

8809

No. _____

Supreme Court of Illinois

People, ex. rel. T.J.Gillenwater

vs.

Mississippi & Atlantic R.R.Co.

The People vs
Relator of Thomas S. Gillman

^{vs}
The ~~Atlantic~~ Miss & Atlantic
Rail Road Co

} Geo. Warrante,

In this case, The Plffs assigns the
following errors, viz-

1st The Court below erred in not overruling
the plffs demurrer to The depts Plea,

2^d The Court below erred in dismissing
The Plffs information herein,

3^d The Court below erred in not giving
judgment according to Plffs prayer of
Plffs information against the depts,

A. Mitchell

Att'y for Plffs,

Consider in error

Wm. S. Bates Counsel for depts

People in relation to
J. G. Miller water.

Miss Charlotte Rice L. Co

There are assignments
of errors

Pleas ~~held~~ in Circuit Court, by Hon Justin Harlan in and for the County of
Effingham, at the September Term thereof 1857. —

The People of the State of Illinois on the Relation of Thomas J. Gillen
Waite by Alfred Kitchell Esquire State's Attorney for the fourth judicial cir-
cuit of the State of Illinois on the 26th day of September A.D. 1857 filed
the following information in the nature of a Two Warrants: —

State of Illinois }
Effingham County } S.S.

September Term of the Effingham
Circuit Court A.D. 1857.

In the circuit court of said county Alfred Kitchell
State's Attorney for the fourth judicial District of the State of Illinois who
prosecutes in behalf of the People of the State of Illinois on the relation of
Thomas J. Gillenwaite of the county of Effingham aforesaid, comes here
into court and gives the court to understand and be informed, that on
the 30th day of July 1850, a Railroad company named the Mississippi
and Atlantic Railroad company was formed in the town of Vandalia, in the
county of Fayette, by the adoption of the following articles of association: —

"In conformity with the Act of the General Assembly of the State of
Illinois, entitled "An act to provide for a general system of Railroad
Incorporations," the undersigned have associated for the purpose of constructing
and maintaining a Railroad as set forth in the following articles: —

1. The name of said corporation shall be the "Mississippi & Atlantic
Rail Road Company."

2. The same shall continue fifty years from the date of its incorporation.

3. The amount of the capital stock of said company, including
the cost of constructing the Road, the right of way, motive power, and other

appertinences for the completion and running of said Road, as near as can be estimated by competent engineers, will be two millions of dollars making forty thousand shares of fifty dollars each.

4. There shall be seventeen Directors to manage the concerns of the Company, as follows:—Justin Hudson, James V. Hedges, William B. Aiken, Lora Corey, John Cutright, James Ewart, John T. Warchest, Presley Frankhouse, Robert Blackwell, Francis Gill, Henry C. Waterman, William S. Wait, Benjamin Johnson, Samuel White, William M. Cain, Curtis Blakeman, and Solomon H. Mudge.

5. The Road to commence at a convenient point on the State line, to connect with the "Terre Haute and Richmond Rail Road" taking its course through the counties of Clark, Cumberland, and through, or near, the north west corner of Jasper County and through the County of Effingham, and to Vandalia in Fayette County, and thence through the counties of Bond and Madison, and through, or near, the north west corner of St. Clair County, and to terminate at or near Glenoidown, on the Mississippi river, and as nearly opposite to the eastern termination of the contemplated Pacific Railroad as practicable—a distance of one hundred and sixty miles, or thereabouts.

6. Nelson D. Sweeney, Salmon D. Phelps, M. G. Dale, N. M. McCurdy, and Dean Andrews, are appointed Commissioners to open subscriptions to the Stock of said Road."

And the said State's Attorney aforesaid, on the relation of the said Thomas J. Gillett—water further gives the Court to understand and be informed that after the adoption of the said articles of association, to wit, on the 31st day of July A.D. 1850 the aforesaid Board of Directors organized by the election of the following officers:—

William S. Wait, President.

A. P. H. Bromwell, Secretary.

Ebenezer Coffey, Treasurer.

William H. Morrison, Engineer.

That pre-

That previous to the organization of said company, one thousand dollars of stock for every mile of said Road intended to be built, had been subscribed, and ten per cent had been paid thereon in good faith.

And the said State's attorney upon the relation of the said Thomas J. Gillemwater further gives the Court here to understand and be informed, that by virtue of the "Act to provide for a general system of railroad incorporations" passed by the General Assembly of the State of Illinois, and approved Nov 5, 1829, the Board of Directors of said "Mississippi and Atlantic Rail Road company" caused the said Railroad to be surveyed and its route located, and a map and profile made of said Road, indicating its course and termini; - that said Road was located on a straight line as near as practicable, from the eastern line of the State of Illinois, at, or nearly opposite to Term Hauty, to Illinoisdown opposite St. Louis; that by virtue of the act aforesaid, the Stockholders of said company after the surveying and locating of said Rail Road as aforesaid petitioned the Legislature of the State of Illinois to sanction their acts and doings in relation to the survey and location of said Road as to its course and termini; and the Legislature aforesaid failed to sanction the aforesaid survey and location of said Road as indicated in said survey.

And the said State's attorney upon the relation of the said Thomas J. Gillemwater, further gives the Court here to understand and be informed that, in consequence of the General Assembly of the State of Illinois, refusing to sanction the aforesaid survey and location of said Railroad, the aforesaid "Mississippi & Atlantic Rail Road Company" was destroyed, and their corporate existence terminated, and their articles of association annulled & cancelled, inasmuch as the General Assembly aforesaid has reserved to itself the right to indicate the route and termini of all Roads intended to be built under said act.

And the said State's attorney upon the relation of the said Thomas J. Gillemwater further gives the Court to understand and be informed, that, notwithstanding the aforesaid "Mississippi and Atlantic Rail Road Company" was dissolved, and

1 their corporate existence terminated, and their articles of association annulled by the General Assembly of the State of Illinois, the said President & Directors of the aforesaid company do unlawfully hold and execute their offices: - that since the refusal of the last General Assembly of the State of Illinois to sanction the route and termini of said Road as indicated in the Survey aforesaid, which destroyed the corporate existence of said company, the said President and Board of Directors have unlawfully assumed all the functions and franchises which could be legitimately conferred upon such a corporation, by the collection of subscriptions from the stockholders, and by receiving deeds of conveyance to real estate, in the name of the "Mississippi and Atlantic Rail Road company" granting the Right of Way to said company, to construct the aforesaid Railroad against the will of the General Assembly of the State of Illinois; that all these unlawful usurpations of powers and offices and franchises have occurred since the aforesaid General Assembly refused to sanction the route and termini of said Road, as indicated in the aforesaid Survey.

And the said State's Attorney upon the relation of the said Thomas J. Gillemwater further gives the Court here to understand and be informed, that previous to the organization of said company, the said Thomas J. Gillemwater subscribed for ten shares of stock in said company, that by order and direction of the Board of Directors of said company he has paid three percentum on said stock into the treasury of said company, and that said Board of Directors have again notified the stockholders in said company that another assessment of one percent on each share of stock has been made, which is now about to be levied on the stockholders by order of the Directors of said Company, the time of payment for which has already expired.

The said Relator further informs the Court here, that the said President and Directors of the aforesaid company have authorized and directed their agent or agents to survey and locate said Road through his lands, to wit: - through the East half of the Southwest quarter of Section thirty six (36) in town N^o eight-North of range N^o five East of the third principal meridian situate in the county aforesaid, and they have unlawfully entered upon, and taken possession of the same for the purpose of con-

structing and maintaining said Road; and that they have made application to the circuit court of said county of Effingham for the appointment of commissioners to appraise the damage and to settle the compensation to be paid to said Relator for the damage he has sustained by reason of running said Road through his lands as aforesaid, which unlawful entry upon his lands were made on the first day of Sept 1851.

The said Relator further informs the Court here, that previous to the institution of these proceedings Justin Harlan, one of the original Directors in said corporation, resigned his said Directorship, and disposed of all his interest in the stock, property and effects thereof, and that Augustus C. French had been duly appointed a director of said corporation in his place and stead.

And the said State's attorney upon the relation of the said Thomas J. Gillewater further gives the Court here to understand and be informed that the said President and Directors of the said Mississippi and Atlantic Rail Road Company are still continuing unlawfully to hold and usurp their offices and franchises aforesaid, and to unlawfully intrude upon and hold possession of the premises aforesaid, as is above stated, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the People of the State of Illinois.

A. Ritchell States Atty

I acknowledge due service of the within on me this fifteenth day of September 1851.

William S. Wait, Pres. M & A. R. R. Co y.

per cent of the whole amount of stock had been paid, which facts have been certified to by the Secretary of State whose certificate is herewith shown to the Court.

And the said company have also filed in the office of the County clerk of the County aforesaid, a map and profile of the route of said Road, certified to by a majority of the Directors of said Company, previous to the commencement of this suit. All of which they are ready to verify.

Logan & Rust, Defts Counsel,

Thomas J. Gillevater
vs.

The Mississippi & Atlantic Railroad Company }

Demurrer to Plea.

And the said Thomas J. Gillevater by the States' Attorney A. Ritchell comes and says that the said plea of the Mississippi & Atlantic Railroad Company, by them above pleaded, and the matters therein contained, in the manner and form as the same are above pleaded and set forth, are not sufficient to bar the said Relator from having & maintaining his aforesaid action thereof against them the said Mississippi & Atlantic Railroad Company, and that the said Relator is not barred by the Law of the Land to answer the same, which he is ready to verify - Whereof for want of sufficient plea in this behalf he prays judgment

A. Ritchell

Mississippi & Atlantic Railroad Company }
Ads
Thomas J. Gillevater }

Joinder in Demurrer.

And the said Mississippi & Atlantic Railroad Company by Logan and Rust their Attorneys say that their said Plea, by them

above pleaded and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said Relator from having and maintaining his aforesaid action thereof against them, and they are ready to verify and prove the same, wherefore, inasmuch as the said Relator has not answered the said plea, nor hitherto in any manner denied the same, the said Illinois and Atlantic Railroad Company pray judgment, and that the aforesaid powers, offices, franchises and privileges, in form aforesaid, claimed by them, may, for the future be allowed to them, - and that they may be dismissed and discharged by the Court hereof, and from the premises aforesaid.

Cogan & Rust, Sol^r for Def^t

The People of the State of Illinois on the relation of
Thomas J. Gillewater
vs
The Illinois & Atlantic Railroad Company

Information in the nature of a
Quo Warranto.

Now at this day comes the plaintiffs by Alfred Mitchell Esq. State Attorney of the 4th judicial circuit, and present to the court now here, the information aforesaid, on the relation aforesaid, and the said defendants, entering their appearance by Cogan & Rust their attorneys file their plea thereto, whereupon the said Plaintiffs, having filed their demurrer to such plea, and the defendants having joined therein, this cause comes on to be heard by the court upon demurrer to the plea aforesaid; and after argument heard it is finally adjudged considered and adjudged by the court, that the said demurrer be overruled and this information dismissed. It is further considered and adjudged that the said defendants recover of the said Thomas J. Gillewater, the Relator aforesaid, their costs and charges about this suit in their behalf expended, and thereof have Execution &c. Whereupon by agreement of the said Relator as of the said defendants it is agreed that this cause may be removed to the Supreme Court of this State without any Bond or further requisition of the said Relator, &c.

State of Illinois
Effingham County } I John S. Kelly Clerk on the Circuit
Court in and for the County of Effingham do certify
that the foregoing papers are a true and correct copy
of the original papers and records ~~do~~ file in my said office
in the above entitled cause

Witness John S. Kelly Clerk of said Court and
private seal there being no public seal as yet
provided our said Court at Covington this 2nd
day of October A D 1851

Seal

John S. Kelly Clerk

The People of the State of Mississippi
on Relation of Thomas P.
Gillmanwater

The Mississippi Atlantic
Railroad Company

Information in the nature of
a Subpoena

Filed Sept 26th 1857
John S. Kelly c/o

Filed the 31st day
of October, A.D. 1857

James D. Puckett
Clerk

8807

\$5. paid by clerk
Wm. -

Decided at New Orleans
Nov. 1857 -