either of these roads to cross otherwise than at grade or upon a level would in my opinion be a violation of the rights of these companies and the public, and would defeat the whole object of the legislation and would be contrary to the policy of the State, as evinced by these enactments which policy is in accordance with the general practice and usage in constructing Rail Roads as well in this as in Europe, and with legislative enactments and requirements in reference to Rail Roads. In my opinion therefore the tracks of the Illinois Central Rail Road should cross that of the Northern Indiana & Chicago road at the point where they now cross and upon the same level, and that the manner of such crossing should be by crossing frogs substantially as now constructed and that the compensation to be paid by the Illinois Central Rail Road Company to the Northern Indiana & Chicago

In 47

SJ2803-100

company should be One thousand dollars

All of which is respectfully submitted

Chicago November 7th 1853

John Van Arlewick

And on the same day & year last aforesaid to wit: on the 9th day of November in the year last aforesaid, there was filed in the said Clerks office, a certain Notice, which is in words and figures following to wit:

Northern Indiana and Chicago Rail Road Company
vs
Illinois Central Railroad Company

In Chancery
Circuit Court of Cook County

Messrs Judd & Frank
Solrs for Orators

Please take notice that a motion will be made in the above entitled cause before his Honor Judge D. S. Morris at the office of the Clerk of the Circuit Court in the Court House on the 9th day of November

inst at 9 o'clock A. M. for an order setting the said cause down for a final hearing at the November term of said Court and requiring the complainants to have the said cause ready for a hearing by that time on their part and behalf

Chicago Nov. 8th 1853.

Jay Blackwell & Buckmaster
Counsel for Defts

And afterwards to wit on the said Ninth day of November A D 1853. the same being one of the days of the October vacation term in said year the following proceedings were had to wit

Northern Indiana and
Chicago Rail Road Company
vs.
Illinois Central Rail Road
Company

Edward H Broadhead and Joseph Gillespie a majority of the three commissioners elected chosen and appointed by the parties complainant and defendant in pursuance

of the terms of the written Stipulation of the Defendants Solicitor and Counsel filed in this cause to settle and determine the amount of compensation to be made by the Defendant to the complainant on account of the crossing of the railroads tracks of the Defendant over and across the road bed land and track of the complainant as well as the point and manner in which the track of the defendants Railroad should be allowed to cross the road bed and track of the Complainants road mentioned in the Bill of Complaint in the cause having reported and certified to the Court in writing by them duly signed and dated at Chicago on the fifth day of November 1853 that they together with their associate commissioner had heard the evidence and argument of Counsel of the parties respectively in regard to all the matters that they Said Broadhead and Gillespie had agreed and determined and did thereby award that the point of crossing of the Rail Road of the Defendant over the Railroad of the Complainant Should be at the point named in

said Stipulation, and that the manner in which the said Railroads of the said Defendant shall be allowed to cross the said railroads of the complainants shall be by bridge to be built by said defendant, at least eighteen feet in the clear above the surface of the rails of the Railroad of the Complainant, and of a width of not less than thirty feet in the clear, said Bridge and the approaches thereto to be efficiently commenced within thirty days from the date of said report and prosecuted with all due diligence to a final completion and after the construction of said bridge and approaches thereto the crossing of the Railroad of the defendants over the railroads of the complainants should be by said Bridge and not otherwise, and that in the mean time and during the construction of said works, the Rail Road of the defendants may cross the Rail Road of the complainant at grade or near the present point of crossing for the purpose of operating said Rail Road and constructing said works and also that the defendants should pay the complainant on demand one dollar for damages on account of crossing in the manner above described

12803-102

and the said report having been filed in this court on the ninth day of November eighteen hundred and fifty three. and the said complainant by its solicitor. afterwards on the day aforesaid having moved the court. that a preliminary injunction issue in said cause restraining the defendant as prayed in the Bill of complaint on file in the cause. and among other reasons. for the reasons the complainants solicitor believe that the decision and award of a majority of said commissioners was not binding upon the defendant. the law requiring as they believed the concurrence of all the commissioners. in order to make the award binding, and whereupon the defendants solicitor insisted that the decision of a majority of the commissioners was binding, and on motion. of said defendants solicitor it was ordered by the court now here. that the report of said Edward H Broadhead and Joseph Gillespie a majority of said commissioners made & filed in this court in manner and form as aforesaid be and the same is in all things confirmed and that the defendant stand to and abide and perform

the said award in all things the same as if the said determination and award had been made and signed by all three of the commissioners selected and appointed as afore said.

And on like motion of the defendants soliciton it is ordered, that this cause be set down for final hearing at the next term of this court, and that the motion of the complainants soliciton for a preliminary Injunction be overruled

And on the third day of December A.D. 1853 the said defendant by its Counsel came & filed the following admission, to wit.

N. Ind^a & C. Rail R.
vs
Central Rail R.

It is admited by the defendant in this cause that a preliminary survey was made in December 1850 of the road of the complainant that said road was staked out by the first of January 1851. and said road finally located in the month of June 1851 and that said road has since been constructed in pursuance of said survey & location and in conformity therewith.

R. S. Blackwell
Solicitor for deft

[12803-163]

And afterwards to wit on the fifth day of December A.D. 1853. it being one of the days of the November trial term of said Court in said year the following among other proceedings were had to wit:-

In the Indiana and
Chicago Rail Road Company
vs. In Chancery.
Illinois Central Railroad
Company

And now at this day come the said parties by their Solicitors, and the cause came on for final hearing pursuant to the order heretofore entered in the same upon pleadings. exhibits and proofs. and it appearing to the Court that said complainants previous to December eighteen hundred and fifty. became a body corporate and politic in presence and by virtue of an act entitled "an act to provide for a general system of Railroad incorporations". approved November the fifth. eighteen hundred and fifty nine: and it further appearing to the Court that said complainants

commenced surveying the line of the said road in December eighteen hundred and fifty. and that previous to the first day of January. eighteen hundred and fifty one the line of said road was staked out. and that said line was finally located in the month of June eighteen hundred and fifty one and that the same was. surveyed and staked out as aforesaid and was. located over through and upon the following described tract piece or parcel of land viz:

Part of the west half of section twenty six (26) in township thirty eight (38) north of Range fourteen east one hundred feet. wide being fifty feet in width on each side of the following line viz: in the north west quarter of said section, commencing at a point on the west line of said quarter five chains and thirty links south of the north west corner of said quarter. thence south forty five degrees east forty nine chains and sixty nine links to a point on the south line of said quarter four chains and ninety two links. west of the south east corner of said quarter. in the south west quarter of said section commencing

on the north line of said quarter four chains and ninety two links west of the north east corner, thence south forty five degrees east six chains, and ninety four links to a point on the east line of said quarter four chains and ninety one links south of the north east corner of said quarter —

And it further appearing to the court that on the thirteenth day of July anno Domini one thousand eight hundred and fifty one the said complainant by their agent procured a title to said piece parcel and tract of land, and that said complainant completed their said road upon said tract of land previous to February eighteen hundred and fifty two and that trains of cars have been daily running over the road of said complainants from said month of February until the filing of the Bill herein —

And it further appearing that said defendant without any legal authority and against the wishes and protest of said complainants on the seventh day of June eighteen hundred and fifty two entered upon the land right of way and property of said

complainants cut the rails of said complainants track. and from that time until the filing of the bill herein have daily trespassed upon the land right of way tracks of said complainants by running trains of cars. over and across the same. and by authorising permitting and suffering the trains of cars of an other Company to run across over and upon the land right of way roadbed and tracks of said complainants

And it further appearing to the court. that said defendants filed a Stipulation in the cause in words and figures following

Cook Circuit Court

Northern Indiana and Chicago. Rail Road Company vs. Illinois Central Rail Road Company } In Chancery

The motion for an Injunction in the above entitled cause having been heard. by Hon B. S. Morris Judge of the Seventh Judicial Circuit at the suggestion of the Court. the proceedings in said cause are suspended until the further order of said Judge upon the defendants entering into the following

[12803-10]

Stipulations.

1st That said defendants will forthwith and without unnecessary delay take all such lawful proceedings as may be necessary to ascertain the compensation to be made to said complainants and the points and manner in which said defendants shall be allowed to cross the track of the said complainants at the point named in the bill of complaint filed herein, in pursuance of section eleven of the act incorporating said defendants and without delay prosecute such proceedings to a final conclusion according to the provisions of said act and that upon the determination of the commissioners the said defendants will forthwith and without unnecessary delay comply with any lawful decision and awards of said commissioners.

2d That until such final determination or the further order of said Judge trains of cars passing both ways upon the road of the said defendants shall keep out of the way of trains passing upon the Northern Indiana and Chicago Rail Road at the crossing mentioned in the bill, so that the trains passing

upon the Northern Indiana and Chicago. Rail Road, shall at all times have the road and the presedence in crossing. which is to be exercised without any unreasonable delay. and that each train passing upon the Illinois Central Road shall come to a full stop at said crossing and send the conducton or fireman on the track so as to see that the same is clear before proceeding: This regulation is to be in force on and after the twenty fifth day of June Anno Domini one thousand eight hundred and fifty three, all of which said defendants hereby stipulate to do and perform. Dated this 18th day of June A.D. 1853.

Blackwell & Beckwith, M. Brayman Solicitor
of Counsel. of. Ill. C.R.R. Co

And that in pursuance of such stipulation, such proceedings, were had that a Board of commissioners consisting of John Van Antwick, Edward H Broadhead, and Joseph Gillespie was duly appointed and organized a hearing had and decision made by said Board. in relation to the mode and manner in which said defendants shall be allowed to cross. the track

[12 803-106]

of said complainants and the compensation to be made to said complainants, and that such decision and award has on motion of said defendants been duly confirmed by an order, entered in this court on the ninth day of November last past. which said award is in the words and figures. following that is to say.

The Northern Indiana and
Chicago Rail Road Company
vs
The Illinois Central Rail Road Company
In Chancery.
In the Circuit
Court of Cook County Illinois

To the Honorable Buckner S. Morris Judge of said Court

The undersigned Edward H. Broadhead and Joseph Gillespie associated with John Van Antwerp commissioners, selected and appointed by virtue of a stipulation entered into in conformity with the provisions of an order of said court. herewith annexed. beg leave respectfully to report to said Court that they together with their associate commissioner. have heard evidence and argument of Counsel of said parties

respectively in regard to all the matters submitted in said stipulation and carefully considered the said matters and that the undersigned have agreed determined and do hereby award that the point of crossing of the Rail Road of the defendants over the Rail Road of the said complainants shall be at the point named in said stipulation, and that the manner in which the said Rail Road of said defendants shall be allowed to cross the said Rail Road of the complainants shall be by bridge to be built by said defendants at least eighteen feet in the clear above the surface of the rail of the Rail Road of the complainants and of a width not less than thirty feet in the clear. Said bridge and the approaches thereto to be effectually commenced within thirty days from this date, and prosecuted with all due diligence to a final completion and after the construction of said Bridge and the approaches thereto the crossing of the railroads of the defendants over the railroad of the complainants shall be by said Bridge and not otherwise — In the mean time, and during the construction of said works the Rail Road of the defendants may cross

[12863-107]

the railroad of the Complainants. at grade. at or near the present point of crossing for the purpose of operating their said railroads and constructing the said works

The undersigned have also awarded. that the said defendants pay to the said Complainants on demand one dollar for damages in account of the crossing in the manner above prescribed — In witness whereof we the undersigned do hereby affix our hands and seals at Chicago this fifth day of November eighteen hundred and fifty three —

Edward H. Broadhead [L.S.]
J. Gillespie [L.S.]

It is therefore ordered — — adjudged and decreed that the defendant be allowed to cross the tracks of said Complainants at or near the premises herein before set forth by carrying its tracks over the road of said Complainants by a Bridge in manner and form and upon the terms and conditions set forth in said award and in no other way And it is further ordered adjudged

and decreed that said defendants specef-
fically perform, abide by and comply with
the terms and conditions of said award:
And it is further ordered adjudged
and decreed that in case said defe-
ndants shall fail or neglect to perform
and comply with any of the terms
and conditions of said award, that
from thenceforce said defendants
shall and do entirely desist refrain
and cease from any further entering upon
using or in any manner interfering or med-
dling with the land road bed and
track of said complainant and from
hindering, delaying interrupting or impe-
ding, the passage of cars over the road
of the complainant and from crossing
over or entering upon the land road
bed and track of said complainant
in any way or manner whatsoever with
locomotives or cars of any kind, and
from authorising permitting or allowing
any other company or corporation to do the same
And upon such failure or neglect to
comply with the terms herein, and in
said award prescribed said defendants
be restrained and enjoined as herebefore
set forth.

And it is further ordered adjud-
ged and decreed that until the —

[12803-108]

the completion of said bridge or the failure and neglect of said defendant to comply with the terms and conditions of this decree in relation to the construction of said bridge. trains of cars passing both ways upon the road of said defendants shall keep out of the way of trains passing on said complainants road at the crossing described in the proceedings herein so that the trains passing upon said complainants road shall at all times have the road and precedence in crossing which is to be exercised without any unreasonable delay and that such train passing upon the defendants road. shall come to a full stop at said crossing. and send the conductor or fireman on the track so as to see that the same is clear before proceeding—

And it is further ordered adjudged. and decreed. that said complainants have and recover of said Defendants their costs in this behalf expended and have execution therefor and that the sum of one thousand dollars as fee to each of said commissioners be taxed in the the costs in this cause and paid by said defendants

And thereupon to wit on the said third day of December A.D. 1853. the said defendant came & filed in said Clerks a certain appeal Bond to the Supreme Court of the State of Illinois which said bond is in words & figures as follows, that is to say:—

Thereupon the said defendant prays and appeal herein which is allowed upon said defendant filing with the Clerk of this Court forthwith an appeal bond to be executed by Thomas Dyer in the penal sum of Ten Thousand Dollars conditioned as the law directs in cases of appeal.

[12803-109]

Know all men by these presents that I Thomas Dyer of Cook County Illinois am held and firmly bound unto the Northern Indiana and Chicago Rail Road Company and their successors in the penal sum of Ten thousand Dollars lawful money of the United States for the payment of which said sum well and truly to be made. I bind myself my heirs executors and administrators jointly and severally by these presents.

Sealed with my Seals and dated this day of December A.D. 1853.

The condition of the above obligation is such that whereas the Circuit Court of Cook County Illinois on the third day of December A.D. 1853 rendered a final decree against the Illinois Central Rail Road Company and in favor of the Northern Indiana and Chicago Rail road Company in a certain cause between said parties then pending in said Court, on the Chancery side thereof which said decree is in these words and figures to wit:

And now at this day come the said parties by their solicitors, and this cause coming on for final hearing pursuant to the order heretofore entered in the same upon pleadings exhibits and proofs, and

it appearing to the Court that said Complainant previous to December 1856 became a body corporate and politic in perpetuity and by virtue of an act entitled "An" act to provide for a general system of Rail Road incorporations" approved November 5th 1849 and it further appearing to the Court that said Complainants commenced surveying the line of its said road in December 1856 and that previous to the first day of January 1857. the line aforesaid road was staked out and that said line was finally located in the month of June 1857 and that the same was surveyed and staked out as aforesaid and was located over and through and upon the following described tract piece or parcel of land viz Part of the west half of Section twenty six (26) in Township thirty eight (38) north of Range fourteen east one hundred feet wide being fifty feet in width on each side of the following line viz: in the South west quarter of said Section commencing at a point on the west line of said quarter five Chains and thirty links South of the north west corner of said quarter thence South forty five degrees east forty nine

chains and sixty nine links to a point on the south line of said quarter four chains and ninety two links west of the south East corner of said quarter in the south west quarter of said section commencing on the north line of said quarter four chains and ninety two links west of the north east corner thence south forty five degrees east six chains and ninety four links to a point on the east line of said quarter four chains and ninety one links south of the north east corner of said quarter

And it further appearing to the Court that on the 13th day of July AD 1851. the said complainants by their agent procured a title to said piece porcel and tract of land and that said complainants completed their said road upon said tract of land previous to February 1852 and that trains of cars have been daily running over the road of said complainants from said ninth of February until the filing of the bill herein. and it further appearing that said Defendants without any legal authority and against the wishes and protest of said

[12803-111]

complainants on the seventh day of June 1853 entered upon the land right of way and property of said complainants, cut the rails of said complainants track and, from that time until the filing of the bill herein have daily trespased upon the land right of way and track of said complainants by running trains of cars over and across the same. and by authority permitting and suffering the trains of cars of another company to run across over and upon the land right of way road bed and track of said complainants

And it further appearing to the court that said Defendants filed a stipulation in the cause in words and figures following

Cook. Circuit Court.
Northern Indiana &
Chicago Rail Road Company.
vs. In Chancery
Illinois Central Rail Road
Company

The motion for an injunction in the above entitled cause

having been heard by Honorable D.S. Morris Judge of the Seventh Judicial Circuit at the suggestion of the court the proceedings in said cause are suspended until the further order of said Judge upon the defendants entering into the following Stipulations 1st That said Defendants will forthwith and without unnecessary delay take all such lawful proceedings as may be necessary to ascertain the compensation to be made to said com-
No 49 plainants and the points and manner in which said defendants shall be allowed to cross the track of the said Complainants at the point named in the Bill of Complaint filed herein in pursuance of section eleven of the act incorporating said defendants and without delay prosecute such proceeding to a final conclusion according to the provisions of said act and that upon the determination of the commissioners the said defendants will forthwith and without unnecessary delay comply with any lawful decision and award of said Commissioners

S 12803-113 2d That until such final determination or the further order of

Indgo trains of Cars passing both ways upon the road of the said Defendants shall keep out of the way of trains passing upon the Northern Indiana and Chicago Rail Road at the crossing mentioned in the Bill so that the trains passing upon the Northern Indiana & Chicago Railroad shall at all times have the road and the precedence in crossing which is to be exercised without any unreasonable delay and that each train passing upon the Illinois Central road shall come to a full stop at said crossing and send the conductor or fireman on the track so as to see that the same is clear before proceeding. This regulation is to be in force on and after the twenty fifth day of June AD 1853 all of which said defendants hereby stipulate to do and perform.

Dated this 18th day of June AD 1853

M Brayman Solr
Ill C. R R Co

Blackwell & Becknith
of Counsel

and that in pursuance of such stipulation such proceedings were had

that a Board of Commissioners consisting of John Van Aortwick Edward H. Broadhead and Joseph Gillespie was duly appointed and organized a hearing had and decision made by said Board in relation to the mode and manner in which said Defendants shall be allowed to cross the track of said complainants and the compensation to be made to said complainants, and that such decision and award has on motion of said Defendants been duly confirmed by an order entered in the court on the ninth day of November last past, which said award is in the words and figures following that is to say

The Northern Indiana and Chicago Rail Road Company

In Chancery

VS

The Illinois Central Rail road Company.

In the Circuit Court of Cook County Illinois

To The Honorable Buckner S. Morris Judge of said Court

The undersigned Edward H Broadhead & Joseph Gillespie associated with John Van Aortwick commissioner

[12803-113]

selected and appointed by virtue of a Stipulation entered into in conformity with the provisions of an order of said Court herewith annexed by leave respectfully to report to said Court that they together with their associate Commissioner have heard evidence and argument of Counsel of said parties respectively in regard to all the matters submitted in said Stipulation and carefully considered the said matters and that the undersigned have agreed determined and do hereby award that the point of crossing of the Railroads of the defendants over the Railroads of the said complainants, shall be at the point named in said Stipulation and that the manner in which the said Railroad of said defendants shall be allowed to cross the said Railroad of the complainants shall be by bridges to be built by said defendants at least eighteen feet in the clear above the surface of the rail of the railroad of the complainants and

said works the railroad of the defendants may cross the railroads of the complainants at grade at or near the present point of crossing for the purpose of operating their said railroads. and constructing the said Works

The undersigned have also awarded that the said Defendants pay to the said complainant on demand one dollar for damages on account of the crossing in the manner above prescribed

In witness whereof we the undersigned do hereby affix our hands and seals at Chicago this 5th day of November 1853.

No 50

(10) Edward H Brookhead (Seal)

J. Gillespie (Seal)

It is therefore ordered adjudged and decreed that the defendant be allowed to cross the track of said complainant at and upon the premises hereinbefore set forth by carrying its track over the road of said complainants by a bridge in manner and form and upon the terms and conditions set forth in said award and in no other way

And it is further ordered adjudged and decreed that said defendants speciffically perform abide by and comply with the terms and conditions of said award

{12803-114}

And it is further ordered adjudged and decreed that in case the said Defendants shall fail or neglect to perform and comply with any of the terms and conditions of said award, that from thenceforth said defendants shall and do entirely desist refrain and cease from any further entering upon using or in any manner interfering or meddling with the land road bed and track of said complainant and from hindering delaying, interrupting or impeding the passage of cars over the road of said complainant and from crossing over or entering upon the land road bed, road and track of said complainant in any way or manner whatsoever, with locomotives or cars of any kind, and from authorizing permitting or allowing any other company or corporation to do the same, and upon such failure, or neglect to comply with the terms herein, and in said award prescribed, said defendant be restrained and enjoined as hereinbefore set forth —

And it is further ordered adjudged and decreed, that until the completion of said Bridge or the failure and neglect of said defendant to comply with the terms and conditions of the decree in relation

to the construction of said Bridge. trains of cars passing both ways upon the road of said defendants shall keep out of the way of trains passing on said complainants road at the crossing described in the proceeding herein so that the trains passing upon said complainants road shall at all times have the road and precedence in crossing, which is to be exercised without any unreasonable delay and that each train passing upon the defendants road shall come to a full stop at said crossing, and send the conductor or fireman on the track so as to see that the same is clear before proceeding.

And it is further ordered adjudged and decreed that said complainants have and recover of said defendants their costs in this behalf expended, and have execution therefor and that the sum of One thousand dollars as fees to each of said commissioners be taxed with the costs in the cause and paid by said Defendants.

Thereupon the said Defendant prays an appeal herein which is allowed upon said defendants filing with the Clerk of this Court forthwith an appeal bond to be executed by Thomas Dyer in the penal sum of ten

[12803-115]

thousand dollars conditioned as the law directs in cases of appeal —

And whereas the said Illinois Central Rail Road Company have prayed for and obtained an appeal from said decree to the Supreme Court of the State of Illinois, held at Ottawa in the third Grand Division. Now if the said Illinois Central Rail Road Company shall prosecute their said appeal with effect and without delay and pay such sum of money costs interest and damages as may be awarded by the said Supreme Court in case the said decree shall be affirmed then this obligation shall be void otherwise to remain in full force and effect —

Thos Dyer Seal

State of Illinois }
Cook County } ss.

I Louis D. Noard Clerk of the Circuit Court of the County of Cook in the State of Illinois do hereby certify that I have compared the foregoing two hundred & twenty six pages with the Original pleadings proofs Exhibits & proceedings now remaining in my office in the Case of the Northern Indiana and Chicago Rail Road Company against the Illinois Central Rail Road Company, and that the same contain a full true and perfect transcript thereof and of all and every part thereof

In testimony whereof I have hereunto set my hand and the seal of said Court at Chicago this Fourth day of February A.D. 1854.

Louis D. Noard Clerk

(1280-116)

Illinois Central Railroad Co v Northern Inda & Chicago R.R. Co.

This is a bill for an Injunction. The injury complained of, is for a trespass and forcible entry upon & laying down a frog & crossing — and maintaining and using such crossing wrongfully and with threatened force — without taking any steps to agree or adjust the manner & terms of such crossing according to law

The bill proceeds upon the assumption that there is but one safe mode of crossing, and to which alone, the defendants will consent, and that is by bridging over. The ground suggested for equitable interposition, is an irreparable injury to their corporate franchises, rights and interests; endangering their locomotives & cars, and diminishing their income from freights and travel, by the increased hazards of a crossing at grade, at a point remote from a station, low, swampy and subject to dense fogs: — and for which they have no adequate remedy at law. The relief prayed is an injunction

I need only remark upon this assumption that a bridge is the only safe crossing, that it is not borne out by the legislation of the state — and is wholly groundless, and cannot become a foundation for equitable interference

The answer admits all the facts material to present whatever of equity there may be in the bill. But I may apply the same remark to the answer that I made in reference to the assumptions of the bill. The plaintiffs in error assume, that by their charter they acquired a pre-emption over all lands to a right of way, which overreached all subsequent grants of way to others — and that they can in their answer, question the legal existence of defendants, as a corporation in law or in fact

(12893-112)

I do not propose to examine or discuss positions so extreme and uncompromising - and to which, doubtless, may in part, be attributed that want of harmony, which has prevented an amicable adjustment of this business relation of the two companies

The act complained of, and admitted to have been done, is a trespass. For this the Law affords a remedy - not only in damages for the injury, but in ejectment for the possession, which may be delivered by the Sheriff by the strong arm of the posse, if need be.

It is charged to be a continuing trespass Still the two remedies will reach, remedy and put an end to the evil. Therefore the case is not remediless at law

But it is alledged, that the legal remedies are inadequate because the injury is irreparable in damages. This might be true of the action of trespass for certain kinds of injuries, such as cutting down ornamental, or fruit trees - it might be of timber, or such like waste or destruction - for which ejectment would be too slow to prevent. But this is not of such a character

The grievance of this part of the case is, that a grade Crossing by means of frogs, put in, used and maintained by trespass, has so increased the hazards and dangers of travel, freights, and their own locomotives and cars, that the public do not travel & freight with them on this account, and their profits are lessened & destroyed thereby

This may be true to some extent - and would be to a greater or less extent of any and

all grade Crossings - and which I assume may be lawfully made under the laws of the State. How much this hazard and danger is enhanced, by the fact, that it was put in, and is maintained by trespass, it is difficult to Conceive This, I submit, would depend more upon the care and diligence in its use, than upon the Character of the act that placed it there. If the Central railroad Company could, under her Charter or the laws of the State, acquire, by agreement of the parties, or Condemnation, a right to put in, maintain and use, such a mode of Crossing at this place, as they have established by the alledged trespass - upon paying a just Compensation for it - I cannot Conceive or admit - that the forcible assumption of the right, presents a remediless injury at law, or that the damages are irreparable on that account. If neither ground be true, the foundation, for equitable interference, fails.

The only remaining inquiry I need make, is whether defendants can Compel the plaintiffs to proceed to adjust this matter according to Law. I find nothing in the general railroad law or the Charters of the parties, which will authorise owners of property to take initiatory steps to Compel Companies to Condemn & take their property. Nor should there be. When Companies need & desire another's property - there is a mode of involuntary purchase by Condemnation. Owners may vindicate their possession until then sold. When such right exists it may be enforced by bill for Specific performance, or Mandamus

Stevens 120

4 or other appropriate remedy Atty Genl v Birmingham & Oxford Junction Railway Co. 7 Eng L & Eq R 283 Same case 8 Eng L & Eq R 243

There are no facts or allegations in the bill which show any right in defendants to compel plaintiffs either to take, use, purchase or condemn the property in controversy. And it is enough that defendants appear to be the owners, and have ample remendies to vindicate and maintain that ownership exclusively in themselves until others acquire rights by purchase or condemnation

But admitting that the suggestions of the bill disclosed an equitable jurisdiction still the decree entered cannot be maintained. The bill is framed for, and only prays an injunction.

The court found sufficient ground to order the injunction, but stayed it upon terms of plaintiffs entering into a stipulation to purchase the rights & property they were using, by proceeding to condemn it, according to the provisions of their Charter - This they did - and so far, it was all well enough For they should have abandoned their trespass or have acquired rightfully what they needed

A Commission was accordingly instituted under the provisions of the Charter - a majority of whom agreed upon a mode, & the terms of a crossing

[12803-121] Upon this compliance with the terms of the

stipulation, I can perceive no further object to be given to a bill for an injunction merely against a trespasser. The defendants were parties to this Commission, and could therefore take such steps as might become necessary to carry out the provisions of law. The bill should have been dismissed - as an injunction bill became an inappropriate means of accomplishing or affording a remedy

But instead of leaving the parties to pursue their rights & remedies under the new position they had assumed - as vendor & purchaser, the bill undergoes a ~~metamorphosis~~ change metamorphosis from a bill for an injunction merely - it becomes by intendment a bill for a specific performance of this inchoate purchase, made since its filing and under its power. And the decree is accordingly for the fulfilment of the award - by building a bridge - crossing - the payment of damages & costs - and the observance of a particular mode of running & using the road ad interim

Surely no one looking at the features & characteristics of this issue, would ever dream of fixing its paternity upon the bill - even though through the plastic powers and processes of a court of equity

The decree must be reversed, and the bill dismissed.

[1880-122] Peck, C. J. concurred in reversing the decree and dismissing the bill.

Caton J. said - It seems to me clear that the allegations

of this bill make such a case as gave the court jurisdiction over the subject matter and that the orders made by the court were not coram non judice - If the court had jurisdiction then that portion of the decree which was entered by the consent and agreement of the parties was binding, and as such consent operates as a technical release of Errors as to such portion I do not see how it can be reversed although the consent may have been extorted by a threat from the court of an injunction which might have been vastly more detrimental to the party than the decree agreed to - I have sought in vain for an exception to the general rule, that consent is a waiver of Errors, by which the party might be released from its operation for that cause, and yet I would rather see the decree reversed for that cause than the want of jurisdiction which it seems to me clearly existed - I fear the consequences of the doctrine -

Illinois Central R.R. Co
v
N. Ia & Chicago R.R. Co

Opinion by
Scott J.

Filed June 2d - 1855
L. Leland Clk.

Costs Unpaid

Illinois Central Rail Road Co
Appellants
vs.
The Northern Indiana and
Chicago Rail Road Co
Appellees

The facts admitted and proved by the record are as follows.

That the appellees previous to December 1850 filed in the Secretary of States office the necessary papers to constitute them a Corporation under and by virtue of "An act to provide for a general System of rail road incorporations" approved Nov 5th 1849.

That in December 1850 a Survey of the line of the road over the premises in question was made, that such survey was finished and the road staked out in January 1851 and the road finally located in June 1851.

That on the 30th July 1851 Judd as agent, attorney and Trustee of Appellees and with appellees money and funds obtained a title to the premises in question, that the deeds making such title were recorded in the Recorders office of Cook County on the 3rd day of November 1851 and that Judd subsequently conveyed said premises to Appellees.

That Appellees finished the grading of their road in October 1851 - That the road was completed and cars commenced running over the same in February 1852 and have continued running until the present time

That on the 6th April 1852 Appellants according to the requirements of their charter filed in the Recorders Office of Cook County a Survey and plat of their road showing its location in Cook County — that R. B. Mason Chief Engineer of Appellants notified John B. Lewis, Chief Engineer of Appellees of such location.

That on the 13th April 1852 Mr Lewis by letter notified Mr Mason not~~ified~~ to enter upon the premises in question or interfere with Appellees track until the mode and manner of crossing had been settled.

That the Appellees Board of Directors adopted resolutions forbidding any entry or any crossing until the mode and manner had been settled and proposing a board of commissioners either under the provisions of Appellants charter or the General Laws of the State — that on the 25th day of April 1852 a copy of these resolutions were served on Robert Schuyler President of Appellees Company.

That in defiance of such notice on the 7th day of May 1852 Appellants entered with force upon said premises, cut the track of Appellees, put in crossing frog, and notified Appellees that they should maintain it by force if necessary, and have men on the ground for that purpose, and that Appellants have from that time been daily trespassing upon said premises by running trains of cars over the same.

That in June 1852 the Legislature passed an act legalizing all that Appellants had done

That appellants have never by purchase condemnation or in any other way or manner acquired a right to enter upon said premises or in any manner to interfere with the possession or road of appellees or to use any land of theirs.

The bill prayed for an injunction to restrain the trespasses until the point and manner of crossing and the compensation to be made therefor had been settled either according to the provisions of Sec 11 of Appellants Charter or the General laws of the State.

An answer was filed and a general replication thereto.

The Bill was filed on the day of June 1853 and a motion made for a preliminary injunction which was resisted by appellants, amongst others for the reasons that the granting of the injunction would be a serious injury to appellants, and that there had been so long an acquiescence that no preliminary injunction ought to issue

The Circuit Judge decided the question of right in favor of complainant, but for the reasons alledged as to the injury to appellants and the acquiescence he would suspend the issuing of the injunction if the appellants would stipulate to proceed and settle the compensation to be made to the ~~appraisers~~ appellees and the point and manner of crossing in pursuance of sections ten and Eleven of the Charter of appellants.

Thereupon on the 18 June 1853

[12903-129]

Appellants by their Solicitor and Counsel filed a Stipulation to that effect and thus by that stipulation continued their trespass upon appellees property and in the use of the same, and such use continues to this day

The Record shows that appellants neglected and delayed to comply with that stipulation, and that Appellees upon affidavits on the day of Sept renewed the motion for injunction, and thereupon the Judge ordered the injunction to issue on the day of September unless the provisions of the Stipulation were carried out.

Appellants then nominated John Van Nortwick as commissioner on their behalf and Appellees nominated Edward N. Broadhead as Commissioner on their behalf, and the two commissioners being unable to agree upon a third, and having certified such disagreement to the Hon Thos Drummond Judge of the District Court of the United States for the District of Illinois said Judge appointed the Hon Joseph Gillespie as third Commissioner

The commissioners not having had time to act the Judge further suspended the issuing of the injunction.

The Commissioners then proceeded to Examine the crossing and to hear the evidence and argument of Counsel, and there being a disagreement, majority and minority reports were made. Gillespie & Broadhead reporting as decreed in this case, and Van Nortwick reporting a legal opinion and

concluding with a decision in favor of the present manner of crossing, with waiver of compensation to appellee.

A motion was then made by appellants that appellee file the majority report which was done — appellee then renewed the motion for an injunction and appellants entered motion to set the cause down for final hearing and that the report of the majority of the commissioners be confirmed. — The Judge overruled the motion for the injunction and sustained the motion ~~for the~~ confirming the majority report and setting down the cause for final hearing

The appellants were upon their own motion ordered ~~and~~ adjudged and decreed to comply with and perform the decision and award of the majority of said commissioners

And a final decree was entered in said cause against appellants based upon such order of confirmation and carrying into effect the award thus confirmed on their own motion.

Upon this Statement of facts appellee make the following points.

1st

Secs 1 & 2 of "An act to provide for a General System of Rail Road corporations" approved Nov. 5th 1849

That it became corporations by filing papers copies of which are annexed to the bill of Complaint and marked Exhibit "A" and that such papers are a full and literal compliance with the law.

(2803-128)

Same act—
Sec: 4 & 21

2nd " That Appellee had a right and full power and authority to Survey and locate the said road and acquire by purchase property.

3rd " That the purchase by Judd with the funds of, and for the use and benefit of Appellee constituted him a Trustee for their use.

Rev. Stat. Ill.
Title Conveyance
Sec 3.

4th " That the premises so purchased by Judd became by operation of Law vested in Appellee without any conveyance by him.

Act to incorporate Appellants Sec 3. Ind Law Sec 21.

3th " That Appellee thus owning the property appellants had no right to enter upon it until such right had been acquired by purchase or by some legal proceedings

6th. The owner of land has in virtue of his title a right to construct a rail road or any other lawful structure thereon

People vs. Platt
17 John R. 195. 210.
14-13-. Hay vs.
Cohoes Co. 2 Comstock
159-161-
Drake vs Hudson River R R
3 Barber S. C. 45-47.
Woodford on Railways

7th. There was a rail road on the land in question, and the same was actually in use in February 1852. Appellants located their route over it on the 6th April 1852

8th. When appellants sought to use the premises in question & to cross and found a rail road in their way they were bound to acquire a right either by agreement or under their own charter or under the general law of Nov. 1849.

{12803-126}

9." The provisions of the General Rail R. Law in relation to the crossing and intersection of roads is in the nature of a police regulation and is binding upon the appellants.

Special S. Laws 1849. Page 20 Sec 6. Galena & C. U. R. R vs Loomis 13 Ill Rep: 548

which provides the method of their getting across other roads by the use of the words "now constructing or in process of construction" includes roads in the exact condition that appellee's was. "Now constructing" is one class and "in process of construction" another, a road is in process of construction from its survey until its final completion, any other construing of Sec. would nullify a part of it

Section Eleven of appellees charter

10. Appellees had surveyed their road, and staked it out over the premises in question before the passage of Defts. Charter, and a necessary part of the "process of construction" is a survey.

R. S. Ill 429
Angel & Ames 606 & 612-664.
5 Johnson Ch R. 380. 381
People vs Utica Ins. Co
15 John R. 386.
Trustees of Vernon vs Hill
6 Cowen 232 & 26
Moore vs. Vesey
31. Maine 360

11. The Appellees being a corporation if it exercised a franchise not granted to it, such franchise exercise cannot be ~~granted~~ questioned by any third person but only in proceedings on behalf of the Sovereign Authority.

12" The Appellees are not authorized to question the exercise of any franchise by Appellee so long as appellees do not invade their property.

The Jurisdiction of a court of Chancery to grant the relief prayed is based upon the following principles and decisions.

Bonaparte vs Camden & A. R.R. Co 1. Bald. 226. 230 231. Mohawk R.R. Co vs Archer - 6 Parge 88 - North Union R.R. Co vs Poulton & T. R.R. Co. 3 Eng R. Cases 355

To restrain and prevent trespass under claim of title and right to permanently occupy and appropriate anothers property even though the injury is not irreparable.

.7 Vesey 308 note 1. & 312. Trinder vs Jones .17 Ves. 110. .8 Vesey 89 & notes .19 " 147 .2 John Ch 162-463 .6 Vesey " 497 707 .5 Vesey " 129

To prevent a multiplicity of suits at Law.

Where the compensation is not adequate and the protection of the property in Specie is the only complete redress.

Moore vs Vesey 31 Maine 310-360

To protect possession under color of title as against a wrong doer.

Moore vs Pearce 31 Maine 360

To protect against irreparable damage and injury and to prevent a multiplicity of suits

[L2802-127]

2 Story Eq. Sec 927 } To protect a party in possession
925 to 930. — } of a statute privilege.
Osborn vs B. U.S }
9 Wheat 838 }
Ogden vs Gibbon }
4 John Ch 150 }
N. Y. Turnpike vs Miller }
5 John Ch. 101 }
Scudder vs Trenton & Delaware Falls Co }
N. Jersey Ch R. 694-715 }
Scranton Turnpike vs Rider 13. C. 611
Livingston vs Van Deuzen }
9 John 507-585-587. }

The appellants took this cause from the regular course of litigation and by their stipulation admitted the prior occupancy and title of appellees, that appellants sought the crossing and not appellees, and that appellees and not appellants were entitled to compensation if any should be awarded by the commissioners, and that stipulation is binding upon them as by it they prevented the appellees from pursuing the remedies sought by the bill they continued in the use and enjoyment of appellees property, subjected appellee to the expenses of the reference, and created for themselves a forum or tribunal to settle the question in controversy - which tribunal could not have been created on the motion of appellees nor without

the application and consent of Appellants.

The act of the attorney in the conduct of the cause is the act of the client.

People vs Montgomery
18 Wend 635
American Ins Co vs Oakley - 9 Paige 498
Denton vs Noyes
6 Joh R. 300.
Gailand vs Smart
6 Cow R. 385
Clarke's Ch. Report 246
1 Bac. Ab. 491

In this cause the counsel made a verbal stipulation in open Court and the Court decided,

"that it must be deemed to
"be binding upon the parties
"and it is the duty of the
"Court if application is made
"for that purpose to see that
"such stipulations are not
violated"

The complainants below had a right to ask for the injunction. The Judge had the authority to grant it upon such terms conditions and securities as he thought proper, a proper case being shown by complt which the Judge was to determine. No power existed in the Judge, nor was it claimed by complainant, to compel a stipulation on the part of the defendant. The stipulation was voluntary and of course deemed by the defendants

beneficial to them.

From the filing of the Stipulation to the report of the commissioners and the order made on motion of Appellants to confirm the majority report and the confirmation of the same. the appellants and not the appellees were the actors.

The language of the Stipulation filed by appellants obviously implies as strongly as it could be made by express words the admissions of the right of the Appellees as a Rail Road Corporation

This admission is upon the record and it is insisted that the appellants are estopped from now denying it.

The proceedings to be had under the stipulation and which were taken under the same the appellants as before stated being the actors, were "to ascertain the compensation to be made and "the point and manner in which said defendant "shall be allowed to cross the track of said com- "plainant at the point named in the bill "of Complaint filed herein in pursuance of sec- "tion eleven of the act incorporating said "defendants"

Phil & Wil'ngton R. R. Co vs Howard 13 Howard 307 335 to 337

An admission either of record or in pais upon which the opposing party has acted and by reason of which he has been deprived of his right or remedies, is binding upon the party making it and he is forever after estopped from denying the truth of it.

That appellees, by the filing of this stipulation by appellant were deprived of what a competent Judicial Authority had decided they were entitled to, cannot as is apparent from this record be denied, and to deny the binding effect of ~~it~~ ~~it~~ the stipulation to its fullest extent is paying a premium for repudiation and bad faith, and allowing a party to speculate upon the acts and doings of the Judicial authorities —.

Webb vs Webb
3 Swans 658
11 Ills. 540

A party cannot assign for error a decree entered by his own counsel

1 Burb. Ch. P. 373
2 Mad. " " 577
Manchester vs. McKee
4 Gilm. 518
Armstrong vs. Cooper
11 Ills 540
Bradish vs. Gee 1 Amb. 229
Webb vs. Webb 3 Swans. 658
Atkinson vs. Marks 1 Cow. R. 709
Kane vs. Whittick 8 Wend 226
Allen et al. vs. Myers 5 Rawle 335
Wilson vs. Commonwealth 3 Penn. R. 532
Smith vs. Virgin 33 Maine 148 to 153

A party consenting to the confirmation of a report or the entry of an award order or decree is estopped from assigning the same for error and cannot appeal from the same

The appellants having created their own tribunal and specified its powers are bound by its decision. They made the reference to the Board of Commissioners without requiring them to report the evidence or the reasons of their

[12003-129]

decision. of course the correctness of the decision re=
=quiring a bridge cannot be a question for examination
or review in this Court, especially at the instance of
appellants upon whose motion the report was confirm=
=ed and they ordered and decreed to perform it

Sec 11 of the act incorporating appellants under the pro=
=vision of which this reference was made expressly makes
the decision of the Commissioners final

The proceedings in this cause were in substance a reference
on motion of appellant
to the Commissioners in the capacity of Masters Special Com=
=missioners arbitrators or referees with their powers and duties
prescribed by the Stipulation

Under such a state of facts and the authorities
before cited appellants cannot assign error or prosecute
an appeal

N B Judd
Of Counsel

Sup. Court
Illinois Central R.R.Co
Appellants
vs
Northern Indiana & C.R.R.Co
Appellees

Points & Authorities
N B Judd

Sup. Court

Illinois Central Rail R. Co Appellants

vs

Northern Indiana & Chicago R. R. Co Appellees

The above entitled cause is to be continued to the next term by agreement of parties
June 11th 1856
Stuart & Douglass
Attys for appellants

N B Judd
Attys for appellees

Will Mess. Stewart & Douglass sign the above Mr. Winston goes down on Monday and will file it

N. B. J.

[12803-130]

58

[illegible] R Road Co,

vs

N. Ind. Rail Road Co

Stipulation

Filed June 17. 1856.

L. Leland

Clk.

Illinois Central Rail
Road Company.
vs
The Northern Indiana and
Chicago Rail Road Company

The Bill in this cause charges that appellee was the owner of certain land and had constructed a rail road thereon which was in daily and constant use. That appellants entered upon the land in question by force built a track thereon, cut the track of Appellee, put in crossing frogs and from the time of such entry until the filing of the bill had been trespassing daily by running trains across said land and track and through the fixtures of Appellee to the serious interruption and injury of the business of Appellee. That these acts were done against the remonstrance of Appellee and the appellants threatened to protect their illegal possession by force. The Bill also charges that a specific method is pointed out in appellants charter for it to acquire the right to cross the track of another road and that they have neglected and refused to take such proceedings. These facts are admitted by the answer

The Bill not only prays an injunction to restrain the trespasses until the Appellant should acquire some right, but has also the general prayer for relief.

As I understand the opinion the opinion the decree is reversed for want of jurisdiction

Upon the question of jurisdiction I would ask the attention of the Court to the following points and authorities

In the case of the Mohawk & H. R. R. Co vs Archer 6 Paige 88 The Chancellor says

"Although the complainants might

"have lain by and permitted Defendant,
"to open the road and have them pro-
"ceeded by suits at-law to recover
"satisfaction for the injury. the
"cases of Belknap vs Belknap (2 John-
"Ch. Rep. 463) and Livingston vs Living-
"ston (6 idem 497) and the cases there
"refered to shows that this Court
"has undoubted jurisdiction to
"interfere by injunction in such
"a case where public officers are pro-
"ceeding illegally and improperly
"under a claim of right, or where the
"exercise of such a jurisdiction is
"necessary to prevent a multipli-
"city of suits at-law. In the present
"case it appears to be a proper one
"for the exercise of such a jurisdic-
"tion, as the act complained of is not
"a mere trespass but an attempt
"to exercise a continued right of
"passing across and through the
"complainants fixtures upon the
"inclined plane to the permanent
"and continued injury of their
"property "

The injuries complained of and enjoined in the above case are precisely analagous to those set forth in the bill in this case.

In the case of Buonaparte vs the Camden and Amboy R.R. Co. 1 Baldwin C.C. R. page 231 Justice Baldwin says

"The injury complained of as impen-
"ding over his property is its perma-
"nent occupation and appropriation

"to a continuing public use"

And on page 232 & 233 he says

"That the complainant may recover
"damages at law is no answer to
"the application for an injunction
"against a permanent appropriation
"of his property for the road under a
"claim of right. This is deemed an
"irreparable injury for which the
"law can give no adequate remedy,
"or none equal to that which is given
"in Equity and is an acknowledged
"ground for its interference"

In the case of the North Union Railway Co. vs The Bolton and Preston. R. Co. 3 Eng. R Cases on page 355 the Vice Chancellor says:

"But it is now clearly settled that
"in cases of trespass under color of
"title where the mischief apprehended
"is irreparable, the jurisdiction of
"the Court exists, and I incline
"strongly to the opinion that
"whether the mischief be irrepara-
"ble or not this Court ought by
"decree at least if not upon mo-
"tion, to extend and apply the
"jurisdiction of preventative
"justice to all cases of trespass
"in which (by analogy to cases
"of Specific performance) damages
"would be an inadequate and un-
"certain remedy and the protection
"of a right in Specie the only mode
"of doing complete justice between the parties"

[12403-132]

Appellants called into existence the tribunal that determined the mode and manner of crossing and if it is true as stated that Appellees could not "compell Appellants either to take use purchase or condemn the property in controversy" the anomaly is presented of a party's seizing the property of another and maintaining possession of it by force and that force ripens into a right - a recovery in trespass for the original wrongful entry does not pass title to the land nor does a second and more recoveries for subsequent crossings:- The Appellees cannot by mandamus or otherwise compel a purchase or condemnation; nor can they restrain such continued trespass for want of jurisdiction although it may and is repeated at least twenty times in every twenty four hours

The opinion states "The bill is framed for and only prays an injuction"

This is an error growing undoubtedly out of the printed abstract.

This case as made by the bill is for general relief. The special prayer asks the Court to restrain the Defendants below from further trespasses and names an injunction as a proper mode by which the object can be accomplished

In addition to the special prayer there is a general prayer for relief

This general prayer is entirely omitted in the printed abstract furnished by Appellants - a fact which the Counsel for the Appellees had not noticed until the reading of the opinion called their attention to the question. The Court by reference to the record will find the usual general prayer for relief and by comparison with the printed abstract (which was alone used in the argument) will see that it is omitted

Justice Story in his Equity Pleadings lays down the rule in Sec 40 when speaking of the prayer for general relief as follows

[1-802-123]

"The latter can never be properly and
"safely omitted because if the Plaintiff
"should mistake the relief to which
"he is entitled in his special prayer
"the Court may yet afford him the
"relief to which he has a right under
"the prayer of general relief provided
"it is such relief as is agreeable to
"the case made by the Bill

What is the case made by the Bill? Complainants in the Court below show title in themselves and a forceable entry and continued trespass on the part of the Defendants They also show that the Defendants charter prescribes the particular manner in which they shall procure the right to cross another rail road. And ask that such trespasses may be stayed until Defendants acquire a right either under their own charter or the general law

The entire decree including the mode and manner of crossing decreed is within the case made by the bill: The Court having jurisdiction of the cause is required by the well settled rules to do full equity between the parties and although the complainant might be protected by a decree restraining the trespasses, The Court may so modify the relief as to protect the Defendants, and in acting upon the mode and manner of crossing there was no departure from the case made.

I assume however that the Court will not reverse so much of the Decree as was entered on motion of Appellants. The order of the 9th November made on motion of Appellants confirms the report and directs the Appellants to stand to, abide by, and perform that award

The final Decree on the 5 December repeats that order. Because it is repeated does it change the force or effect of anything in the order of 9 November so far as it relates to the validity or performance of the award?

Such being the case what else is there in the final decree to which exception can be taken as a departure from the case made by the bill

The Balance of the Decree orders that in a certain contingency the Defendants be restrained from further trespassing. That until the expiration of that contingency the Defendant may continue their trespasses in a particular manner and finally the order for costs — These portions of the Decree only are the action of the ~~Defendants~~ Complainants below. Can it be said that we depart from the case made by the bill because the injunction is made to depend upon a contingency instead of being absolute. when the case made and the relief prayed only sought to stay the Defendants until they acquired a right

It is not material to this question in what manner the Court below arrived at so much of the Decree as is based upon the award of the commissioners. The question here is does so much of the Decree as was entered on our motion conflict in any manner with the case made by the bill

It can hardly be necessary to cite authorities or show to this court, that in an Equitable proceeding the Chancellor has full descretionary power, by reference to master or commissioners or by a feigned issue to be advised of any fact about which he is in doubt. Take the case of the Wheeling Bridge the Supreme Court of the United States even after a final hearing ordered a commission and Chancellor Walworth aided by Engineers was for months engaged in the examination of the question and finally reported the Bridge a nuisance. But the Court did not upon that report, although sustaining and acting upon it, order the nuisance to be abated. but said to Defendants if you wile change the elevation of some parts of your Bridge we wile not abate it. and the decree was made conditional that the Bridge should come down

[2808-134]

unless the Defendants made certain changes in it by a particular date? No one ever thought of calling such a decree a departure from the case made by the bill. And the cases so far as the principle and practice upon which decrees are based are precisely analagous.

Appellee would respectfully ask that a rehearing and argument be granted in this cause

Respectfully
Solr for Appellees

Supreme Court of Illinois

The Illinois Central Rail Road Co

vs

The Northern Indiana & Chicago

Rail Road Company

Petition for Rehearing

Filed July 13. 1858

L. Leland Clk.

IN THE SUPREME COURT

OF ILLINOIS.

THIRD GRAND DIVISION.

JUNE TERM---A. D. 1854.

THE ILLINOIS CENTRAL RAILROAD COMPANY,

versus

THE NORTHERN INDIANA AND CHICAGO RAILROAD COMPANY.

APPEAL FROM COOK CIRCUIT.

CHICAGO,
R. L. & C. L. WILSON & CO., PRINTERS, "JOURNAL." OFFICE.
1854.

IN THE SUPREME COURT
OF ILLINOIS.

Third Grand Division—June Term, A. D. 1854.

APPEAL FROM COOK.

ILLINOIS CENTRAL RAILROAD CO.
vs.
NORTHERN INDIANA and CHICAGO RAILROAD CO.

This is a Bill in Chancery, Filed in the Circuit Court of Cook County on the 30th day of May, 1853, by the Northern Indiana and Chicago Railroad Company *against* the Illinois Central Railroad Company.

The Bill sets forth, That in pursuance of an Act of the General Assembly of the State of Illinois, entitled "An Act to provide for a general system of Railroad Incorporation," passed November 5th, 1849, and previous to the second day of December, 1850, the complainants became a body corporate, by the name and style above mentioned, by filing in the office of the Secretary of State of the State of Illinois, the Articles of Association, papers and proceedings prescribed in said Act, a copy of which papers and proceedings is annexed to said Bill and made part of the same, marked exhibit "A."

That a survey of the route of complainant's Road was commenced in the early part of 1851, under the direction of John B. Jervis, Chief Engineer of complainant's, and that the final location of said route from Chicago to the eastern boundary line of the State of Illinois, was made in the month of June of the same year, which route runs through the west half of Section twenty-six, in township thirty-eight, north of range fourteen, east of the third principal meridian, and also through the south-east quarter of the same section.

That for the purpose of procuring a right of way and facilitating the construction of said Road, complainants, by their attorney, Norman B. Judd, procured from William B. Ogden a deed of Conveyance of the following described parcel of said west half of said section twenty-six, to wit: One hundred feet wide, being fifty feet on each side of the following line, viz: in the north-west quarter of said section, commencing at a point on the west line of said quarter five chains and thirty links south of the north-west corner of said quarter; thence south forty-five degrees

east, forty-nine chains and sixty-nine links, to a point on the south line of said quarter, four chains and ninety-two links west of the south-east corner of said quarter, in the south-west quarter of said section, commencing on the north line of said quarter, four chains and ninety-two links west of the north-east corner: thence south forty-five degrees east, six chains and ninety-four links, to a point on the east line of said quarter four chains and ninety-one links south of the north-east corner of said quarter, which said conveyance was made on the 30th day of July, 1851, and filed for Record in the Recorder's office of Cook County, on the 3d day of November, 1851, a copy of which said deed is annexed to said Bill, marked "Exhibit B," and made part of said Bill.

That complainants procured from William B. Ogden for himself, and from Mahlon D. Ogden and Edwin H. Sheldon, executors of William E. Jones, deceased, a conveyance of the following described parcel of the south-east quarter of the said section twenty-six, to wit: One hundred feet wide, being fifty feet wide on each side of the following line, viz: commencing at a point on the west line of said quarter, four chains and ninety-one links south of the north-west corner of said quarter; thence south forty-five degrees east, forty-nine chains and sixty-nine links to a point on the south line of said quarter, four chains and fifty-five links west of the south-east corner of said quarter, which said deed was executed July 30th, 1851, and filed for Record in the Recorder's office in Cook County, November 3d, 1851, a certified copy of which said Deed is annexed to said Bill, marked "Exhibit C," and made part of said Bill.

That at the time of making the said conveyances, the Grantors therein named were seized in fee simple of the tracts of land conveyed thereby, which said conveyances were made to said Norman B. Judd, in trust for and as the agent and attorney of complainants, and the consideration for said tracts of land was paid by them.

That the grading of complainants' Road was commenced in October, 1851, and that said Road was completed across said section twenty-six and the premises so conveyed to Judd, February 20th, 1852, and that from that time to the present, trains of cars for transporting persons and property have passed over complainants' Road every day except Sundays.

That on the 16th day of June, 1852, the General Assembly of the State of Illinois passed an "Act to authorize the construction and use of the Northern Indiana and Chicago Railroad," a copy of which act is annexed to said Bill and marked "Exhibit D," and made a part of said Bill.

That on the 10th day of February, 1851. said General Assembly passed an Act entitled "An Act to incorporate the Illinois Central Railroad Company."

That on the 6th day of April, 1852, the Illinois Railroad Company filed in the Recorder's office of Cook County a map of the location of so much of the Chicago Branch of said Road as lies within Cook County, and further, that the line of the said Chicago Branch, as shown by said map, is located upon the tracts of land conveyed to Judd as aforesaid, and near the centre of section twenty six, and that the Illinois Central Railroad Company has never acquired any title or interest in the said tracts of land, nor any right to cross over the same.

That in the act incorporating the Illinois Central Railroad Company, is contained the following provisions: "And when the route of said Road "or either of its Branches, as provided in the act, shall intersect, or cross, "or connect with, or run along or upon the line of any other Railroad "now constructing, or now in process of construction by any other com- "pany to be formed under this Act, shall join with such other company in "making all necessary turn-outs, sidelings and switches and other con- "veniences necessary to further the objects of such connection; and "when the route of any other company shall be occupied as aforesaid, "just compensation shall be made to such other company for all expen- "ditures made by them in the location of such Road, and all Railroads "so constructed or now in process of construction, intersections as afore- "said and connections made with the Roads authorized to be built by "this act, shall be made and facilities in the trans-shipment of freight and "passengers and interchange of cars afforded by each over the respective "Roads, upon fair and equitable terms; and in case the said companies "cannot agree upon the amount of compensation to be made therefor, or "the points and manner of such crossings and connections, the trans- "shipment of freights and passengers and interchange of cars, the same "shall be ascertained and determined by three commissioners, one to be "chosen by each of the said companies, and the two so chosen to choose "a third, and in case they cannot agree upon the choice of the third "person, he shall be appointed by the Judge of the District Court of the "United States for the District of Illinois, and the decision of the three "when so chosen shall be final, *Provided*, that this corporation shall not "take and run on the road or line of any such company which is now "being constructed, without the consent and agreement of the company whose road or line is proposed so to be used."

That in the act entitled "An Act to provide for a general system of Railroad incorporations," passed November 5th, 1849, it is enacted as follows: "To cross, intersect, join and unite its Railroad with any other "Railroad before constructed at any point on its route, and upon the "grounds of such other Railroad Company, with the necessary turn-outs, "sidings and switches, and other conveniences, in furtherance of the ob- "jects of its connections, and every other company whose Railroad is, or

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"hereafter shall be intersected by any new Railroad, shall unite with the "owners of such new Railroad in forming such intersections and con- "nections, and grant the facilities aforesaid; and if two corporations can- "not agree upon the amount of compensation to be made therefor, or the "points or manner of such crossings and connections, the same shall be "ascertained and determined by commissioners to be appointed by the "Court, as is provided hereinafter, in respect to the taking of lands."

That after the completion of complainants' Road, in the month of April, 1852, R. B. Mason, Chief Engineer of the Illinois Central Railroad, informed John B. Jervis, Chief Engineer of complainants' Road, by letters, of the location of the Chicago Branch of said Illinois Central Railroad, within the county of Cook, to which letter, John B. Jervis replied as follows:

ADRIAN, 12th April, 1852.

"R. B. MASON, Esq.,

"DEAR SIR:— Yours of the 7th inst. has been received. I am "sorry not to have seen you at Chicago. The subject of crossing our "track by the Illinois Central Road has occupied my attention for some "time, and I had determined to embrace the first opportunity to have a "conversation with you in relation to it. You will readily see that "crossing lines so far from a station, by means of crossing-frogs, would "be very objectionable. It has nothing to recommend it but the expense. "The objections are: first, trains approaching at the same time, under the "excitement that would urge them to pass first, may be brought into col- "lision, and great damage done to life, limb, and property. Second, it "would render it necessary for trains to slacken speed in order to pass the "frogs in safety, and with all the care that may be used, there will be "danger of breaking wheels in the frogs, and causing great damage to "the train. If the crossing was near a station, the objections to this plan "would be greatly reduced, but under the circumstances it appears to me "the only course to be recommended is that of bridging over, so that each "Road would have their own track. This will involve considerable expense "and I should recommend that our Company pay such proportion as "would be fair and reasonable. In the first place you would make the "approaches on piles, and this would not be a serious addition to the "expense, and the track once down, the bed could be filled with embank- "ment, and made solid and the respective trains would pass without "interference with each other, or the hazard of a collision. If you con- "sider the matter carefully, I think you will come to the same conclusion. "Two important lines of road should not allow their business to be con- "ducted on such a hazard and embarrassment as a level crossing would "involve, and I should be happy to interchange views and enter into any

"negotiations that may be proper to put this plan of crossing on a satis-
"factory and fair basis. In the meantime, William Jervis will confer
"with you as to plan and mode of crossing.

Respectfully yours,

JOHN B. JERVIS."

That at a meeting of the Board of Directors of complainants' Road, the following resolutions were adopted, in relation to the crossing of said Road by the Illinois Central Road: "At a meeting of the Directors of "the Northern Indiana and Chicago Railroad Company, held at the office, "No. 74 Beaver street, New York, present Charles Butler, President, Geo. "Bliss, John B. Jervis, Edwin C. Litchfield, and John Stryker, Mr. Stry-"ker was appointed Secretary *pro tem.*,

"Resolved, That the Illinois Central Railroad Company, having com-"menced the construction of their road, at a point about nine miles from "Chicago, where their line as located will cross the track of the Northern "Indiana and Chicago Railroad Company, and their chief engineer having "made a communication as to the mode and manner of crossing the "same, and whereas the only safe mode expedient to be adopted at "this place is by a bridge to be constructed over the track of this Com-"pany.

"*Resolved*, That the said Illinois Central Railroad Company be noti-"fied that this company cannot agree to any other mode of crossing their "Road, except by a bridge, and this company are ready to meet any officer "or agent of said Illinois Central Railroad Company, at any convenient "time and place they may designate, for the purpose of agreeing upon "the mode and manner of said crossing, and that if they cannot agree "upon the same, this company is ready to refer the same for adjustment "in the manner prescribed in the charter of the Illinois Central Railroad "Company, and the general laws of Illinois.

"*Resolved*, That the chief engineer take all lawful means to prevent "any crossing of the track of this company by the Illinois Central Rail-"road company, until the question is finally settled, either by the agree-ment of the parties, or commissioners as provided in the law," copies of which resolutions were delivered to Robert Schuyler, the president of the Illinois Central Railroad company, at the office of said company in New York, April 25th, 1852; said company having no office in the State of Illinois for the transaction of their general business.

That the Illinois Central Railroad company, was forbidden to enter upon the land so held for complainants as aforesaid, or to cross complainants' road until the manner of crossing had been determined, by a commissioner appointed in pursuance of the laws in said Bill before set forth, except by carrying their road over complainants' road, sufficiently

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high to allow complainants' cars and locomotives to pass under the same safely.

That R. B. Mason was notified that complainants would not allow any other method of crossing than as above stated; that the views of complainants on that subject were made known to him by William Jervis, resident engineer of complainants' road, and that said resident engineer, was instructed not to permit the track to be crossed, except in the manner dictated in the foregoing Resolutions—that in reply to said notice, said Mason informed said Jervis that he would not disturb complainants' track without giving him timely notice, so that he might prevent the same.

That on the 7th day of May, 1852, said Mason secretly conveyed materials to the place, and by force cut the rails of complainants' road, and put in crossing-frogs without giving the aforesaid notice, and complainants were first informed of said attempt to cross their track by a letter from said Mason, in the following words;—

CHICAGO, May 7th, 1852.

WILLIAM JERVIS, Esq.,

"DEAR SIR:—Having everything prepared to-day for putting in "the crossings where our road crosses yours, I concluded to put it in, and "have done so. I took the precaution to keep a man half a mile each "way with a red flag to stop any train that might come, but fortunately "none came along. I also took the precaution to send a line, up to your "gravel pit, and sent a man with a line to the first station east, so that "your trains in to-night might have notice. It fits both tracks well, and "I think will admit of trains running over it with almost the usual speed. "I made everything permanent and strong. Truly yours,

R. B. MASON."

That at the time said crossings were put in, complainants' road had been completed several months and trains of cars were running over it daily; that complainants' track was cut and the frogs put in, on the premises conveyed to Judd, as aforesaid.

That said John B. Jervis sent to said Mason a letter, of which the following is a copy:—

CHICAGO, May 10th, 1852.

"R. B. MASON, Esq.,

"DEAR SIR:—I regret that after I had intimated my objections "to the crossing of the Illinois Central track on the same level with ours, "that you should without notice have cut our track and put in such a "crossing. I have no wish in any manner to embarrass the operations "of your company, but as I conceive that both companies are bound by

"every consideration of private interest and public duty to adopt such "measures as shall, as far as practicable, secure life and property—and "believing that a level crossing such as you have put in will place the "lives of passengers over both roads in great jeopardy, I therefore cannot "consent to it. Believing the crossing which you have put in on our "road near this city will render travelling on both roads extremely hazard-"ous, I feel called upon to protest, and do protest, against your placing or "maintaining any crossing at or near the point above indicated, except by "passing over our track at a height sufficient to permit our engines to "pass under the same. This is the only practicable mode of crossing "which is safe. I am not aware that there is any difference of opinion "between us on this point, but should there be, I think both companies "are bound to have the question settled by a commission of impartial "men. I therefore propose that three persons be appointed in conformity "to the act incorporating the Illinois Central Rail Road Company, to de-"vise upon the proper mode of crossing our road."

Respectfully, your obedient servant,

JOHN B. JERVIS.

That said John B. Jervis notified said Mason that as the agent of the complainants, he should take measures to restore their track, and prevent and prevent any further tnterference with the same, until the question was settled according to law; that Mason answered, that he should protect his frogs by force.

That said Mason stationed a body of armed men at the crossing, thereby preventing complainants from restoring their track without causing a riot.

That at the time of cutting complainants track, the Illinois Central Railroad Company had no title or interest in the land where the frogs were put in; that neither said company nor any one else had, or have they since acquired any right or interest in or to said premises or any right to enter thereupon; that the title to said premises have been transferred by Judd to complainant; that the Illinois Central Railroad Company have acquired no right by purchase, grant or condemnation, to enter upon or use said premises.

That complainants had always refused to assent to any crossing of their road except in the manner specified in the resolutions before set forth; that the Illinois Central Railroad Company refused to take measures or join complainants in any measures to settle the question pursuant to law.

That on the twelfth day of May, 1852, the Illinois Central Rail Road Company, by M. Brayman their Solicitor filed in the Circuit Court of Cook County, a petition, a copy of which is annexed to said Bill marked

"exhibit E;" that said petition purported to be filed to procure a right of way in accordance with the provisions of the Charter of said road and of the act passed Nov. 5, 1849, entitled "An Act to provide for a general system of Rail Road Incorporation;" that a notice of the filing of the petition was served upon Norman B. Judd, and that an application would be made at the then May Term for the appointment of Commissioners to assess damages for the right of way over complainants premises herein before described.

That in pursuance of said notice, Judd appeared before the said Court at the time appointed to resist the condemnation of complainants track, and to compel the Illinois Central Rail Road Company to settle the manner of crossing complainants road in the way provided by the act incorporating the Illinois Central Railroad Company, and the act to provide for a general system of Railroad Incorporation; that the Illinois Central Railroad Company did not appear before the court at the time appointed; that the proceeding has never been prosecuted; that complainants have always been ready and willing to settle the manner of crossing as provided in the laws before mentioned.

That the cutting of complainants track by the Illinois Central Railroad Company, and the constant running of trains over said track permitted by said company are irreparable injuries to road, business and property of complainants; that no adequate compensation in damages can be made; that serious and repeated injuries are caused to the franchise and property of complainants; that six trains run daily over complainants road, carrying a large number of passengers and a large quantity of freight; that the business of the road is daily hindered and damaged; that trains of cars are compelled to slacken speed in order to cross said "frogs" in safety, thereby wasting time; that frequently they are compelled to come to a full stop; that collisions are unavoidable unless complainants surrender the use of their road to the corporation so trespassing upon their rights; that the danger to persons and property is increased by the risk of breaking wheels in the "frogs;" that complainants are daily prevented from having the free and unmolested use of their property; that the fear of collision and the danger of crossing the "frogs" is daily injuring the business of their road; that these injuries are permanent, and no adequate compensation can be made to complainants.

That the Michigan Central Railroad Company, a foreign corporation created by the laws of Michigan, are allowed by the Illinois Central Railroad Company to use its road and run trains daily across the track of complainants' road, thereby injuring their business, and trespassing upon their rights.

That the Michigan Central Railroad Company has no right or existence under the laws of this State; that by running trains of cars within

the State they are exercising right without the authority of law, and that the Illinois Central Railroad Company have no authority to allow the use of their road to such company.

That said crossing is nine miles from Chicago, and a long distance from any station; that it is in low, marshy ground where the fog often settles; that in a dark foggy night lights cannot be seen at any distance; that on the evening of the 25th day of April, 1853, a serious collision occurred between the train running on complainants' road and one belonging to the Michigan Central Railroad Company, at said crossing, by which eighteen lives were lost, and many persons injured, and the engine and cars of complainants' train injured to the amount of several thousand dollars; that the collision was occasioned by the negligence of persons in charge of the Central Railroad.

That the Illinois Central Railroad Company are not yet running passenger or freight trains over their road; that the iron is only laid a distance of about thirty miles south of Chicago, and that the company is doing no business on that part of the raod except occasionally running a train to transport materials for the construction of said road.

That the only safe mode of crossing complainants track is by constructing a bridge at such height that locomotives can pass under the same, and that at the point of crossing, such bridge, and the necessary embankments and pile bridging would not greatly increase the expense, or make an objectional grade; that no private arrangement can obviate the danger of a collision so long as the roads cross at the same level, and that in dark and foggy nights it would be impossible to see a train at ten rods distance, even if provided with the best reflectors and lights, and that an attempt to operate roads so constructed is trifling with the lives of passengers; that no human foresight can prevent collisions.

The Bill prays that the Illinois Central Railroad Company may answer the allegations in said Bill, and that said company be enjoined and restrained from entering upon, or using, or in any manner interfering with complainants' lands and with their track—from delaying the passage of cars over their road—from crossing, and entering upon their road, bed, or track, and from permitting any other company or corporation to do the same, until the mode of crossing be determined in the manner prescribed in said act of incorporation, entitled "An act to incorporate the Illinois Central Railroad Company," or in the manner pointed out in the act entitled "An Act to provide for a general system of Railroad Incorporation" and until said crossing shall have been erected according to the determination of commissioners to be appointed in pursuance of said law; that a writ of injunction may be granted, enjoining the Illinois Central Railroad Company, and the Michigan Central Railroad Company, their agents, at-

tornies and servants, as above prayed for; and also a summons commanding the Illinois Central Railroad Company to appear and answer complainants' Bill and abide by such decree or order as should be rendered.

Signed by John M. Wilson, Secretary of the Northern Indiana and Chicago Railroad comyany.—Sealed with the seal of said company.

In an amended prayer for process of injunction, filed by leave of the court. November 2d, 1853.

Complainants pray—For a preliminary writ of Injunction commanding the Illinois Central Railroad company, their superintendent, engineers, solicitors, agents, and servants, that they absolutely refrain from entering, or permitting any other railroad company or persons to enter upon the land and road bed of complainants at the place of crossing before mentioned, and from crossing or attempting to cross, or permitting any other railroad company or person to cross the same with any locomotive, car or otherwise, until the further order of the Court in the premises.

A summons issued out of said Court on the 30th May, 1853, commanding the defendants to appear and answer complainants' Bill.—Served May 31st, 1853.

On the 15th day of June, 1853, the Illinois Central Railroad Company, by M. Brayman, their solicitor, filed in said Court, their answer to complainants bill of complaint.

The answer admits, that previous to the 2nd day of December, 1850, some steps were taken by the persons referred to, in complainants bill, and named in exhibit, "A," thereto annexed, towards an organization under the provisions of an "Act to provide for a general system of Railroad Incorporation," approved Nov. 5th, 1849, under the name and style of the Northern Indiana and Chicago Railroad Company, but that said persons did not become a body politic and corporate as in said bill alledged. That the Articles of Association papers and proceedings, a copy of which is annexed to complainants bill marked, "exhibit A," were filed in the office of the Secretary of State as in said bill alledged.

The answer charges—That the Commissioners appointed to open the books of subscription to the stock of said company named in "exhibit A," did not perform the duties required of them by Section five of the act aforesaid.

The answer denies—That said Commissioners ever appointed a time or place for a meeting of the Stockholders to choose Directors, or that any notice of such a meeting was ever published in the State paper, or any other paper published in Cook County, or that any such meeting was ever held in any County, in or through which said Railroad was proposed to be constructed, or at any other place, as required by the Sixth Section of the act aforesaid.

That any election of thirteen directors ever was held as required by section six of the act aforesaid, but only seven directors are named in "exhibit A," and says that it does not appear that these seven were ever elected to their offices.

The answer says—That of the seven persons named in "exhibit A," as directors, six, to wit: George Bliss, John B. Jervis, Charles Butler, Elisha C. Litchfield, Edwin C. Litchfield, and John Stryker were not at the time of their pretended appointment, residents of any county or counties in or through which said railroad was proposed to be constructed, and located, and only one of said persons was such resident, whereby said persons were not elected to their offices according to the requirements of said act.

That no distribution or allotment of capital stock of said proposed company was ever made as required by said act, and defendants insist that until the act entitled "an act to authorize the construction and use of the Northern Indiana and Chicago Railroad," approved June 16, 1852, was in force, the complainants were not a body politic or corporate, with authority to construct or locate a railroad, and until that time complainants had no power or authority to purchase or condemn any lands for their use, either directly or indirectly; that until the time aforesaid, no person or persons could, by the laws of the state of Illinois, hold in trust or stand seized of any lands or right of way to the use of complainants, and that all deeds or conveyances purporting to convey lands or right of way over any lands to complainants, or to any person in trust for them, which were made and executed prior to the aforesaid time, are utterly void and of no effect, and that no right, title or interest did or can pass to complainants by virtue thereof.

The answer says—That the defendants are not informed, except by complainants' bill, when the survey of the road therein mentioned was commenced, nor at what time the final location was made, and therefore neither admit or deny the allegations in said bill relating thereto, but they admit that such location was made over and upon the particular section and part thereof alledged.

The answer admits that Norman B. Judd obtained deeds of conveyance from the persons in said bill named, of the lands alledged and shewn by exhibits B, and C, filed with said bill, and with money furnished by the subscribers of the paper marked "A," also therewith; that several grantors in the said deeds of conveyance in said bill set forth, were at the time of the execution and delivery thereof, seized of the premises therein described in fee simple, as in the said bill alleged.

That said Judd, in procuring said deeds of conveyance, acted as the agent of the persons named in said exhibit "A," under some secret understanding not described by exhibits "B, and C" and not known to said defendants, but for the purpose of constructing and using on said land a railroad, and for no other purposee.

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That the grading of the road in said bill mentioned, was commenced, and said road open for the running of cars, and that trains have run, and still continue to run thereon, but defendants insist that grading, construction and completion of said road by complainants, and running of cars thereon, were without authority, and in violation of law.

The answer admits—That the General Assembly of the State of Illinois passed an act entitled "an act to authorise the construction and use of the Northern Indiana and Chicago Railroad, as in said bill alleged, to a copy of which, marked exhibit "D," and annexed to said bill, defendants crave leave to refer, as though it was set out in said answer; and the defendants insist that before the act approved June 16th A. D. 1852, went into effect agreeably to the constitution of this State, complainants did not acquire any rights, powers, or franchises, under the "act to provide for a general system of railroad incorporation," and that all the acts of the persons named in exhibit "A," and said complainants, were without authority. Defendants admit that they were incorporated as alleged in complainants' bill.

The answer states—That the route of defendants' road was located as early as October, 1851, and the line indicated upon the lands, over which the same would pass; that said location was adopted by the Board of Directors previous to the first day of January, 1852; that complainants had notice of said location prior to complainants laying down their track as in said bill alleged.

That on the 6th day of April, 1852, defendants filed a map in the Recorder's office of Cook county, showing the location of their road over said section and part thereof, as in said bill alleged.

This answer denies—the allegation in said bill contained, that these defendants never acquired any title or interest in the tracts or parcels of land conveyed to said Judd, as in said bill set forth, or the right to cross over the same, and these defendants say that by reason of such location so made, by these defendants, these defendants acquired a franchise and right to an easement over the lands in said bill mentioned, upon the line of said location upon purchasing said lands or making just compensation for the same, as required by their act of incorporation, and that the franchises, rights and powers then acquired, were, and are paramount to any franchises, rights or powers of complainants.

This answer states—That on the 15th day of March, 1852, these defendants purchased of William B. Ogden, Mahlon D. Ogden, and Edwin H. Sheldon, executors of William E. Jones, the land upon which their road was located, and is now constructed, and that William B. Ogden, Mahlon D. Ogden, and Edwin H. Sheldon, executors of William E. Jones, by their deed, bearing date the day and year last aforesaid, conveyed to these defendants the aforesaid premises, a copy of which deed is annexed to said

answer, marked "1," to which copy these defendants crave leave to refer as though the same were set out at full length in said answer.

That at the time these defendants purchased said premises they supposed and believed that they had acquired an absolute title to said premises, for the purpose of constructing and operating a Railroad, and although the deeds to Judd were recorded in the Recorder's office in Cook County, these defendants and their agents were not aware that any such deeds had been made to Judd, or were recorded as aforesaid at the time aforesaid, nor when these defendants put in the crossing in said bill mentioned and hereinafter mentioned, on the 7th day of May, 1852.

This answer admits that the act of incorporation of these defendants contained the provisions in said bill alledged but these defendants say that the said provisions applies only to roads then constructed or in process of construction, and that said complainants road was not at the time of the passing of said act, constructed or in process of construction.

That the allegation in said bill, in relation to a particular provision in the act entitled "An act to provide for a general system of Railroad incorporation" approved November 5, 1849, is true, but these defendents say that complainants had no right or power to intersect or cross these defendants' road, until after the act, June 16, 1852, went into effect, and these defendants insist that if complainants desire a crossing over defendants track by virtue of the act of November 5, 1849, it is the duty of said complainants to institute the proceedings therein mentioned, for the purpose of effecting that object, and that complainants have no right to require of these defendants so to do, and these defendants insist that said complainants have an adequate remedy at law by mandamus, to compel these defendants to do all such acts relative to the crossing, as the court shall decide ought to be done and performed by these defendants.

This answer admits—That on the 7th day of April, 1852, the said R. B. Mason, mentioned in said addressed letter to said John B. Jervis, in said bill named, the object of which was to inform said Jervis that said Mason intended to make a crossing: also, that Mason received from Jervis the letter in said bill, mentioned, set forth, dated April 12th 1852.

This answer admits—That Robert Schuyler received a copy of the resolutions of the complainants, as in said bill alledged.

This answer denies—That the defendants were forbidden to enter upon said lands or to cross complainants' track or to interfere with said track, as in said bill alledged, or that said Mason was informed or notified that complainants would not allow any other manner of crossing than by bridge, as in said bill alledged.

This answer admits—That William Jervis was the resident Engineer of complainants and that R. B. Mason was the chief Engineer of these de-

fendants, at the time alledged in said bill, that said Mason had a conference with said Jervis upon the subject, in said bill mentioned, but denies that said Jervis informed Mason that he was instructed by John B. Jervis to prevent any crossing of complainants track as in said bill alledged, and also denies that said Mason made any assurance to William Jervis that he, the said Mason would not disturb the track of the complainants' road without giving said Jervis timely notice, as in said bill alledged.

This Answer admits—That on the 7th day of May, 1852, said Mason, without giving any notice to complainants Engineer, William Jervis, cut the rails of complainants' and put in crossing frogs necessary to carry the track of these defendants across complainants track; That so much force as was necessary to perform a work of that character was used, but whether the same was done by the "strong arm" as in said bill alledged these defendants are not advised.

This Answer states—That complainants Engineer well knew, before said crossing was made, that defendants Engineer intended to make such crossing whenever it became necessary for him so to do, in the construction of defendants road, but admits that the first information complainants or their Engineer received, that such crossing had been made, was from the letter of said Mason, as in said bill alledged—although they have no knowledge or information upon the subject.

This answer also admits that R. B. Mason wrote and William Jervis received from him the letter, dated May 7th, 1852, as in said bill alleged; that on the 7th day of May, 1852, the complainants' track had been completed for several months, and that trains of cars were running over the same daily and that said track was cut, and said "frogs" put in upon the premises in said bill alleged. But these defendants insist that complainants had not, at that time, and did not have until the act of June 16th, 1852 was in force any right, power or authority to operate a Railroad in any manner whatever.

This answer admits—That R. B. Mason received from John B, Jervis the letter dated May 10th, 1852, in said bill set forth, and also states that R. B. Mason, on the 10th day of May 1852, delivered to John B. Jervis a reply thereto, a copy of which is annexed to said answer, marked "2."

And also says, that John B. Jervis informed R. B. Mason that he the said Jervis should cause the track and frogs laid down and put in by said Mason, to be taken up by force and violence, and this Answer admits that thereupon Mason informed said Jervis that he the said Mason should protect the same in like manner, if the acts of said Jervis made it necessary to do so.

This answer admits—That Mason had a large number of men under his contract, in constructing defendants road near by said crossing, but said men were not armed with any other weapons than the tools used by them, and the answer admits that Mason would have protected said crossing in the con-

dition it was put by him by force, if the acts of said Jervis had rendered it necessary for him so to do to preserve the same.

This answer further states, that at the time of putting in said crossing these defendants had a good and perfect right to pass over said premises in that manner as against the complainants, as in said answer before set forth, and defendants believe they had a perfect right so to do, as against all persons whatever, and that such right had been acquired in the manner before in said answer set forth.

This answer admits that the lands mentioned in said bill have never been condemned agreeably to the laws of this State, and they also admit that said Judd, on the 6th day of November, 1852, conveyed all his right, title, and interest, in and to said premises, to the complainants.

This answer denies that the complainants have always objected and refused to assent to any other crossing, except in the manner specified in the resolutions in said bill set forth, but says, that since the 12th day of May, 1852, until the filing of their bill of complaint. nothing has passed between the complainants and the defendants upon that subject. That up to that time, the complainants had no right to have any crossing, whatever, and that since that time, and since the complainants had authority to construct a Railroad, and operate the same under the act of the Legislature aforesaid, these defendants have not been applied to in relation thereto.

This answer further says, that the complainants, from the 17th day of May, 1852, when they were applied to for that purpose, by R. B. Mason, up to the 8th day of January, 1853, declined making any arrangement with these defendants relative to the crossing of trains, so as to secure the public safety.

This answer admits that the petition of the defendants, set forth in said bill, was drawn up by their Solicitor, M. Brayman, but whether the same was ever filed or served, these defendants are unable to state.

And also admits, that no proceedings were ever had or taken under the same, the defendants not considering it necessary so to do, and the defendants have no knowledge, information, or belief relative to any other matter or thing in relation to the action of the parties, or their attorneys, in regard to said petition.

This answer denies that the complainants have, ever since the 12th day of May, 1852, informed these defendants of their readiness to do anything whatever in relation to the said crossing, but the defendants believe that they have always been willing these defendants should take up the same, and bridge over complainants' road, at the expense of these defendants, and in such a manner as not to interfere with complainants' road, but, whether with or without controversy, these defendants are unable to state.

This answer insists, that in putting in said frogs, and making said crossing, these defendants violated no legal rights of the complainants—that such crossings are usual and customary in all parts of the United States where Railroads are operated to any considerable extent, and are, and have been, for years, considered, by those skilled in the operation of Railroads, not only safe, but causing little or no injury to the track thereby crossed, and that the crossing of complainants' track, as in said bill set forth, is of little or no injury to said track, or to the business, over the same

That the complainants are not entitled to any compensation for any sach injury to said track, or to their business, but on the contrary thereof these defendants are entitled to compensarion from the cmplainants for an infringement of the rights and franchises of these defendants. These defendants have no knowledge, information, or belief of any damages sustained by complainants franchises and property in consequence of said crossing, but these defendants admit that daily trains are running over the said road, as in said bill alledged, and that such trains do, at said crossing, usually slacken their speed and sometimes come to a full stop; and the trains of these defendants, and those of the Michigan Central Rail Road Company do the same, and that no great amount of time is wasted thereby.

This answer further states, that with ordinary and proper care, there is no danger of breaking wheels, or other machinery, upon said crossing, and that there is no danger of collisions on account of said crossing, ordinary care being observed, and denies that the injury of such crossing does not admit of compensation; and further says, that these defendants, and those who occupy the road of these defendants, are subject to all the embarrasments, hindrances and damages to which the complainants are subjected, and that inasmuch as these defendants have a permanent right of way over the complainants; these defendants are entitled to compensation in respect to all the matters aforesaid, and not the complainants.

The answer admits, that since the 7th day of May, 1852, these defendants have allowed the Michigan Central Rail Road Company, a corporation created by the laws of Michigan, to run over and upon the road of these defendants, and for these defendants' benefit and profit, as these defendants may lawfully do; and these defendants insist that said Michigan Central Rail Road Co. may acquire, and have acquired a right to use their trains of cars, as aforesaid, under, and by virtue of an agreement with these defendants, and that said Michigan Central Rail Road Co. ought to be made a party to this suit.

This answer admits, that said crossing is about nine miles from the City of Chicago, and upon a low, wet, and marshy prairie, but cannot state at what distance from stations, neither can these defendants state with accuracy, the precise distance at which lights can be seen in a dark and

foggy night, when provided with the best reflectors, but presume this would depend much upon the brilliancy of the light, and the darkness and fogginess of the night. These defendants, however, as a matter of opinion, think that a bright light, with a good reflector, might be seen more than ten rods. These defendants admit, that a collision occurred at the time and place, and between the cars in said bill alledged, and with the consequences therein stated. But being that said collision was caused by the carelessness of persons having charge of the Michigan Central Rail Road Company's train, but on the contrary say that the same was caused by the gross negligence and carelessness of persons having charge of the train of complainants, and by a violation of an arrangement on their part which was made on the 22d day of January, 1853, between R. B. Mason, Chief Engineer of defendants road and J. H. Moore, the Superintendant of complainants road, in said answer afterwards set forth.

This Answer further says, that the Defendants are running over their road two or more construction trains daily—that they have now more than forty miles of said road completed, will soon have more ready for the cars to run upon, and that these Defendants intend to put on to the Railroad in a few days a passenger train to run regularly. That the Michigan Central Railroad Company are now running over said road with a large number of freight and passenger cars from which these Defendants derive great profits: and further says that any interference on the part of this Honorable Court restraining the passing and repassing of said construction cars would seriously affect the construction of the Defendants' road, and that irreparable injury would be the consequence of restraining these defendants not only to these defendants, but to the Michigan Central Railroad Company and to the people of the State of Illinois who may desire to travel or transport freight over said road. The Answer denies that a bridge is the only proper mode of making a crossing at the place aforesaid and that future collissions cannot be avoided by proper care: The Answer further says that on the 22nd day of January 1853 an agreement was made between the complainants by J. H. Moore the Superintendant of the said Complainants' road with full power and authority for the purpose, and these Defendants by R. B. Mason with like power and authority, regulating the running of trains over the roads of said companies respectively at the crossing in said Bill mentioned, which said arrangement went into effect on the first day of February 1853, and has continued in force up to the present time. Defendants crave leave to refer to exhibits marked 3, 4, 5 and 6, as showing the said arrangement and the manner in which it was made. These Defendants insist that the crossing in said Bill mentioned is not unsafe or dangerous, that as before stated such crossings are

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usnal and customary: That the Northern Indiana Railroad Company owned and controlled by the Complainants have their crossings of a similar character across the track of the New Albany and Salem Railroad Company and one of them in a deep cut where such crossings would be considered more hazardous, and the Complainants have been constantly passing over the same without fear of collision: That no collision has ever occurred upon the crossing in said Bill mentioned except the one above stated, and under the circumstances of the case these Defendants insist that the Court ought not to interfere to the destruction of a large and profitable business of these Defendants, but Complainants should be left to their remedy at law. The Answer insists that there has been such an acquiescence on the part of Complainants as to deprive them of any right to an injunction with respect to any of the matters in said Bill set forth. This Answer for sake of brevity and conciseness of expression has, in speaking of the rights of the persons named in "Exhibit A" or those claiming under them in regard to any property matter or thing, spoken of them as those of the "Complainants," but the Answer distinctly denies that the Complainants had in a corporate capacity any rights, property, power, or authority in regard to any matter or thing until the time of said Act of June 16th, 1852 took effect and wherever the word complainants is used in the above connection it is made in the place of the persons named in "Exhibit A" and those claiming under them.

And the Answer denies all manner of unlawful combination and confederacy wherewith Defendants are by said bill charged—without this that there is any other matter or thing in said Bill contained material or necessary for these defendants to make answer unto and not in and by said answer well and sufficiently answered traversed confessed and avoided or denied, is true to the knowledge or belief of these defendants, all which matters and things the defendants are ready and willing to maintain and prove as this honorable Court shall direct and humbly pray to be hence dismissed with their reasonable cost, in this behalf most wrongfully sustained.

Signed—The Illinois Central Railroad Company,
by ROBERT SCHUYLER, Pres't.

And afterwards on the 18th day of June 1853, in vacation at chambers before the Honorable Buckner S. Morris, Judge of said Court, the following proceedings among others were had, to wit:

NORTHERN INDIANA & CHICAGO RAILROAD COMPANY, vs. The ILLINOIS CENTRAL RAILROAD COMPANY. } IN CHANCERY, June 18th, 1853.

This day came the complainant and the defendant by their respective soliciters and the motion of the complainants for a preliminary injunction

against the defendants fully argued by the council of the respective parties upon the Bill Answer, Exhibits, and Affidavits filed herein, on consideration of the premises, and being fully satisfied, from the pleading exhibits and affidavits on file in this cause, that the complainant is entitled to the preliminary injunction asked for. I do therefore order that the same be granted and insured according to the prayer of complainants bill of complaint filed in this cause, *unless* the defendant by its counsel or solicitor shall forthwith enter into and file in this cause a stipulation to the effect following to wit:

First: That the said defendant will proceed without unnecessary delay, to take such proceedings as are necessary, under the act of incorporation of the defendant, as indicated by the 10th and 11th sections thereof, to ascertain by commissioners, the compensation to be made to the complainants and the points and manner in which the said defendants railroad shall be allowed to cross the railroad track of the complainants at the place mentioned in said bill of complaint, and shall prosecute such proceedings in pursuance of the provisions of said act, without unnecessary delay, to a final conclusion and comply with the decision and award of the commissioners in the premises.

Secondly—That until such final determination or further order in the premises to the contrary, the trains of cars passing both ways upon the defendants' road shall keep out of the way of the complainants' tarins of cars passing upon the said complainants' road, at the crossing thereof in the bill mentioned, so that the complainants' trains shall have the road and precedence at all times, in crossing there, till further order in the premises to the contrary thereof, or by agreement of the parties to change the same, which precedence in crossing shall at all timesbe exercised without unreasonable delay. The defendants' trains coming to a full stop at the crossing aforesaid and send forward on its track the conductor or fireman, so as to see their way clear before crossing. This regulation to take effect and be in force on and after the 25th day of June 1853.

And upon making and filing such stipulation the issuing of said writ will be staid till further order in the premises.

Whereupon the defendants' solicitor made aad filed in this cause the stipulation above required, in the words and figures following, to wit:

NORTHERN INDIANA AND CHICAGO RAILROAD COMPANY. vs. The ILLINOIS CENTRAL RAILROAD COMPANY. } Cook Circuit Court, In Chancery.

The motion for an injunction in the above entitled cause having been heard by the Hon. B. S. Morris, Judge of the seventh Judicial Circuit, at the suggestion of the Court, the proceedings in the said cause are suspended

until the further order of said Judge, upon the defendants entering into the following stipulations:

1st, That said defendants will forthwith and without unnnecessary delay take all such lawful proceedings as may be necessary, to ascertain the compensation to be made to said complainants, and the point and manner in which said defendants shall be allowed to cross the track of the said complainants, at the point named in the bill of complaint filed herein, in pursuance of section eleven, of the act incorporating said defendants, and without delay, prosecute such proceedings to a final conclusion, according to the provisions of said act, and that upon the determinafion of the commissioners the said defendants will forthwith and without unnecessary delay, comply with any lawful decision and award of said commissioners.

2d, That until such final determination or the further order of said Judge trains of cars passing both ways upon the road of said defendants, shall keep out of the way of all trains passing upon the Northern Indiana and Chicago Railroad, at the crossing mentioned in the bill, so that the trains passing upon the Northern Indiana and Chicago Railroad shall at all times have the road and precedence in crossing, which is to be exercised without unreasonable delay, and that each train upon the Illinois Central railroad shall come to a full stop at said crossing and send the conductor or fireman on the track so as to see that the same is clear before proceeding—this regulation to be in force on and after the 25th day of June, 1853; all of which, said defendants hereby stipulate to do and perform.

Dated this 18th day of June, 1853.

M. BRAYMAN,
Sol'r Illinois Central Railroad Company.

BLACKWELL & BECKWITH, of Counsel.

And the issuing of said writ is thereupon stayed, till the further order in the premises, and it is further ordered that said commissioners report their proceedings to this court with all convenient speed.

B. S. MORRIS,
Judge of the 7th Judicial Circuit Illinois.

June 18th 1853.

And afterwards, on the 3d day, being the first Monday of October in the year 1853, in vacation, the same being a regular vacation day appointed as such by said Judge, the following, among other proceedings were had, to wit:

NORTHERN INDIANA & CHICAGO RAILROAD COMPANY,
vs.
The ILLINOIS CENTRAL RAILROAD COMPANY. } IN CHANCERY,

And now to wit, this 3d day of October, 1853, came again the parties by their respective solicitors, being one of the days designated at the last

term of the 7th Judicial Circuit Court of this State as motion days for the hearing of matters contemplated by the act respecting the practice in chancery cases, in said circuit, approved February 12th, 1853, as required by the third section thereof; and upon reading the affidavit of John Stryker, and the exhibits referred to and made part thereof, which was filed in this cause the 19th day of September, 1853, and on motion of the complainants' solicitors, after argument and consideration of the premises, do now order and direct the clerk of this Court to issue in this cause on the 19th instant the preliminary Injunction heretofore ordered and stayed till the further order of this court in the premises.

And on the 6th day of October, 1853, there was filed in the clerk's office a certain appointment in words and figures following, to wit:

NORTHERN INDIANA AND CHICAGO RAILROAD COMPANY, vs. The ILLINOIS CENTRAL RAILROAD COMPANY. } In the Circuit Court of Cook Connty. In Chancery.

For the purpose of organizing the commission contemplated by the said Court, in accordance with the stipulation filed by the said defendants in the above entitled cause, on the 18th day of June, 1853, and the various orders of the Court herein, the said Illinois Central Railroad Company duly nominate and appoint John Van Nortwick, the commissioner on their part.—The nomination of John B. Turner, for the same office not having been accepted, is withdrawn.

October 4th, 1853. M. BRAYMAN, Sol'r Ill. C. R. R.

BLACKWELL & BECKWITH, of Counsel.

And on the 6th day of October, 1853, there was filed in said clerk's office an acceptance of the aforesaid appointment, in words and figures following, to wit:

M. BRAYMAN, Esq.,
Att'y Ill. C. R. R. Co.

CHICAGO, October 5th, 1853.

I have this day received notice of my appointment on the part of the Ill. C. R. R. Co., a commissioner to join such others as may be appointed by the Northern Indiana and Chicago R. R. Co., for the purpose of settling certain questions to be submitted under an order of the Hon. B. S. Morris, Judge of the Circuit Court of Cook County, relative to the crossing of the roads of said companies.

I hereby accept the said appointment and shall be prepared to meet such others as may be appointed, at two o'clock P. M., on Friday, the 7th inst., for the purpose of carrying out the objects of said commission.

Your obedient servant,

JOHN VAN NORTWICK.

For the purpose of completing on the part of the Northern Indiana and Chicago Railroad Company, the commission desired by the Illinois Central

Railroad Company to settle the question as to the compensation to be made to the Northern Iudiana and Chicago Railroad, and also the points, mode, and manner in which the Illinois Central Railroad shall be allowed to cross the track of the Northern Indiana and Chicago Railroad Company, in pursuance of the eleventh section of the act incorporating the said Illinois Central Railroad Company, and upon the terms and conditions contained in the stipulation filed on the 18th day of June, 1853, in Cook Circuit Court, in a cause in Chancery therein pending, wherein the Northern Indiana and Chicago Railroad Company were complainants, and the Northern Indiana & Chicago Railroad Company were the defendants, the Northern Indiana and Chicago Railroad company hereby nomina te Edware H. Broadhead as commissioner on their part.

NORTHERN INDIANA AND CHICAGO RAILROAD COMPANY } In C ...uit Cour
vs
The ILLINOIS CENTRAL RAILROAD COMPANY. } Cook County.

The Clerk will not issue the writ of injunction in this cause until the further direction of the Judge.

Chicago, Oct. 19th, 1853. B. S. MORRIS.

And on the 21st day of October, 1853, the complainants, by N. B. Judd their solicitor, filed in said clerk's office, a general Replication.

And on the 9th day of November, 1853, there was filed in said clerk's office, the Report of the commissioners in words and figures following to wit:

Whereas a controversy exists between the Illinois Central Railroad Company and the Northern Indiana and Chicago Railroad Company and the said companies are not able to agree upon the amount of compensation to be made for expenditures &c, nor as to the points and manner of crossing of the two roads, connections &c, (being such a controversy as it was contemplated might arise between the said Central Company and Northern Railroad Company by the 11th Section of the Charter of the Illinois Central Railroad Company,) ang it has been necessary to settle such controversy by a commission, according to the provisions of the said sections, and one of said companies has appointed Edward H. Broadhead, Esq., and the other John Van Nortwick, Esq., as commissioners, and the said commissioners have certified as is hereto annexed, that they were unable to agree upon the choice of a third commissioner, and thereby the contingency has occurred, provided for in said section, by which the appointment of a third commissioner has devolved upon the Judge of the District Court of the United States for the District of Illinois: now I the undersigned Judge of said court, in pursuance of the authority vested in me by the said 11th section, do hereby nominate, constitute and appoint the Hon. Joseph Gillespie, of the County of Madison, and State of Illinois, such third commissioner, hereby conferring upon him

the same power and authority to act in the premises as the other commissioners has, by virtue of the appointments made by the two companies respectively.

In witness whereof I have hereunto set my hand and seal,

THOMAS DRUMMOND,

Chicago, this 22d day of October, 1853. U. S. Judge for Illinois.

Chicago, Oct. 15th, 1853.

Hon. Thomas Drummond, Judge of the District Court of the U. S. for the State of Illinois.

The undersigned commissioners selected by the Northern Indiana and Chicago Railroad Company and the Illinois Central Railroad Company to settle the question of the crossing between said companies, being unable to agree upon the third commissioner, hereby request you to exercise the power confered upon you in the eleventh section of the act incorporating the Illinois Central Railroad Company, by selecting a third person to act as commissioner with us, EDWARD H. BROADHEAD,

Commissioner on the part of the Northern Indiana and Chicago R. R. Co.

Chicago, Oct. 14th, 1853.

The undersigned commissioner appointed by the Northern Indiana and Chicago Railroad Company and the Illinois Central Railroad Company to determine the several matters in controversy, in reference to the crossing of said roads in Cook county, selected the Hon. Edwin S. Leland as the third commissioner. A messenger was sent to the residence of said Leland with the notice of his selection, who having returned reports that said Leland is absent, holding the courts of his Circuit and consequently would not be able to serve. The said appointment is therefore revoked. Being satisfied that we cannot further agree upon the selection of a commissioner, we report these facts, that a commissioner may be appointed by the Judge of the District court of the U. S. for the District of Illinois, in pursuance of the act under which we have been chosen commissioners by the parties in interest,

JOHN VAN NORTWICK,

Commissioner on the part of the I. C. R. R. Co.

The NORTHERN INDIANA & CHICAGO RAILROAD CO. vs The ILLINOIS CENTRAL RAILROAD COMPANY. } In Chancery in the Circuit Court of Cook Co., Ill.

To the Honorable Buckner S. Morris, Judge of said Court.

The undersigned Edward H. Broadhead and Joseph Gillespie associated with John Van Nortwick Commissioners selected and appointed by virtue of a stipulation entered into, in conformity with the provisions of an order of said Court herewith annexed, beg leave respectfully to report to said Court that they together with the associate commissioner, have heard evidence and argument of counsel of said parties respectively in regard to all the matters submitted in said stipulation and carefully considered the said matters,

and that the undersigned have agreed, determined and do hereby award that the point of crossing of the Railroad of the Defendants, over the Railroad of the said complainants should be at the point named in said stipulation and that the manner in which the said railroad of the said defendants shall be allowed to cross the railroad of the complainants, shall be by bridge, to be built by said defendants at least eighteen feet in the clear above the surface of the rails of the railroad of the complainants and of a width of not less than thirty feet in the clear; said bridge and the approaches thereto, to be effectually commenced within thirty (30) days from this date and prosecuted with all due dilligence to a final completion, and after the construction of said Bridge and the approaches thereto the crossing of the railroad of the defendants, over the Railroad of the complainants shall be by said Bridge and not otherwise. In the mean time, and during the construction of said work the railroad of the defendants may cross the railroad of complainants at grade at or near the present point of crossing, for the purpose of operating their said railroad and constructing said road.

The undersigned have also awarded that the said defendants shall pay to the said complainants on demand, one dollar for damages on account of the crossing in the manner above prescribed.

In witness whereof we the undersigned do hereby affix our hands and seals at Chicago, this 5th day of November 1853.

EDWARD H. BROADHEAD. SEAL

J. GILLESPIE. SEAL

And on the 9th day of November 1853, there was filed in the said clerks office the report of one other of the commissioners in word and figures following to wit:

To the Hon. B. S. Morris, Judge of the Circuit Court for the County of Cook.

The undersigned, one of the commissioners selected to ascertain and determine, in pursuance of section eleven of the charter of the Illinois Central Railroad Company, the point and manner in which the railroad of said company should be allowed to cross the railroad track of the Northern Indiana and Chicago railroad company, and the compensation to be made to the last named company.

Respectfully reports that having in conjunction with his associates in the commission Joseph Gillespie and Edward H. Broadhead, examined the point of crossing in question, heard the testimony and the arguments of Attorneys and Counsel of the parties in interest, and having maturely considered the matters submitted, he has been unable to agree with his associates in their

report. He further respectfully states that by the charter of the Illinois Central Railroad Company, the said company have a right to cross the track of any other railroad, and by section 11 of said charter, it is provided that when the route of the said road or either of its branches shall intersect, cross or connect with or run along or upon the line of any other railroad now constructed or now in process of construction by any other company, it shall join with such other company in making all necessary turn-outs, sidelongs and switches and other conveniences necessary to further the object of such connection, and that all railroads so constructed or in process of construction, intersected as aforesaid, and connections made with the roads authorized to be built by this act, shall be made and facilities in the transshipment of freight and passengers and interchange of cars afforded by each over the respective road on fair and equitable terms, and if the companies cannot agree upon the points and manner of such crossings and connections the trans-shipment of freight and passengers and interchange of cars, the same should be ascertained and determined by three commissioners. It was also provided, by an amendment of the charter of the Illinois Central Railroad Company, that the roads of other companies might cross their road and that when so crossed the two companies should join in making and affording business connections on the same terms and conditions as is provided by section eleven, above refered to.

These acts in my opinion were intended to secure to the Illinois Central Railroad Company the right to connect its road with any other road upon its rout, constructed or constructing at the time its charter passed, the right to have an interchange of business both freight and passengers as well as cars from one road to the other, and to secure to all roads which cross its track, the same rights, and to the public the benefit that would be derived from such business connections. These are important and valuable rights to the public and generally to the companies, and in my opinion being seconded by legislative enactments, render it imperative on the companies to join in making such connections and affording the business facilities to the public. An intersection of one road with another can only be made at grade or where the tracks are upon the same level, the rights and privileges above mentioned would be practically cut off and destroyed at the point in question unless the crossing be at grade or upon the same level.

To require the track of either of these roads to cross otherwise than at grade or upon a level would in my opinion be a violation of the rights of these companies and the public and would defeat the whole object of the Legislature and would be contrary to the policy of the State as evinced by these enactments which policy is in accordance with the general practice

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and usage in constructing Railroads as well in this country as in Europe and with legislative enactments and requirements in refference to Railroads. In my opinion therefore the track of the Illinois Central Railroad should cross that of the Northern Indiana & Chicago Railroad at the point where they now cross and upon the same level, and that the manner of such crossing should be by crossing frogs substantialy as now constructed and that the compensation to be paid by the Illinois Central Railroad Company to the Northern Indiana and Chicago Company should be one thousand dollars.

All of which is respectfully submitted.

JOHN VAN NORTWICK.

Chicago, November 7th, 1853.

And on the 9th day of November 1853 defendants' counsel filed in said clerks office a notice to the effect that a motion would be made before the Hon. B. S. Morris on the day and year aforesaid at 9 o'clock A. M. for an order setting the cause down for a final hearing and requiring the complainants to have the said cause ready for a hearing at that time on this part and behalf.

And on the 9th day of November 1853, the same being one of the days of the October vacation term in said year the following proceedings were had.

NORTHERN INDIANA & CHICAGO RAILROAD COMPANY,
vs.
The ILLINOIS CENTRAL RAILROAD COMPANY.

Edward H. Broadhead and Joseph Gillespie a majority of the three commissioners selected, chosen and appointed by the parties complainant and defendant in pursuance of the terms of the written stipulation of the defendants' solicitor and counsel filed in this cause to settle and determine the amount of the compensation to be made by the defendant to the complainant on account of the crossing of the Railroad track of the defendants over and across the road, bed, land, and track of the complainant as well as the point and manner in which the track of the defendants' Railroad should be allowed to cross the road, bed, and track of the complainants' road mentioned in the bill of complaint in this cause, having reported and certified to the court in writing by them duly signed and dated at Chicago, November 5th, 1853. (Here follows the report.)

And the said report having been filed in this Court, on the 9th day of November, 1853, and the said complainants, by their solicitor, afterwards on the day aforesaid, having moved the Court that a preliminary injunction issue in said cause, restraining the defendant, as prayed in the Bill of Complaint on file in this cause, and among other reasons for the reason the complainants' solicitor believes that the decision and award of a ma-

jority of said commissioners was not binding upon the defendant, the law requiring, as they believe, the concurrence of all the commissioners in order to make the award binding, and thereupon the defendants' solicitor insisted that the decision of a majority of the commissioners was binding, and on motion of said defendants' solicitor, it was ordered by the Court now here, that the report of said Edward H. Broadhead and Joseph Gillespie, a majority of said commissioners, made out and filed in this Court, in manner and form as aforesaid, be, and the same is, in all things, confirmed, and that the defendant stand to, and abide and perform the said award in all things the same as if the said determination and award had been made and signed by all three of the commissioners, selected and appointed as aforesaid.

And on like motion of defendants' solicitor, it is ordered, that the cause be set down for a final hearing at the next term of this court, and that the motion of complainants' solicitor for a preliminary injunction be overruled.

And on the third day of December, 1853, the said defendant by its counsel, came and filed the following admission:

NORTHERN INDIANA AND CHICAGO RAILROAD COMPANY. }
vs. }
CENTRAL RAILROAD }

It is admitted by the defendants in this cause, that a preliminary survey was made in December 1850 of the road of the complainants; that said road was staked out by the first of January, 1851, and said road finally located in the month of June, 1851, and that said road has since been constructed in pursuance of said survey and location, and in conformity therewith.

R. S. BLACKWELL, Solicitor for Def'ts.

And on the 5th day of December, 1853, it being one of the days of the November trial term of said court in said year, the following among other proceedings were had, to wit:

NORTHERN INDIANA AND CHICAGO RAILROAD COMPANY }
vs }
The ILLINOIS CENTRAL RAILROAD COMPANY. }

And now at this day come the said parties, by their solicitors, and the cause came on for final hearing, pursuant to the order heretofore entered in the same upon the pleadings, exhibits, and proofs, and it appearing to the court, that said complainants, previous to December, 1850, became a body politic and corporate, in pursuance and by virtue of an act entitled "an act to provide for a general system of railroad incorporation," approved November 5th, 1849, and it further appearing to the court that said complainants commenced surveying the line of its said road in December, 1850, and that previous to January, 1851, the line of said road was staked out, and that said line was finally located in the month of June, 1851, and that the same was surveyed and staked out as aforesaid, and was located over, through,

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jority of said commissioners was not binding upon the defendant, the law requiring, as they believe, the concurrence of all the commissioners in order to make the award binding, and thereupon the defendants' solicitor insisted that the decision of a majority of the commissioners was binding, and on motion of said defendants' solicitor, it was ordered by the Court now here, that the report of said Edward H. Broadhead and Joseph Gillespie, a majority of said commissioners, made out and filed in this Court, in manner and form as aforesaid, be, and the same is, in all things, confirmed, and that the defendant stand to, and abide and perform the said award in all things the same as if the said determination and award had been made and signed by all three of the commissioners, selected and appointed as aforesaid.

And on like motion of defendants' solicitor, it is ordered, that the cause be set down for a final hearing at the next term of this court, and that the motion of complainants' solicitor for a preliminary injunction be overruled.

And on the third day of December, 1853, the said defendant by its counsel, came and filed the following admission:

NORTHERN INDIANA AND CHICAGO RAILROAD COMPANY. }
vs. }
CENTRAL RAILROAD }

It is admitted by the defendants in this cause, that a preliminary survey was made in December 1850 of the road of the complainants; that said road was staked out by the first of January, 1851, and said road finally located in the month of June, 1851, and that said road has since been constructed in pursuance of said survey and location, and in conformity therewith.

R. S. BLACKWELL, Solicitor for Def'ts.

And on the 5th day of December, 1853, it being one of the days of the November trial term of said court in said year, the following among other proceedings were had, to wit:

NORTHERN INDIANA AND CHICAGO RAILROAD COMPANY }
vs }
The ILLINOIS CENTRAL RAILROAD COMPANY. }

And now at this day come the said parties, by their solicitors, and the cause came on for final hearing, pursuant to the order heretofore entered in the same upon the pleadings, exhibits, and proofs, and it appearing to the court, that said complainants, previous to December, 1850, became a body politic and corporate, in pursuance and by virtue of an act entitled "an act to provide for a general system of railroad incorporation," approved November 5th, 1849, and it further appearing to the court that said complainants commenced surveying the line of its said road in December, 1850, and that previous to January, 1851, the line of said road was staked out, and that said line was finally located in the month of June, 1851, and that the same was surveyed and staked out as aforesaid, and was located over, through,

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and upon the following described tract, piece, or parcel of land. (Here follows the description of the land, it being the same that was conveyed to Norman B. Judd, as agent for the complainants, as in said bill mentioned.)

And it further appearing to the court that on the 13th day of July, 1851 the said complainants, by their agent, procured a title to the said piece parcel and tract of land, and that said complainants completed their said road upon said tract of land previous to February 1852, and that trains of cars have been daily running over the road of said complainants from said month February until the filing of the Bill herein.

And it further appearing that said defendants, without any legal authority, and against the wishes and protest of said complainants, on the seventh day of June, 2852, entered upon the land, right of way and property of said complainants, cut the rails of said complainants' track, and from that time until the filing of the bill herein, have daily trespassed upon the land, right of way, track of said complainants by running trains of cars over and across the same, and by authorizing, permitting and suffering the trains of cars of another company to run across, over and upon the land, right of way, roadbed and track of said complainants..

And it further apdearing to the court that the said defendants filed a stipulation in the cause in words and figures following: (here follows a copy of the stipulation) and that in pursuance of such stipulation such proceedings were had that a board of commissionars consisting of John Van Nortwick, Edward H. Broadhead and Joseph Gillespie was duly appointed and organized, a hearing had, and decision made by said board in relation to the mode and manner in which said defendants shall be allowed cross the track of said complainants, and the compensation to be made to said complainants, and that such decision and award has on motion of said defendants been duly confirmed by our order, entered in this court on the 9th day of November last past, which said award is in the words and figures following. (Here follows a copy of the award)

It is therefore ordered, adjudged and decreed, that the defendant be allowed to cross the track of said complainants, at or upon the premises, hereinbefore set forth, by carrying its track over the road of the said complainants, by a bridge in manner and form, and upon the terms and conditions set forth in said award, and in no other way.

And it is further ordered, adjudged and decreed, that said Defendants specifically perform, abide by, and comply with the terms and conditions of said award.

And it is further ordered, adjudged and decreed, that in case said defendants shal fail or neglect to perform and comply with any of the terms and conditions of said award, that from thenceforth the defendants shall

shall and do entirely desist, refrain and cease from any further entering, upon, using, or in any manner interfering or meddling with the land road-bed, and track of said complainants, and from hindering, delaying, interfering or impeding the passage of cars over the road of the complainants, and from crossing over or entering upon the lands, road-bed and track of said complainants, in any way or manner whatsoever with locomotives, or cars of any kind and form, authorizing, permitting or allowing any other company or corporation to do the same. And upon such failure or neglect to comply with the terms herein and in said award prescribed, said defendants be restrained and enjoined as heretofore set forth

And it is further ordered, adjudged and learned that until the completion of said bridge, or the failure and neglect of said defendants to comply with the terms and conditions of this decree in relation to construction of said bridge; trains or cars passing both ways upon the road of said defendants, shall keep out of the way of trains passing on said complainants road at the crossing described in proceeding herein, so that the trains passing upon the said complainants road shall at all times have the road, and precedance in crossing, which is to be excercised without any unreasonable delay, and that each train passing upon the defendants' road shall come to a full stop at said crossing, and send the conductor, or fireman on the track so as to see that the same is clear before proceeding.

And it is further ordered, adjudged and decreed, that said complainants have, and recover of said defendants, their costs in this behalf expended, and have execution therefor, and that the sum of one thousand dollars, as fees to said commissioners, be taxed in the costs of this cause, and paid by said defendants. Therefore the said defendants pray an appeal herein, which is allowed upon said defendants filing with the Clerk of this Court forthwith an appeal bond to be executed by Thomas Dyer in the penal sum of ten thousand dollars, conditions as the law directs in cases of appeal.

M. C. R. R. Co.

v.

St. Md. & Ch. R. R. Co.

COOK CIRCUIT COURT.

Northern Indiana and Chicago R. R. Co., }
vs. }
The Illinois Central R. R. Co. }

This cause comes before me on Bill of complaint answer, and affidavit on both sides, and a motion is now made for an injunction against the defendants to restrain them from running their cars, or permitting any other Company to run cars cross the complainant's Railroad, founded upon this state of fact, to-wit: That the complainants located and constructed its road, and thereafter the defendants located and constructed their track, running it across that of the complainant's, on the same level, cutting the complainant's track and putting down the so-called crossing frogs, without the assent of the complainants and against its repeated protests. In the defendants charter (11 section) it is declared, that if the parties cannot agree upon the amount of damage for the right of way across such track, and the points and manner of crossing, the same shall be submitted to three Commissioners, one to be chosen by each party and the third by the two so chosen; if they cannot agree upon such third man, then the Judge of the District Court of the United States for this District shall select the same. The decision of this board to be final. The complainants offered to negotiate with the defendants and settle said matters or select Commissioners in pursuance of the section of law aforesaid, which propositions the defendants refused, took forcible possession and constructed their track across the complainant's track, as aforesaid.

The Bill alleges that the complainants became a body corporate prior to the 2d December 1850, in the manner provided by the act to provide for a general system of Railroad Incorporations; approved 5th Nov. 1849; setting out the facts which made the plantiffs a corporation.

1st. The answer of the defendants admit the facts alleged in the bill, but deny that the plaintiffs became a corporation till June 16, 1852, subsequent to the construction of both roads.

2nd. They say if the complainants became a corporation as alleged, yet the Legislature by said statute, reserved the right to itself "to indicate the route and termini of said roads, and the same shall not be constructed or commenced without the expressed sanction of the Legislature of this State, by a law to be passed hereafter," and the location and construction of the complainant's road without the "sanction" of the Legislature, till June 16, 1852, was illegal and void; or gave complainants no rights over the land in question as against or superior to that of the defendants.

3d. That complainants had no authority to purchase and hold real estate or right of way till June 16, 1852, either by itself, or by any person for its use, and that the purchase of the right of way by Mr. Judd in his own name, with money of the plaintiffs and for the plaintiffs use, on the 13th July, 1851, was illegal and void, as to the plaintiffs.

These three objections or propositions will be now considered, for if they are true, here ends the case.

The first and second sections of the General Railroad act declares, that any number of persons not less than 25 being subscribers to the stock of any contemplated railroad, may be "formed into a corporation for the purposes of constructing, owning and maintaining such road, by complying with the following requirements," which in substance are, that "when" a $1000 for every mile of said road shall be in good faith subscribed and ten per cent thereon paid in, "then" the subscribers may elect Directors and subscribe articles of association, which shall set forth the name of the corporation and persons elected Directors, (with some other acts, not material to notice,) which articles of association should be filed in the office of Secretary of State, with the affidavit of three of the Directors, that the amount of stock required as above was subscribed, and ten per cent paid in. And the fourth section declares "when" said article and affidavit shall be filed as aforesaid, that the subscribers and their successors, "shall be a body politic and corporate," by the name stated, and shall be capable of sueing and being sued, have a common seal &c., and be capable in law of purchasing, holding, and conveying any real done all this—and the second notice was that he would maintain it by force.

The defendants insisted that the plaintiff has not, by proper evidence shown it was a corporation, because they say, that the 3d section of the act declares that a certified copy of the articles of association and affidavit under the hand of the Secretary of State, and the seal of office should be presumptive evidence of the existence of the corporation.

The plaintiff's bill sets forth the acts done and uses under the act, all which the defendants by their answer admit to be true. But it was not necessary to prove a fact alleged by one party and admitted to be true by the other. What use is proof in such case. But again, the law is well settled, that if there has been uses of a corporate franchise by an association of persons, their existence as a corporation can only be enquired into by direct proceedings on behalf of the State, and I sustained the law to be when the question was raised by the answer and argument. On this point see 3d Sand. (N. Y.) R. 625, 6 Iri. (N. C.) R. 476, 8 Mass. R. 151, 10 Ala. R. 82.

Again, the defendants insist no injunction can properly be granted in this case, till the plaintiff first establish its right or title at law.

I admit such is the rule laid down in many cases, but it is not only proper, but absolutely necessary. But this rule like all others, has its exception, as I will show presently. Justice Story in his 2d vol. of Eq. Jur. sec. 959 b., says: "It may be remarked, in conclusion, upon the subject of special injunctions, that Courts of Equity constantly decline to lay down any rule which shall limit their power and discretion as to the particular cases, in which such injunctions shall be granted or not. And there is wisdom in this course; for it is impossible to foresee all the exigencies of society, which may require their aid and assistance to protect rights, or redress wrongs." It is says he, "manifestly indispensable for the purposes of social justice in a great variety of cases, and therefore should be fostered and upheld by a steady confidence." I mention this authority merely to show the rules where no other appropriate remedy existed to protect a right or redress a wrong. But in the case in 6 Vesey Jr. 706-7, Lord Eden examined this very question and shows many cases of exception to the rule that you must proceed at law in doubtful titles even. Injunction was granted to a party in possession under color of title. In another, where the title was so doubtful that the Judges differed in opinion as to who had the title.

This authority is directly in point. The plaintiff here was in possession not only claiming title, but in fact had the indisputable right to the possession. He had possession and had the right of possession and right of property—a complete title.

VPAIGE: 88.—In the case of the Mohawk R Roadcompany *vs.* Archer, is another case directly on the point of the jurisdiction and right of issuing the injunction in this case; where it is said that this court has an undoubted jurisdiction to interfere by injunction, where public officers are proceding illegally and improperly under a claim of right or where the exercise of such jurisdictions necessary to prevent a multiplicity of suits at law." Again, (he says)—"The present case is a proper one for the exercise of such a jurisdiction as the act complained of is not a mere trespass but an attempt to exercise a continued right of passing across and through the plaintiff's fixture, to the permanent and continued injury of the plaintiff's property."

This is the precise statement of the case now before me. Here I might stop on this point of the case, but I have a few cases more to the same point.

2RAILWAY CASES: 355. North Union Rail Road Company *vs.* The Poulton & Putney Railway Company. It is said—"But it is now clearly settled, that, in cases of trespass under color of title where the mischief apprehended is irrepairable the jurisdiction of the court *exists;* and I incline strongly to the opinion, that whether the mischief be irrepairable or *not*, this court ought by decree, at least, if not upon motion, to *extend* and apply the jurisdiction of preventive justice to all cases of trespass in which (by analogy to cases of specific performance) damages would be an *inadequate* and uncertain remedy, and the protection of a right *in specie* the only mode of doing complete justice between the parties."

This is the case here: The defendants, by argument say, they entered *under color* of title by a deed from the same grantors, who *first* conveyed to Mr. Judd the right of way. Does any one doubt that time is of the utmost importance to rail road companies—that the plaintiff's trains have to slacken their speed in approaching the crossings in question some twenty times a day, and some times come to a full stop to get by safely. That this state of facts is to grow worse and worse, by reason of additional trains that defendants are to put on—that dollars and cents can pay for the loss of time—the dread and fear of collision in approaching the crossing—the anxiety of the owner of this property—the trouble the vexation, the danger of life, limb and destruction of property—all at stake upon the caprice, whims or malice of the engineers or conductors of the trains, running with feelings of hostile opcourt of law is able to do complete justice to the parties, and afford to the plaintiff a safe, certain, efficient, adequate remedy?

Willan action on the case, or trespass, compel the defendants to agree with the plaintiff about the amount of compensation to be made, and the points and manner the defendants shall cross the plaintiff's track, and whether it shall be by a bridge or not; and if by bridge, how it shall be constructed? Will either action compel the defendants to submit these questions to the consideration of three commissioners as prescribed by law?

It is enough to state these questions without giving any answer thereto, to show the utter inability of a court of law to administer the proper relief in this case. Something should be done and promptly to settle the whole difficulty between the parties, in order to preserve, or protect each of the parties in the enjoyment of their respective rights and franchises, and afford some security to life, limb and property, to those who travel upon these roads.

I am bound, in justice to the plaintiff and to the public, to give effect to the law, which the defendants have seen fit to set at defiance; nor will I do so injuriously, so as to interfere with the progress of the defendant's works or rents, issues or profits, unless they compel me so to do, by their own conduct in the premises. But I will take care to reserve to myself the power of doing so, in order that justice may be done. The law prescribes the mode of determining the matters in dispute, when the parties cannot agree; and I advise prompt and efficient action in the matter. If this is not promptly attended to, I shall, on the application of the plaintiff, and notice to the defendants, founded on affidavit of refusal or negligence, direct the writ of injunction to be issued according to the prayer of the bill; till then I shall hold the case over for further consideration, with leave to either party to offer further proof in the matter if they think proper.

I will take this occasion to say, that I do not feel at libery to withhold this jurisdiction when it is necessary to keep corporate companies within their legitimate powers, or from over-stepping the law, because, great as their powers necessarily are, to enable them to carry into effect the great objects of their incorporations. If they go beyond the powers given by law, and in a mistaken exercise of power, or wilfully interfere injuriously with the property of others, I feel bound, when caled upon properly, to restrain them. But it must, of course, be a case clearly within the jurisdiction of the Court of Equity, and that such company is exceeding its powers injuriously, or threatening so to do.

The defendant's solicitor having produced to me the stipulation, hereto annexed, which being satisfactory, the motion for an injunction is taken under advisement.

The Illinois Central R. R. Company filed the following stipulation on Saturday afternoon:

Northern Indiana and Chicago R. R. Co., }
vs. } In Chancery.
Illinois Central R. R. Company. }

The motion for an injuction in the above entitled case having been heard by Hon. B. S. Morris, Judge of the Seventh Judicial Circuit, at the suggestion of the Court the proceedings in the said cause are suspended until the further order of said Judge upon the defendants into the following stipulations:

1st. That said defendants will forthwith and without unnecessary delay, take all such lawful proceedings as may be necessary to ascertain the compensation to be made to said complainants, and the points and manner in which said defendants shall be allowed to cross the track of the said complainants at the point named in the bill of complainants filed herein, in pursuance of section eleven of the act incorporating said defendants, and without delay prosecute such proceedings to a final conclusion according to the provisions of said act, and that upon the determination of the Commissioners the said defendants will forthwith and without unnecessary delay comply with any lawful decision and award of said Commissioners.

2d. That until such final determination, or the further order of said Judge, trains of cars passing both ways upon the road of the said defendants, shall keep out of the way of trains passing upon the Northern Indiana and Chicago Railroad at the crossing mentioned in the Bill, so that the trains passing upon the Northern Indiana and Chicago R. R shall at all times have the road, and the precedence in crossing, which is to be exercised without any unnecessary delay, and that each train passing upon the Illinois Central Road shall come to a full stop at said crossing, and send the conductor or fireman on the track so as to see that the same is clear before proceeding. This regulation to be in force on and after the 25th day of June, A. D. 1853, all of which said defendants hereby stipulate to do and perform.

Dated this 18th day of June, A. D. 1853.

M. BRAYMAN,
Solic. Ill. C. R. R. Co.

BLACKWELL & BECKWITH, Counsel.

A SINGULAR CIRCUMSTANCE.—A few days since Mayor Shallaker received a letter from an attorney at law, in Curtstown, Tuolumne county, California, stating that a client of his was then

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vs

Illinois Central R.R

Opinion of

Hon. W. D. Morris

estate and personal property whatever, necessary for the construction of such road, and for the erection of all buildings, yards, and appertenances for the use of the same."

The 21st sec. of the act then proceeds to say among other things, that every such corporation shall possess the power to cause surveys to be made for the proposed road, and to enter on lands for that purpose, "to receive, hold and take such voluntary grants and donations of real and personal estate as shall be made to it, to aid in the construction, maintenance and accommodation of such road," and also to "enter upon and take possession of and hold, and use all such lands and real estate and personal property as may be necessary for the construction and maintenance of its railroad and stations, depots," &c., "necessary to accomplish the object for which the corporation is created." Also "to lay out its road, not exceeding six rods wide and to construct the same," &c., with such other general powers as would enable the Company to build its road, save and except the power to force its way over land by condemnation and appropriation against those who should refuse to give or sell the right of way. This right or power was withheld until the Legislature on petition &c., declared the road of sufficient public utility to authorise the taking of private property for that purpose—as was decided by the Supreme Court of this State in 13 Ills. R. 2., Gillumater vs. Mississippi and Atlantic R. R. Co.

The Bill of complainant sets out fully all the facts by which the plaintiff became a corporation by the filing of articles of association with the affidavit annexed, with the Secretary of State, copies of which were made a part of their bill, showing they had complied with the statute, all which the defendants admitted in the answer, yet denied that the plaintiff was a corporation.

The complainants also alleged it did in June 1851, survey and locate said road, and on the 13th July, 1851, Mr. Judd purchased in his own name, but with the money of the plaintiff, and for the use of the plaintiff, the right of way over the land in question from the owners in fee simple. That in October of same year plaintiff took possession and began the grading of said road.—About the 20th of Feb., 1852, the road was finished and cars have been running daily thereon from that time to this, carrying passengers and freight to a large extent.

That on the 10th Feb., 1851, the defendants charter was passed, and on the 22d March of the same year it was accepted (and they then became a corporation.) That on the 6th April, 1852, defendants filed, in pursuance of their charter, a map showing their location of their road in this county That on the 12th of the same month and year, John B. Jervis, Chief Engineer of the plaintiff's Road, in answer to a letter written to him on the 7th by Col. Mason, the Chief Engineer of the defendant's Road, (the day after Col. Mason filed said map) in which answer Mr. Jervis opposes in strong terms the crossing of the plaintiff's track on the same grade, by putting crossing frogs, and urging a crossing by bridge, concluding by saying he would be happy to interchange views and enter into negotiation are proper to put this plan of crossing on a satisfactory basis.

Thus it is seen that the plaintiff was a corporation from the time of the filing their articles of association, and it is shown by the statute itself, that the plaintiff had power to purchase, receive as a gift, and hold real and personal estate—with full power to survey, locate its road and take possession and construct the same, as far as the plaintiff could obtain the right of way by purchase, or donation.

Again, it follows as a necessary result, that if the plaintiff had power to purchase or hold property in its own name, it had also the right to take and hold possession of property purchased with its money and for its use. The purchase by Mr. Judd as aforesaid, gave the plaintiff a title by operation of law, (it was a resulting trust,) and our statute relative to such purchases declares the title shall vest in the *cestui que trust*. Thus we see that the plaintiff was the real owner of the right of way in question, and was in the lawful possession and use thereof on the 7th day of May, 1852, when the defendants unlawfully entered upon the plaintiff's track and cut the same, putting down their crossing frogs, without asking leave so to do, or giving notice of such intention or taking any steps towards procuring from the plaintiff, by agreement or otherwise, right to cross the plaintiff's track. The first thereof was from Col. Mason that he had position to each other, trying to see which shall get by first. What damages can be given in such a case, to be called *adequate* or *commensurate* with the injury complained of? Eighteen souls have been hurried from this world before their God, by reason of this trespass and unlawful appropriation of property; and it is said that damages can be given commensurate with the injury, under the *plausible* excuse that it was the result of *negligence*.

There is no action at law that can reach the damages or prevent the mischief, of the defendant's passing twenty times or more a day through and over the plaintiff's fixtures, to the *permanent and continued* injury of the plaintiff; who is, in every sense of the term, without adequate relief, except by the application of the remedial power of the writ of injunction. See 1 Vesey—188; 2 Dow—519; 1 Baldwin—226, 230, and 231.

These show clearly, that it is the duty of the court to *restrain* corporations and keep them within their powers.

The General Rail Road Act, and the 11th section of the defendant's own charter, directs what they shall do in order to cross another rail road track. This the defendants refuse to do; but have entered by force, wantonly, wilfully and deliberately takes possession of the plaintiff's property in direct violation of their charter.

But again:—The defendants object to this proceeding, because, they say, that the plaintiff has a complete remedy at law. 1st: by mandamus; 2d: by action of ejectment; 3d: by action on the case; and 4th. by action of trespass G. C. F.

Now it is well settled that the proceedings by mandamus *only lay* where the party was *without any other remedy*; for it is said that courts will not exercise that extraordinary remedy, and in any case where there is any other specific remedy adequate to *enforce* the right. So if it be true, as urged by the defendants, that the plaintiff hath three other remedies at court, then the plaintiff cannot have that by mandamus. Yet all these actions named would afford limited and partial relief only, and fall far short of giving to the plaintiff efficient and adequate relief in the premises, and wholly insufficient for the ends of justice.

Defendants also object, that the plaintiff has never offered to *negotiate* with them touching the crossing aforesaid. This may or may not be true. Let us see. John B. Jervis, the chief engineer of the plaintiff, in his letter to Col. Mason, the defendants chief engineer, under date April 12. 1852, nearly one month before the committing of the trespass alleged, writes, that he (Mr. Jervis) will "be happy to interchange views and enter into any negotiations that are proper to put this plan of crossings on a satisfactory and fair basis. In the mean time William Jervis" (resident engineer) "will confer with you as to the plan and mode of crossing;"

But again:—The plaintiff, by resolution of its board, declared their willingness to negotiate with the defendants, and forbid them to cross its track, till it was settled by agreement, or according to the manner prescribed by the defendant's charter, or by the general laws of the State of Illinois.

The defendants say they will suffer much greater loss by the issuing of the injunction, than that which the plaintiff has or can suffer—that it will stop their works for six months, at a loss of more than $600 a day—deprive them of large rents, &c. derived from the Michigan Central Road, and that courts of equity will not grant injunctions in such cases.

In the case, Greenhalph vs. The Manchester &c. Rail Road Company, 113, 1 R. cases, has, in reply to such argument—"That, however, is no answer, and these companies should be aware that it is not, if there be a clear case against them."

The defendants say, that the plaintiff has laid by a year without taking steps to stop them, &c. therefore no injunction ought to issue.

This and the preceding objection might be and are good reasons for the withholding of the injunction, if the defendants or their attorneys will stipulate that they will, without unnecessary delay, to settle the matter with the plaintiff, by agreement, or by selecting commissioners, in pursuant of the 11th section of their charter, to determine the compensation to the plaintiff, and the point and manner of crossing the plaintiff's track; and in the mean time to give the plaintiff the full use of its track—the defendants to keep their trains out of the way, or something to that effect; till these matters are settled as pointed out by the defendants' charter. It is clear that the complainant is without any safe and adequate remedy in the premises, unless it is done in the case before me by injunction.

The case in 13 English Charg. R. 498, Deeree vs. Guest, is cited as a case in point against granting this injunction. I do not think so. That case differs from this in some material respects.

First. The plaintiff there was a mortgagee, who was out of possession at the time of the trespass, and at the time of filing his bill.

Second. The tenant *in possession* gave the defendants permission to do the acts complained of.

Third. The defendants claimed a right of possession from the mortgagor or reversioner.

Fourth. Defendants were not a corporation acting in derogation of its corporate powers, given by statute.

Fifth. He had, as the court said, a complete remedy at law.

Can it be true that this is such a case, that

under arrest upon the charge of murdering a lady named Jane Morton, formerly of Fulton, near this city. What led to his arrest, it appears, was a daguerreotype of a lady which was found on his person, which was identified as the miniature of Mrs. Morton. Before the Coroner's jury, one witness swore positively that the deceased was Mrs. Morton, although the body was in a decomposed state, and identity appeared impossible. This witness swears that he cannot be mistaken; the likeness is correct, and that he knew Mrs. Morton, wife of Joseph Morton, residing in Fulton, Hamilton county, Ohio, that they lived near a saw-mill where he once worked, and that M. formally resided in Madisonville, about eight miles from Cincinnati.

The object of the attorney, in addressing the letter to this city, was to ascertain if such a lady ever lived in Fulton, or yet resides there.

Major Shellbaker immediately set to work to investigate the matter, and fortunately found a lady residing in Fulton, corresponding in every particular to the description in the letter. She is at present residing in Fulton; her maiden name was Ross, and she formerly lived in Madisonville. She married a man named Joseph Morton, who is now proprietor of a saw-mill in Fulton. She cheerfully made affidavit to the foregoing facts, and had her daguerreotype taken, at the request of the Mayor, which was forwarded by him to the attorney in California.

As the trial has been postponed for three months in order to give the person imprisoned an impartial hearing, it may readily be expected that the above intelligence, when it reaches him, will be the source of the greatest gratification, releasing him from the stigma of murder, and in all human probability saving his life; for it is well known that in California it is a difficult matter for one charged with crime, more especially murder, to extricate himself from the dilemma, when there is the least suspicion or evidence to fasten the crime upon him.—*Cin. Times*.

Important Railroad Connections.—A meeting of the officers of the Columbus, Piqua and Indiana Railroad Company, and the officers of the Marion and Mississinewa Valley Railroad Company, and the friends and projectors of the railroad from Marion via Peru to Chicago, was held in Peru, Indiana, on the 8th and 9th instant at which the following important arrangements were made: A permanent connection was entered into by which the M. and the M. V. R. R. Company, agree to complete their road from Union to Marion at the earliest day possible, and that C. P. and Indiana Railroad Company agree to furnish the rolling stock and to run said road for a term of years. The company from this place to Peru and the company from Peru to Chicago have been dissolved, and a new company from Marion to Chicago has been formed: the road of which is to be run in like manner by the C. R. and Indiana Railroad Company. This gives to the C. P. and Indiana Railroad Compar the entire running control of the line of railroa from Columbus, Ohio, to Chicago, Illinois. all these arrangements have been made as preliminary steps to an entire consolidation stocks of all the roads from Columbus to go. By this arrangement there will now two companies between Union and Chic the whole railroad interest between the Columbus, in Ohio, and Chicago, Illin come united as one man in one signle "*Indiana guage.*" In fact, when this shall have been completed there will broken line of railroads on the same New York city, via Philadelphia, Pittsburgh, Columbus, Piqua, Uni &c., to Chicago. Along this entire Columbus we learn there are alread rable connections made.—*Marion (I*

Rail Road Consolidation.—The between Cleveland and Toledo have idated, and the guage is hereafter to l The following are the resolutions ado consolidated company:

Resolved, That the President of th be and is hereby requested to cause to in the agreement for the consolidat companies a clause providing that th the Junction Road, and the guage of be built or that may be adopted by the ted company west of Sandusky, shall h four feet ten inch guage, and if that g at some future day, be altered, that track to conform to the guage of the line shall be laid down, simultaneous change of guage from the point of J Toledo, or from any intermediate poin said Junction and Port Clinton.

Provided, That if the consolidated shall deem it necessary at the time of mation of this consolidation to adop Northern line a four feet and one half it they shall be permitted to do so by their ing a separate line to Toledo, as above and have the same ironed and in runn as soon as the like number of miles shal pleted on the said Northern line, west of tion of the Toledo, Norwalk and Cleve Road Company.

☞ The United States Squadron chased some two thousand tons of Cu Coal for the use of the Japan Squadr