No. 13046

Supreme Court of Illinois

Geyer

vs.

Ill. Cent. R. R. Co.

71641 7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 49.

1900.

Geer
vs
Hill

1304

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State of Illinois } Pleas in the Circuit
Jo Daviss County } Court in and for said
14th Judicial Circuit } County. Began and held
at the Court House in the City of Galena
in said County on the third Monday of
in the Month of October A.D. 1857. to wit:
on the 19th day of October A.D. 1857.
Present Hon. Benjamin R. Sheldon
Judge.
U. D. Meacham Prosecuting Attorney
S. K. Miner Sheriff
Wm. R. Rowley Clerk.

Hezekiah St. Gear
vs
The Illinois Central
Rail Road Company
} Bill in Chancery

Be it remembered
that heretofore to wit on the 29th day of
July A.D. 1857. the Plaintiff in the above
entitled cause filed in the Office of the
Clerk of said Circuit Court his Bill of
complaint in the above entitled cause
which said Bill is in the words and
figures following to wit:

State of Illinois } In the Jo Daviess
Jo Daviess County } County Circuit Court
In Chancery

To the Honorable Benjamin R. Sheldon, Judge of the 14th Judicial Circuit of the State of Illinois, and of the Circuit Court in & for the said County of Jo Daviess, in Chancery sitting:

Humbly complaining shewith unto your Honor, your Orator Hezikiah H. Gear of the County of Jo Daviss aforesaid, that on the nineteenth day of June A. D. Eighteen hundred & forty nine, and for a long space of time previous thereto, your orator was the owner, in fee simple, and entitled to the possession and enjoyment of the North part of the South West fractional Quarter of Section number twenty four (24) on the west side of Fever, (now Galena) River, in the said County of Jo Daviss. That on the said 19th day of June A.D. 1849, your Orator, as such owner caused a portion of the said tract of land to be laid out and platted as an addition to the City of Galena, in said County, into four Blocks, and sub-divided into Lots. which said Blocks & Lots were duly numbered

That afterwards to wit: on the 13th day of July A.D. 1849. The said plat was acknowledged by your orator, and Recorded in the Recorders Office of the said County of McDavitt, in conformity with the Statute, That said Blocks were numbered, on said Plat, one (1). two (2). three (3) and four (4). And that Block number two (2) of said addition was Sub-divided into Lots, numbered one (1). two (2). three (3). four (4). five (5) six (6). Seven (7). Eight (8), and nine (9); and that your orator has ever since been, and still remains the owner of the said Block number two (2) with the exception of Lots No. one. two & three and is entitled to the sole and exclusive possession, use and enjoyment of the same, and every part thereof with the exception aforesaid.

That on or about the day of A.D.

The Illinois Central Rail Road Company, a corporation existing under the laws of the State of Illinois located a portion of the Illinois Central Rail Road upon, over and through a portion of the said Block number two owned by your orator without the consent of your orator and without having acquired any right

to appropriate said grounds by condemnation or otherwise, and that since such illegal location and appropriation of said grounds so belonging to your orator the said Rail Road Company have continually occupied and used the same to the great damage of your orator and to the injury of his property adjoining and lying adjacent thereto, and to the destruction of the streets and easements which were and are necessary to the enjoyment and use of the lands of your orator, and that the said Rail Road Company are now in the constant use of their said Rail Road over and through the Lands of your orator as aforesaid using and running thereon Locomotive Engines and Cars to the great damage of your Orator, and rendering valueless the Lands of your orator so affected by such appropriation and use.

That said Block number two is bounded on the East by Bench Street in said City of Galena, and that said Bench Street adjoining a part of the said Block, especially Lots numbered Four (4), Five (5) and Six (6) is wholly appropriated by and occupied by the said Rail Road, without any authority of law as your Orator is advised by counsel and verily

believes, and that said Rail Road entirely obstructs and renders said Bench Street impassable and wholly useless, and that the travel which ordinarily and properly passed from Bench Street to Mississippi Street before the occupation of Bench Street by said Rail Road is by such occupation and obstruction forced off of the line of said Street on the Lands of your orator, that being the only means by which the Public passing on Bench Street can reach Mississippi Street. Your Orator further shows that by the 10th Section of the act incorporating the said Rail Road Company entitled "An act to incorporate the Illinois Central Rail Road Company," approved Feby 10, 1851. it is provided and enacted as follows, to wit:

"Sec 10. said Corporation may construct their said Road and branches over or across any stream of water, water course, road, highway, Rail Road or canal, which the route of its road shall intersect, but the Corporation shall restore the stream or water course road or highway thus intersected, to its former state, or in a sufficient manner not to have impaired its usefulness. Whenever the track of said Rail Road shall cross

a Road or highway, such road or highway may be carried under or over said track as may be found most expedient; and in case where an embankment or cutting shall make a change in the line of such road or highway desirable, with a view to a more easy ascent or descent, the said company may take such additional lands for the construction of such roads or highways as may be deemed requisite by said corporation unless the lands so taken shall be purchased or voluntarily given for the purposes aforesaid, compensation therefor shall be ascertained in the manner in this act provided as nearly as may be, and duly made by said corporation to the owners and persons interested in such lands. The same when so taken or compensation made to become a part of such intersecting road or highway in such manner, and by such tenure as the adjacent parts of the same highway may be held for highway purposes".

And your orator further shows that the said Rail Road Company has never restored the said Bench Street (which is a highway intersected by the Rail Road of the said

corporation) to usefulness for highway purposes, and have never obtained other lands for the purposes of a highway by purchase, gift, condemnation or otherwise to connect with the said Beach Street and furnished an easement for travel and passage thereon.

Your Orator further shows unto your Honor that he has frequently called upon the said Rail Road Company through the Officers and agents of the said Company and requested the said Company to restore the said Beach Street to usefulness as a highway, and to remove their said Rail Road from the lands of your Orator or to compensate your Orator for the damages which he has sustained by reason of the occupation and use of the same, and to cease using & occupying the lands of your Orator & the said Beach Street for the purposes of said Rail Road, with which reasonable request of your Orator your Orator had well hoped the said Rail Road Company would have complied: But now so it is, may it please your Honor the said Illinois Central Rail Road Company, combining and confederating with divers persons, at present unknown to your Orator, whose names when discovered

your orator prays he may be at liberty to insert herein with proper and apt words to charge them as parties defendants hereto. and contriving how to wrong and injure your orator in the premises, the said Illinois Central Rail Road Company absolutely refuses to comply with such requests. All which actings, doings and refusals of the said Illinois Central Rail Road Company are contrary to Equity and good conscience and tend to the manifest and irremediable wrong injury and oppression of your orator in the premises. In consideration whereof, and forasmuch as your orator is entirely remediless in the premises according to the strict rules of the Common Law, and can only have relief in a Court of Equity where matters of this nature are properly cognizable and relievable.

To the end therefore, that the said Illinois Central Rail Road Company by and through its proper officers, agents or attorney and the rest of the confederates when discovered may full, true, direct and perfect answer make (without oath which is hereby expressly waived) to all and

singular the matters herein before stated and charged as fully and particularly as if the same were here repeated and they distinctly interrogated thereto.

And that your Honor will grant to your orator the Peoples writ of Injunction directed to the said Illinois Central Rail Road Company their officers, agents, attorneys, and servants commanding and restraining them from using and occupying for the running of Locomotive Engines or Cars, or for any other purpose that portion of their said Rail Road which is upon the Lands of your orator as aforesaid, and that portion thereof which occupies and obstructs Bench Street adjacent to the lands of your orator as herein before described. And that the said Illinois Central Rail Road Company may be compelled by decree of this Honorable Court to remove their said Rail Road from the lands of your orator, and to remove the same from that part of Bench Street adjacent to the lands of your orator as herein before described, and that said Rail Road Company put the lands of your orator

and the said Bench Street in the same condition and repair as the same were when they took possession of the same as near as possible: and that the said Rail Road Company may also be decreed to make a reasonable compensation to your orator for the damages sustained by him by reason of the illegal and improper conduct of the said Rail Road Company in the premises and that your orator may have such other & further relief in the premises as the nature of this case may require, and as shall be consistent with Equity.

May it please your Honor to grant to your orator not only the Peoples writ of Injunction as herein before prayed but also a writ of Summons to the said Illinois Central Rail Road Company commanding the said company to appear in this Honorable Court at the next term thereof, then and there to answer all and singular the premises, and to stand to, perform and abide such order and decree in the premises as to this Honorable Court shall seem meet and your orator shall ever pray.

Johnson & Loop
Solrs for
Compl

N. N. Gear

State of Illinois }ss
Ad Davis County }

Ezekiah N Gear

complainant, having been first duly sworn on oath says that he has heard read the foregoing bill in Chancery subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge except as to those matters stated to be upon information & belief and as to those matters he believes it to be true.

Sworn to & Subscribed
before me this 2d day of
July A.D. 1857.
Lewis Zoller J. P.

N. N. Gear

On application this day made for an Injunction under the within bill of complaint after a hearing by both parties. It is ordered that at the expiration of four months from this date an injunction issue as prayed for in the bill so far as Bench Street therein named is concerned, unless the said Rail Road Company in the bill named, shall within

that time restore said Bench Street where it crosses or uses the same to its form "er State before such crossing or use of it, in a sufficient manner so as not to have impa= "ired its usefulness as a highway.

Galena July 25. 1857.

Benj. R. Sheldon
Cir. Judge 14th Jud. Cir. Ills

Endorsed
Filed July 29th 1857
Wm R. Rowley Clk

And afterwards to wit: on the 31st day of August A. D. 1857, at the August term A. D. 1857, of said Jo Davies County Circuit Court in the Record of the procedings thereof in said cause appears the following entry to wit:

H. H. Gear
vs
Ills. Cent. R. R. Co } Bill

The Defendants by their solicitor come and file their answer

The answer referred to in the last above recited entry is in the words and figures

singular the matters herein before stated and charged as fully and particularly as if the same were here repeated and they distinctly interrogated thereto.

And that your Honor will grant to your orator the Peoples writ of Injunction directed to the said Illinois Central Rail Road Company their officers, agents, attorneys, and servants commanding and restraining them from using and occupying for the running of Locomotive Engines or Cars, or for any other purpose that portion of their said Rail Road which is upon the Lands of your orator as aforesaid, and that portion thereof which occupies and obstructs Beach Street adjacent to the lands of your orator as herein before described. And that the said Illinois Central Rail Road Company may be compelled by decree of this Honorable Court to remove their said Rail Road from the lands of your orator, and to remove the same from that part of Beach Street adjacent to the lands of your orator as herein before described, and that said Rail Road Company put the lands of your orator

and the said Bench Street in the same condition and repair as the same were when they took possession of the same as near as possible: and that the said Rail Road Company may also be decreed to make a reasonable compensation to your orator for the damages sustained by him by reason of the illegal and improper conduct of the said Rail Road Company in the premises and that your orator may have such other & further relief in the premises as the nature of this case may require, and as shall be consistent with Equity.

May it please your Honor to grant to your orator not only the Peoples writ of Injunction as herein before prayed but also a writ of Summons to the said Illinois Central Rail Road Company commanding the said company to appear in this Honorable Court at the next term thereof, then and there to answer all and singular the premises, and to stand to, perform and abide such order and decree in the premises as to this Honorable Court shall seem meet and your orator shall ever pray.

following to wit:

State of Illinois } In Circuit Court
Jo Daviess County } In Equity

Ezekiah H. Gear
vs
Illinois Central Rail
Road Company

The said Defendants saving & reserving unto themselves all manner of benefit & advantage of exception to the many errors uncertainties & other defects in the said Bill of Complaint contained, for answer thereunto, or unto so much or such parts thereof as defendants are advised are material for them to make answer unto answering say,

That they believe it to be true as stated in said Bill, that said Gear on the 19th day of June A.D. 1849, & for a long time previous was the owner in fee simple & entitled to the possession & enjoyment of the north part of the South West fractional Quarter of Section No 24, in the West side of Galena River in said County.

And Defendants further answering, say, that they believe it to be true, that said Gear

did ~~cause~~ cause a portion of said tract of Land to be laid out & Platted as an addition to the City of Galena in said County & did acknowledged & Record the same & that said Blocks & Lots were numbered as stated in Bill - But there Defendants have no knowledge as to how much of said Block No 2 the said Gear is now the owner & have no knowledge as to how much thereof he is entitled to the sole & exclusive possession but these defendants do deny that said Gear is entitled to the possession of so much of said Block No 2 as the Rail Road of said Defendants was located over.

And Defendants further answering admit that they are a corporation existing under the laws of said State of Illinois, & were on the said day of A.D. 185 & that as such corporation & under & by virtue of the laws of said State of Illinois, they located their said Rail Road over certain lands of said Gear in said O & H. Gears addition to Galena & Lands near & adjoining thereto of said Gear & that a small corner of said Block No 2 was embraced in such location, that said Gear & said Defendants not being able

to agree upon the sum to be paid for Right of way for said Rail Road over said lands the said Defendants on the 21st day of October A. D. 1853. filed their petition in the Office of the Clerk of the Circuit Court of said County praying for the appointment of commissioners to assess the damage & fix the compensation to said Gear, by reason of the said location of said Rail Road over said Lands, in due form of law, and that by virtue of said petition commissioners were appointed by the Hon Benj R. Sheldon to assess said damages & fix said compensation & that said commissioners filed their Report in due form of law in the Office of the clerk of said Court on the 21st day of November 1853. by which Report, under the hands & seals of said Commissioners, it appears that the sum of Twenty Thousand Dollars was awarded as damages & compensation to the said Gear by reason of the location of said Rail Road as aforesaid all of which proceedings of said commissioners were made in due form of law & Defendants pray that reference may be had to said Petition & all the other proceedings of Record in the premises in the Office of said Clerk. whenever it may become

necessary so to do, & fully as if the same were at length incorporated herein. And Defendants are & insist that said Gear has received the said sum of Twenty Thousand Dollars in full for compensation & damages over the aforesaid lands by reason of the location of said Rail Road over the same & has received payment for the location of said Rail Road over said Land in said Block No 2. and is not entitled to any other or further damages therefor from these Defendants. And Defendants are & insist that said award of said commissioners embraced all & every damage occasioned to the lands of said Gear, in said Gear's addition to Galena & adjacent thereto, by reason of the location, are & operation of Defendants Rail Road over the same (except the private Landing of said Gear, which was specially excepted in writing from the operation of said award) And said Defts aver that they have paid said award of Twenty Thousand Dollars so made by said Commissioners as aforesaid, & that said Gear has received the same in full payment, satisfaction & discharge of said award & of the damages arising from

5

The location, are & operation of said Rail Road over the aforesaid Lands & over said part of said Block No 2, upon which said Rail Road was located & Defendants insist that it is inequitable & unjust to require them to pay for said grounds a second time as said Gear now seeks to do. And defendants deny that they located a portion of their Rail Road upon, over & through a portion of said Block No 2, without the consent of said Gear & without having acquired any right to appropriate the same as alleged in said Bill. But Defendants expressly aver that said Rail Road was located by the Engineers & agents of Defts over said Land & said Block No 2, with the knowledge & consent of said Gear that said Gear expressly agreed with Defts that they should locate their said Rail Road as aforesaid long before the same was condemned as aforesaid by said commissioners under the understanding that in case the said parties could not agree as to the sum to be paid to said Gear for said right of way over said Lands, the same should be afterwards condemned in due form of law. And Defendants aver that

they located their said Rail Road as aforesaid long prior to the said condemnation over the said lands of said Gear, with his approbation & consent, that said Gear then lived & has ever since resided within a few rods of said Block No 2, & knew how said Rail Road was constructed & located & operated & yet that said Gear not only consented & agreed to the location & construction of said Rail Road as aforesaid & received said awards of twenty thousand Dollars, but had never objected to the location use & operation of said Rail Road over said corner of said Block No 2, or intimated any dissatisfaction with the same, until about the time of exhibiting his said Bill. And Defendants insist that said Gear is not under the circumstances entitled to any Injunction or any aid whatever in the premises from this Honorable Court. And Defendants deny that they have continually occupied & used the said lands in said Block No 2, to the injury of the property of said Gear or to the destruction of the Streets & Easements necessary to the use & enjoyment of said Gear's Lands as averred in said Bill

And Defts. further deny that they are now in the constant use of their Rail Road over & through the lands of said Gear as alleged in said Bill to his damage & rendering valueless his lands, as averred & charged in said Bill. And Defendants further answering say, that although, they originally located their said Rail Road over a small corner of said Block No 2 & although, they insist they have a perfect & absolute right to run their Engines & cars over the same & to appropriate the part of the same over which their Rail Road was so located to the uses and purposes of their said Rail Road yet, these defendants deny that they are using or now enjoying any part or portion of said Block No 2. or that their Rail Road is operated over through or upon any part or portion thereof. that these Defts. are using any part of said Block No 2. in any manner whatever. And Defts. admit that said Block No 2. is bounded on the East by Bench Street in the City of Galena but Defendants deny that any part of said Bench Street is wholly appropriated by & occupied by the said Rail Road without authority of law as averred in said Bill.

And Defts. deny that said Rail Road entirely obstructs & renders said Bench Strut impassable & wholly useless — and deny that travel is by any occupation or obstruction of said Strut by said Rail Road fenced off of the line of said Strut in to the lands of said Gear as averred in said Bill, although, Defts admit that the only means by which the public passing on Bench Strut can reach Mississippi Strut is by passing over the lands of said Gear. But Defendants deny expressly that such passing over said Gears lands is caused by the Rail Road of these Defendants or by these Defts. in any form or manner. And Defendants deny that they have made or rendered said Bench Strut impassable along or near said Block No 2, or elsewhere, but defts aver that the obstructions in said Bench Strut which force said travel off of the same are natural obstructions, consisting of a ledge of Rocks several Rods in length & many feet in heigth & which wholly obstruct said Bench Strut along said Block No 2 & have never

forced

been removed & which these Defts did not interpose or create.

And Defts. further answering say, that the section No ten of the charter of Defendants is correctly set out in said Bill, but Defendants insist that they have not interefered with the usefulness of said Bench Strut for highway purposes with their said Rail Road, or otherwise & therefore could not restore the same, and admit that they have never obtained other lands for the purposes of a highway to connect with said Bench Strut, and Defendants, deny that they are required by said charter or by Law, to acquire other Lands for highway purposes under the circumstances of this case.

And Defendants further answering, say, that said Gear, has called upon the Officers & agents of these Defendants & requested the said Company to open said Bench Strut as a highway & to remove said Rail Road from said Block No 2, or to pay him the said Gear large damages therefor, and defendants did remove their said Rail Road from said Block No 2, but have not opened up said Bench Strut, nor made a passable highway of the same, as they were not required by law so to do, the said defendants never having

interfered with said Bench Strut & never having impaired its usefulness as a Strut. And Defendants further answering say, that they regard the demand of said Gear to open up Bench Strut (or as stated in said Bill to restore the same) but which is incorrect as said Strut has never been opened or graded & hence cannot be restored) & to purchase other lands for said Street from said Gear as an attempt to extort money from these Defendants: and that said Gear is undertaking by his said Bill to force & compel these Defendants to purchase his lands at an exhorbitant price & to grade & open up said Bench Strut as a passable public highway, for the express ease & benefit of said complainant at the cost & expense of Defendants and contrary to Law, or good conscience.

And Defendants admit that they refuse to comply with the unreasonable demands of said Gear which require them to buy his lands at his own price & to construct a Strut for him which these Defendants are not required by law to do, but these Defendants deny that they

refuse to restore any Struts whatever whose usefulness they have impaired. And Defendants deny the right of said Gear to relief in the matter of said Bench Strut by his proceeding, even if the same had been by them impaired. (which Defts always deny) and defendants pray that they may have the full benefit of this objection to the same extent, as if they had taken the same by demurrer to the part of said Bill relating to Struts. And Defendants deny all charges of combination & confe-
deration as charged in said Bill, and deny the right of said complainant to the writ of Injunction or to the relief prayed for in his said Bill without that, that any other matter or thing material for these defts to answer & not hereby sufficiently ans-
wered unto confessed or avoided traversed or denied, is true to the knowledge or belief of these Defendants. And Defendants further answering say, that they are now & always have been ready to restore any & all Struts or highways, in the said addi-
tion or elsewhere, whose usefulness they may have impaired by their said Rail Road, but they expressly deny that they have impaired the usefulness of said

Bench Strut as averred in said Bill.
And Defendants having fully answered said Bill humbly pray to be hence dismissed with their reasonable costs & charges in that behalf most unreasonably sustained &c

Illinois Central Rail Road Company.
By Douglas & McClellan
Their Solicitors

Endorsed.
Filed August 31st 1857
Wm R Rowley Clerk

And afterwards to wit on the 2nd day of September A. D 1857. as per to said August Term A. D. 1857. of said Circuit Court, in the Records of the proceedings thereof in said cause appears the following entry to wit:

Hezekiah H. Gear
vs
The Illinois Central Rail Road Company

Bill

By consent of the parties by their solicitors it is

ordered by the Court that this cause be continued.

And afterwards to wit, on the 25th day of November A. D. 1857, as yet of the October Term A. D. 1857 of said Jo Daviess County Circuit Court. The parties by their attorneys filed in open Court the following affidavit of John Newell together with the annexed plats which are as follows to wit;

State of Illinois } In Circuit Court
Jo Daviess County } Oct. Term A. D. 1857.

Hezekiah H. Gear
vs
Illinois Central Rail Road Company

John Newell being first duly sworn according to law says, that he is a civil Engineer by profession, that he is acquainted with the Lands & Lots of Hezekiah H. Gear, named & described in the Bill of said Gear in the above entitled cause being Lots No 4, 5 & 6 in Block No (2) Two in H. H. Gear's addition to Galena & is also well acquainted with

the line & relative portion of the Illinois Central Rail Road, near said property and also, with the location & condition of Bench Strut along, near, and adjacent to said Lots of said Gear. And this affiant further says, that the plat hereto annexed marked "A" correctly represents the relative position of said Rail Road to said Lots of Lands & of said Bench strut & also, of said Lots of lands.

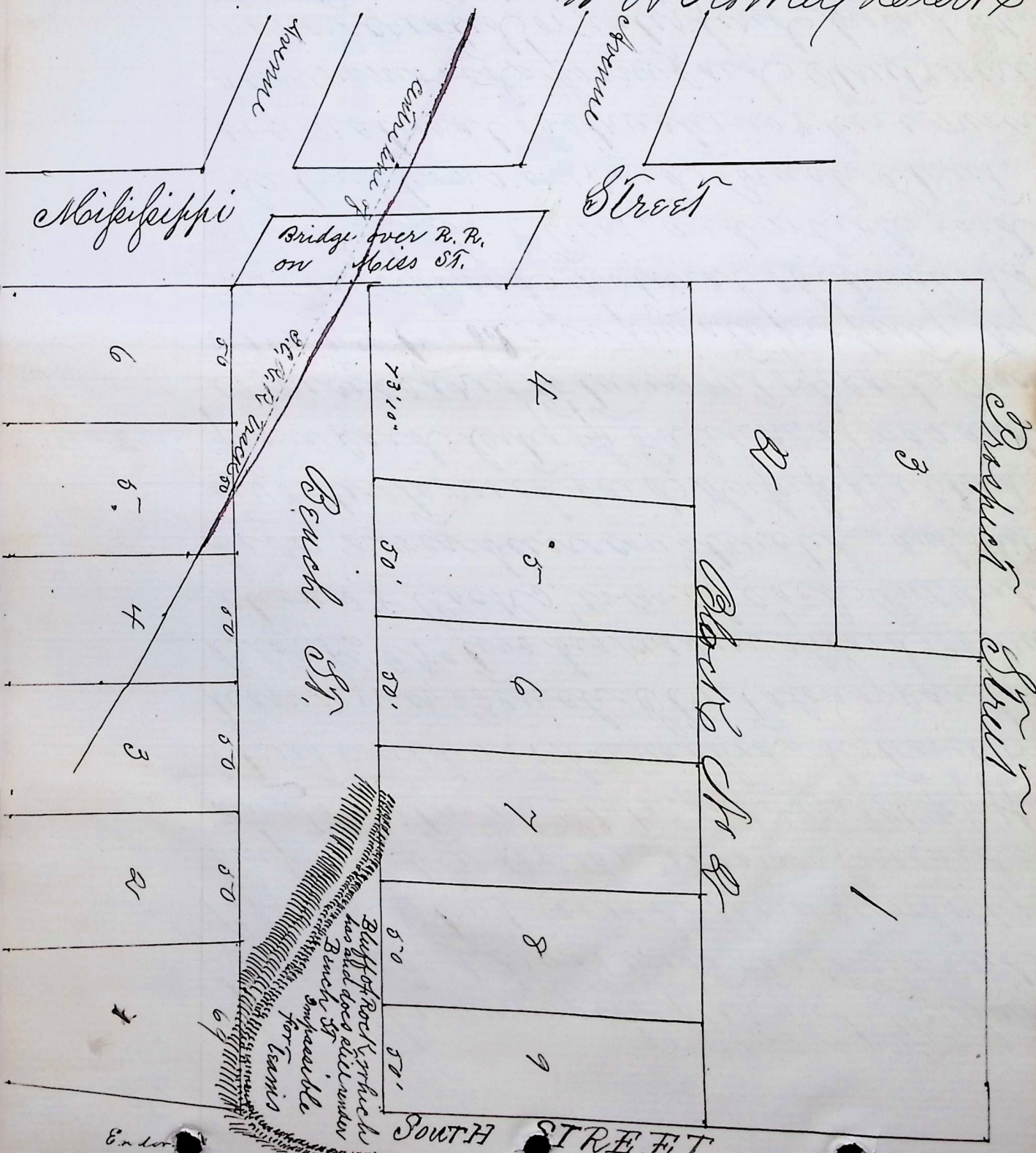
And affiant further states, that said Rail Road does not occupy any part or portion of any of the said Lots of said Gear, but is wholly within the Lands of the said Illinois Central Rail Road Company & used & operated entirely upon the lands of said Defendants, through said H. St. Gear's addition. And affiant further states, that said Bench Strut, has never been opened and worked as a passable Strut, between said Bench Strut and said Rail Road adjacent thereto, but, that there always have existed; and still do exist impassable barriers in said Strut, being a ledge of Rocks several feet in heighth, which has always obstructed & still does obstruct said Bench Strut, at said point as indicated & shown

upon the annexed plat, and that if said Rail Road did not exist at all the said Bench Strut would there be wholly impassable for the reason aforesaid in its natural State, and that Mississippi Strut could not be reached by travel or Teams over Bench Strut along said Block Sp two by reason of said obstru "ctions & Rocks, even if said Rail Road had never been constructed, and that in order to reach said Mississippi Strut from said City of Galena, it was and is necessary to turn out of said Bench Strut & travel over private property, by reason of said natural obstructions in Bench Strut, and which said obstructions in said Bench Strut, are natural obstructions & have never been removed from said Strut & were never created or interfered by said Illinois Central Rail Road Company. And affiant further states that the plat therein profile, along said Bench Strut certified by him & Milton Wadleigh 20 August 1857, is correct and truly represents the elevation along said Strut as it purports to do, the said plat being filed by the Clerk of said Circuit Court of this date in said cause.

Subscribed & Sworn to
before me this 20th day
of November A.D. 1857
Wm R. Rowley Clerk

John Newell

Endorsed
Filed November 20th 1857.
Wm R Rowley Clerk


Avenue
Avenue
Avenue
Mississippi
Street
Bridge over R. R.
on Hiles St.
Bluff Rock which has slid down and still under Bench St. impassible for teams
Bench St.
Bluff Rock Ch R
Prospect Street
SOUTH STREET
1
2
3
4
5
6
7
8
9
50
73.10
50
50
50

This Profile made this 20th day of August 1867 by the undersigned shows correctly the Elevations of the present surface of the grounds on the center line of Bench Street between Miss. and South Sts and on the center line of an Avenue laid down in Gear's addition South of Miss. St and East of the Ills. Central Rail Road. The Elevations are given from the base line of the City Lands

John Newell Div. Engr. 2nd Div. I. C. R. R.

Milton Nadleigh City Surveyor of Galena

NOTE
East end of Road bridge on Mississippi Street is 0.8+ above and west end 1.6 – below grade of said Street as established and Recorded by Capt. Gear

SCALE { HOR. 50 FEET TO INCH
VER. 10 " "

And afterwards to wit on the 27th day of November A.D. 1857. as yet of said October term A.D. 1857. of said Circuit Court in the Record of the proceedings thereof in said cause appears the following entry to wit:

H. H. Gear
vs
Ills. Cent Rail Road Company

Injunction

The Complainant by his solicitor comes and files a Replication to Deft's answer.

The Replication referred to in the last recited entry is in the words & figures following to wit:

H. H Gear
vs
Ills. Cent Rail Road Company

In the Circuit Court of De Davis County October Term 1857

The Replication of the Complainant to the answer of the Defendants. This repliant saveing and reserving unto himself all manner of advantage of exceptions to the manifold

insufficiencies of the said answer, for replication thereto saith that he will aver and prove his said Bill to be true certain and sufficient in the law to be answered unto and that the said answer of the said defendants is uncertain untrue and insufficient to be replied unto by this repliant. without this that any other matter or thing whatever in said answer contained material or effectual in law, in law to be replied to confessed and avoided, traversed or denied is true. all which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct, and humbly prays as in his said bill he hath already prayed.

H. H. Gear
By M. Y. Johnson
his Sol

Endorsed
Filed Nov 27th 1857
Jno R. Conley clerk

And afterwards to wit: on the 4th day of December A. D. 1857, as yet of the said October term A. D. 1857, of said Co Davies County Circuit Court in the

Records of the proceedings thereof in said cause appears the following entry, to wit:

Hezekiah H. Gear
vs
The Illinois Central Rail Road Company } Bill

Now at this day came on to be heard this cause and the Court after hearing the evidence and arguments of counsel orders that this Bill be dismissed without prejudice to the complainant at his costs, to which the complainant by his solicitor excepts It is therefore considered by the Court that the Defendants have and receive of the Complainant their costs by them about their defence herein expended and that Execution issue therefor.

And afterwards to wit on the 5th day of December A.D. 1857. as part of the said October Term A.D. 1857. of said Jo Daviess County Circuit Court in the Records of the proceedings thereof in said cause appears the following entry to wit:

Company as the same appear of Record in my office

In testimony whereof I have hereunto set my name and affixed the seal of said Court at my office in Galena this 12th day of March AD 1859

Attest - Wm R. Rowley Clerk

Fees
Transcript 7.25
Plats 5.00
Certificate .35
$12.60

Gear
vs
Ills Cent Rail
Road Compy

Supr Court 3rd Grand Division
Apl Term 1859

And now comes the Complainant and says in the Record and proceedings in the above cause there is manifest errors in the Judgment and orders of the Circuit Court and that the same should be reversed and remanded for the following reasons -
In dissolving the Injunction
In dismissing the Complainants Bill
In not rendering a decree in favour of the Complainants Wherefore he pray that the Judgment may be reversed and remanded &c

M Y Johnson
Atty of Compl

~~333~~ ~~328~~

Hezekiah H. Gear

vs ~~333~~

Illinois Cen. R. R. Co.

Record

Filed April 27, 1859

S. Leland

Clerk

COUNTY CLERK'S OFFICE COOK COUNTY ILLINOIS