

No. 13174

Supreme Court of Illinois

Tonica & Petersburg R. R. Co.

vs.

Roberts

71641  7

Tornica & P. R. R.

vs

John Roberts

314

Tornica

vs

John Roberts

1859

13174

STATE OF ILLINOIS, } THIRD GRAND DIVISION.
SUPREME COURT. } APRIL TERM, A. D. 1859.

THE TONICA AND PETERSBURG RAILROAD COMPANY, Appellant,

vs.

JOHN ROBERTS, Appellee.

Appeal from Tazewell Circuit Court.

This was a proceeding by the appellant under our statute to obtain the right of way across the land of the appellee. The proceedings and judgment, as well as the errors relied on by the appellant for the reversal of this judgment, all sufficiently appear by the bill of exceptions filed in said case, commencing at page 8 of the record, and is as follows :

STATE OF ILLINOIS, } TAZEWELL COUNTY CIRCUIT COURT,
Tazewell County. } ss. February Term, A. D. 1859.

TONICA AND PETERSBURG RAILROAD COMPANY,

vs.

JOHN ROBERTS.

Bill of Ex-
ceptions, 8 to
22

Be it remembered, that on the trial of this cause, the evidence on the behalf of the appellant, Roberts, was as follows :

David Sloan was first sworn, and testified that he knew appellant's land over which the Tonica and Petersburg railroad runs; had been along the line of the road through the said land; that said farm was situated in Tazewell county, Illinois, 11 miles from Peoria, 14 miles from Pekin, about 7 miles from Washington; that Peoria was the market at which Roberts and his neighbors usually sold their farm produce; that at Washington there was a depot of the Peoria and Oquawka railroad; that if the Tonica and Petersburg railroad was constructed, and a depot located on the same within a shorter distance of Roberts' farm than the depot at Washington or Peoria, witness believed that the appellant and his neighbors would still prefer to sell their farm produce at Peoria, because Peoria would be a much better market for them than a way station along the Tonica and Petersburg railroad, even taking into consideration the disadvantage of hauling a greater distance to get their produce to market. Witness further stated that he lived about one mile from Roberts; that he had resided there for the last twelve years; that Roberts' farm was worth about \$40 dollars per acre; that, in the opinion of witness, the damage to Roberts would be one thousand dollars by reason of the Tonica and Petersburg railroad running across his land in manner as set forth in the following plat, which said plat is admitted to be correct by the parties to this suit. And witness stated further, that, in estimating this damage, he took into consideration the manner in which the road run through the farm and cut up and divided the land, the cost of building the fence and maintaining the same along the line of the railroad, the quantity of land taken by the railroad, the inconvenience to Roberts in cultivating a farm cut up into the parcels that his is by the road, and in being obliged to cross the road every day in attending his farm; but witness stated he did not include in the damages the inconvenience Roberts would labor under, if the railroad company should refuse to allow him to put up cattle guards, and thus he be com-

pelled to use gates. In such case, the damages to Roberts would be increased, how much witness did not state. Witness further stated that the farm of Roberts would be worth forty dollars an acre without reference to any effect the locating or constructing of the Tonica and Petersburg railroad would have on the price of the same; and if it never had been and should never be opened and located or built there.

// The witness was then cross-examined, and testified that appellant's farm, the one in question, was situated two miles from the town of Morton; that the railroad runs over the highest and best part of said land; that there is a slough running along the west side of the line of the railroad some little distance from the same; don't think the construction of the Tonica and Petersburg railroad over the land of the appellant, in the manner in which the same runs, would enhance the value of the same; believes that appellant has sufficient railroad facilities by living within eleven miles of Peoria, and seven of Washington; that it would be no advantage to him to have a railroad depot nearer his farm than Peoria or Washington; don't think that railroads advance the value of lands through which they pass. In estimating the damages to Roberts by reason of the construction of the Tonica and Petersburg railroad through
/2 his farm, witness stated that he did not take into consideration the benefits said road would confer on Roberts, because, in his opinion, no benefits accrued.

Samuel Mowberry, another witness for said appellant, was sworn, and testified that he then lived about five miles from Roberts, the appellant; had lived in that (Roberts') neighborhood about twenty-six years; that he was well acquainted in that section of country; that he had been over the farm of appellant since the Tonica and Petersburg railroad had been laid out through the same, and had been over the line of the said road; that the road, as marked out on the plat shown first witness, was correctly platted; that in his estimation the land of Roberts was worth \$35 per acre; that the damage to appellant, by reason of the construction of the Tonica and Petersburg railroad across his land, would be about \$950; that he arrived at this estimate by taking into consideration the quantity of land taken by said railroad, the bad shape in which Roberts' farm was cut up by it, the cost of building and maintaining the fence
/3 along the line of the road through appellant's farm, and the general inconvenience and trouble in being obliged to cross a railroad track every day in attending to necessary farm work. Witness further stated that, in his estimate of damage to appellant, he did not include the damage that would accrue in case the railroad company should refuse to let appellant erect cattle guards along the line of the road through his farm, and thus compel him to make use of gates. In such case, in the opinion of witness, the damage to appellant would be increased. Witness did not state how much. That in estimating the value of Roberts' farm, witness had stated what he thought it would be worth, without reference to the locating or constructing of the Tonica and Petersburg railroad, and the farm of Roberts was all fenced and in cultivation.

/4 On cross-examination, witness testified that he did not think the construction of the Tonica and Petersburg railroad through the farm of appellant would in any way enhance the value of said farm: that

Roberts lived near enough to a railroad depot at present, and having another depot established within one or two miles of his farm would not benefit him any; that the reason that he placed the damage so high as he had done, was that the road run diagonally through the farm of appellant; that it run upon the highest and best ground, and cut up the farm in a bad shape; that he did not take into consideration, in estimating the damages of appellant, any benefits accruing by reason of the building of the road, for, in the opinion of witness, no benefits could or did accrue to Roberts either by the locating or construction of the Tonica and Petersburg railroad through his farm.

15 John Lowman, another witness for said appellant, testified that he knew the land of Roberts over which the Tonica and Petersburg railroad passes; has been along the line through Roberts' farm; thinks the plat of the road shown here correctly represents the manner in which said road runs through Roberts' farm. All of Roberts' land is enclosed; estimates Roberts' damages, by reason of the constructing through his farm the Tonica and Petersburg railroad, to be from \$800 to \$900. In this estimate includes the costs to Roberts of building and maintaining the fences and cattle guards along the line of the railroad through his farm, but witness states that he does not include, in this estimate of damages, the loss of time and inconvenience to Roberts, in case the railroad company should refuse to let him erect cattle guards along the line of road, through his farm, and thus oblige him to make use of gates in passing from one part of his farm to the other, across the railroad track. In such case, witness states the damages by him before stated would, in his opinion, be increased; how much he did not state.

16 On cross-examination, this witness testified that he did not think the construction of the Tonica and Petersburg railroad through Roberts' land would enhance its value; that he lived about four or five miles from the land of appellant; that in estimating the damages accruing to Roberts, by reason of the construction of the Tonica and Petersburg railroad across his farm, he estimated the fence to cost \$1 25 per rod.

17 John Oswald, another of appellant's witnesses, testified that he knew the farm of Roberts through which the Tonica and Petersburg railroad passes; that the plat shown him correctly represents the manner in which the road runs through Roberts' farm: that the land in question is worth about \$35 per acre; and that he estimated the damages to Roberts, by reason of the construction of the Tonica and Petersburg railroad over his land in the manner represented in the plat, to be at least \$900. That in this estimate he did not include the damage to Roberts in case the railroad company should refuse to let him erect cattle guards along the line of the road through his farm, and compel him to make use of gates in crossing from one part of his farm to the other. In such case the damages would be increased; how much he did not state. Witness stated that he would not give as much for the farm by \$900, with the road, as he would without it; that the value by him placed upon the land of Roberts, was the value of the land, without taking into consideration the construction of the Tonica and Petersburg

railroad through the farm of Roberts. Witness was then cross-examined, and testified that he did not think the construction of the Tonica and Petersburg railroad through the farm of Roberts would benefit Roberts or enhance the value of his farm.

18 The appellees then introduced William D. Evans, who testified that he was one of the three commissioners chosen and selected by the Tonica and Petersburg railroad company to view the land of appellant over which the line of said road runs, and to assess the damages for condemning the right of way over the said land; that he, in company with Bell, another of the commissioners selected by said railroad company, viewed the land along the line of road through Roberts' farm; and that in his estimation the benefits to Roberts, by reason of the construction of said railroad, were equal to the damages; and that the three commissioners selected by the said railroad company assessed the same at one dollar; that he is still of the same opinion; that the reason why the sum of one dollar was assessed as damage to Roberts, was that the commissioners thought by law they were compelled to name some nominal damages to owners of land over which the line of railroad run.

The witness was then cross-examined, and testified that he resided at Delavan, about sixteen miles from the land of Roberts; that he has lived at his present residence four or five years; that in his estimation of damages he did not take into consideration the building and maintaining of the fences along the line of the road, but made the estimate in view of the railroad company being obliged, by law, to build and maintain the same at their own expense.

19 Birkett, another of appellees' witnesses, testified that he was one of the commissioners selected by the Tonica and Petersburg railroad company to view the land of Roberts and condemn the right of way across the same for the road; that he had been along the line of said road through the farm of Roberts, but not in company with the other commissioners; that he then estimated the benefits to Roberts in constructing the line of road over his land, equal to the damages, and was still of the same opinion.

Witness was then cross-examined, and testified that he resided at Washington, in Tazewell county; that in estimating the damage to Roberts, he did not take into consideration the building and maintaining of the fences along the line of the railroad through the farm of Roberts, but thought that the company were bound by law to build and maintain the same at their own expense. Witness stated that he never went over the line of the road through the farm of Roberts but once, and then not in company with the other commissioners, but with one Sawyer, a director in the railroad company.

20 Bell, another of appellees' witness was sworn, and testified that he was one of the commissioners selected by the Tonica and Petersburg railroad company to view the land of Roberts, and condemn the right of way across the same for said railroad; that he had been along the line of said road through the farm of Roberts, in company with Evans, who

was another of the commissioners; that he had then estimated the damages and benefits to Roberts, by reason of the construction of said road across his farm, as equal, and still was of the same opinion.

The witness was then cross-examined, and testified that he resided in Washington, Tazewell county; that in estimating the damages and benefits to Roberts by reason of the construction of the Tonica and Petersburg railroad across his farm, he, the witness, had not taken into consideration the expense of building and maintaining the fence by Roberts along the line of said road through his farm, but he had believed the railroad company bound to keep up and maintain the said fences at their own expense.

This was all the evidence in this cause on the part of either party.

2 / The appellant then requested the court to give the jury the following instructions:

"The court instructs the jury that after the assessment and payment of the damages to Roberts by the railroad company by way of damages in the condemnation of land taken for the purpose of the road, the railroad will not be bound to make the fence on either side of the road, or to make cattle guards for them to cross the road; nor will Roberts have a right, without the consent of the railroad company, to make cattle guards across the said road. If they believe, from the evidence, that Roberts' land was already fenced and enclosed, then the company are not bound to fence their road where it runs through this land."

22 And the appellees objected to the giving thereof, and each of them, by their counsel; which objection was overruled by the court, and the instructions given to the jury. To the overruling of which objections, and the giving of the said instructions to the jury, the appellees, by their counsel, then and there excepted.

The jury returned into court with the following verdict:

"We the jury find for appellant, and fix the damage at one thousand dollars, and the plaintiff build his own fence."

And thereupon the appellees, by their counsel, moved the court to set aside the verdict of the jury so rendered as aforesaid; and to grant a new trial in said cause, and assigned, as reasons for the said motion, that the said verdict of the said jury so rendered as aforesaid, was contrary to law and contrary to the evidence; which motion was overruled by the court, and judgment rendered on said verdict. To which overruling and judgment the appellees, by their counsel, then and there excepted, and now pray that this their bill of exceptions be signed and sealed by the court; which is done.

JAMES HARRIOTT, [L. S.]

And the said Tonica and Petersburg railroad company assigns for error :

First. That the court erred in giving the instructions asked by Roberts' counsel.

Secondly. The court erred in not granting a new trial.

For which, and for other errors appearing on the record and proceedings aforesaid, the said railroad company prays that the judgment aforesaid be vacated, annulled, reversed, and altogether held for nothing.

A. L. DAVIDSON, Attorney for said company.

314 49
Sonica & Petersburg
Rail Road Company
John Roberts
Abstract

Filed April 27, 1859
L. L. Leland
Clerk

No

STATE OF ILLINOIS, } THIRD GRAND DIVISION.
 SUPREME COURT. } APRIL TERM, A. D. 1859.

THE TONICA AND PETERSBURG RAILROAD COMPANY, Appellant,

vs.
 JOHN ROBERTS, Appellee.

Appeal from Tazewell Circuit Court.

This was a proceeding by the appellant under our statute to obtain the right of way across the land of the appellee. The proceedings and judgment, as well as the errors relied on by the appellant for the reversal of this judgment, all sufficiently appear by the bill of exceptions filed in said case, commencing at page 8 of the record, and is as follows :

STATE OF ILLINOIS, } TAZEWELL COUNTY CIRCUIT COURT,
 Tazewell County. } ss. February Term, A. D. 1859.

TONICA AND PETERSBURG RAILROAD COMPANY,

vs.
 JOHN ROBERTS.

5 Bill of Ex-
 ceptions, 8 to
 22

Be it remembered, that on the trial of this cause, the evidence on the behalf of the appellant, Roberts, was as follows :

David Sloan was first sworn, and testified that he knew appellant's land over which the Tonica and Petersburg railroad runs; had been along the line of the road through the said land; that said farm was situated in Tazewell county, Illinois, 11 miles from Peoria, 14 miles from Pekin, about 7 miles from Washington; that Peoria was the market at which Roberts and his neighbors usually sold their farm produce; that at Washington there was a depot of the Peoria and Oquawka railroad; that if the Tonica and Petersburg railroad was constructed, and a depot located on the same within a shorter distance of Roberts' farm than the depot at Washington or Peoria, witness believed that the appellant and his neighbors would still prefer to sell their farm produce at Peoria, because Peoria would be a much better market for them than a way station along the Tonica and Petersburg railroad, even taking into consideration the disadvantage of hauling a greater distance to get their produce to market. Witness further stated that he lived about one mile from Roberts; that he had resided there for the last twelve years; that Roberts' farm was worth about \$40 dollars per acre; that, in the opinion of witness, the damage to Roberts would be one thousand dollars by reason of the Tonica and Petersburg railroad running across his land in manner as set forth in the following plat, which said plat is admitted to be correct by the parties to this suit. And witness stated further, that, in estimating this damage, he took into consideration the manner in which the road run through the farm and cut up and divided the land, the cost of building the fence and maintaining the same along the line of the railroad, the quantity of land taken by the railroad, the inconvenience to Roberts in cultivating a farm cut up into the parcels that his is by the road, and in being obliged to cross the road every day in attending his farm; but witness stated he did not include in the damages the inconvenience Roberts would labor under, if the railroad company should refuse to allow him to put up cattle guards, and thus he be com-

peddled to use gates. In such case, the damages to Roberts would be increased, how much witness did not state. Witness further stated that the farm of Roberts would be worth forty dollars an acre without reference to any effect the locating or constructing of the Tonica and Petersburg railroad would have on the price of the same; and if it never had been and should never be opened and located or built there.

// The witness was then cross-examined, and testified that appellant's farm, the one in question, was situated two miles from the town of Morton; that the railroad runs over the highest and best part of said land; that there is a slough running along the west side of the line of the railroad some little distance from the same; don't think the construction of the Tonica and Petersburg railroad over the land of the appellant, in the manner in which the same runs, would enhance the value of the same; believes that appellant has sufficient railroad facilities by living within eleven miles of Peoria, and seven of Washington; that it would be no advantage to him to have a railroad depot nearer his farm than Peoria or Washington; don't think that railroads advance the value of lands through which they pass. In estimating the damages to Roberts by reason of the construction of the Tonica and Petersburg railroad through his farm, witness stated that he did not take into consideration the benefits said road would confer on Roberts, because, in his opinion, no benefits accrued.

12 Samuel Mowberry, another witness for said appellant, was sworn, and testified that he then lived about five miles from Roberts, the appellant; had lived in that (Roberts') neighborhood about twenty-six years; that he was well acquainted in that section of country; that he had been over the farm of appellant since the Tonica and Petersburg railroad had been laid out through the same, and had been over the line of the said road; that the road, as marked out on the plat shown first witness, was correctly platted; that in his estimation the land of Roberts was worth \$35 per acre; that the damage to appellant, by reason of the construction of the Tonica and Petersburg railroad across his land, would be about \$950; that he arrived at this estimate by taking into consideration the quantity of land taken by said railroad, the bad shape in which Roberts' 13 farm was cut up by it, the cost of building and maintaining the fence along the line of the road through appellant's farm, and the general inconvenience and trouble in being obliged to cross a railroad track every day in attending to necessary farm work. Witness further stated that, in his estimate of damage to appellant, he did not include the damage that would accrue in case the railroad company should refuse to let appellant erect cattle guards along the line of the road through his farm, and thus compel him to make use of gates. In such case, in the opinion of witness, the damage to appellant would be increased. Witness did not state how much. That in estimating the value of Roberts' farm, witness had stated what he thought it would be worth, without reference to the locating or constructing of the Tonica and Petersburg railroad, and the farm of Roberts was all fenced and in cultivation.

14 On cross-examination, witness testified that he did not think the construction of the Tonica and Petersburg railroad through the farm of appellant would in any way enhance the value of said farm: that

Roberts lived near enough to a railroad depot at present, and having another depot established within one or two miles of his farm would not benefit him any ; that the reason that he placed the damage so high as he had done, was that the road run diagonally through the farm of appellant ; that it run upon the highest and best ground, and cut up the farm in a bad shape ; that he did not take into consideration, in estimating the damages of appellant, any benefits accruing by reason of the building of the road, for, in the opinion of witness, no benefits could or did accrue to Roberts either by the locating or construction of the Tonica and Petersburg railroad through his farm.

15 John Lowman, another witness for said appellant, testified that he knew the land of Roberts over which the Tonica and Petersburg railroad passes ; has been along the line through Roberts' farm ; thinks the plat of the road shown here correctly represents the manner in which said road runs through Roberts' farm. All of Roberts' land is enclosed ; estimates Roberts' damages, by reason of the constructing through his farm the Tonica and Petersburg railroad, to be from \$800 to \$900. In this estimate includes the costs to Roberts of building and maintaining the fences and cattle guards along the line of the railroad through his farm, but witness states that he does not include, in this estimate of damages, the loss of time and inconvenience to Roberts, in case the railroad company should refuse to let him erect cattle guards along the line of road, through his farm, and thus oblige him to make use of gates in passing from one part of his farm to the other, across the railroad track. In such case, witness states the damages by him before stated would, in his opinion, be increased ; how much he did not state.

16 On cross-examination, this witness testified that he did not think the construction of the Tonica and Petersburg railroad through Roberts' land would enhance its value ; that he lived about four or five miles from the land of appellant ; that in estimating the damages accruing to Roberts, by reason of the construction of the Tonica and Petersburg railroad across his farm, he estimated the fence to cost \$1 25 per rod.

17 John Oswald, another of appellant's witnesses, testified that he knew the farm of Roberts through which the Tonica and Petersburg railroad passes ; that the plat shown him correctly represents the manner in which the road runs through Roberts' farm : that the land in question is worth about \$35 per acre ; and that he estimated the damages to Roberts, by reason of the construction of the Tonica and Petersburg railroad over his land in the manner represented in the plat, to be at least \$900. That in this estimate he did not include the damage to Roberts in case the railroad company should refuse to let him erect cattle guards along the line of the road through his farm, and compel him to make use of gates in crossing from one part of his farm to the other. In such case the damages would be increased ; how much he did not state. Witness stated that he would not give as much for the farm by \$900, with the road, as he would without it ; that the value by him placed upon the land of Roberts, was the value of the land, without taking into consideration the construction of the Tonica and Petersburg

railroad through the farm of Roberts. Witness was then cross-examined, and testified that he did not think the construction of the Tonica and Petersburg railroad through the farm of Roberts would benefit Roberts or enhance the value of his farm.

The appellees then introduced William D. Evans, who testified that he was one of the three commissioners chosen and selected by the Tonica and Petersburg railroad company to view the land of appellant over which the line of said road runs, and to assess the damages for condemning the right of way over the said land; that he, in company with Bell, another of the commissioners selected by said railroad company, viewed the land along the line of road through Roberts' farm; and that in his estimation the benefits to Roberts, by reason of the construction of said railroad, were equal to the damages; and that the three commissioners selected by the said railroad company assessed the same at one dollar; that he is still of the same opinion; that the reason why the sum of one dollar was assessed as damage to Roberts, was that the commissioners thought by law they were compelled to name some nominal damages to owners of land over which the line of railroad run.

The witness was then cross-examined, and testified that he resided at Delavan, about sixteen miles from the land of Roberts; that he has lived at his present residence four or five years; that in his estimation of damages he did not take into consideration the building and maintaining of the fences along the line of the road, but made the estimate in view of the railroad company being obliged, by law, to build and maintain the same at their own expense.

Birkett, another of appellees' witnesses, testified that he was one of the commissioners selected by the Tonica and Petersburg railroad company to view the land of Roberts and condemn the right of way across the same for the road; that he had been along the line of said road through the farm of Roberts, but not in company with the other commissioners; that he then estimated the benefits to Roberts in constructing the line of road over his land, equal to the damages, and was still of the same opinion.

Witness was then cross-examined, and testified that he resided at Washington, in Tazewell county; that in estimating the damage to Roberts, he did not take into consideration the building and maintaining of the fences along the line of the railroad through the farm of Roberts, but thought that the company were bound by law to build and maintain the same at their own expense. Witness stated that he never went over the line of the road through the farm of Roberts but once, and then not in company with the other commissioners, but with one Sawyer, a director in the railroad company.

Bell, another of appellees' witness was sworn, and testified that he was one of the commissioners selected by the Tonica and Petersburg railroad company to view the land of Roberts, and condemn the right of way across the same for said railroad; that he had been along the line of said road through the farm of Roberts, in company with Evans, who

was another of the commissioners; that he had then estimated the damages and benefits to Roberts, by reason of the construction of said road across his farm, as equal, and still was of the same opinion.

The witness was then cross-examined, and testified that he resided in Washington, Tazewell county; that in estimating the damages and benefits to Roberts by reason of the construction of the Tonica and Petersburg railroad across his farm, he, the witness, had not taken into consideration the expense of building and maintaining the fence by Roberts along the line of said road through his farm, but he had believed the railroad company bound to keep up and maintain the said fences at their own expense.

This was all the evidence in this cause on the part of either party.

21 The appellant then requested the court to give the jury the following instructions:

"The court instructs the jury that after the assessment and payment of the damages to Roberts by the railroad company by way of damages in the condemnation of land taken for the purpose of the road, the railroad will not be bound to make the fence on either side of the road, or to make cattle guards for them to cross the road; nor will Roberts have a right, without the consent of the railroad company, to make cattle guards across the said road. If they believe, from the evidence, that Roberts' land was already fenced and enclosed, then the company are not bound to fence their road where it runs through this land."

22 And the appellees objected to the giving thereof, and each of them, by their counsel; which objection was overruled by the court, and the instructions given to the jury. To the overruling of which objections, and the giving of the said instructions to the jury, the appellees, by their counsel, then and there excepted.

The jury returned into court with the following verdict:

"We the jury find for appellant, and fix the damage at one thousand dollars, and the plaintiff build his own fence."

And thereupon the appellees, by their counsel, moved the court to set aside the verdict of the jury so rendered as aforesaid; and to grant a new trial in said cause, and assigned, as reasons for the said motion, that the said verdict of the said jury so rendered as aforesaid, was contrary to law and contrary to the evidence; which motion was overruled by the court, and judgment rendered on said verdict. To which overruling and judgment the appellees, by their counsel, then and there excepted, and now pray that this their bill of exceptions be signed and sealed by the court; which is done.

JAMES HARRIOTT, [L. S.]

And the said Tonica and Petersburg railroad company assigns for error :

First. That the court erred in giving the instructions asked by Roberts' counsel.

Secondly. The court erred in not granting a new trial.

For which, and for other errors appearing on the record and proceedings aforesaid, the said railroad company prays that the judgment aforesaid be vacated, annulled, reversed, and altogether held for nothing.

A. L. DAVIDSON, Attorney for said company.

3134-314-49
Somers & Petersburg
Rail Road Company

John Roberts

Abstract

Filed April 27, 1839

L. Deland
Clerk

No

Page 1.

Plas to a term of the Circuit Court
begun and held at the Court House
in the City of St. Louis within and for
the County of St. Louis and State of
Illinois on the first Monday of the
month of February in the year of
our Lord One thousand Eight hundred
and fifty nine before the Hon James
Harrist Judge of the 21st Judicial
Circuit of the State of Illinois composed
of the Counties of St. Louis and St. Louis.

Be it remembered that on the 3^d day
of December AD 1858 an appeal Bond
was filed in the County Court of
St. Louis County Illinois in the words and
figures following to wit:

" Know all men by these presents that
" We John Roberts and
" do hereby and firmly bound unto the
" Tonica & Petersburg Rail Road Company in
" the penal sum of One hundred and fifty
" dollars for the payment of which well and
" truly to be made and performed we bind
" ourselves our heirs executors and Adminis-
" trators jointly severally and finally by
" these presents Witness our hands and
" Dated this 3^d day of December 1858

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"The Conditions of the above obligation
"is such that whereas the above
"Rail Road Company did on the
"20th day of October 1858 apply to
"Elias Wenger a Justice of the Peace
"of said County to summon three persons
"to assess the damages done or to be done
"to the land of said John Roberts by reason
"of the location and Erection of said
"Rail Road over the land of said John
"Roberts, and whereas said appraisers
"so summoned by said Justice bring
"W. D. Evans Thomas Brinkley & James
"J. Bell, did on the 28th day of October
"1858 assess the damages by reason of
"the Erection and location of said Rail
"Road over said land of said John
"Roberts The West 1/2 of the North West 1/4 of
"Section 15, Town 25, North Range 3 West
"of the third principal Meridian, at one
"Dollar, and which said assessment
"was returned to said Justice on the
"23rd day of November 1858 and judgment
"returned thereon from which said assess-
"ment Robert Roberts agent for John
"Roberts takes an appeal to the County
"Court of Tazewell County Illinois
"Now of the said Robert Roberts

Page 3

" agent for John Roberts shall prosecute
" his suit to the effect and pay whatever
" judgment may be rendered upon the
" trial or disposal of said appeal then
" this Bond to be void otherwise to remain
" in full force

" John Roberts by his agent Robert Roberts Esq
" C Williamson Esq

" Taken and approved by me

" the 3^d Dec. 1858

" Jno Smiley Atty

And now afterward to wit, on the ^{4th} day of
~~December~~ ^{November} 1858, an appeal Amicus
issued in the word and figure
following, to wit,

" State of Illinois The People of the State
" Taylor County of Illinois to the Sheriff
" of said County greeting—

" We command you that you summon
" J. C. & P. R. R. Co. Rail Road Company
" if he shall be found in your County
" personally to be and appear before the
" County Court of said County on the
" first day of the next term thereof to
" be held at the Court House in Pekin
" in said County on the Third Monday
" of January next to prosecute his
" suit against John Roberts

Page 4. "lately appealed from before Elias
"Munger. And now you then and there
"this writ with endorsement thereon
"is what manner you shall have
"executed the same
" Withup John Judd Clerk of said
" said Court and the Seal thereof
" at the City of Pekin this 4th day of
" December AD 1858
" John Judd, Clerk County Court
" per E. Thoby, Deputy."

which said summons, was filed on
the 11th day of January AD 1859 duly
served on John L. Marsh and Josiah
Sawyer, Directors of said Company.

And now heretofore; to-wit:
on the 30th day of November a Subpoena
is issued in said Cause in the
words and figures following; to-wit:

"State of Illinois, The People of the State of
"Jaswell County of Illinois to Elias Munger
" a Justice of the Peace of
" said County Meeting

"Whereas the Quincy & Litchburg Rail Road
"Company did apply to you to appoint appraisers,

Page 5

" to assess the damages done on to be done to the
" land of John Roberts by the location of
" said Rail Road over the land of John Roberts
" And whereas said Commissioners have returned
" by you that they have assessed upon said land
" over which said Rail Road is located
" the sum of One dollar from which said
" assessment an appeal has been taken to the
" County Court of said Saywell county and
" a Bond duly approved and filed in the
" office of the Clerk of said Court

" Therefore We Command you
" the said Justice of the Peace to suspend
" all further proceedings on said judgment
" and cease from further molesting the
" said John Roberts on occasion thereof
" until the further order of said County
" Court

" (S)

" Witness John Midgley Clerk of
" our said County Court and
" the Seal thereof at Dallas at Texas
" the said County this 30th day of
" November AD 1858

" John Midgley Clerk
" Per Charles Wells

" Which said Insupercedon was filed on the 11th
" day of January AD 1859 duly served

And now afterwards Nowit: on the
14th day of November A.D. 1838. a
Transcript was filed in the words
and figures following to wit:

State of Illinois } To James S. Jew
Steuell County } or any other citizen
of the State and County aforesaid

Upon the application of J. L.
Waters Director of the T. & P. R. R. Co
You are hereby directed to summon
M. Adams, Thos. Birkett & James J.
Bell to appear forthwith before me
the undersigned an acting Justice
of the Peace within and for said
County, there and there to be sworn
as appraisers and appraisers of
damage done or to be done to
the lands of John Roberts by reason
of the Erection of the Toulon and
Petersburg Rail Road on said land
and that they proceed to make
said view and appraisement
on the 28th day of October And this
you are not to omit, and have
you there and there the summons
Given under my hand and seal this
20th day of Oct 1838

Page 6

And now afterwards: to wit: at a term
of the Circuit Court begun and held at the
Court House in the City of St. Louis within
and for the County of St. Louis and
State of Missouri on the first Monday in
the month of February in the year of
our Lord One thousand eight hundred
and fifty nine. Present the Hon. Jam.
Kawitt. Judge. Hugh Dullenton prosecuting
attorney Thomas C. Allen Sheriff and
Chas. L. Young Clerk. The following
proceeding were had: to wit:

" Thursday February 17. 1859

" The Tonic & Petersburg

" Rail Road Company

" m } Appeals
" John Roberts } Appts.

" This Day came

" the parties by their attornys. who appear

" come a jury of twelve good and

" lawful men: to wit: S. Lincoln

" J. Wood, D. J. Thompson, Lewis

" Douglas, Wm. Harrison, Thos

" John Clayton, J. R. Ridge, J. H. Daily

" C. W. Galliard & H. Case

" Garrett duly elected tried and sworn

Page 7 "who having heard the allegations and
"proofs of the parties and argument
"of counsel therefor Verdicted say We the Jury find for
"the Defendant in the sum of one
"thousand Dollars he to build his
"own fence.

"Whereupon the Defendants
"entered their Motion for a new
"trial which the Court overruled.

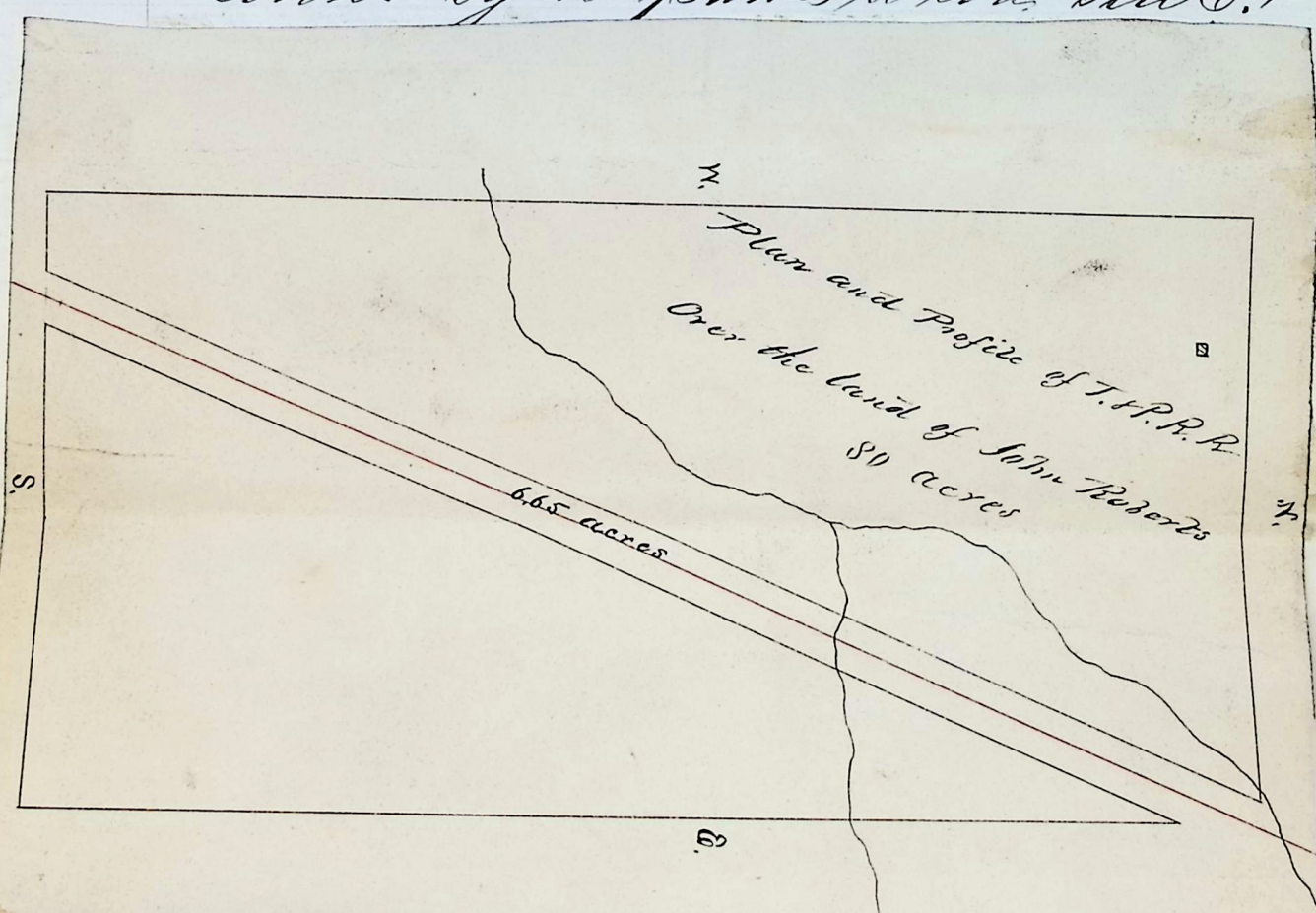
"It is therefore ordered and
"adjudged by the Court that the
"Defendants have and recover of
"said Plaintiffs the sum found
"as aforesaid and the costs and
"charges by him about his defence
"dependent and that Executions
"issue therefor.

"Whereupon the Plaintiffs
"prayed an appeal and it is ordered
"by the Court that they file their
"Appeal Bond in 30 days with
"John L. Marsh as security in
"the sum of \$1500 (Bill of
"Exceptions to be signed in vacation).

And now afterwards to wit
on the 24th day of February 1839
a Bill of Exceptions was filed
in the words and figures following
to wit;

Page 8, State of Illinois
 " Yazewell County Ex. Circuit Court
 " " February term AD 1856
 " Tonica & Peoria R.R. Co.
 " " "
 " John Roberts
 " "

Page 9, that the appellant and his neighbors
"would still prefer to sell their farm
"produce at Peoria, because Peoria,
"would be a much better market for
"them than a way station along the
"Peoria, Quincy and Petersburg Rail
"Road, even taking into consideration
"the disadvantage of hauling a greater
"distance to get their produce to market.
"Witness further stated that he lived about
"1 mile from Robert, that he had
"resided there for the last 12 years;
"that Robert's farm was worth
"about \$400 dollars per acre; that, in the
"opinion of witness, the damage to
"Robert would be One thousand dollars,
"by reason of ^{the} Peoria & Petersburg Rail
"Road, running across his land in
"manner as set forth in the following
"Plate, which said plate is admitted to
"be correct by the parties to the suit.



Page 10 "and Witness stated further, that, in estimating
"the damage, he took into consideration
"the manner in which the Road run through
"the farm ^{and} cut up and divided the
"land, the cost of building the fence,
"and maintaining the same along
"the line of the Rail Road, the quantity
"of land taken by the Rail Road, the
"inconvenience to Roberts in Cultiva-
"ting a farm cut up into the parcels
"that is in by the Road, and in being
"obliged to cross the Road every day
"in attending his farm; but Witness
"stated he did not include in the
"damages the inconvenience Roberts
"would labor under if the Rail Road
"Company should refuse to allow him
"to put up Cattle Guards, and thus
"he be compelled to use gates. In such
"Case, the damages to Roberts would be
"increased, how much Witness did not
"state. Witness further stated that the
"farm of Roberts would be worth
"Forty dollars an acre, without reference
"to any effect the locating or con-
"structing of The Sonoma & Petroling Rail
"Road would have on the price of the same,
"and if it never had been ^{or put} and should never
"be opened and located there.

Page 11, The Witness was then cross examined,
and testified that appellants farm,
"the one in question, was situated
"2 miles from the town of Moulton;
"that the Rail Road runs over the
"highest and best part of said land;
"that there is a slough running
"along the West side of the line of the
"Rail Road some little distance from
"the river; don't think the construction
"of the Soucia & Petersburg Rail over the
"land of the appellants, in the manner
"in which the same runs would
"enhance the value of the same;
"believes that appellant has sufficient
"Rail Road facilities by being within
"11 miles of Venice and 7 of Washington;
"that it would be no advantage
"to him to have a Rail Road Depot
"near his farm than Venice or
"Washington; don't think that Rail
"Roads advance the value of
"lands through which they pass.
"In estimating the damage to Moulton
"by reason of the construction of the
"Soucia & Petersburg Rail Road through
"his farm, Witness stated that he
"did not take into consideration

Page 12 the benefits said Road would confer on
"Robert, because, in his opinion, no
"benefits accrued
"Samuel Wherry, another witness
"for said Appellant was sworn, and
"testified that he ^{lived} lived about 5 miles
"from Robert, the Appellant, had
"lived in that (Robert's) neighborhood
"about 26 years; that he was well
"acquainted in that Section of Country;
"that he had been over the farm of
"Appellant since the Tonica and
"Petersburg Rail Road had been laid
"out through the same, and had been
"laid out over the line of the said
"Road, that the Road, as marked out on
"the Plate shown first Witness, was
"correctly plotted; that in his estimation
"the land of Robert was worth \$35-
"per acre; that the damage to Appellant
"by reason of the construction of the
"Tonica & Petersburg Rail Road across
"his land would be about \$950; that
"he arrived at this estimate by taking
"into consideration the quantity of land
"taken by said Rail Road, the bad shape
"in which Robert's farm was cut up
"by it, the cost of building and maintaining

Page 13 "the fence along the line of the
"Road through Appellant's farm, and
"the general inconvenience and
"trouble in being obliged to cross a
"Rail Road track every day in
"attending to necessary farm work.
"Witness further stated that, in his esti-
"mate of damage to Appellant, he did
"not include the damage that would
"accrue in case the Rail Road Com-
"pany should refuse to let Appellant's
"Cattle guards along the line of the
"Road through his farm, and thus
"compel him to make use of gates. In
"such case, in the opinion of Witness,
"the damage to Appellant would be
"increased; Witness did not state how
"much; that in estimating the
"value of Robert's farm, Witness had
"stated what he thought it would be
"worth without reference to the locating
"or ~~and~~ constructing of the Souma, &
"Petoskey Rail Road; and the farm
"of Robert was all fenced and in
"cultivation. On Cross Examination,
"Witness testified that he did not think
"the construction of the Souma, &
"Petoskey Rail Road through the

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of farms of Appellant would in any way
enhance the value of said farms; that
"Roberts lived near enough to a Railroad
Depot at present, and having another
Depot established within 1 or 2 miles of
his farms would not benefit him any;
"that the reason that he placed the
damage so high as he had done, was
"that the Road runs diagonally through
the farms of Appellant; that it runs upon
the highest and best ground, and cuts up
the farms in a bad shape; that he did
"not take into consideration, in estimating
the damage of Appellant, any benefit
accruing by reason of the building of
the Road, for, in the opinion of Witnes,
no benefit could or did accrue to Roberts
either by the locating or construction of
the Louisa & Petersburg Rail Road through
his farms. [¶] John Sirmore, another
Witness for said Appellant, testified that
"he knew the land of Roberts on which the
Louisa & Petersburg Rail Road passes;
"has been along the line of through Roberts
farms; thinks the Plat of the Road shows
"how correctly represents the manner
"in which said Road runs through
"Roberts farms. all of Roberts land is
"enclosed.

15 "Estimates Robert's damages, by reason of
"the constructing through his farm
"the Tonica & Petersburg Rail Road, to be
"from \$800 to \$900. In this estimate includes
"the costs to Robert of building and
"maintaining the fences and cattle
"guards along the line of the Rail
"Road through his farm; but Witness
"states that he does not include, in
"this estimate of damages the loss of time
"and inconvenience to Robert in case
"the Rail Road Company should refuse
"to let him use such cattle guards
"along the line of Road through
"his farm, and thus oblige him to
"make use of Gates in passing from
"one part of his farm to the other
"across the Rail Road track.
"In such case, Witness states the damage
"by him before stated would, in his opinion,
"be increased, how much he did not
"state. On Cross Examination, ~~Witness~~
"this Witness testified that he did not
"think the construction of the Tonica
"& Petersburg Rail Road through Robert's
"land would enhance its value; that
"he lived about 4 or 5 miles from the
"land of Appellant; that in Estimating

16 " the damages accruing to Roberts, by
" reason of the construction of the Tonica
" & Petersburg Rail Road across his
" farm he estimated the fence to
" cost \$1²⁵/₁₀₀ per Rod
" John Oswald, another of Appellants,
" Witness, testified that he knew the
" farm of Roberts through which the
" Tonica & Petersburg Rail Road passes;
" that the Plate shown him correctly
" represents the manner in which
" the Road runs through Roberts' farm;
" that the land in question is worth about
" \$35 per acre; and that he estimated
" the damages to Roberts, by reason
" of the construction of the Tonica, &
" Petersburg Rail Road Company over his
" land in the manner represented in the
" Plate, to be at least \$400; that in this
" estimate he did not include the damage
" to Roberts in case the Rail Road Com-
" pany should refuse to let him erect
" cattle guards along the line of the
" Road through his farm, and compel
" him to make use of Gates in crossing
" from one part of his farm to the other.
" In such case the damages would be
" increased, how much he did not
" state. Witness stated that he would

100

" not give as much for the farm by
 " \$900, + with the road, as he would
 " without it; That the value by him
 " placed upon the land of Robert was
 " the value of the land without taking
 " into consideration the construction
 " of the Sonica & Petersburg Rail Road
 " through the farm of Robert. Witness
 " was then Cross examined, and
 " testified that he did not think the
 " construction of the Sonica & Petersburg
 " Rail Road through the farm of Robert
 " would benefit Robert or enhance the
 " value of his farm

The Appellee then introduced
 " William D. Egan, who testified that he was
 " one of the three Commissioners chosen
 " and selected by the Sonica & Peters-
 " burg Rail Road Company to view the
 " land of Appellant over which the
 " line of said road runs, and to
 " assess the damages for condemning the
 " right of way over the said land;
 " that he, the Company with Bell,
 " another of the Commissioners selected
 " by said Rail Road Company, viewed
 " the land along the line of road through
 " Robert's farm; and that in his estimations

18 " the Benefits to Roberts, by reason of the
" construction of said Rail Road, were
" equal to the damage; and that the
" three commissioners selected by the said
" Company assessed the same at One
" dollar; that he is still of the same opinion;
" that the reason why the sum of One dollar
" was assessed as damage to Roberts,
" was that the Commissioners thought by
" law they were compelled to make some
" nominal damage to owner of land
" over which the line of Rail Road run.
" The Witness was then cross examined,
" and testified that he resided at Melvan,
" about sixteen miles from the land of
" Roberts; that he has lived at his present
" residence 4 or 5 years; that in his estimation
" of damage ~~of damage~~ he did not
" take into consideration the building
" and maintaining of the fences along
" the line of the Road, but made the estimate
" in view of the Rail Road Company being
" obliged by law to build and maintain
" the same at their own expense.

" Birckett, another of Appellee's Witnesses,
" testified that he was one of the Com-
" missioners selected by the Iowa &
" Western Rail Road Company to
" view the land of Roberts and
" determine the right of way.

109 " across the same for the Road; that he had
" been along the line of said Road through
" the farms of Roberts, but not in Company
" with the other Commissioners, that he there
" estimated the benefits to Roberts in Construc-
" ting the line of Road over his land
" Equal to the damages, and was still
" of the same opinion. Witness was then
" cross examined, and testified that he
" resided at Washington, in Hazen
" County; that in estimating the damage
" to Robert, he did not take into consid-
" eration the building and Maintaining of
" the fences along the line of the Rail
" Road through the farms of Roberts, but
" thought that the Company were bound
" by law to build and maintain the same,
" at their own expense. Witness stated
" that he never went over the line of the
" Road through the farms of Roberts, but
" once, and then not in Company with
" the other Commissioners, but with one
" Sawyer, a Director in the Rail
" Road Company

" Bell, another of Appellee's
" Witness was sworn, and testified that
" he was one of the Commissioners selected
" by the Gonica & Petersburg Rail Road Company

"to view the land of Roberts and condemn
 "the right of way across the same,
 "for said Rail Road; that he had
 "been along the line of said Road
 "through the farms of Roberts and
 "comp any with Evans, who was another
 "of the Commissioners; that he had
 "then estimated the damages and
 "benefits to Roberts by reason of the con-
 "struction of said Road across his
 "farms as equal, and still was of the
 "same opinion. The Witness was
 "then cross examined, and testified
 "that he resided in Washington, Hog-
 "well County; that in estimating the
 "damages and benefits to Roberts by
 "reason of the construction of the Tonic,
 "and Petersburg Rail Road across his
 "farms. he, the witness, had not taken
 "into consideration the expense of build-
 "ing and maintaining the fence
 "by Roberts along the line of said
 "Road through his farms, but he had
 "believed that the Rail Road Company
 "bound to keep up and maintain the
 "said fences at their own expense,
 "This was all the evidence in this
 "cause on the part of either Party.

21,

The appellants then requested
the Court to give the jury the following
instructions:

"The Court instructs the
jury that after the assessment and
payment of the damages to Roberts
by the Rail Road Company by way
of damages in the condemnation
of land taken for the purpose of the
Road, the R.R. will not be bound to
make the fence on either side of the
Road, or to make cattle guards for them
to cross the Road; nor will Roberts have
a right, without the consent of the
Rail Road Company, to make cattle
guards across the said Road. If they
believe, from the evidence, that Roberts
land was already fenced and
enclosed, Then the Company are
not bound to fence their road where it
runs through this land."

And the Appellees objected
to the giving thereof, and each of
these, by their counsel; which
objection was overruled by the
Court, and the instructions
given to the jury. To the overruling
of which objection, and the giving

22 of the said instructions to the Jury, the Appellee,
"by their Counsel, there and there accepted.

"The Jury returned into Court
"with the following verdict:

" "We the Jury find for Appellants,
"and fix the damage at One thousand
"dollar, and the Plaintiff build his
"own fence."

" And thereupon the Appellee, by
"their counsel, moved the Court to set
"aside the Verdict of the Jury so rendered
"as aforesaid, and to grant a new trial
"in said Cause, and assigned, as
"reason for the said motion, that the
"said verdict of the said Jury so rendered
"as aforesaid was contrary to law
"and contrary to the evidence; which
"motion was overruled by the Court,
"and judgment rendered on said
"verdict, to which overruling and
"judgment the Appellee, by their
"counsel, there and there accepted,
"and now pray that this their Bill
"of exceptions be signed and sealed
"by the Court; which is done

" James Barnette. (Seal)

And now afterwards to wit: on the 5th day of March A.D. 1889 an Appeal Bond was filed in the words and figures following: 'to wit:'

" State of Illinois

" Jazwell County. I know all men by

" these presents that the
" Tonicas & Petersburg Rail Road Company

" as principal and John S. Marsh of the

" County of Jazwell and State of Illinois

" are held and firmly bound unto John

" Roberts of the same County and State

" in the penal sum of fifteen hundred

" dollars good and lawful money of the

" United States the payments of which

" well and truly to be made. We bind

" ourselves our heirs executors administrators

" firmly by these presents. Signed with the

" hand and private seal of said John

" S. Marsh and Sealed with the private

" Corporate Seal of said Company

" The Conditions of the above

" obligation is such that whereas

" at the February term of Jazwell

" County Circuit Court for the

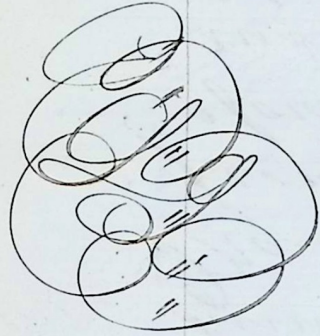
" year 1889 and on the 14th day

" of said month of February the

24 "said John Roberts recovered a
"judgment against the Tonic
"and Petersburg Rail Road
"Company for the sum of
"the thousand Dollars and
"costs of suits at a suit in
"said Court pending and
"Whereas the said Tonic and
"Petersburg Rail Road Company
"has prayed an appeal from
"the said judgment of the said
"Court to the Supreme Court
"of the State of Illinois, and the
"said ^{prayer of} appeal of said Company
"has been granted by said Circuit
"Court, conditioned that the said Tonic,
"and Petersburg Rail Road Company
"file their bond in the sum of fifteen
"hundred dollars with John L.
"Marsh as surety within thirty days
"from the rendition of the judgment
"aforesaid. Now if the said Tonic,
"and Petersburg Rail Road Company
"shall well and truly prosecute
"their suits without delay to effect
"and abide the judgment of said
"Supreme Court and pay all costs
"adjudged against said Company

25

" by said Supreme Court in said
" Supreme Court in said suit
" then this obligation to be void
" otherwise to remain in full
" force and virtue in the law

John C. Wank 

The Union & Vermont Rail
Road Co.

Richard Yates, President
Jas. Borden, Secretary

State of Illinois }
Tazewell County } J. Merrill C. Young
Clerk of the Circuit
Court within and for said County
do certify that the foregoing Twenty five
pages contain a true, perfect and
Complete Copy of the Record of the
Proceedings had in the Cause therein
Named, as the same appears of Record
in my office.

In Witness whereof I have herewith
set my hand and affixed
the Seal of said Court at
Pekin this 9th day of April
AD 1859

Merrill C. Young Clerk

Supreme Court April Term 1859

And now comes the appellant and says
that in the record & proceedings aforesaid
& in the giving of the judgment aforesaid
there is manifest error to its damage
And assigns for error

First That the Court below erred in giving the
instructions asked by Roberts

Secondly The Court erred in not granting a new
trial For which reasons And for

other errors appearing in the record & proceedings
aforesaid the said Appellant prays that
the judgment aforesaid may be reversed
annulled & altogether held for nothing

A. L. Davis
for appt.

And now comes the said Appellee
and says that in the record and proce-
edings aforesaid there is no error, and
therefore prays that said judgment may
be affirmed.

B. S. Putnam & J. Roberts
for Appellees

314
Loomis & P. R. Co.

by appt

John Roberts

Appellee

Record &

App of errors

Filed April 26. 1839

L. Delaney
Clerk

W. S. Co

Putnam &
Roberts