

No. 12803

Supreme Court of Illinois

Ill. Cent. R. R. Co.

vs.

Northern Ind. and Chicago
R. R. Co.

~~XX~~ 10
Mt. Central R. R. Co.

vs
A. L. & Co. R. R. Co.



2895
859

M. Cent. H. R. Co.

^{ing}
O. S. & Co. H. R. Co.

Filed June 14. 1854

L. Sel and Clerk

State of Illinois
County of Cook } P

Shew before the Honorable
Buckner S. Morris Judge of the Seventh
Judicial Circuit Court of the State of
Illinois and presiding Judge of the Circuit
Court of the County of Cook at the Court
House in the City of Chicago in said County
at a vacation Term on the fourth Monday
(being the twenty fifth day) of October in
the year of our Lord One thousand eight
Hundred and fifty three and of the Inde-
pendence of the United States ^{the} twenty eighth

Present

Hon Buckner S. Morris. Judge of said Court
C. P. Bradley. Sheriff of Cook County
Attest, Louis D. Howard. Clerk of said Court.

Be it remembered that on the thirtieth
day of May in the year of our Lord one
thousand eight Hundred and fifty three
there was filed in the Office of the Clerk of
said Circuit Court of said County a
certain Bill of Complaint which is in words
and figures as follow, to wit:

State of Illinois }
Cook County. }
Circuit Court }

To the Hon. Buckner S. Morris
Judge of the Seventh Judicial
Circuit and presiding Judge
of the Cook County Circuit
Court in Chancery Sitting

Complaining sheweth unto your Honor, your
orator the Wabash Indiana and Chicago
Rail Road Company, that under and
in pursuance of an act of the General
Assembly of the State of Illinois entitled
"an act to provide for a general system
of Rail Road incorporation" passed on the
fifth day of November, in the year one
thousand eight hundred and forty nine
and previous, to the second day of December
in the year one thousand eight hundred
and fifty, your orator became and was
a body corporate by the name and style
above set forth and in the manner pre-
scribed in said act, by filing in the
Office of the Secretary of State of the State
of Illinois, the articles of association, papers
and proceedings ^{presented} in said act, a copy of

which said papers and proceedings are
hereto attached and marked "Exhibit A"
which your Orator hereby makes a part of this
your Orators bill of complaint. as by refer-
ence to said original papers now on file
in the Office of the Secretary of State of
said State of Illinois will more fully and
at large appear.

And your Orator further shows unto your
Honor, that in the early part of the year
eighteen Hundred and fifty one a survey
of the route for the Rail Road as descri-
bed in said "Exhibit A" was commenced
under the direction of John B. Jarvis as
chief Engineer of your Orator and that in the
month of June in said year the final
location of the route was made between
the city of Chicago, and the eastern bound-
ary line of the state of Illinois, and
that the line as located runs, over and
through, the west. half of Section twenty
Six in Township thirty eight, north of Range
fourteen East of the third principal Meridian
and also over and through the South East
quarter of the Same Section in the Township
and range last aforesaid

And your Orator further shows unto your
Honor, that for the purpose of procuring
the right of way, and facilitating the
construction of said Road your Orator

by its attorney Norman B. Sudd procured
from William B. Ogden a deed of con-
veyance of the following described part or
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 com-
mencing 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 title was
made by the said William B. Ogden
to the said Norman B. Sudd on the
thirtieth day of July. in the year one
thousand eight Hundred and fifty one

and filed for Record in the Records.
Office of said Cook County, on the third day
of November in the year last aforesaid
and recorded in Book 45 of Deeds page
41 a certified copy of which said Deed
of conveyance is hereto annexed marked
Exhibit "B" and made a part of this your
Orators bill of Complaint as by reference
to the original deed now in the possession
of your Orator or to the record thereof made
as aforesaid will more fully, and at
large appear.

And your Orator Shews, unto your Honor
that by its Attorney aforesaid your Orator
procured from William B. Ogden for
himself and from Mahlan D. Ogden and
Edwin W. Sheldon executors of the last
will and testament of William C. Jones
deceased a deed of conveyance of the
following described portion parcel of
the South East quarter of said Section Twenty
Six and in Township and Range last
aforesaid. to wit, One Hundred feet
wide, being fifty feet wide on each 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

new chain 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 title was made and said deeds
of conveyance last aforesaid was exe-
cuted by said William B Ogden and
by said Mahlan D. Ogden and Edwin
M. Sheldon as aforesaid, on the said thir-
tieth day of July, in the year ~~one thousand~~
Eight hundred and fifty one, and was
filed for record in the Records Office
of said Cook County on the said third
day of November, in the year last aforesaid
and recorded in Book 45 of Deeds
page 39 a certified copy of which said
deed of conveyance is here to annexed
marked "Exhibit" "C" and made a part
of this your Orators bill of complaint
as by reference to the original deed now
in the possession of your orator or to the
records thereof made as aforesaid will
more fully and at large appear

And your Orator further shows unto your
Honor that at the time of making the
said deeds of conveyance herein before
referred to the Grantors therein named were

seized in fee simple of the tracts of Land
thereby conveyed and that the said con-
veyances thereby made were made to said
Norman B. Edd in trust for and as the
agent and attorney of your Orator and
that the consideration paid for said
tracts of land conveyed by said deeds
were paid by your Orator.

And your Orator further shows unto your
Honor that the grading of the road of
your Orator was commenced in October
in the year Eighteen Hundred and
fifty one and that on the twentieth
day of February, in the year Eighteen
Hundred and fifty two the road of
your Orator over and across said Section
twenty Six and upon the premises so con-
veyed to said Edd as aforesaid
was completed and that from that day
until the present time trains of Cars
for the transportation of persons and
property over the said road of your
Orator have been running every day
except Sundays and that a great
number of persons and a large amount
of property have been transported and
carried over said road.

And your Orator further shows unto

your Honor that the General Assembly of the State of Illinois on the sixteenth day of June in the year Eighteen Hundred and fifty two passed "an act to authorize the construction and use of the Northern Indiana and Chicago Rail Road a copy of which said act is hereto attached and marked "Exhibit D" and made a part of this your Orators bill of complaint as by reference to said act now on file in the Office of the Secretary of State of the State of Illinois will more fully and at large appear

And, your Orator further shows unto your Honor that on the tenth day of February in the year Eighteen Hundred and fifty one the said General Assembly passed an act entitled "An act to incorporate the Illinois Central rail road company for the particular provisions of which said act your Orator refers to the printed laws of the State of Illinois

And your Orator further shows unto your Honor that on the sixth day of April in the year Eighteen Hundred fifty two

the said Central Rail Road Company,
filed in the Recorders Office of the said
County of Cook a map showing the
location of so much of the branch of
said Central Rail Road extending from
the main trunk to Chicago as lies within
the said County of Cook, and your
Orator further shows unto your Honor that
the line of said Chicago branch as
shown by said map so as aforesaid
filed in the Recorders Office of Cook
County by the said Illinois Central
Rail Road company, is located upon
and across the pieces parcels or tracts
of land so conveyed as aforesaid to
said Indd and near to the Center
of said Section twenty six and that
said Illinois Central Rail Road
company has never in any manner acq-
nired any title or interest in the said
tracts or parcels of land so conveyed
to said Indd as aforesaid, nor any
right to cross over the said parcels or
tracts of land and upon which your
Orators said road was constructed
as aforesaid

And your Orator further shows unto
your Honor that the following provisions
are in said act incorporating the said

Illinois Central Rail Road Company.
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
Rail Road 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 sideling and Swit-
ches and other conveniences necessary to
further the objects of such connection, and
when the route of any other Company shall
be occupied as aforesaid just compensa-
tion shall be made to such other Company
for all expenditures made by them in
the location of such road and all
rail roads so constructed or now in
process of construction intersects as
aforesaid 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 passen-
gers 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 crappings and connections the trans-shipment of freight and passengers and interchange of cars. the same shall be ascertained and determined by three commissioners one to be chosen by each of 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 whom 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 as by reference to said act of incorporation will more fully and at large appear

And your Orator further shews unto your Honor that the said act entitled "An act to provide for a general System of Rail Road incorporations" passed November fifth in the year Eighteen Hundred and forty nine it is enacted among other things

as follows, "to cross, intersect, join and unite its Rail Road with any other Rail Road before constructed at any point on its route and upon the grounds of such other Rail Road Company with the necessary turn outs, Sidings and Switches and other conveniences in furtherance of the objects of its connections and every other Company whose Rail Road is or hereafter shall be intersected by any new Rail Road shall unite with the owners of such new rail road in forming such intersections and connections and grant the facilities aforesaid and if two corporations cannot agree upon the amount of the 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 herein after, in respect to the taking of lands." as by reference to said act will more fully and at large appear.

And your orator further shows unto your Honor that after the completion of your Orators road and in the

month of April eighteen Hundred and
fifty two one R. B. Mason Chief Engineer
of said Illinois Central Rail Road
addressed a letter to said John B. Davis
Chief Engineer of your Orator road and
one of your Orators. board of Directors
informing said Davis of the location
of the route of the Chicago branch
of said rail road so far as the same
was within the County of Cook to which
said letter the said John B. Davis caused
to be delivered to said Mason a
re 4 reply in the words and figures following

Adrain 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 crapping over track by the Illinois Central
road has occupied my attention for
some time and I had determined to
imbrace the first opportunity to have
a conversation with you in relation to it.
You will readily see that crapping
lines so far from a station by means
of crapping prop. would be very objec-
tionable - 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 collision 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 embankment and made solid and the respective trains

would pass without interference with
each other or the hazard of a collision
If you consider the matter carefully
I think you will come to the same
conclusion. Two important lines of
road, should not allow their business
to be conducted on such a hazard
and embroachment as a level crossing
would involve, and I should be happy
to interchange views and enter into
any negotiations that are proper to put
this plan of crossing on a satisfactory
and fair basis - In the mean time
William Harris will confer with you as
to plan and mode of crossing

Respectfully Yours

John B. Harris

And you order further show unto your
Honors, that having received informa-
tion as aforesaid of the location of
the line of said Illinois Central
road in the County of Cook, your
Orders at a meeting of the Board
of Directors adopted resolutions in
relation to crossing of your orders
road, by the Illinois Central road
in the words and figures following
At a meeting of the Directors of the
North Indiana and Chicago

Rail Road company held at the
office No 74 Beaver Street. New York
present Charles Butler President Gen Bliss
Mr B Lewis Edwin C. Litchfield and
John Stryker - Mr Stryker was appointed
Secretary pro tem Resolved - That the
Illinois Central Rail Road Company
having commenced 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 Rail Road 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 company -

Resolved - That the said Illinois
Central Rail Road company be
notified 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
Rail Road company. at any con-
venient time and place they may

designate for the purpose of agreeing upon the mode and manner of said craping and that if they cannot agree upon the same this company is ready to refer the same for adjustment in the manner provided in the charter of the Illinois Central Rail-road company and the general laws of Illinois -

No 5 Resolved. That the Chief Engineer take all lawful means to prevent any craping of the tracks of this company by the Illinois Central Rail Road Company until the question is finally settled either by the agreement 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 Rail Road company, at the office of said company in the City of New York on the Twenty fifth day of April eighteen hundred and fifty two. the records office and place of business of said Illinois Central road Company being then in the City of New York and the President and Secretary both residing in said City of New York and said company not having at that time any office within the State of Illinois for the transactions of their general

business

And your Orator further shews unto your Honor, that said Illinois Central Rail Road company was forbidden to enter upon the lands, held for your Orators road as aforesaid, or to cross the road of your Orator or in any manner to interfere with the track of your Orators said road until the manner of crossing has been determined by a commission to be chosen in pursuance of the laws herein before set forth except by carrying the road of said Illinois Central Rail Road Company over the road of your Orators at a sufficient height to enable your Orators locomotives and cars to pass under the same in safety.

And your Orators further shew unto your Honor, upon information and belief and so charges, that the said R. B. Mason Chief Engineer of said Illinois Central Rail Road was fully informed and notified, that your Orator would not consent to or allow any other method of crossing their said road, than as above

stated: that William Davis the resident Engineer having charge of your Orator road fully informed said Mason of the views of your Orator upon that subject and that said resident Engineer, was instructed by said John B. Davis to whom the power had been given by your Orator to prevent any crossing of the track of your Orator road except in the manner indicated in the resolutions herein before set forth - that in reply to said Notice said Mason advised said William Davis that he would not disturb the track of your Orator road without giving him timely notice so that said Davis might as the Engineer of your Orator prevent the same

And your Orator further shows into your Honor, that on the seventh day of May, in the Eighteen Hundred and fifty two the said Mason, having carried his materials to the place clandestinely - without giving the required notice, with force and by the strong arm, cut the rails of your Orator said road, and put in crossing frogs and the first knowledge that the said William Davis or your Orator had of the attempt to cross the road of your

Orators was a letter from said mason
in the words and figures following -

Chicago May 7th 1852

William Lewis Esq

Dear Sir

Moving every
thing prepared to-day for putting in
the crossings, when 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 precau-
tion, to send a line up to your gravel
pit, and sent a man with a line
to the first Station East of the crossing
so that your trains into 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 every thing permanent
and strong

Yours Truly

R. B. Mason

that at the time the said mason so
interfered with the track of your Orators

road: your Orators road had been completed for several months. and trains of Cars were running daily over the road of your Orator. That your Orators track, was cut and the frogs put in upon the premises heretofore before described as having been conveyed to said Orator.

And your Orators further show unto your Honor, that the said John B. Jarvis your Orators Chief Engineer to whom had been given the power and who was instructed to prevent any crossing, except in the manner above specified caused to be delivered to the said Mason a letter of which the following is a copy.

Chicago May 10th 1852

A. B. Mason Esq

Dear Sir

I regret that after I had intimated my objections to the crossing of the Illinois Central tracks 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 hazardous. 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
tracks. 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 Railroad Company. to devise
upon the proper mode of crossing our
road

Respectfully Your obedient Servant
John B. Lewis

And the said John B. Lewis also informs

the said mason that he should as the
agent of your Orator, take measures to
restore the track of your Orators road
and prevent any further interference until
the question, as to the manner of crossing
should be settled according to the provision
of law herein before set forth. to which said
mason, that he should protect his frog
and manner of crossing by force
As your Orator is informed and believes -
And your orator further shows. unto
your Honor, that they have been informed
and believe, and charge the fact to be that
said R. B. Mason pursuant to his threat
procured a large party of armed
men, and had them stationed night
and day, at said crossing to prevent your
orators, restoring their said track so that your
orator could not without causing a
riot have restored their said track -
And your Orator further shows. unto your
Honor, that the Illinois Central Rail Road
company, at the time of cutting of
the track of your Orator, by said mason
as aforesaid, had not any title or interest
in said ^{land} at the place where said frogs
were put in, and said crossing made
nor hath said company, or any other
person or corporation any right to enter
upon the same. Nor have said comp-

any. nor any other company or corporation or person ever since acquired any right or interest of in or to said premises so conveyed to said Indd. in trust for your orator. and that the title to said premises has been transferred. by said Indd to your orator.

And ~~hoo~~. said Illinois Central Rail Road company either by purchase grant or condemnation acquired any right to enter upon or use any part of said premises conveyed as aforesaid.

And your orator further shew unto your Honor. that your orator has always objected to and refuse to assent. to any other crossing of your orators said road by the Illinois Central road except. in the manner specified in. the resolutions of your orator herein before set forth. that said Illinois Central Railroad company have neglected and refused to take any proceedings themselves or join your orator in any proceedings. for the purpose of settling pursuant to law the mode and manner in which said crossing should be made.

And your orator further shows. unto your Honor. that on the twelfth day. of May. in the year Eighteen hundred.

and fifty two. the ^{said} Illinois, Central Rail
Road Company by Mr Brayman their
solicitor filed in the Circuit Court of said
County of Cook a petition. a copy of which
is hereto annexed and marked "Exhibit III"
that said petition purported to be filed
to procure a right of way. in accordance
to the provisions of the Charter of the said
Illinois Central Rail Road Company
and of the said act passed the fifth
day of November A.D. 1849 Entitled "an
act to provide for a general system of
rail road incorporations" that a notice
of the filing of said petition was served
upon Norman B. Budd the person who
held the property in trust for your Orator
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, on the premises of your
Orator as herein before described - that in
pursuance of said notice, the said Budd
appeared before said Court on the day
appointed for the purpose and with
a view to resist a condemnation of the
Rail Road track of your Orator and
to compel said Illinois Central Rail
road Company to settle the manner of
crossing the road of your Orator in the
way provided, in the act incorporating

said Illinois Central Rail Road company. and also under said act to provide for a general system of Rail Road incorporations - that the Illinois Central Rail-Road company. did not appear before said Court at the day fixed in said notice, or any person for them, that such proceedings has never in any manner been further prosecuted or attempted to be prosecuted that your orator has always been ready and willing to settle the manner of crossing as provided in the several laws herein before set forth

And your orator further shows unto your Honor, that the trespasses committed by said Illinois Central Rail Road company. by the cutting of your orators track and putting in the crossing frogs, the constant running over your orators said track by trains of cars. which are permitted by the said Illinois Central Rail Road company. are great and irreparable injuries to road business and property of your orator and that no adequate compensation in damages can be made to your orator. that serious and repeated damages is done to the franchise and property of your orator - that. Not less than Six trains

are running daily over the road of your
Orator carrying a large number of persons
as passengers and a large quantity of
property as freight, that the business done
over your Orators said road, is hindered
and delayed daily and seriously dam-
aged - that trains of Cars are compelled
to slacken speed in order to creep said
frog in safety so that a large amount of
time is wasted daily - that frequently the
trains of Cars of your Orator are compelled
to come to a full stop - that collisions
are unavoidable unless your Orators surrender
the use of their road to the corporation
so trespassing upon the rights of your Orator
as aforesaid - that there is great danger
to the persons and property passing over
your Orators said road in consequence
of the additional risk of breaking wheels
and other machinery upon the frog so
forcibly put into your Orators road as
aforesaid that your Orators are daily
prevented from having the free and
unmolested use of their property - that
the fear of collisions and the danger
growing out of creeping frogs and the
use of the same, is daily injuring
the business on the said road of your
Orator - and that such injuries are permanent,
and continued and no adequate compensation

in damages can be made to your Orators -

And your orators further shews unto your Honor, that a certain foreign corporation known by the name and style of the Michigan Central Rail Road company created by the laws of Michigan are allowed by said Illinois Central Rail Road company to use its said road by running trains daily over and across the roads of your said orator, thereby hindering delaying and injuring the business on the road of your said orator, and daily trespassing upon the rights interest and property of your orator

And your orators further shews unto your Honor, that as they are advised and believe and so charge the fact to be the said Michigan Central Rail Road company is not known to, and have no right or existence under the laws of the State that the said, Michigan Central Rail Road company by running their trains of cars within the state are exercising rights within this State without the authority of law and that said Illinois Central Rail Road company have no power or authority to allow the use of their road to the said.

Michigan Central Rail Road Company.

No 8 And your Orator further shows in to your Honor that said crossing is about nine miles from Chicago, a long distance from any station. and upon a low wet and marshy prairie upon which the fog often settles, so that it is impossible to see lights at any distance, in a dark and foggy night. that on the evening of the twenty fifth day of April A.D. 1853. a serious collision occurred between the Com running over the road of your Orator and a train of cars belonging to the said Michigan Central Rail Road Company at the crossing so put in by the said Illinois Central Rail Road Company as aforesaid in consequence of which Eighteen persons lost their lives and a large number of other persons were wounded and injured and the locomotives and cars running over your Orators road were broken and injured to the amount of several thousand dollars and a large damage sustained in consequence thereof that said collision was occasioned by the gross negligence of the persons in charge of said Central Rail Road in not carrying any head lights on

their locomotive

And your orator further shows unto your Honor, that the said Illinois Central Rail Road company are not yet running either passenger or freight trains over their said road - that the iron is only laid a distance of about thirty miles south from Chicago, and that the only business that said Illinois Central Rail Road is doing on that part of their road is occasionally running a train used in the transportation of materials to be used in the construction of their said road

And your orator further shows that the only proper and safe mode of crossing your orator's tracks, is by constructing a bridge over the same at a height sufficient to permit locomotives to pass under the same and that at the point of crossing such bridge and the necessary embankment and full bridging can be constructed without greatly increasing the expense or making an objectionable grade; and your orator further shows that no private

arrangement, or regulations can obviate the danger of collisions so long as said roads cross each other on the same level. and that in dark and foggy nights it would be impossible to see another train at the distance of ten rods even if provided with the best reflectors and lights. and that an attempt to operate roads thus located is trifling with the lives of those who travel upon such roads - and your Orators are warranted by the uniform and melancholy experience in similar cases in stating and therefore charge that no human foresight and precaution can prevent collisions and the consequent loss of life and property -

All which actings and doings, are contrary, equity and good conscience and tend to the manifest injury of your Orators - To the end therefore that the said Illinois Central Rail Road Company may, true, full, and perfect answers make to all and singular the matters and things charged charged in this bill and that as fully as if particularly interrogated thereto and that said Illinois Central Rail Road Company may, by decree of this

Honorable court, be enjoined and restrained from entering upon using or in any manner interfering or meddling with the lands of your orator and with the road bed and tracks of your said orator and from hindering, delaying, interrupting or impeding the passage of cars over the road of your orator and from creeping over or entering upon the road bed and road and tracks of your orator in any way, or manner whatsoever - with locomotives or cars of any kind, and from permitting or allowing any other company or corporation to enter upon or creep over the same until the mode and manner of proper creeping be settled and determined in the manner prescribed in their said Act of incorporation entitled "an act to incorporate the Illinois Central Rail Road Company"

Approved tenth of February, or in the manner pointed out in the act entitled an act to provide for a general system of Rail Road incorporations and until said creeping shall have been erected, constructed or put in according to the determination of

commissioners. to be appointed in pursuance of said laws. and that your orator may have such other and further relief as may be agreeable to equity and good conscience. May it please your honor to grant unto your orator the writ of injunction restraining and enjoining the said Illinois Central Rail Road company. and the said Michigan Central Rail Road company. their attorneys. agents conductors. and servant in manner and form as above prayed for and also a summons. commanding the said Illinois Central Rail Road company. to be and appear before this Hon. Court according to the course and practice thereof and to answer your orator's Complaint herein and to stand to abide by and perform such order and decree in the premises as shall seem meet and shall be agreeable to equity and good conscience

And your orator will ever pray

On witness whereof the Northern Indiana and Chicago Rail Road company have here unto set its Seal and caused the name of its Secretary to be subscribed this 10 May 1853

John W. Wilson Secretary of the Northern Indiana & Chicago Rail Road Company.

J. W.

State of Illinois }
Cook County S.S. }

John Stryker being duly sworn saith that he is a Stockholder in and a member of the Board of Directors of the Northern Indiana and Chicago Rail Road Company that he is well acquainted with the affairs and business of said company and particularly with the crossing mentioned in the foregoing bill of complaint this deponent further saith that he has heard and read the foregoing Bill and knows the contents thereof, that the same is true of his own knowledge except so far as stated upon information and belief and as to those matters he believes it true

John Stryker.

Subscribed & Sworn to before
me this 11th day of May A.D. 1853.

L. S.

Witness my hand and
Notarial Seal at the City
of Chicago in said County
of Cook. the day and year
last aforesaid

W. R. Stebbins
Notary Public

Amended prayer for process of injunction
filed by leave of the Court November 2^d 1853. see order of
that date.
And also in the mean time may it please your
Honor, to grant unto your Orator the people's
preliminary writ of injunction to be issued
out of and under the seal of this Court
and directed to the Illinois Central Rail
Road Company, its Superintendents
Engineers, Solicitors, Agents and Servants
therein and commanding them and
each of them under a certain penalty
that they and each of them absolu-
tely refrain and desist from entering or
permitting any other Railroad Company
or persons to enter upon the land road
bed and Railroad of your Orator at the
place of crossing mentioned hereinbefore
in your Orator's bill. And also from cross-
ing or attempting to cross, or allowing
or permitting any other Rail Road
Company or person to cross the land
road bed and Railroads tracks
of your Orator at the place aforesaid
with any locomotive Engine, Car, or
trains of Cars or otherwise until the
further order of this Court in the premises

Northern Indiana and Chicago Rail Road Company.

"Exhibit A"

The undersigned do hereby subscribe for and agree to take and pay for the number of Shares of Stock of one hundred dollars each set opposite our respective names in a Rail Road which is contemplated to be built from the City of Chicago to the Western line of the State of Indiana where the said western line of the State shall be intersected by the Rail Road of the Western Division of the Buffalo and Mississippi Rail Road Company and we do hereby agree with each other and with the corporation intended to be formed for the purpose of constructing said Road to pay the amount of our several Subscriptions in cash to Edwin C Litchfield for the use of said corporation at such times and in such instalments as the directors of said Corporation when elected shall determine the object and intention of the undersigned being to organize an association for the purpose of being formed into a corporation for building, constructing, owning & maintaining such Rail Road under and in virtue of the act of the Legislature of the State of Illinois - Entitled

An act to provide for a general System of Rail Road. Incorporations passed and in force Nov 5th 1849. and an act supplemental thereto passed ~~Nov 10th 1849~~ and in force Nov 6th 1849. Ten per cent upon the amount of such subscriptions is payable, at the time of Subscribing and the remainder as before stated

September 19th 1850

Names.	No of Shares
Geo Bliss	Five
Charles Butler	Five
S. H. Fleewood	Five
Elisha C. Sitchfield	Five
Edwin C. Sitchfield	Five
John B. Davis	Five
John W. Wilson	Five
Phillip Thurber	Five
John Wentworth	Five
Ger Smith	Five
N. H. Brown	Five
Charles Walker	Five
W. C. Gurnee	Five
Mark Skinner	Five
D. Brainard	Two
G. C. Hubbard	Five

Thomas L. Forest
 Eder S. Trinkham
 W B Ogden
 B. S. Morris
 J. Maxwell
 Geo Stueb
 R K Smith
 H. G. Loomis
 John H Kungie
 Hugh White
 J. H. Hubbard
 M. L. Morcy.
 John Stryker
 Charles Gould

Five
 Five
 Five
 Two
 Two
 Two
 One
 Five
 Five
 Five
 Five

Ac 10

Whereas in and by an act of the Legislature of Illinois passed November 5th 1849 Entitled "An act to provide for a general system of Rail Road incorporation" it is provided that for the purpose of constructing, owning and maintaining a Rail Road, any number of persons not less than twenty five, may be formed into a corporation in the manner therein specified, and that they shall severally subscribe articles of Association formed in the manner, in said act set forth And whereas the undersigned, have subscribed to the stock of a company to the amount in the aggregate of fifteen thousand dollars, for the purpose of, constructing a Rail Road from the Western line of the State of Indiana to the City of Chicago in the State of Illinois a distance not exceeding fifteen miles and have paid in ten per cent upon such subscriptions

And whereas the undersigned have elected Directors of said Company "Viz" George Bliss - John B. Davis Charles Butler, Elisha C. Sitchfield, John M. Wilson Edwin C. Sitchfield & John Stryker.

Now Be it Known That we do hereby
subscribe articles of association as auth-
orized by the act aforesaid. and we
do hereby set forth and declare as follows
That the name of the corporation here
by intended to be formed is the
Northern Indiana and Chicago Rail
Road Company

That the same shall continue fifty
years from and after this 28th day of
Oct A.D. 1837

That the amount of the capital Stock
shall be One Hundred and fifty
thousand Dollars

The said Stock shall be divided into
fifteen hundred shares of one hundred
dollars each

That the number of directors shall
be seven. and that they shall be George
Bliss John B. Morris Charles Butler Elisha
C. Litchfield John M. Wilson Edmund C.
Litchfield and John Stryker -

That the said Rail Road is to be
constructed from some convenient point
in or near the City of Chicago in the
most eligible course for the same
southeasterly and southerly to the easterly line
of the State of Illinois at a point where
said easterly line shall be intersected
by the Road of the Western Division

of the Buffalo and Mississippi Rail Road Company, as the same shall be constructed

That the same will pass into or through parts of the County of Cook, and will be about 13 to 15 miles in length.

And that the following persons are named as commissioners to draw books of Subscriptions to the stock of such company, viz George Smith, Phillip Thurber John M Wilson, Edwin C. Litchfield and John Stryker

And we do severally agree to take and pay for the number of shares of one hundred dollars each set against our respective names as follows

Names	Residence	No of Shares
John B. Davis	Rome. N.Y.	Ten
Charles Butler	New York	Five
Geo Blip	Springfield Mass.	Ten
Elish. C. Litchfield	Detroit	Ten
Edwin C. Litchfield	New York	Ten
John M. Wilson	Chicago Ill	Five
Geo. Smith	do do	Five
W H Brown	do do	Five
Charles Walker	do do	Five
W. S. Gurnee	do do	Five

D. Bramford	Chicago Ill	Two
J. S. Hubbard	do do	Five
Monty Skinner	do do	Five
John Wentworth	do do	Five
Phillip Thumber	do do	Five
Thos. L. Forrest	do do	Five
B. S. Morris	do do	Two
P. Maxwell	do do	Two
Geo Steel	do do	Two
R. H. Swift	do do	Two
H. G. Loomis	do do	Two
Geo H Knapp	do do	One
W. B. Ogden	do do	Five
11 Hugh White	Waterford N.Y.	Five
F. K. Hubbard	Utica " "	Five
W. L. Morcy	Albany " "	Five
John Stryker	Rome N.Y.	Five
Charles Goned	New York	Five
E. H. Flutworts	New York	Five

State of Illinois
 Cook County City of Chicago ^{Ill} On the
 twenty eight day of October in the year
 of our Lord one thousand eight. hundred
 and fifty before me the undersigned
 Andrew S. Brown Notary Public duly
 commissioned and sworn and residing
 in the City of Chicago personally appear
 ed John M. Wilson Phillip Thumber
 John Wentworth George Smith

William H Brown Charles Walker
Walter S. Gunnar Mark Skinner Daniel
Brainard Gordon S. Hubbard Thomas L
Forrest. S. K. Swift. E. S. Trinkham
H. G. Loomis. John H Kinzie J. Maxwell
George Stet B. S. Morris W B Ogden
to me known to be persons who subscribed
the annexed articles of association for
the organization of a Rail Road
company. to be known as the Northern
Indiana and Chicago Rail Road
Company. and the said persons acknow-
ledged that they severally subscribed
their names with the number of shares
annexed to their names in good faith
for the uses and purposes therein expressed.

In witness whereof I have hereunto
set my hand and affixed my seal
of Office the day and year above
written

L. E.

Andrew D Brown
Notary Public

State of New York. }
City and County of New York } p. On this
nineteenth day of November Eighteen
Hundred and fifty before me a commis-
sioner for said County and State

appointed by the Governor of the
State of Illinois to take acknowledg-
ments of deeds and other instruments
in writing to be used or recorded in
said state of Illinois came, John
Stryker George Bliss William S. Morey
Hugh White Charles Butler Thomas H.
Hubbard Edwin C. Litchfield Elshale
Litchfield John B Lewis and Charles
Goulds all of whom are personally known
to me to be the same persons who sub-
scribed the annexed article of associ-
ation for the organization of a Rail-
Road Company, to be known as "the
Nottingham Indiana and Chicago Rail
Road Company;" and the said
persons, acknowledged that they severally
subscribed their names with the
number of shares annexed to their
names, in good faith, for the uses
and purposes therein expressed.

L. E.

In witness whereof I have hereunto
subscribed my name and
affixed my official Seal
at my Office, in the City
of New York, the day and
Year above mentioned

Stanley M. Fleetwood
Commissioner for Illinois in New York

State of New York. $\frac{3}{4}$
City and County of New York $\frac{3}{4}$ p. On this
nineteenth day of November Eighteen
Hundred and fifty before me a com-
missioner for said County and State appo-
inted by the Governor of the State of
Illinois, to take acknowledgements of Deeds
and other instruments in writing to be used
or recorded in said State of Illinois
came Stanley H. Flutworts to me per-
sonally known to be one of the persons who
subscribed the annexed articles of associ-
ation for the organization of a Rail
Road Company to be known as "The
No 12 Northern Indiana and Chicago Rail
Road Company," and acknowledged
that he subscribed his name with
the number of Shares annexed thereto
in good faith, for the uses and purposes
therein expressed.

In witness whereof I have here-
unto subscribed my name
and affixed my official
Seal at my office, in the
City of New York the day
and year above written

H. Woodbridge Hudson
Commissioner Illinois
in New York



New York Nov. 18th 1837
To the association for the construction of
the Northern Indiana and Chicago Rail
Road

Gentlemen

I have examined
the route of the proposed Northern
Indiana and Chicago Rail Road
commencing at the State line of the
State of Indiana on Illinois near where
the same strikes Lake Michigan and exten-
ding to the city of Chicago passing through
the South eastern part of Cook County
in the State of Illinois. The length of
the Road, will be about forty-two miles
I have estimated the cost of construc-
ting said Road as follows.

Grading Bridging Right of Way.	\$22,000
Emp. Ties. Spikes. Chains	12,000
Iron Rails	67,000
Laying Track	4,200
Stations Cars and Engines chargeable to this length of line	33,000
Superintendence	1,000
	<u>\$148,800.</u>

There is some uncertainty in regard to the cost
of Stations ground in the City of Chicago
and right of way which cannot be

determined at this time. It is not probable
however this can materially affect the main
object of the enterprise

Respectfully Submitted

John B. Davis

Civil Engineer

I approve of the foregoing estimate

J. Mastie

Civil Engineer

State of New York. }
City and County of New York } J.

John Stryker

of Rome in the State of New York and
Charles Butler and Edwin C. Litchfield
of the City of New York, being duly
sworn depose and say, that one hundred
and fifty eight Shares of the par value
of one hundred dollars each being to
the amount of at least one thousand
Dollars, for every mile, of the road inten-
ded to be built as specified in the fore-
going articles of association have been
subscribed to the Stock of the company
or corporation contemplated by the said
articles and that ten per cent on the
said amount has been actually and
in good faith paid in cash upon
said subscription to the directors named
in said articles, and that the said
John Stryker Charles Butler

Edwin C. Litchfield and three of the directors
named in such articles

Subscribed and sworn to
before me this 20th day of
November

John Stryker
Charles Butler
Edwin C. Litchfield

L. E.

Stanley H. Fluttwort.

A. Commissioner for the County
and State of New York appointed
by the Governor of the State of
Illinois to administer oaths and to
be used or recorded in said State of
Illinois

William B. Ogden & W. B. Innes
"Exhibit B"

This Indenture made this thirtieth day of July, in the year of our Lord one thousand eight hundred and fifty one - Between William B. Ogden of the city of Chicago of the County of Cook, of the first part and Norman B. Innes of the same place party of the second part -

Witnesseth: That the said party of the first part for and in consideration of one Dollar to them in hand paid, by the said party of the second part, the receipt of which is hereby acknowledged, hath granted sold released and conveyed, and by these presents doth grant sell release and convey unto the said party of the second part, his heirs and assigns forever all the following described lot piece or parcel of land situate lying and being in the County of Cook for the sole purpose of building constructing maintaining and using thereon a Rail Road to "Mt. Pleasant" Port of the lowest 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 lines 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 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. Together with all and singular the hereditaments and appurtenances therunto belonging or in anywise appertaining. To have and to hold the above bargained premises with the appurtenances for the use aforesaid unto the said party of the second part his heirs and assigns forever. Provided however, that if the said Rail Road shall not be commenced over by said party of the second part or his assigns over and through said premises, within one year and be completed within three years or if said party of the second ^{part} or his assigns

Shall at any time hereafter cease permanently
to use said premises for a Rail Road and
the same shall be abandoned, and the route
thereof changed so as not to be continued
over the said premises, then and in that case
the said lands hereby granted shall revert
to the said grantor his heirs or assigns

In witness whereof the said party
of the first part hereunto set his hand and
Seal the day and year first above written

Signed Sealed and Delivered

In presence of

H. B. Ogden

State of Illinois
Cross County } J. V. C. Turner a
Notary Public in and for the said County
and the State aforesaid do hereby certify
that H. B. Ogden personally known to
me as the same person whose name
is subscribed to the foregoing instrument
appeared before me this day in person
and acknowledged that he signed seal-
ed and delivered the said instrument of
writing as his free and voluntary act and
for the use and purpose therein set forth.
Given under my hand and Seal this Second
day of August A.D. 1851.

L. S.

V. C. Turner
Notary Public

No. 31,749 filed for Record Nov. 3, 1851. and

Recorded in Book 45 of Deeds 241.

State of Illinois }
Cook County } f

I Louis D. Howard Clerk of
the Circuit Court and Ex officio, Recorder of the
County of Cook in said State do hereby
certify that the above is a true copy of a certain
Deed filed in my office for Record on the 3^d
day of November 1851 and recorded in Book No 45
of Deeds on page 41

L. D. H.

Certified under my hand
and the Seal of said Court
at Chicago this 7th day of May,
A.D. 1853.

L. D. Howard
Clerk

W. B. Ogden & T. C. B. Dudd
"Exhibit C."

This indenture made this thirtieth day of July
in the year of our Lord one thousand eight
Hundred and fifty one - Between William
B. Ogden for himself, Mahlon D. Ogden and
Edwin M. Sheldon Executors of the last will
and testament of William C. Jones deceased
of the City of Chicago of the County of Cook
of the first part and Norman B. Dudd of
the same place party of the second part -
Metropolis That the said party of the first
for and in consideration of One Dollar to
them in hand paid by the said party
of the second part. (the receipt of which
is hereby acknowledged, have granted
sold released and conveyed, and by
these presents, do grant sell release and
convey unto the said party of the second
part his heirs and assigns forever, all
the following described Lot piece or parcel
of land, Situate lying and being in the
County of Cook for the sole use of building
constructing maintaining and using thereon a
Rail Road to wit:

That part of the South
East quarter of Section twenty Six (26) in
Township thirty eight (38) North of Range
fourteen East of the third principal meridian
described as follows. One Hundred feet

134

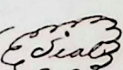
Leased

wide being fifty feet 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 - Together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining - To have and to hold the above bargained premises with the appurtenances for the use aforesaid unto the said party of the second part his heirs and assigns forever - Provided however, ^{that} if the said Rail Road shall not be commenced, by said party of the second part, or his assigns over and through said premises within one year and be completed within three years. or if said party of the second part or his assigns shall at any time hereafter, cease permanently to use said premises for a Rail Road and the same shall be abandoned and the route thereof changed so as not to be continued over the said premises, then and in that case the said

land hereby granted shall revert to the said
Grantor their heirs or assigns

In witness whereof the said party
of the first part hereunto set their hands
and seals the day and year first above
written

Signed Sealed and Delivered
In presence of
Edwin R. LaBar
as to W. D. Ogden

W. B. Ogden 
Edwin H. Sheldon 
Executor of W. E. Jones dec'd
Mahlon D. Ogden 
Ex'r of W. E. Jones dec'd

State of Illinois

Coast County

J. S. W. C. Turner a
Notary public in and for the said
County and the State aforesaid do
hereby Certify that W. B. Ogden Edwin H.
Sheldon Mahlon D. Ogden Executors of
Wm E Jones deceased personally known
to me as the same persons whose names
are subscribed to the foregoing instrument
appeared before me this day in person and
acknowledged that they signed sealed
and delivered the said instrument of
writing as their free and Voluntary act
and for the uses and purposes therein set
forth. Given under my hand and Seal
this second day of August A.D. 1851.

J. S. W. C. Turner

Notary Public

L. E.

No 31,747, filed for record Nov 3^d 1851.
Recorded in Book No 45 of Deeds page
39.

State of Illinois }
Cook County } J.

J. Louis D. Wood Clerk
of the Circuit Court & Ex officio Recorder of
said County, do hereby certify that the above
is a true copy of a certain Deed filed in
my office for Record on the 3^d day of November
A.D. 1851, and recorded in Book No 45 of
Deeds on page 39. Certified under my
hand and the seal of said Court
at Chicago this 7th day of May
1853.

L. D.

L. D. Wood Clerk

"Exhibit D" Be it enacted by the people of the State of Illinois represented in the General Assembly, that the Northern Indiana and Chicago Rail Road Company be and they are hereby authorized to maintain and use or construct and build a Rail Road at and from the City of Chicago in the County of Cook in a southerly and southeasterly direction through the southerly portion of said County of Cook to a point where the State line shall be intersected by the road of the Western Division of the Buffalo and Mississippi Rail Road Company on the most direct and eligible route; and the road above mentioned is hereby declared to be of sufficient public utility to justify the taking of private property for constructing and maintaining the same; and the acts done by said company, are hereby legalized and the said Northern Indiana and Chicago Rail Road Company is authorized to make such contracts and agreements for the transportation of freight and passengers and the construction and maintaining or use of its said Road with any road of which it may be an extension, as to the board of directors may see proper. Approved June 16. 1852

To the Hon. J. T. Dickey, judge of the Court
"Exhibit B" County Circuit Court of the State of
Illinois

The petition of the Illinois Central
Rail Road Company by Ed Brayman
their solicitor respectfully represents that the
track of a Rail Road authorized by law
to be constructed by said company has
been located and established over and
through the following described lands
and real estate situate in said
county of Cook to wit: The East half
of the South West quarter and the East
half of the North West quarter and the
West half of the South East quarter of
Section twenty six in township thirty
eight North of Range fourteen East of
the third principal Meridian —
That after the survey and location of
their said Rail Road and with a view
to the establishing constructing and
operating the same as authorized by law
to do, they did acquire by voluntary
grant or purchase of the rightful owners
supposed rightful owners thereof right
of way over and through the same
that is to say, comprising land (part
of said premises) the width of One

Hundred feet on each side of said Rail
Road measuring from the center of its track
as the same, had been surveyed located
and established by said Company reference
being particularly had to a map or plat
of said lands and the said Rail Road
track over and through the same filed
and now of record in the Office of the
Recorder for said County of Cook
together with all the tenements heredit-
aments profits rights privileges and
appurtenances thereunto appertaining as
will more fully appear by reference to
the deed of conveyance thereof executed
No 15 and delivered to said Illinois Central
Rail Road Company by Mahlon D. Ogden
and Edwin M. Sheldon. Executions
of Wm E. Jones. and William B. Ogden
bearing date the fifteenth day of March
1852 and which is recorded in the Office
of the recorder of said County in Book 47
of deeds page 240 &c the original
of which is here shown to the Court -
And your petitioners further represent
that they have since the making and
recording of said deed proceeded to
the construction of their said Road and
the laying down the track thereof over
and through the said premises and
upon the land so by them purchased

for that purpose, and that their road with its superstructure iron rails and other necessary appurtenances and fixtures is now upon the same, and that they are in possession thereof. Your petitioners represent that in purchasing said land and right of way as aforesaid, they supposed and believed, that the title of said grantor was good, that they had good right to survey the same, and were not informed by said grantors and did not know that any other persons had any right title or claim to the same or any portion of and did not learn that such was true until after they had come into possession of the said land, and had actually built their Rail Road and laid down their track over & through the same. But that they have since learned, that Norman B. Edd resident of the said County of Cook has or claims to have by virtue of a Deed or Deeds of conveyance from said Edwin W. Sheldon, and Mahlon D. Ogden executor of William E. Jones and William B. Ogden some title claim or interest to and in a portion of the lands and premises, to convey to your petitioners and on and over which their rail road

and track have been constructed and now remain. and that in so far as the right title and claim of the said Idd may extend the title so, acquired by your petitioners is defective and your petitioners cannot by voluntary grant or release or otherwise than by the aid of this Court perfect and secure their title to the land aforesaid purchased And your petitioners further represent that said Norman B. Idd has had notice of this application as required by law as shown by proper proof thereof herewith filed and referred to

It is therefore prayed that commissioners may be again appointed to ascertain and assess the compensation proper to be made to the said Norman B. Idd and such others as may hold or occupy under him, or who may be disclosed as having interest in said lands and premises to the end that the title of your petitioners may be perfected And your petitioners being in possession of said premises so by them acquired and having constructed and occupied and now occupying their Rail Road over and through the same according to law further pray leave of Court to continue to occupy and use said premises during the

pendency and until the final conclusion
of such proceedings as may be had herein
and that all actions and proceedings
against them on account thereof may be
stayed on security being given or compe-
nsation paid into Court according to
law, which your petitioners are ready
to do whenever your Honor shall direct,
and that such further and final
proceedings may be had in the premises
as law may provide, and equity require
And your petitioners &c

Wm Brayman
Solv & Agt of
Ill. C. R. R. Co

~~And afterwards to wit on the eighteenth day of
June in the year of our Lord one thousand
eight hundred and fifty three came the
Illinois Central Rail Road by Wm. Bray-
man their Solicitor and filed in said
Court their answer to said Complainant's
Bill of Complaint, which is in words
and figures as follows to wit;~~

And afterwards to wit in the 30th day of
May. in the year of our Lord one thousand
eight hundred and fifty three, there
issued out of said Court. the peoples writ
of Summons whis is in words and figures
as follows to wit:—

State of Illinois }
Cook County } ss. The people of the
State of Illinois, to the Sheriff of said
County Greeting;

We command you that you Summons.

15 1/2

The Illinois Central Rail Road
Company if they shall be found in
your County personally, to be and appear
before the Circuit Court of said County on
the first day of next term thereof to be
holden. at the Court House in Chicago
in Cook County on the fourth Monday
of October next, to answer unto ~~Arthur~~
Indiana and Chicago Rail Road
Company, in their certain bill of
complaint filed in said Court on
the chancery side thereof

And have you then and there this
writ, with an endorsement thereon
in what manner you shall have
executed the same —

Witness Louis D. Wood. Clerk
of our said Court and the



Seal thereof at Chicago in said county this 30th day of May A.D. 1853.

L. D. Moody Clerk

Served this writ by reading to Mason
Brayman solicitor of the Illinois Central
Rail Road Company and to Raswell B.
Mason Engineer and David A. Mel. Vice
President — and delivering a copy to each
of them. this 31st day of May 1853.

On the back of which said summons appears the following endorsement

Fees, 3. Services.	\$1.50
3. Copies	1.50
3. Miles	.15
1 Return	.10
	<u>\$3.25</u>

C. J. Bradley Sheriff
By M. Regier. Deputy

And afterwards to wit on the eighteenth
day of June in the year of our Lord one thousand
eight hundred and fifty three came the
Illinois Central Rail Road by M. Brayman
their solicitor and filed in said court
their answer to said complaints
Bill of complaint, which is in words
and figures as follows to wit:

In Chancery,

In Circuit Court of Cook
County of October term, 1853

The answer of the Illinois Central Rail Road
Company, defendant to the bill of complaint
of the Northern Indiana and Chicago Rail
Road Company, complainants

No 16 These defendants now and at all times hereafter
saving, and reserving unto themselves all benefit
and advantage of exception which can or
may be had or taken to the many errors uncer-
tainties and other imperfections in the said
complainants said bill of complaint con-
tained for answer thereto or unto so much
or such parts thereof as their defendants are
advised are material or necessary for them
to make answer unto these defendants
answering say, that they admit that
previous to the second day of December
A.D. 1850 some steps were taken and some
proceedings had by the persons referred to
in said bill of complaint, and named
in the exhibit marked "A" thereto annexed
towards an organization under the provisions
of "an act to provide for a general system
of Rail Road Incorporations" approved
A.D. 1849 under the name, and style
of the Northern Indiana and Chicago
Rail Road Company, but their

40503-34

defendants are advised and believe and so charge the fact to be that the said persons named in the said exhibit marked "A" did not become a body politic and corporate as in the said bill alleged. These defendants admit that the articles of association papers and proceeding a copy of which is to the said bill attached and marked "Exhibit A" were filed in the office of the secretary of State as in said bill alleged. These defendants further answering say that they are advised and believe and so charge the fact to be that the persons named as commissioners to open the books of subscription to the stock of said company named in said exhibit marked "A" did not, any time whatever perform the duties required of them by section five of the act aforesaid. These defendants also deny that said persons named as commissioners as aforesaid ever appointed any time or place for a meeting of the Stockholders to choose directors and that any notice of such a meeting was ever published in the State paper or in any paper published in said Cook County, twenty days or any other length of time, and that any such meeting ever

was held in any county in or through which said Rail Road was proposed to be constructed, or at any other place, as required by the sixth section of the act aforesaid. These defendants further say, that no election of thirteen Directors ever was held as required by the sixth section of the act aforesaid, but only seven directors, one in the said exhibit "A" named, and and that it does not appear that said seven persons named as directors were ever elected to their offices -

These defendants further say, that six of the seven persons named in the said exhibit "A" as directors, to wit George Bliss John B. Davis Charles Butler Eliha C. Litchfield Edwin C. Litchfield and John Stryker were not at the time of their said pretended appointment residents of any county or counties in or through which said rail Road was proposed to be constructed and located, and only one of said persons named in said exhibit "A" to wit John M. Wilson was such a resident whereby the said persons were not elected or appointed to said offices in accordance with the requirements of said act -

These defendants further say, that no distribution or allotment of capital

Acts of said proposed company was
ever made or required by the said act
And these defendants do and will insist
that until the act entitled an act to
authorize the constructing and use of the
Northern Indiana and Chicago Rail Road
approved June 16. A.D. 1852 was in force
agreeably to the Constitution of the state
the said complainants, were not a
body politic and corporate with power
or authority to construct or locate a Rail
Road and that until the time last
aforesaid, the said complainants had
not power or authority to purchase or
condemn any lands for their use either
directly or indirectly. And these defen-
dants do and will insist that until
the time last 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 for or to the use
of the said complainants, and that
all deeds and conveyances purporting to
convey lands or a right of way over
any lands to the said complainants or
to any person in trust for the said
complainants use, which were made
and executed prior to the time last

aforesaid, were and are utterly void and
of no effect as to the said complainants
and that no right title or interest does
or can pass to the said complainants
under or by virtue thereof.

These defendants further answering say
that they are not advised except by the
said complainants bill at what time
the survey of the road therein mentioned
was commenced nor at what time the
final location thereof was made and
therefore neither admit nor deny the alle-
gations in the said bill contained in relation
thereto. but these defendants do admit that
such location was ever made over and
upon the particular section and part thereof
in said bill alleged. These defendants
admit that Norman B. Smedd did procure
from the several persons in said bill named
deeds of conveyance of lands as in the
said bill alleged and shown by the
exhibits marked B & C. therewith filed
and with money furnished by the subscribers
of the paper marked A also therewith filed
These defendants also admit that the
several grantors in said deeds of convey-
ance 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 said bill alleged.

No 17

These defendants also admit that said
Norman B. Swadd, in procuring said deed
of conveyance acted as the agent and at the
instigation of the persons named in said
exhibit "A" under some secret understanding
not described by said exhibit B & C, and
not known to these defendants, but for the
purpose of constructing and using on the
said lands a Rail Road, and for no
other purpose —

These defendants admit that the grading
of the road in said bill mentioned was
commenced, and said road open for
running of cars and that trains have
continued and still continue to run
thereon as in said bill alleged, but these
defendants, do and will insist that such
grading construction and completion
of said road by the complainants and
running of cars thereon, were without
authority, and in violation of law —

These defendants, admit that the
General assembly of the State of Illinois
passed an act entitled "An act to
authorize the construction and use of the
Northern Indiana and Chicago Rail
Road as in said bill alleged and
these defendants crave leave to refer to

the copy of said act marked "D" and filed with said bill, the same as though it was herein set forth at large - And these defendants do and will insist, that until the said act of the Legislature approved June 16 A.D. 1852 aforesaid went into effect agreeably to the constitution of this State the said complainants, did not acquire any rights, powers or franchises under said "act to provide for a general system of Rail Road incorporation" and that all the acts, doings, of the persons named in said exhibit "A," and the said complainants were without any authority rights ~~rights~~, franchises, and acts of their defendants. These defendants admit, that they were incorporated as in said complainants bill alleged - These defendants further answering say that the route, of these defts road was located as early as October A.D. 1851. by the Chief engineer of these defendants and the line indicated, upon the lands over which the same would pass that such location, was reported to these defendants by said Engineer, and that the same was adapted by the board of Directors of these defendants previous to the 1st day, of January A.D. 1852, that said complainants had notice and well knew of said location so made by these defendants as aforesaid prior to the said complainants laying down

their rails and track as in the said bill alleged - These defendants further say that on the 6th day of April A.D. 1852 these defendants filed the map in the Recorder's Office in Cook County, showing the location of their road over said section and port thereof as in said bill alleged - These defendants deny the allegation in the said bill contained that these defendants have never in any manner, acquired any title or interest in the tract or parcels of lands conveyed to said Indd as in said bill set forth or the right to cross over the same; and these defendants say that by reason of the location so made by these defendants as aforesaid, these defendants thereby 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 franchise rights or powers of the complainants - These defendants further answering say, that on the 15th day of March A.D. 1852 these defendants purchased of William B. Ogden Mallin D. Ogden and Edwin W. Sheldon executors of William Ogden the lands upon which the road of these defendants was located and is now constructed, and these defendants further say that said

William B. Ogden, Mahlon D. Ogden & Edwin M. Sheldon
executors of William C. Jones. by their deed
bearing date the day and year last aforesaid
conveyed to these defendants the premises
aforesaid. a copy of which deed is hereto
attached, marked "1." and to which deed
these defendants crave leave to refer as
though the same were set out herein at length.
And these defendants further answering say:
that at the time these defendants purch-
ased said premises and received their deed
thereof as aforesaid, they supposed and
believed, that they had acquired an
absolute title to said premises for the
purposes of constructing and operating
a Rail Road. and although the said deeds
to the said land herein before mentioned
were recorded in the Recorder's Office in
said Cook County, these defendants
and their agent were not aware that
any such deeds had been made to
said land or were on record as
aforesaid, at the time aforesaid. nor
when these defendants, put in the crossing
in said bill alleged and herein after men-
tioned on the 7th day of May A.D. 1852.
These defendants admit, that the act of
incorporation of these defendants contain-
ed the provisions in said bill alleged
but these defendants say that the said
provision applies only to roads then constructed

As 18

on in process of construction and that the
said complainant's road was not at the time
of the passing of said act, constructed or in
process of construction.

These defendants admit that the allegation
in said bill contained, in relation to a particu-
lar provision in the act, entitled "An act
to provide for a general system of Rail Road
incorporations. approved November 5th 1849
is true, but these defendants say that
said complainants had no right or power
to intersect or cross the road of these defendants
until after the said act June 16. A.D. 1852
went into effect, as herein stated - And
these defendants do and will insist that
if said complainants desire a crossing over
the track of these defendants under and
by virtue of the act of November 5th 1849 it is
the duty of the said complainants to
institute the proceedings therein mentioned
for the purpose of effecting that object
and that said complainants have
no right to require of these defendants
so to do. And these defendants do
and will insist, that the said com-
plainants have an adequate remedy
at law by Writ of Mandamus to compel
these defendants to do all such acts and

things relative to said cropping as the court shall decide, ought to be done and performed by these defendants.

These defendants admit that said R. B. Mason, in said bill named, on the 7th day of April A.D. 1852 addressed a letter to said John B. Davis in said bill named the object and purport of which was to inform Mr Davis, that said Mason intended to make a cropping; these defendants also admit that said Davis wrote and said Mason received from him the letter in said bill set forth dated April 12 1852 as in said bill alleged.

These defendants also admit that said Robert Schuyler received a copy of the resolutions of the complainants as in said bill set forth and alleged.

These defendants further answering deny that these defendants were forbidden to enter upon said lands, or to cross the complainants track, or not to interfere with the said complainants track as in the said bill alleged. These defendants also deny that said R. B. Mason was informed or notified that said complainants would not consent or allow any other mode of cropping, than by bridge as in said bill set forth. These defendants admit that William Davis was the

resident engineer, of the complainants
and that R B Mason was the Chief engineer
of these defendants at the times in said bill
alleged - These defendants also admit
that said Mason had a conference with
said William Jarvis upon the subject in
said bill mentioned; but these defendants
deny that said William Jarvis informed
the said Mason, that he was instructed
by John B Jarvis, to prevent any crossing of
the complainants track as in said bill
alleged and these defendants also
deny that said R. B. Mason made
any assurance to said William Jarvis
that he the said Mason would not
disturb the track of the complainants
road without giving him said Jarvis
timely notice as in said bill alleged
These defendants admit that said
R. B. Mason the Chief engineer of
these defendants on the 7th day of May
A.D. 1852 without giving any notice
to the complainants engineer William
Jarvis, cut the rails of the complainants
and put in crossing frogs necessary to
carry the track of these defendants across
the complainants track - These defen-
dants also admit 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 alleged these defendants are not advised. These defendants further answering say that the complainants engineer before said craping was made well known that the engineer of these defendants intended to make such craping whenever it became necessary for him so to do in the construction of the road of these defendants, but admit that the first information the complainants or their engineer received that such craping had been made was from the letter of said mason as in said bill alleged, although they have no knowledge or information upon the subject. These defendants admit that said R B Mason wrote and the said William Davis received from him the letter dated May 7th 1852. as in said bill alleged. These defendants also admit that on the 7th day of May A.D. 1852. the complainants track had been completed for several months, and that train 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

1019

defendants, do and will insist that the said complainants had not at that time, and did not, have under the act of June 16, 1852 was in force any right power or authority to operate a Rail Road, in any manner whatever. These defendants admit that said R B Mason received from said John B. Davis, the letter dated May 10th 1852 in said bill set forth, and these defendants say that said R B. Mason on the 10th day of May A.D. 1852 delivered to the said John B. Davis a reply thereto a copy of which is hereto annexed marked "2". These defendants further answering say, that said John B. Davis informed the said R B. Mason, that he the said Davis should cause the tracks and frogs so laid down, and put in by said Mason to be taken up by force and violence and these defendants admit, that said Mason thereupon informed the said Davis, that he said Mason should protect the same in like manner if the acts of the said Davis made it necessary for him so to do. These defendants also admit that said R B Mason had a large number

of men under his contract in constructing
the roads of these defendants near by said
croppings, but said men were not armed,
with any other weapons than the tools
used by them, and these defendants also
admit that said Mason would have
protected said cropping, in the condition
it was put by him, by force, if the acts
of said Purvis had rendered it necessary
for him so to do, to preserve the same.
These defendants further answering say
that at the time of putting in said
cropping as aforesaid, these defendants
had a good and perfect right to pass
over said premises, in that manner
as against the complainants as herein
before stated and set forth, and these
defendants suppose and believe that
they had a perfect right so to do, as
against all persons whatever, and that
such right had been acquired in the
manner hereinbefore set forth.
These defendants admit that said
lands mentioned in said bill have
never been condemned agreeably to
the laws of this State, and they also
admit that said Indeb on the
6th day of November A.D. 1852 conveyed
all his right title and interest in and
to said premises to the complainants.

These defendants deny that the complainants have always objected and refused to assent to any other crossing, except in the manner specified in the resolutions herein before stated, but say, that since the 12th day of May A.D. 1852 until the filing of this bill of complaint, nothing has passed between the complainants and these defendants upon that subject. That up to that time the said complainants, had no right to have any crossing, whatever, and that since that time and since the complainants had authority to construct a Rail Road and operate the same under the act of the Legislature aforesaid - these defendants have not been applied to in relation thereto. These defendants further answering say - that the complainants from the 17th day of May A.D. 1852, when they were applied to for that purpose by said R B Mason up to the 8th day of January, A.D. 1853, declined making any arrangement with these defendants relative to the crossing of trains so as to secure the public safety. These defendants admit that the petition of these defendants set forth

in said bill was drawn up by their
solicitor Mr. Brayman, but whether
the same was ever filed or removed these
defendants are unable to state ~
These defendants admit that no
proceedings were ever had or taken under
the same: these defendants not consider-
ing it necessary for them so to do and
these 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 ~

1020

These defendants deny that the said
complainants have ever since the said
12th day of May, A.D. 1852 informed these
defendants of their readiness to do any-
thing whatever in relation to said
crossing, but these defendants believe that they
have always been willing that these
defendants should take up the same
and bridge over said complainants
road at the expense of these defendants
and in such a manner as not to
interfere with the said complainants
road - but whether, with or without con-
troversy about compensation these defen-
dants cannot state ~

These defendants do and will
insist that in putting in said prop.

and making said crossing these defendants violated no legal right of the complainants. These defendants do and will insist that such crossings are usual and customary in all parts of the United States where Rail Roads are operated to any considerable extent and one and have been for years considered by those skilled in the operation of Rail Roads, not only safe, but producing or causing, little or no injury, to the track thereby crossed, and that the crossing of the complainants tracks as in said bill set forth is of little or no injury, to the said track, or to the business over the same.

These defendants do and will insist that the complainants, are not entitled to any compensation for any such injury to said track, or to their business, but on the contrary thereof these defendants are entitled to compensation from the complainants for an infringement of the rights and franchises of these defendants. These defendants have no knowledge information or belief of any damages sustained by the complainants franchises and property.

in consequence of said craping; but these
defendants admit, that dily trains are
running over the said road as in said
bill alledged, and that such trains
do at said craping usually slacken
their speed and sometime come to a
full stop, and the trains of these
defendants, and those of the Mic-
higan Central Rail Road Company
do the same, and no great amount
of time is wasted or lost thereby.
These defendants further say, that
with ordinary care there is no danger
from collissions on account of said crap-
ing. These defendants further say,
that with ordinary and proper care
there is no danger of breaking wheels
or other machinery upon said craping.
These defts deny that, the injury of such
a craping, does not admit of compensation.
These defendants further say, that these
defts, and those who occupy the road
of these defts, are subject to all and
every of the embarrassments, hindrances dam-
ages to which the said complainants
are subjected and that in as much
as these defendants have a paramount
right of way over the said complainants
these defendants are entitled to com-
pensation in respect to all the matters

aforsaid, and not the said complainants
These defendants admit that they do
allow and have allowed since the 1st day
of May A.D. 1852, the Michigan Central
Rail Road Company a corporation cre-
ated by the laws of Michigan to run
over and upon the road of these defen-
dants and for these defendants benefit
and profit as these defendants may
lawfully do and these defendants
do and will insist that said Michi-
gan Central Rail Road Company
may acquire and have acquired a right
p 20 to run their trains of cars as aforsaid
under and by virtue of an agreement
with these defendants and that said
Michigan Central Rail Road Com-
pany ought to be made a party to this
suit.

These defendants admit that said
crasping 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 reflector but presume this would depend in some measure upon the brilliancy of the light, and the darkness and fogyness 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 alleged, and with the consequences therein stated, but - but these defendants deny, that said collision was caused by the carelessness of persons having charge of the Michigan Central Rail Road Company train, but on the contrary thereof, say, that the same was caused by the gross negligence and carelessness of persons having charge of the train of the complainants, and by a violation of an arrangement on their part, which was made on the 22^d day of January. A.D. 1853. between said R. B. Mason the Chief Engineer of the road of the defendants and J. H. Moore the Superintendent of the road of the complainants herein after set forth - These defendants further answering say, that these defendants are running over their road two or more construction trains every day - That they have now over forty miles of said

No 21

12003-44

road completed, will soon have some of the spans ready for the cars to run upon, and that these defendants intend to put on to said Road in a few days a passenger train to run regularly. That the Michigan Central Rail Road Company are now running over said road with a large number of freight and passenger cars, from which these defendants derive great profits. These defendants further say, that any interference on the part of this Honorable Court restraining the piling and repiling of said construction cars, would seriously affect the construction of said road of these defendants and that irreparable injury would be the consequence of restraining these defendants, not only to themselves but to the Michigan Central Rail Road Company, and to the people of the State of Illinois who may desire to travel or transport freight over said road. These defendants deny that a bridge is the only proper mode of making a crossing at the aforesaid, and these deny that future collisions cannot be avoided by proper care. These defendants further answering say - that on the 25th day of January A.D. 1853, an agreement was made between the complainants by

J. H. Moore the Superintendent of the
said complainants road with full
power and authority for that purpose
and these defendants by said R. B. Mason
with like power and authority regulating
the running of trains over the roads of
the said companies, respectively at the cross-
ing in said bill mentioned which said
arrangement went into effect on the 1st of
February A.D. 1853. and has continued in
force up to the present time These defen-
dants now leave to refer to exhibit marked
3, 4, 5 & 6, as showing the said arrange-
ment and the manner in which it was
made These defendants do and will
insist that the crossing in said bill
mentioned, is not unsafe or dangerous, that
as hereinbefore stated such crossings are usual
and customary - that the Northern Indiana
Rail Road Company, owned and contr-
olled, by the complainants have their
crossings of a similar character across
the track of the New Albany and Salem
Rail Road 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 this Court ought not to interfere to the destruction of a large and profitable business of these defendants but the said complainants, should be left to their remedy at law. These defendants will and do insist that there has been such a acquiescence on the part of the complainants as to deprive them of any right to an injunction with respect to any of the matters in said bill set forth. These defendants, for the sake of brevity and conciseness of expression have herein 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 these defendants distinctly deny that the complainants had in a corporate capacity any right property power or authority in regard to any matter or thing until the time said act of June 16. A.D. 1852 took effect, and wherever the word complainants is used in the above connection it is thus made in the place of the persons named in exhibit "A" and those claiming

under them. And these defendants deny
all and all manner unlawful combinations
and confederacy, wherewith they are by said
bill charged, without this. That there is
any other matter or thing in the said com-
plainants bill contained, material or
necessary for these defendants to make
answer unto and not herein and hereby
well and sufficiently, answered, contro-
verted and avoided or denied. It is true
to the knowledge or belief of these defen-
dants, all of which matters and things
these defendants are ready and willing
to maintain and prove as this Hon Court
shall direct, and humbly pray to be
hence dismissed, with their reasonable
costs in their behalf, most wrongfully
sustained

New York June 7. 1853.
The Illinois Central
Rail Road Company.

by
Robert Schuyler
Pres.

J. S. S.

State of New York.
City and County of New York. ⁱⁿ on the
Seventeenth day of June one thousand
eight hundred and fifty three before me

Moses B Maclay a Commissioner of
the State of Illinois in the City of
New York to take affidavits duly
commissioned under the laws of
Illinois and qualified personally
appeared. Robert Schuyler the President
of the Illinois Central Rail Road
Company and made oath that he
was the President of the Illinois
Central Rail Road Company.

that the seal affixed to the foregoing
answer of said company is
the corporate seal of said company
and was affixed thereto by
authority of said company and
that he has read the said answer
and knows the contents thereof and
that the same is true to the best
of his knowledge information and
belief and as he verily believes

Subscribed and sworn to Robert Schuyler
before me in the City of
New York on the day and
year last aforesaid

Moses B Maclay 
Illinois Commissioner
in the City of New York

M. Brayman
Solic. Ill. C. R. R. Co

To all to whom these Presents shall
come -- Greeting. ~~~~~
Whereas the "Illinois Central Railroad
Company" contemplate the construction of
certain lines of Railroad with branches thereto
as authorized by the act incorporating
said company.
Now Know Ye, That Mahlon Q. Ogden
and Edwin W. Sheldon, the only acting
and qualified exponents of William C.
Barnes of the city of Chicago deceased
and William B. Ogden of said city
of Chicago of the County of Cook
and State of Illinois, being desirous
for the construction of said Rail Road
and branches, as well in consideration of
the premises as of the sum of Fifty
Dollars lawful money of the United
States, to them in hand paid the
receipt whereof is hereby acknowledged
have aliened remised released
conveyed and confirmed and by
these presents do grant bargain sell alien
remise release convey and confirm unto
the said "Illinois Central Railroad
Company" and to their successors

and assigns, for the purpose of constructing, maintaining, and operating thereon a single or double track Railroad with all its necessary appurtenances and for all uses and purposes connected with the construction, repair, maintenance and complete operation of said Rail Road, the Right of Way for the same over and through the following tract, piece or parcel of land, situate lying and being in the County of Cook and State of Illinois, bounded and described as follows; the East half of the North west Quarter, the East half of the North West Quarter and the west half of the North East Quarter of section twenty six in Township thirty Eight North of Range fourteen East of the principal Meridian

Said Right of way over and through the lands and premises above described to include and comprise land of the width of one hundred feet on each side of said Rail Road measuring from the center of the track as the same has been surveyed, located and established by said company reference being particularly had to a

map or plat of said lands as the said
Railroad track over and through the
same, filed and of record in the office
of the Recorder for said County of Cook
together with all the tenements, hereditaments,
profits right privileges and appurtenances,
thereto appertaining: To Have
and to Hold, the same unto the Illinois
Central Railroad Company, their
successors and assigns forever for all
lawful uses and purposes incident to
or in any way connected with the
construction, preservation occupation
and sole enjoyment of said Road and
said lands of the width aforesaid.
Provided However, That if the said Rail
Road shall not be commenced over
and through the said premises, or if
the said Illinois Central Railroad
Company, or their successors or assigns
shall at any time hereafter cease
permanently to occupy and use
said Railroad so to be constructed
and the said track shall be
abandoned, or the route thereof
changed so as not to be continued
over and through the said premises
then and in that case the said lands
and premises hereby granted, shall
revert to the party who may be

No 23

lawfully entitled to the same and
it is understood that said Company
shall erect and maintain such cross-
ings as may be necessary to the accom-
modation of persons whose lands are
divided by the said track; and shall
also erect and maintain such
lawful fences as will divide the
lands occupied by said Company
from the adjoining lands on each
side, and as far as practicable
prevent intrusion upon or passage
across the lands and Rail Road
occupied by said Company.
In witness whereof the said grantor have
hereunto set their hands and seals this 16th
day of March A.D. 1852

Signed Sealed and Delivered

In presence of

Mahlon D. Ogden *ESQ*

Exec. of Wm E Jones dec^d

Edwin H. Sheldon *ESQ*

Exec. of Wm E Jones dec^d

W B Ogden *ESQ*

J. Patrick Duffey a Justice

State of Illinois }
County of } S.S.

of the peace in and for the said county in the State aforesaid
Do hereby certify, that Mahlon D. Ogden, Edwin H. Sheldon Executors
and W B. Ogden personally known to me as the persons whose
name subscribed to the foregoing Warranty Deed

appeared before me this day in person and
acknowledged that they signed sealed and
delivered the said instrument of writing
as their free and voluntary act. for the
uses and purposes therein set forth

Given under my hand and Seal this 16th day
of march A.D. 1853.

J. Duffy. J.P.

Chicago. May. 10. 1852
John B. Davis Esq.
Dear Sir

In reply to your
favor of this day relative to the crossing of
the Illinois Central Rail Road on the
same level with yours - I have to say that
the crossing was made by me under the
full impression and which I still entertain,
that my right to do so was as
clear as to construct any part of
the line; and I do not concede that
the interests you represent are to be prejud-
iced, thereby. Whatever of inconvenience
or damage may grow out of the cross-
ing of the two upon a level the Illinois
Central Rail Road Company will suffer
its full share, and if such a crossing as
you suggest, shall be found necessary

it will remain an open question whether
our Road or such other road as we may
intersect shall bear the expense and
inconvenience of constructing and opera-
ting a track elevated above the others.
If I am to understand by your note not to
embargo the operations of the Illinois Central
Rail Road, that you relinquish the
idea of removing the crossing, now put in
pending negotiation for, in some other
form, I will at once communicate with our
Board on the subject of referring the whole
matter to commissioners and give you the
the earliest information of their decision.

Very Respectfully and Truly Yours

R. B. Mason

Adrian Aug 8, 1853.
N. B. Mason Esqr

Dear Sir,

Your favor

of the 4th inst suggesting an arrangement
for the government of our trains. at the
crossing of the Illinois Central. and
Northern Indiana. Rail Roads crossings—
came to hand this A. M. In reply I
would say, that we shall be very glad
indeed to join with you in any arrange-
ment, which will afford equal privileges
to the two companies and give the
greatest safety to the public. Your propo-
sition appears a little difficult to me,
or at least some portions of it. I now
propose that all trains on the Northern
Indiana Rail Road going to Chicago
have the preference over your trains
etc. and that trains on the Illinois
Central going from Chicago have the
preference over Northern Indiana Rail
Road trains going either way—
I now suppose, that your train going
from Chicago with the preference and
our trains going either way trains
should be going in at the same time
with the preference etc who would have
the tracks. You will see the difficulty.
I would propose the following for your

No 24

consideration - all trains on the End
Rail Road going towards Chicago to
have the preference over your trains going
either way. - and all trains on the
End Rail Road going from Chicago
to give your trains going either way the
preference

Respectfully Yours
J. E. M. Moore
Supt.

Adrian Jan'y 25 1853
R. B. Mason Esq

Dear Sir

Yours of
the 22nd inst with inclosures came to
hand this A. M. I enclose herewith
a copy of the notice which I
have issued to our Conductors &c.

Yours Truly

J. E. M. Moore

North Indiana Rail Road
"Notice"

On and after February 1st 1853. all
Trains or Engines on the Road going
from Chicago will avoid Trains
on the Illinois Central Rail Road
going either way. over the Rail Road
crapine between Rock Island Junction
and Anisworth - Trains on this road
Going towards Chicago have the preference
over Illinois Rail Road Trains going
either way - in short. For. And R. R. Trains
have the preference in all cases when
Going towards Chicago and give the
preference in all cases when going from
Chicago

Adrain Jan. 21. 1853.
Signed Jas. M. Moore Engr

And afterwards to wit, on the 18th day of
June. A.D. 1853. came the said complainants
by Irdd & Frink their Solicitors and file
in. said Clerk's office, two certain affidavits
which are in the words and figures following.
to wit:

Affidavit of A. B. Irdd.

Cook Circuit Court.

Northern Indiana and Chicago
Railroad Company.

vs.

Illinois Central Railroad
Company.

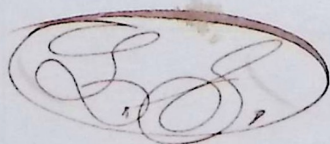
A. B. Irdd being duly sworn. saith
that section six of the act incorporating
the said defendants creates the first
board of directors of said Company and
provides that their powers shall commence
after the acceptance of the said act
of incorporation in the manner provided
therein.

The deponent further saith that the form
and manner of acceptance is provided
in the sixteenth section of said act for
the particular provisions of which this
deponent refers to the act incorporating

25
said Illinois Central Rail Road Company. And this deponent further saith that at the time of the survey and location of said road in Oct. 1851. and January A.D. 1852. as set forth in the answer filed herein the said Charter had never been accepted by the Corporation in the manner prescribed by said Charter and that said Rail Road Company. had no power right or authority to locate said road. And this deponent further saith. that for the purpose of remedying said defect at the special session of the Legislature in June 1852 the said Illinois Central Rail Road Company. by its agents and attorneys Martin Traupman and James F. Fay. procured the passage of an act. to legalize the existence of said Company. Entitled an act to amend the Charter of the Illinois Central Rail Road Company. Approved June 22^d 1852 for the particulars of which this deponent refers to the printed laws of that session, and for the particular form of acceptance made by said Company this deponent refers to the printed copies of the same published by said defendant

A. B. Dodd

Sworn and Subscribed before me
this 11th day of June A.D. 1853



H. A. Stebbins
Notary Public

Cook's Circuit Court.

Northern Indiana and
Chicago R. R. Co

vs.

The Illinois Central
R. R. Co.

Affidavit of John B. Jarvis

Cook, County, Ill. John B. Jarvis being
duly sworn, saith that he is by profession
an engineer and has been actively engaged
as such in the construction of canals and
Rail Roads upwards of thirty years
that the following statement contains his
opinions and experience in relation to
crossing such as complained of in this case
Regarding a crossing of Rail Roads such
in particular as that of the Northern Indiana
and Chicago, by the Illinois Central
Rail Road to be hazardous to life and
property transported on the Rail Road
There is nothing that can be said in
favor of such crossing except the economy
of first cost in the construction. That said
crossing is less expensive in the first constr-
uction there is no doubt. The objection to
a bridge over the Rail requiring a rise
in grade to overcome it is more apparent

than real. In this case a long straight
line would approach the bridge from
both directions and a train would easily
rise this grade with the aid of its momentum,
and in general would not loose
as much motion as should be lost to safely
pass a level crossing - It is unsafe to run
Rail Road Cars and Engines through crossing
frogs independent of any care that may
be used from the greatly increased danger
of breaking wheels in passing them - whatever
care may be used, there is always hazard of
collision of trains, especially in the night -
No doubt a great deal may be done by
cautious rules and regulations to prevent
collisions of trains - But it is well known
that no system of rule has been sufficient
to protect against collisions and disasters
on the same road, some of which depend
necessarily, regulations to protect from danger -
There are on Rail Roads a diversity of
circumstances that lead, to inadvertence
in description, and neglect that no rail
way company can possibly provide against.
In relation to the crossing under consideration,
it may be regarded as of the most
objectionable character as to location -
Trains that pass it have no occasion
to stop - or reduce their speed for any purpose of
business, only as caused by the crossing -

If all the trains of both roads should be required to stop, in order to insure safety the expense and delay including attendance would be more than equivalent to the expense of bridging over. The danger in this case if the trains of the Michigan Central Company are to run over, would be materially enhanced by the spirit of rivalry that would probably excite each struggling for some advantage in passing the crossing. This kind of rivalry will run through the employees of the two companies, almost inevitably, even if the companies do not encourage it. That this is not right will not be denied. But my experience has led me to the opinion that such feelings are not easily controlled and no reasonable effort should be spared to place the persons and property transported beyond the reach of such contingency. Notwithstanding the danger attendant rail roads do cross in the manner under consideration but it is my belief they seldom cross in this way except at or near stations. A crossing of this kind occurs near Boston on the track near the City which I have passed many times on both roads.

The Worcester and Providence roads. The
crossing is about one hundred rods from
the Providence road Station at Boston.
The Worcester Station is further, it may be
 $\frac{3}{4}$ of a mile, possibly a mile. I have
heard (even this near their station) this
crossing deprecated many times as very
hazardous by the Officers of the Rail Road
Companies, and the Citizens of Boston.
The city government of Boston had an
Engineer some time engaged, to devise some
plans by which all the level crossings
near that City could be changed to
running over and under each other.
The only similar crossing to the one
under consideration, that now occurs to
me, is the crossing of the Buffalo and
Rochester rail road and the Buffalo
and Wick City rail road some ^{out of Buffalo} miles
probably six or eight miles. At this crossing
the country is level and the trains
easily seen on each road - within a
few months after these roads were
brought into use, a collision occur-
ed (I think by daylight) causing
the loss of several lives, and many
wounded. The Hudson River Rail
road Company, in crossing the track
of a quarry rail road considered the
hazards of collision sufficient to

See 26

+

See 26-54

warrant them in putting a bridge over
and raising their grade to pass it.
I do not think level crossing except
at or near Stations can be said to be
in many cases adopted on roads
of any considerable business in the
country. The crossing of the Hudson
and Berkshire with the Albany and
Boston is a level crossing some distance
from a station and occurs in two roads
following along in the same valley
nearly parallel and I think both
using steep grade. The Berkshire road
has a very small bump - even in this case
they pass the roads at one crossing by
a bridge, and probably would have done so
at others, had the location permitted
it. On English Rail Roads there
may be level crossings, but it must
be regarded as the exception for the
usual mode there is to bridge and
give each road its own track one over
and the other under in crossing each
other - and so far as I have in-
quired opinions with experienced
engineers the level crossing of Rail
Roads is regarded as hazardous and should
not be adopted when it is practicable

to avoid them

John B. Servis

Subscribed and sworn
before me at the city of
Chicago this 11th day
of June A.D. 1853

(J. B.)

W. R. Stebbins
Notary Public

And on the same day and year
last aforesaid to wit, the 18th day of
June in the year aforesaid, came the said
defendants by Blackwell & Bickwith
their counsel and file in said Clerk's Office
two certain affidavits which are in words
and figures following to wit

Affidavit of Roswell B. Mason

I, Roswell B. Mason of lawful testimony
and say, that I am, and have been for
some time past chief engineer of the Illinois
Central Rail Road Company. The
said company has constructed and ready
for use that portion of its road extending
from Chicago. To wit, the distance of
about forty miles, and the company
are now continuing the construction of

that portion of said road, southward towards
the Kankakee river, with all the speed
the nature of the work will admit.
The company have made the contract
for the work, and have procured the rails
chains, and all other materials required to
complete the construction of that portion
of the road, and if said company
are not interrupted, in the progress of their
said works, will have their road comple-
ted for use the distance of one hundred
and twenty miles from Chicago by first
day of January, A.D. 1854.

I further say, that nearly all of the ties
and all of the rails, chains and other materials
required for constructing the construction of said
road are to be transported from Chicago to such
places on the line of the road, as they will
be required for use. That in transporting such
materials said company are now running over
that portion of the road which is completed
three trains of cars each way daily, and will
be obliged to continue to run the same from
the present time during the season.

I further say that the contractors and other
persons employed in constructing said road
for the distance of one hundred miles
from Chicago are dependent upon these daily

trains of cars. for nearly all of their supplies
necessary to carry on the works upon the road
aforesaid as they have no other adequate
means of obtaining them - I further say
that about one hundred and fifty laborers
are now engaged upon this division of the road
in laying the tracks and otherwise, and a large
number in constructing the road, and a stoppage
of these daily trains, would prevent the
contractors from fulfilling their contracts
with the company, their said laborers out of
employ, and at present entirely suspend the
construction of that portion of the road -
I further say that said Company are now
receiving and will unless prevented from
by stopping of the cars, continue to receive
daily at Chicago over that portion of said road
traversed by the cars of the Michigan Cen-
tral Rail Road Company, large amounts
of lumber timber and other materials which
have been contracted for and are necessary
for the construction of the works of the
Illinois Central railroad Company
at Chicago; and a stopping of the trains
of cars of the Michigan Central Railroad
Company upon which said lumber, timber
and other materials are, and are to be
transported, would necessarily suspend the
construction of the said works of the
Company at Chicago. I further say

that the Michigan Central Rail Road Company, are now running and will continue, unless prevented, to run over that portion of the road extending from the Union Rail Road to Chicago, two passenger trains each way, daily Sundays excepted, and one or more freight trains each way daily, transporting a large number of passengers and large amounts of merchandise. That by an arrangement between the said Michigan Central Railroad Company, and the Illinois Central Rail Road Company, the business so carried on, and to be carried on by said Michigan Central Rail Road Company, upon and over, that portion of said road is the business of the Illinois Central Rail Road Company, and from which said last mentioned Company derive a large revenue. The suspension of said business by stopping the trains of the Michigan Central Rail Road Company would be a damage to the Illinois Central Rail Road Company of at least one hundred and fifty Dollars per day. The other damages which the Illinois Central Rail Road Company would sustain from any injunction restraining

them from crossing the track of the Northern
Indiana and Chicago Rail Road Company.
would be at least five Hundred Dollars
per day, besides the damages, which would
accrue to contractors and other persons in
the employ "of" the company.

I further say, that said Michigan Central
Rail Road Company, would necessarily
sustain great damage by any stoppage
of their trains as aforesaid.

I further say, that to approach the tracks
of the Northern Indiana and Chicago Rail
Road Company, where the same is crossed
by the Illinois Central Rail Road Comf
any, by a raised track, and bridge over
the tracks of the Northern Indiana and Chicago
Rail Road Company, would require
seven or eight months if said work was
proceeded in with all convenient speed.

I further say that the usual mode for
one Rail Road track to cross another in
the Eastern States, is to cross on the same grade.
I know of no instance, where they cross other-
wise, except at one point where the Boston & Albany
R.R. passes over the Hudson & Berkshire Road.
These roads cross each other twice, once on
the same grade - and once on a different
grade. The Fitchburg Road on which
7 or 8 daily trains are run each way
has three or four crossings at grades, two

of them at least, one not at stations -
The Boston & Worcester R.R. Road crosses the
Boston and Providence Road one mile or more
from any Station. It is safer no doubt to
cross at a station, but regulations can be made
which if complied with, will render crossings
at any point entirely safe.

I have made the profession of engineering my
business since 1825, and am acquainted
with the rail Roads of the Eastern States and
others in the United States, generally -
I further say, that on the 22^d day of Janu-
ary, A.D. 1853 an arrangement was made
between myself as Chief Engineer of the Illinois
Central Rail Road Company and J. H. Moore
superintendent of the Northern Indiana
and Chicago Rail Road Company, by which
all trains of said last mentioned compa-
ny coming towards the city of Chicago
should have the right of way, at all places
where said roads cross each other and
all trains of said last mentioned compa-
ny going from Chicago should give
the right of way at such places where
regulation is still in force and if complied
with would in my opinion render such cross-
ing safe, and not dangerous to the public
or to said companies - I further say that

I have read the answer of the Illinois Central Rail Road Company at the suit of said Northern Indiana and Chicago Rail Road Company, pending in the Circuit Court of Cook County and the facts therein set forth are true to my best knowledge information and belief. And that such facts as are herein stated referring to my conduct acts and correspondence, are true in substance and in fact according to my best knowledge and remembrance.

Subscribed and sworn to before me this 11th day of June A.D. 1853. } P. B. Mason

L. D. Hood,

Clk

Affidavit of Henry Bacon

I Henry Bacon testify ~~and say~~ and say that I am employed as an engineer on the Illinois Central Rail Road that portion of the road from the junction four or five miles beyond where the tracks of the Illinois Central Rail Road and the Northern Indiana and Chicago road cross each other, for one hundred and sixty miles South is under my

personal charge, subject to the supervision
of the Chief Engineer. Mr. Mason
I further say, that an injunction stopping the
creeping of the cars of the Illinois Central
Rail Road Company of the tracks
of the Northern Indiana and Chicago
Rail Road Company, would prevent
the continuing the construction of the Illinois
Central Road on that division. Nearly
all of the ties rails chains and other mate-
rials for the construction of the road are to be
transported from Chicago over said creeping.
Also the supplies for the contractors and other
persons employed on said road who have
no adequate means of obtaining the same.
Three daily trains are now running each way for the
purpose of transporting materials and supplies
and the same will be required during the
present season. About one hundred and fifty
labors, who are engaged, in laying the
track and otherwise, and a large number
of men in constructing said road upon
the road would be thrown out of employ
and the contractors upon the line unable
to fulfil their contracts by a suspension
of their trains. I have been employed
in engineering upon Rail Roads for ten
years past, have been over most of the

New England roads, and am familiar
with rail road crossings. I do not
now recollect of a crossing by bridge. I
know of several crossings not at stations and
believe, that with proper regulations com-
plied with, such crossings are safe

Subscribed and sworn to before me this 11th day
of June A.D. 1853.

Merry Bacon

L. D. Wood

clerk

And afterwards to wit on the same day
and year last aforesaid. In vacation at
Chambers, before the Hon. Buckner S. Morris
Judge of said Court, the following proce-
dings among others were had to wit:

Northern Indiana and Chicago
Rail Road Company

vs
The Illinois Central Rail Road Company

In Chambers

June 18, 1853

This day came the com-
plainant, and the defendant by their

respective solicitors, and the motion of the complainant for a preliminary injunction against the Defendant, fully agreed by the counsel of the respective parties upon the bill Answer, exhibits, and affidavit 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 issued according to the prayer of the complainant's 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 proceeding as are necessary under the act of incorporation of the defendant as indicated by the 11th and 12th Sections thereof, to ascertain by commissioners the compensation to be made to the complainants, and the points and manner in which the said Defendants, rail road shall be allowed to cross the Rail Road tracks 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 trains 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 thereof till the 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 times be exercised without unreasonable delay. The Defendants trains coming to a full stop at the crossing aforesaid, and send forwards, 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 25th day of June A.D. 1853, —

And upon making and filing such Stipulation, the issuing of said writ will be stayed till further order in the premises whereupon the Defendants Solicitor

made and filed in this cause the Stipulation
as above required, in the words and figures follow-
ing to wit:

Cook, Circuit Court
Northern Indiana and
Chicago Railroad 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 defen-
dants entering into the following Stipu-
lations

1st That said defendants will forth-
with and without unnecessary delay
take all such lawful proceedings as
may be necessary, to ascertain the compen-
sation 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 determination of the Commissioners the said defendants will forthwith and without unnecessary delay, comply with any lawful decision and award of said Commissioners -

2^d 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 all trains passing upon the Northern Indiana and Chicago Railroad, at the crossings mentioned in the bill, so that the trains passing upon the Northern Indiana and 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 Rail 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.

Blackwell Beckwith }
of Counsel } M. Brayman
Solr. Ill. Central
Rail Road Company

And the issuing of said writ is thereupon
stayed, till the further order in the premises.
and it is further ordered, that said commis-
sioners report their proceeding to this Court
with all convenient speed.

B. S. Morris Judge
of 7th Judicial Circuit
Ills

June 18th 1853.

And afterwards to wit on the 19th
day of September 1853. there was
filed in said Clerk's Office a
certain affidavit and Notice in
the cause which are in words
and figures as follows. to wit:

Cook's Circuit Court.

The Northern Indiana and
Chicago Railroad Company.

vs

The Illinois Central Rail
Road Company

State of New York

City and County of New York

J B

John Stryker

being duly sworn saith, that he is one of
the Directors of the Northern Indiana and
Chicago Railroad Company.

No 29
That soon after the defendants entered
into the Stipulation filed in the above
entitled cause, and upon the making
and filing of which the Hon B. J.
Morris Judge of the Seventh Judicial
District suspended further proceedings.
upon the application for an injunction
in said cause. Said Complainants
were advised that there was and under-
standing between A. B. Wood Solicitor
for said Complainants and Mason
Brayman Esq. Solicitor for said
Defendants, that the selection of the
Commissioners, contemplated by the said
Stipulation should be made in New
York City, that being the business
head quarters of said parties

That in pursuance of such understanding and upon the invitation of said Defendants, a Committee on behalf of said Complainants fully authorized to act in the premises, consisting of this Department George Blip. and Henry A. Foster met a Committee of said Defendants consisting of Robert Schuyler President and H. P. Burrell Treasurer of said Defendants at the office of said Defendants ~~at the office of said Defendants~~ for the purpose of agreeing upon the Commissioners contemplated by said Stipulations

That after some discussion of the subject matter said Defendants Committee proposed that the Committee on behalf said Complainants should name seven persons who would be satisfactory to said Complainants as Commissioners from which number said Defendants Committee would select the three persons who should act as Commissioners thereupon said Complainants Committee named the following seven persons William H. Swift President of the Western Railroad Massachusetts and also President of the Board of Trustees of the Illinois and Michigan Canal John Wilkinson

President of the Syracuse and Utica
Rail Road Company. Edward H.
Broadhead. Chief Engineer of the
Milwaukee and Mississippi Rail Road
Henry B. Payne. President of the Cleve-
land, Columbus and Cincinnati
Rail Road Company. E. C. Dennis
Superintendent of the Buffalo and
State line Rail Road. H. Stone Jr
Superintendent of the Cleveland
Columbus and Cincinnati Railroad
and Edwin F. Johnson Chief Engineer
of the Illinois and Wisconsin Rail
Road. from the names thus presented
said Defendants Committee selected
as Commissioners - William M. Swift
John Wilkinson and Edward H. Broa-
dhead - and they were agreed upon
as Commissioners - that said Committee
separated with the understanding and
agreement that the persons so chosen
should be regularly appointed by a
Rule of Court to be entered for that
purpose in the above entitled cause
That the meeting above described
was held on or about the seventh day
of July last past. that about two days
after Mr Schnyler called at the office
of said Complainant. and stated
that he had been advised that

such appointment could not be made by rule of Court, but must be made by stipulation of the parties which was assented to and it appeared that the stipulation stated be drafted by Henry A. Foster Esq and submitted by said Complainants to said Defendants, which which was agreed to. That in pursuance of such understanding, and on or about the twelfth day of July aforesaid, a stipulation was draughted and signed by the President of the said complainants Company, and submitted to said Defendants a copy of which is hereto attached and marked Schedule No 1, and made a part of this affidavit and which the Defendants declined to execute and returned the same with a statement that they would communicate further with said Company. That on or about the fifth day of August last past, said defendants by W. P. Burrill their President (said Burrill having been chosen President) sent said Complainants a letter a copy of which is hereto annexed and marked Schedule No 2, and made a part of this affidavit, accompanying which letter was a stipulation a copy

of which is hereto attached marked Schedule
No 3. and made a part of this affidavit
In reply to said last communication
said complainants by their President
John B. Davis addressed a letter to
said Defendants a copy of which is
hereto attached marked Schedule No 4
and made a part of this affidavit
accompanying which were two stipula-
tions copies of which are hereto
attached marked respectively Schedule
No 5 and Schedule No 6. and made
a part of this affidavit in reply to
which communication, said Defendants
by their President, W. J. Burrell addressed
a letter to said complainants a copy
of which is hereto attached, marked
Schedule No 7. and made a part
of this affidavit - And this deponent
further saith, that said defendants
have wholly neglected and refused
to comply with the stipulation filed
in this cause and upon the making
of which the Hon J. S. Morris suspended
the granting of the injunction herein
and do now absolutely refuse to
proceed with the commission
upon the terms and conditions pre-
scribed by said stipulation

John Stryker

Sworn before me this 9th day
of September 1853.

J. J. Roosevelt.

Sworn in open court

J. J. R.

State of New York.
City and County of New York

J. Richard B. Connolly, Clerk of
the City and County of New York and also
Clerk of the Supreme Court for the said City
and County being a Court of Record
Do. Hereby Certify - That J. J. Roosevelt
before whom the annexed deposition was
taken was at the time of taking the same
a Justice of the Supreme Court of
said City and County, duly appointed
and sworn, and that his signature
thereto is genuine as I verily believe.

In Testimony whereof I have hereunto
set my hand, and affixed the Seal
of the said Court and County the 9 day
of September 1853.

Richd B. Connolly
Clerk



Schedule No. 1

No 1

A. Copy of this has been presented W.A.S.

Whereas in a cause pending in the Cook County Circuit Court in the State of Illinois the following proceedings and stipulations were had and entered into to wit

<u>Cook County Circuit Court</u> 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. P. 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 the 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 points and 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 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.

A
2nd 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 all 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 road, shall come to a full stop at said

craping, and send the Conductor or fireman
on the track so as to see that the same is
clear before proceedings.

This regulation to be in force on and
after the 25th day of June A.D. 1853.

All of which said defendants hereby
stipulated to do and perform.
Dated this 18th day of June A.D. 1853.

Wm. Brayman Soli.

Ill. C. & N. R. Co

Blackwell & Beckwith of Counsel

No 31
Now therefore, for the purpose of ascertain-
ing as speedily as may be the compensation
to be made to the said Northern Indiana
and Chicago Rail Road Company and
the point mode and manner in which
said Illinois Central Rail Road
Company shall be allowed to cross the
track of the said Northern Indiana
and Chicago Rail Road Company
at the point mentioned in said bill
in pursuance of said section eleven
of the aforesaid acts

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
Milkinson 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 Com-
pany, shall make to the Northern Indiana
and Chicago Rail Road Company
and the point, 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 at the aforesaid point and
that if for any reason any one of the
said Commissioners shall refuse or
be unable to serve as such Commis-
sioner 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 conform to any. couple with the order
decision and award, 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 Sec-
tion of the said act

In witness whereof, the said respective
commissioners hath hereunto affixed
its corporate seal, and caused the
same to be subscribed by the President
thereof.

This,

day of July A.D. 1853.

John B. Davis,
Pres't. St. J. & Ch. R.R. Co.

Schedule No 2.

Office of the Illinois Central Rail Road Company

Dear Sir

New York 5th August 1853

The recent resignation of our
late President. Mr Schuyler and the abs-
ence from Town of most of the members of
our Executive Committee have delayed some-
what, the submission to you of a formal
proposition to submit the subject of the
Craping near Chicago to Commissioners.

At the meeting of our Board of Dir-
ectors a few days since, it was suggested
that perhaps a more prompt and at any
rate a final decision might be arrived
at by selecting for Commissioners the three
gentlemen composing the Supreme
Court of the State of Illinois as rather

pany would have any inducement,
to take any step for the purpose of review-
ing in a Court of law, any point decided
by the three persons who constitute the Court
of last resort, in that State, and it was
ordered that such a proposition be sub-
mitted to your Company,

I therefore herewith send you a
proposition to submit the matter to
Commissioners, with an offer that those
three gentlemen shall be the commis-
sioners if satisfactory to your Company
offering at the same time to select one
commissioner in the manner pointed out
in the Charter if the above suggestion
is not acceptable to your Company -
Awaiting your reply.

I am very respectfully
W. P. Burrall Pres.
Ill. C. R. R. Co

John B. Davis Esq
East North, Indiana and
Chicago Rail Road Co

New York