

People ex rel Tammey } In Supreme Court. June Term 1853.
 vs. } Error to Grant.
 Atlantic & Miss R R Co } Quo Warranto.

The facts are simple. The People have filed an information in the nature of a quo warranto vs. the Atlantic & Miss R R Co alleging in substance that the said Corporation are usurping the power and franchise of purchasing land and constructing a rail road thereon between certain termini without the warrant of law.

The R R Co by way of plea set forth a complete and perfect organization under the general rail road incorporation act of this State approved Nov. 5. 1849. and insist that by virtue of such organization they have power to purchase and hold land & construct their road.

To this plea the People demurred.

The Circuit Court overruled the demurrer and rendered judgment vs. the relation for Costs.

To reverse this judgment the People prosecute a writ of error. and assign for error.

The decision of the Court in overruling their demurrer to the plea aforesaid.

13 M R 1. Read.

The only question of law presented by the record is

"Whether the Atlantic and Mississippi Rail Road Company have the power under the law of their organization to construct their road until the Legislature have given their assent to the proposed route and termini of such road?"

The solution of this question depends upon the sound construction of the Statute of Nov 5/49.

The language of that law is as follows. viz:
"And the Legislature hereby reserves the right to itself to indicate the route and Termini of said roads, and the same shall not be constructed or commenced without the expressed sanction of the Legislature of this State, by a law to be passed hereafter".

Law 1849-Spe. Ses. 28 Sec 22 last clause.

Sec 1 to 4 inclusive provides the mode and manner of organizing a company for the purpose of constructing owning & maintaining a rail road. and declares that after doing certain acts the said Company shall become a body politic and corporate.

The 4 & 21st Sec's then define the powers of this Corporation among others the power to Construct a rail road &c.

Sec 22 then provides

1. That any such Corporation or
 2. Any no of persons not less than 13 intending to organize under this act
- May present a petition to the Legislature stating
1. When application is made by an organized Co. the termini and location & route of the road proposed to be constructed under the act
 2. When application is made by persons who have not, but who intend to organize under the act, the termini of the road proposed to be constructed, and that they intend to run said road on the most direct and eligible route between the termini indicated in their petition.

The reason of this difference in the specification of the route of the road in the petition is because the organized body has the Corporate power and funds necessary to a preliminary survey. given by Sec 1. & 21. Clause 1.

A power which it is constitutional for
the Legislature to grant

And without which grant they would
be harrassed,

Whereas no precise & definite location
can be made for want of this license
by the persons who intended to organize
under the law, after their general
route & terminus should be approved by
the Legislature.

Sec 22 further provides the form of the Vouchers
of the petition.

When the Legislature by law shall have
decided the question of utility, then
and not till then, can the Company
already organized, or about to be organized
Condemn Lands. &c.

All of these various provisions have reference
to the grant of the right of eminent domain

If the law had here stopped the construction
would be reasonable and justifiable that
the Corporation need only apply to the Leg-

statute for the right of eminent domain
& that if they could acquire land by
purchase a donation or an application
for this power would be unnecessary
and the Co. might proceed to construct
their road without further legislation.

Such a construction is forbidden by
the language of the last clause of sec 22.
New York Statute p. 387

✱

words of statute. No road shall be constructed or commenced.
7 Mass 524.
9 Bac 240. Without the expressed sanction of the leg-
islature.

There is a manifest distinction between
the two powers reserved in this section.

The right of eminent domain is one
thing.

The power to construct the road another
& different thing.

Both are essential to the complete
operation of the legitimate functions of
a rail road corporation.

In fact there are three essential attributes
of a rail road incorporation, neither
of which can be dispensed with.

1 A Corporate Capacity with the ^{express} ordinary incidents
powers ^{such} of a corporation

2 The power of eminent domain

3 The franchise "Which consists of the
enrolments to be derived from the
harassment of persons & property over
the road."

Each of these things may be properly
termed a franchise and can only be
created by the sovereign authority of
the State.

A Corporation is a franchise

So is an exclusive Toll - i.e. fair fees, market
&c.

So the delegation to a person or corporation
of the eminent domain.

No ~~one~~ body of persons can claim to ex-
ercise either without the express
sanction of the Legislature

The argument therefore that it was
only this extraordinary power of eminent
domain which the Legislature ~~has~~ has
withheld from the organized body
applies with as strongly to the franchise
itself.

Constitution already prohibited this - legislation useless

No franchise can therefore be exercised
without the assent of the sovereign power

And when granted is, subject

- 1 The publicum - or right of the People to
travel over the road and transport their
property on payment of Toll
- 2 The jus regium - or right of the government
to make salutary regulations concerning
the use of the road &c
- 3 The eminent domain or right of the
State to resume the franchise when
the public welfare demands it.

To say therefore that because a man owns
the land, he has a right to build a
cart road over it - exercise the franchise
of receiving tolls - and at the same
time exempt himself from the control
of the State, except so far as the power
of eminent domain is concerned, is
to permit the creation of franchises, in
defiance of the sovereign authority of
the State.

The power is given to construct the road
but this presupposes the assent of the Legislature
to the route & termini of the road.

until that assent has been obtained -
the ^{power of the} Corporate Body is in being - &
their power to construct the road in
obedience

~~When~~

The organized body is a corporation - for
some purposes - to procure stock subscribers
to do deeds, collect the 1870 - make
a preliminary survey - purchase
land & apply to the Legislature
for an approval of their route & terms.

Sec 4. declares power of purchasing
land & c. on filing certificate.

And this before

- | | |
|----------------------------|--------------------------|
| 1 All stock subscribed | } under
Sec 5, 6 & 7. |
| 2 Before its apportionment | |
| 3 Before directors chosen | |

From this it will ^{be} seen that there are
three ~~stages~~ divisions of power given
this corporation to be exercised ~~before~~ at
different ~~times~~ periods in their organization

- 1 The power in Sec 4. in filing the certificate
2. The power in Sec 5 6 & 7. after that time
- 3 The power to construct road after
assent of Legislature.

Again there is a provisional & a
permanent organization

Provisional sec 6. Can be more 12 directors

Permanent sec. 5 to 7.

These various provisions must be construed
together - each clause - sentence & word
- nothing to be insignificant, superfluous
or void. Swanwick 658. 763.

Lesser expressions to give way to larger
Swanwick 658. 703-4.

General words controlled by particulars
Swanwick 658. 559.

Admit for a while of the argument that
a person who owns land has power
to construct a road over it.

This right he claims as a landholder.
Natural person may exercise this power.
Corporations have no such power -
their power depends upon statute -
If the power is a contingent one - the
contingency must happen before the
power arises.

The power in this case cannot be claimed by the corporation because a land owner.

This they repudiate by their plea they - claim as a corporation with the powers & franchises, and the law makes the power depend upon the contingency -

It has not happened they can't blow hot & cold with same breath.

Again where there is a general & particular intent of the leg. both must be executed by the courts - Swann 765.

Their language is expressive of both.

The general intent

- 1 To produce uniformity of organization
- 2 To give special legislation.

Particular intent

- 1 To make the charter a security for private funds Leg Rep p 2.
- 2 To build up towns & cities in Union Leg Rep p 2.

The general intent is manifested by the passage of a general law under

which any company desirous of
building a rail road, might
organize

The ~~particular~~ by reserving the location
& termini within the control of the
leg., and thus protect roads already
constructed or in process of construction
from injurious competition & prevent
any road from being located to the
injury of our towns & cities.

Whether this the true policy of our
State or not is a ~~leg~~ question for
the exercise of legislative discretion

Courts have nothing to do with
the policy of a law.

Dwarris. 690. Smith 662.

They are to execute it as they find.

Rules of Construction

History of Legislation, Smith 740. 17th 479.

Occasion of the enactment, Swanwick 694.
Smith 740

Report of Legislative Committee 1849. p 23. 29

Resolutions of the two houses. Senate 70 House 63.

Instructions to Committee Senate Jan 1849 p 60.

Coleman's construction of the law
by People Salem Convention.

Practice under law - ^{Legislative Construction} Northern red
belucaps road. 2 Wend 274.

Action & Time Route road.

Application of this very copy
to legislation

Court cannot shut its eyes to the state
policy counsel which prevailed.

Again there is no essential difference
between special acts & this general law
as relates to the right of eminent domain

In the special the route is indicated &
power given to condemn.

In the general law, when route located
or indicated — power given.

Two acts necessary in one case

In both cases the route is ^{planned} before
the legislature

So power to Construct.

Government grants to be construed
strictly -

No power by implication

Reason - 4 Kent Case

It is said sec 4. declares them a
Corporation — true — but this begs
question.

What power have they sec 4.

This Court say a Corporation for some purposes

Again

The power conferred by Sec 21. Cannot be separated & part taken & part rejected.

Clause 4 gives power to construct road
a 347. To condemn lands.

Reshank in both powers in Sec 22.

Again Sec 22.

When leg. approve of route the Co is to pay damages for lands injuriously affected, as well as those taken for use of road.

If Co may purchase a ship - may injuriously affect other lands & no provision for compensation.

If leg. approve. Owner may compel by mandamus.

& Compensation must be made to adjoining land holders - before entry on the lands of him whose land are purchased &c.

Can't connect with other roads under Sec 21 cl 6. until approved by leg.

Sec 21 Cl 7. vary 1 mile in location approved
by Leg - this intended to prevent
Co - from frustrating intent of Leg -
when approval has been given
no power to change

termini

In Gillenwater Case power specified
but not conferred -
Legislation necessary.

Construction of last clause of Sec 22.

Suppose all the right of way obtained
but one piece midway between S &
Louis & T Hanks.

Can the Co. ~~begin~~ commence the
construction of any part of the road
tho' they have obtained right of way as
aforesaid - until approval given of route.

If yes, the Court lends the words to the
construction of the road over the midway
parcel.

If when the whole right of way is procured
they can ~~obtain the~~ construct road - ~~the~~
~~the~~ words have no effect at all.

Yes.

Then Court in one case give no effect
to the language.

In the other they limit the language
to a particular part of the words.

This is an admission that the words
are to have some weight, and as
the Court is faced to construe
they must construe these words
according to the true intent &
meaning of the Legislature.

If the literal meaning is adopted the
law is clear - there is nothing to
construe.

If the literal meaning is to be departed
from. this opens the door to construction
& all extrinsic aids may be resorted
to for the purpose of ascertaining the
Leg. intent.

The words are always to be followed.

Why insert last clause at all

Then reading is the "Company may
Construct this road over all lands
not acquired by purchase as
soon as the Legislative Sanction
the route."

In this the intention.

Then idea is an implied Sanction

Sec 44. 1. Time runs from assent

2. Suppose quo warranto - answer no power

3. They run this with 13th.