13174

Supreme Court of Illinois

Tonica & Petersburg R.A. Co.

VS.

Roberts

71641

Jonica & Both gohn Roberts. 314 1859 13174

STATE OF ILLINOIS, 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, SS. TAZEWELL COUNTY CIRCUIT COURT, February Term, A. D. 1859.

TONICA AND PETERSBURG RAILROAD COMPANY,

25.

JOHN ROBERTS.

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' of 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-

Q,

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 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 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.

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

3

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.

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 15 road runs through Roberts' farm. All of Roberts' land is enclosed; Yestimates Roberts' damages, by reason of the constructing through his farm the Tonica and Petersburg railroad, to be from \$800 to \$900. this estimate includes the costs to Roberts of building and maintaining the tences 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.

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.

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 main-

tain 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

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

20

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.

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."

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.

AL. L. DAVIDSON, Attorney for said company.

Paul Road formbany

John Roberts

Albhack

Willer April 27, 1839 L. Leland lelah

10

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

THE TONICA AND PETERSBURG RAILROAD COMPANY, Appellant, 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, SS. TAZEWELL COUNTY CIRCUIT COURT, February Term, A. D. 1859.

TONICA AND PETERSBURG RAILROAD COMPANY, JOHN ROBERTS.

Be it remembered, that on the series as follows: Be it remembered, that on the trial of this cause, the evidence on the

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 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 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.

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 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.

On cross-examination, witness testified that he did not think the /4 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.

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 75 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. this estimate includes the costs to Roberts of building and maintaining the tences 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.

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.

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 main-

tain 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 rail7 orad 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.

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."

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.

Tomed & Petersburg Rail Road fompany John Roberto Filedapril 27.183 g Lelmer belik

Page 1.

Blus to a term of the Circuit Court by and held at the Court Bound in the City of Selling without and State of Minorio on the first Monday of the Manth of Thebreway sie the year of our Lord One thousand Eight hunder and fifty mine before the Dom January Halling of the 21th pudicial Circuit of the State of Sellinisis Composed of the Connets of Monard Fageweeld,

Be it resembered that on the 3 day of Weenthe ab 1838 an appeal Bosel was filed sing the County Court of Tazewell County Illimois in the words and figure, following throit,

"Me John Robert and
"Al held and finnly bound unto the "Jonica V Cetersting Rail Road Company in "How fenal Muse of On hundred and fifty "dolland for the payment of which well med "Tomby to be made and performed we bind "onnelow our hoirs executors and administration frations fintly Severally and finally by these presents Mithies our hands and "Nals this, 3"day of We center 1858

"The Conditions if the above obligations is such that whereas the above " Kail Road Company did on the 20th day of October 1838 apply to This Monger a Justice of the Peace to assess the damages done or to be done to the land of said John Roberts by reason of the location and Erection of Mail " Rail Rock our the land of Said John Roberts, and whereas said appraising " So Summoned by said fustice bring "The Town Thomas Britetto & June "O Bell, did on the 28th day of Oclobus "1858 afices et damages by reason of The Exections and locations of said Wind Hoad over said land of Said John "Roberts The Westifn of the North Westifu of Section 15, Jour 25 North Kange 3. Mich If the third principal Mentione at Me Tillar and which owil apessment was returned to said frelies on the 23° day of November 1858 and judgment " Ment Nobert Robert agent for John "Robuts takes an appeal to the County) "Comot of Jazewell County Illmois Now if the said Robert Roberts

Pago 3 " agent for John Roberts shall prospente I his suit to the effects and pay whatever Thine or disposal of Said appeal their " this Boul to be void otherwise to unsin in full force Then Robert by his agent Robert Robert France (6 Williamstone France) The 30 Doc. 1858 And your afterward house, on the Day of issued in the word and figure foll owing ; lowit, Tagenellowing of Allining to the Sherift of dail Count meting "Tou ica & Petestrug Rail Road Company "if he shall be found in your county " personally to be and appear buf on the Comely Combofsail County on the "first day of the need been thereof to The held at the Can't House in Perry "I famous med to produced his

Jage 4 " lately appealed from before Clias "Manger And have you thew and there "This with with endondement thereon "Executed the Dame Mithul John Judy clarkofoun Dand Court and the Sear through at the Cit, of Pethin this 4th day of December at 1858 Johnsidle duk Count Court per Exthere, Wepty. which said summer, was filed on the 11th der of James ab 183 gdul severed on John L. Marks and position Sawyin Denceton of said Company rette Both dar of etwanter a Superdidus, issued in Said Cauxe inthe wood and figure following, tower "Tate of Illiwing the Verbland to Elia Newson"

Lagurellount of Minors to Elia Newson

a gration of the Verbrand

said County Neeting There a to Source Vilesburg Rail Road on pay did apply to you to appoint appraise,

Jage 8 "land of John Robert to the Socalety of Dail Rail Rail our the land of Ama Robert And Where's Paid Counties iown have returned to you that the have a sessed upon said land "von which said Rail Road is located The sume of One dollar from which said okessment du dokeal has been father to the County Court of said Sagwellle runt and office of the Club of said Court Dheefa We Command you the Rail quelies of the Peaco to Peacoul all frither Derceedings on Daid Indoment and close from further newlesting the Daid John Robert on occasion thrust "with the fresther order of said Quete We said County this 3th day of Local milly Club Which said Inperseder was filed on the 11th dog of January alo 1839 deel served

and now afternaced Nowit, on the 4th day of Whomber at 1838. as Transcript was filed in the words and figures following townit, State of Illinois To funer of Pece Mywell Country 3 or to any other Citizen of the State mus County aforesaid Upon the application of It Mars Wieder of the J. P. N. Il. Co you are knedy thicolor to Semmon MADisano Sho Wirketto V James ! Bell to affect finition to be for the the modersigned an weling Justice Covery there and the to hisworn as approving and afreeson of daninge dove or to be down to the land of John Hours by water of the Erection of the dowiere and detastrong Stail Hours on baid land and that they proceed to make you are not to ouit and have you those and the the Surrency Grown berny hand and halthy 2010 day 11 Oct 1888

Page 6 And now aflewards towits; at a leur of the Circuit Court begun and held at the Count House ine the City of belling withing and for the Country of Tagavell and State of Illium on the first Mondayin the month of Seburary in the year of on Ind On dons much eighte hundale and fifty mine. Present the Hon Jam, Hassiotte, Julgs Hugh Dullutors Jowse culing allowey Thomas C. Ween theiff and Jorceeling when had it wite? Thursday Thereany 17 1839 The Tonica & betweening the Tonica of the Company 3 appears
"I The Wohrt 3 appears
"I The Wohrt 3 appets
"I This Wahrt 3 appets Olhis Day cam the partie leg this allo my whowfor Com a frony of twelow good and lawful men; lowid; & Lingaln Mood D.J. Thompsong Venis Frankilian More Sammo Thes John Clayton Joseph Kingo Jlabaily 16' W. Galliard S. H. Case Fry "Sanetto duly eleded hied and divon

Page 7" who having regulate allegations and for flomsel that for Verdicto My Me the Juny find for the Mefullant in the sense of My thousand Wollan he to build his own fence Therenfrom the Papisolog go As Entered their motion for a new trial which the Court over meled It is therefore ordered und adjulyed by the Court that the Defendant have and never of Said defaintiff the some found as aforesaid and the Costoned Charge ley him about his defence " Repended and that Texentions issue therefor Whereupon the Phintiples prayed an appeal and its is ordered by the bound that they file their appeal Bout ine 30 days with John SiMarsh as Decrity in In the some of fito of Bill its " Tweephons to be signed in vacation And now afterwards howile on the 24the day of February 1839 a Bill of Exceptions was filed no the words and friguen following

Page 8 1 State of Illinois Sagewell County of Circuit Courts Courts Sulfamony tong across "Jouica & Peterburg R.R.Co."
"Jouica & Peterburg R.R.Co."
"John Roberts 3 The it remembered, " that on the hial of this cause, the hideuce on the behalf of the appelant, Roberts was as follows; Wavid Stoan was firsto Swone, and lestified that he Kuled appelants land our which the Facien Velesbury Wail Word runghal bern along the line of the Mad through the Said land; that said farmions " Silicated in Vagewell County, Illinois, Il miles from Vanias, 14 miles from 'Vekin, about y mile from Mashington, "That Vering was the Market atowhich Wohnts and his neighbor, wonally sold Meir fanne produce; that ato Washing "Tou there was a Mepoto of the Minia, Y Oquan ka Knil Knul; thatif the Tonica Willesting Wail Would was Constructed, and a he pot bouted on the same withing a shorter distance of Notut fame than the hefertate brasingtine or veria titues believel

Juge I that it appelant and his Mighton " would still prefer to Sell their farm " perduce ato Venia, because veria, would be a suich better Market for there than a May Stating alongthe Verixo Tourica and Veterstung Mail Koad, eun taking into Consideration the disubrantage of handing a qualer distance to get their produce to ninke. Mithelp further Miled that he him almo I mile from Nohist, that he had " Wesided there for the last 12 years; Mal Withert famo was worthe "about \$40 dollars per a co; thato in the " opinion of without the damage to "by reason of Sovien & Vetersbury Hail " Roud running a crop his land ine " Manner us beto forthe in the following "Olate which said plato is admitted to " be consob by the parties to the Suito? Plan and Anglie of J. A. A. A. A. A. Over the Verent of Jahr Redonts

Jage 10 rand Mithely Stated further, that, in estimating this damage, he troto into considerations the Manner is which the Road run through the famy but up and divided the lund the costor of hilding the fences and Municiping the Same along the like of the Wail Would The quantity of land taken by the Wail Would the inconvenience to Noberts in Cultivaling a fame ente up side the parcels that is his by the Road, and in bring "obliged to crop the Word way day in allending his fanne; but withely Mater he til not indule ity the damages the incommence Notato would labor under of the Hail Hoad Company should refuse to allow him to pute up Caute Guards, and thus he be compelled to use gates, Inpuch Case the damages to Wiberts would be "wicreased, how weech Witness did not Slato: Mitness further Stated that the Jam of world be wented Forty dollars and one without reference Ho any effecto the locating on con-Chieling of The Tonica & Peterstone Rais "Word would have on the price of the Dame, "and if it more had throw and spould more

Jag 11, The Miles was there outs warried, "and testified that appelants fame, the one sing questions was setuated 2 miles from the town of Mortous; thato the Kail Road runs over the highester and biste pail of sail land; that there is a Alongh muning along the West side of the line of the Mail Road some little distance from "the same, don't think the Construction of the Truca & Vetusting Mail our the "land of the appelante in the Manner my which the Dame must would enhance the value of the same; bilieves that appelant has sufficient Rail Wand facilities by living withing "Il mile of Ferrice and y of Mushington, "that ite would be no advantage "to Tring to have a Rail Word Depot " nearer his farme thang linia or "Washingtong; Dout think that Mail "Moads advance the value of "lands through which they pass. The Costmating the damage to What My reason of the construction of the Voucea & Velesbury Unil Word thrugh whisferme, Withelp stated that he " did not hatto into consideratione

Jage IV the bruefits suit Wood would conferon Roberto, because my his opinione, no freefits accused Janual Montery, unther withers for suid appelant was know, and testified that he hird about 5 miles from Notherto, the Appelant, had lived in that (White) wightohood about 26 years; that he was well acquainted ing that Section of Country. that he had been over the fame of "Appelante Since the Touce a and Velesbry Rail Hoad had been this out through the dame, and had been "Exile so our the live of the said "Moad, that the Mind, as marked out on the Plate Shown first Withely, was Concetty platted, that we his latinutino the land of Notato was worther \$35per acre, Thato the damage totappelant by reasons of the constructions of the Touien & Velesbrigho Hart Madacrofo "his land would habout fgot that "he arrived ate this istimule by taking into consideration the quantity of land taken by smil Mail Word, the had shape ing which Nobest famy was out up by it The Cost of building and Millianing

Jago 18 the fence along the line of the Would through appelants farmound the general incommicae and Thouble in bring obliged to Cropa "Hail "Wood hack Trongday nic "allending to necepary fame work. Witnes further stated that in his lite. "make of damage to appelant he did not include the damage that would accome in case the While Road Com pany should refuse to lets appelants Could Calte grands along the line of the "Word through his famo, and this "Compet him to make ut of later in " such case, in the opinion of while " the damage to appelant would be "increased; Mitnes did not Olato how Much; that in Istimating the Walnu of Athet Jamp Mitrufohus Malet what he thought ito would be worther without reference to the bocating axx constructing of the Touica & Welessbury Rail Moule, and the farme of Mobrets was all fenced and ins "Cultivating On Crop Committee Witness lestified what held not think " the Coustmetion of the Milas & Pelesbury Rail Road throughothe

yours of appelants would in my may Enhance the value of Said formis, that "Wobents lind was enough to a Mail thank Depot ato present, and having another Seport established Mithing 1 or 2 miles of his fame would not touefito himonny; that the Reason that he placed the dannage to high as he had done, was that the Roul run diagonally things the fame of appelant; that it runufun the highesto and test grounds, and cutoup the Jampine a bail shape, that he did note take into consideration, in Colimning the damage of Appelant, my limits accoming by penson of the building of the Monde, for in the opinion of Mines. no huefits Could or did accure to lithes either by the locations or ansmichione of the Jouien & Petersting Mail Would thungs his fame I John Tommer, another Withef for Daid appellanto, restified that "he Knew the land of Notests mer which the Joniew & Setersburg Mail Atal passes; fasten along the line of through Westernts the Correctly reforesents the marion ing which said Road remo through & Koberto forme, all of Koberts land is enclosed

15 "Estimates Notato damages, by reason of " the constructing thingh his farm The Tonica & Petersburg Rail Road to be from \$800 to \$900. Two this astimate includes the costs to Robert of building and mainlaining the fences and battle "grands along the how of the Rail "Moule throughe his famo, but Witness States that he does not include, in this estimate of damages the lop of line and inconvincues to Noberts in Case, the Kail Koad Company should refuse to let him erech calle grands along the line of Boal through his fame, and thus oblige line to make is of Gates in passing from one part of his fame to the other across the Rail Road Frack The such case Mithele states the damage by hime before stated would in his opinion , be increased, howmuch he did not state, On cross adameiralismo Photosofo this Withelp testified that he did not Think the Constructions of the Donies, " & Petersburg Rail Koad throngs Roberts "land would enhance its value; that "he lived about 4 or 5 miles from the "land of appelant; that in Estimating

" the damages accining to Mobints by " reason of the construction of the Jouica, "I Petersburg Rail Road across his form he estimated the fearer to aosto fil in per Hod Toling Osevales another of appelants Withufee, testified that he Ruew the farme of Botests through which the Jouice & Vetersburg Mail Wood passes; that the Plate shown him correctly "represent the manner in which the Koad runs hurego Roberts farm; " thato the land no question is worth about 1/35 per acre; and that he estimated " the damages to Roberts by reason of the Constructions of the Conica, of elessing Mail Noad Impany over his land in the manner represented in the Plate, to ho ato least Agoo; that in this estimate hedid not include the damage to Robert in Case the Wail Road Com-"pany should refuse to let him ach Casto grands along the him of the hodd through his farm, and Compel him to make use of States in Croping from one part of his farme to the other. Die such case the damager would be in creased, how much he did not State. Witness Status that he would

" not give as much for the farm by 1 fgoo + with the Wrad, as he would without it; That the value by him placed upon the land of Mohntwood the value of the land without latting into considerations the Coustmetion of the Sociece Webersburg Kail Koal Through the fung of Robert Mines testified that he did not think the constructions of the Source Velenting Kail Road through the fame of Motherts would binefite Roberts or enhance the value of his fame The appelees thew introduced William D. Tram, who lestified that hewas one of the three Commissioner Choden und dele der by the Torrica or Vetersburg Kail Road Company to view to land of appelante over which the line of said road muse, and to apas the dannages for condemningthe Tight of may over the said land; that he in Company with Bell, another of the Commissioner, selected by Sail Rail Road Company, vourely I the land along the live of Word through Roberts faring, and that in his estimations

the Benefito to Roberts, by reason of the Constructions of Dail Kail Koad were equal to the damage; and that the The Commissioner, Delected by the Said Company assessed the same ato the Lollow, that he is still of the Dance opinion; that the reason why the some of the dollar mas assessed as damage to Koberto, was that the Commissioner thought by law they were compelled to name Some nominal damages to owner, of land over which the live of Kail Koad run. The Witness was their cross becaused, and testified that he resided at Welevan, about six trees miles from the land of Roberts that he has lived at his presents residence 4 or 5 years, thato in his estimation of Durnages of Monneyes he did not Take into condideration the building and marilaring of the fences along The line of the Krail but made the estimate in view of the Mail Mous Company bring obliged by law to build and manitain The pane ato their own lespende, Wirkello, another of appelles Mithely " testified that he was one of the Commissionen selected by the Truice & Vitersburg Hail Had Company to " view the land of Robert and

aerofo the same for the Moud; that he had " been along the line of said Road through " the fames of Moberto, but not in Company " with the other Commispioner, that he thous " estimated the bruefits to Moberto in Constactting the line of Road over his land Equal to the duringes, and was still of the same opinions. Witness wasthern crofo evaninel, and testified that he " resided at Mashington, in Vaguerell County; that in lestimating the damage " to Robert, he did not take into Cousible eration the building and Maintaining of the fences along the hire of the Mail Houd though the fame of Motorts buto by law to build and maintains the same, at their own le pense. Witness Mater that he never went over the hire of the Hould thimph the fame if Mobile but "once and their not in Company with "The other commissioner, buto with me, Javy En a Director in the Wail 1 Hoad Company Well, another of appelees' Witheh was from and testifice Shat he was one of the Commissioner, Selection by the Comica & Petersburg Rail Madlimpany 20 " to view the land of Moberto and Condeum the right of way acrof the same " for said Mail Moad; that he had been along the line of said Model " therough the fames of Motorts in "Company with Evans who was mother If the Commissioner; that he had their estimated the dannings and Tonefile to Noberto by reason of the Con Muching of said Road acrof his farme as Equal and still was of the Jame opinione The Millely was there crop Evanined and lestified that he resided in Washington, lagewell bounty; that in estimating the I damages and brue fits to Roberts by reasons of the Constructions of the Jonica, and Clasbring Mail Rad acrof his fame. he, the witness, had not tatten "into Considerations the repense of buildring and maintaining the fence "by Moberto along the him of said " Noach through his fame, but he had I believed that the Wail Wood Company y bound to Keefo upo and maintain the I Paid fences ato their own expense, I This was all the evidence sies this " Cause on the part of wither party)

The appelant then requested the Court to give the Jung the following instructions? The Court instructo the young that after the assistments and of layments of the damages to Motorto Thy the Rail Road Company by way of Dumages in the Condemnations If land takens for the purpose of the Mond, the IN IC, will not be bound to make the fence on either side of the fload or to make battle quands for them to crop the Moad, nor wire Waterto have a right, without the Consents of the The Road Company, to make batte grands a conf the Daid Hoad. If they believe from the evilence, that Woberts land was already fenced and ren closed, how the Company are "For bound to fence their road where it "Terns through this land" And the appelees objected " to the giving thereof, and each of "there, by their Connel; which "Objection was overruled by the 1 Court, and the instructions " June to the gray. To the overruling " of which objection, and the giving

22 10 the said instructions to the Juny, the appeller, by their Counsel, there and there weefted. The Juny returned into Court with the following verdicto:

"We the Juny find for appellants, and fix the danney at one Thomand dollar, and the Planitiff build his own fence" And thereupon the appeller by their counted, moved the Court to beto aside the Verdicts of the Jung To rendend as afresaids, and to grant a new hiab in Pail Cause, and apigned, as reasons for the Dail molions, that the "dail veriliet of the Daid Jone to under as aforesaids was contrary Walan and contrary to the evidence, which Instive was overruled by the Onet, and fielgments rendered on paid "veile cot to which overruling and "Judgmento the appelled, by their "Connsel there and their specifiled, " and now formy that this their Bill I free plions to signed and tealer Ily the Conve; which is done

And now aflewards tomile; on the The day of March appeals Boul was filed in the words I State of Minois
"Tagewell County of Minor all men by
these presents that the
Vourier & Petersony Rail Mond Company as frincipal and John & March of the Coming of Jagewill and State of Ellivis " are held and finily bound muto John Roberto of the Dance County and State in the penal sure of fifteen hundred dollar, good and lawful money of the United States the payments of which well and bruly to be made We bind "ourselves our hein upe culon, administratory firstly by these presents digned with the hand and private fral of laid pho Willand and Sealed with the formats "Conformate that of Daid Conforming The Condition of the above " obligation is onch that where is " at the February terms of Cagwell "County Circuit Court furthe John Cho 1884 and on the Mithoday of Said manto of February this

24 "Said John Hoberts recoveredas pollymento against the Jonies 1. A Milesburg Hair Wood Confung for the frances The Thomsand Vollarian Costo of Britg at a suit in Paid Court pending and Whereas the said Tariew and "Heiseny Rail Road Confaux has project ce appeal from "The sunt gedgement of the siew" Court of the State of Illinois, and the "has been granted by Jail Circuit Counts, Conditioned that the said Touises "and Pelesting Rail Road Company " file their bond in the onno of fifteen hundred dollar with John & March as mely within thirty days from the resulting of the Judgment aforesaid. Now if the said Toured, and Vitersburg Rail Road Company "Their Duit withent delay loffeet and abile the Judgment of said Defrewa Conto and pay all costs adjutice against said Ampaio

" by said Supreme Conno sin said , Supreme Combonio said finit " there this obligations to be word otherinse to ilmain in full nce and virtue in the law The Janier Vilterstring Rail Koad Q Richard Sate, President Ja Berdan Secretary a

State of Illinois & S. Merrill Comy Clark 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 Harred, as the Dame appears of Record in my office.

Is thitref whereof I have herenuto

Let my hand and affixed

the leal of laid Court at

Pekin this 9 th day of April

Ad 1859

Menic & Grung Clark I Upreme Court April Som 1859 And now Comes the appellant and Days that in the second sproudings afourand I in the giving of the godgment apourant thew is manifest Enor to its dange Aud assigns for Enior Fish That the Court below Ened in giving the histrictions asked by Hoberts Swendly The Court End in not granting a new trial For which reasons and for

other errors appearing in the record sproeutrys aforsaid the Said appellacet prays That the Judgment afousaid may be reversed annelled & allogether keld for nothing A. Davison for appt. I And now Comes the Said Appelle and Days that in the more and proce edings ofoutoid their is no Error, and thenfor parys that said Judgment may be official. Pretryman of Notents for Offpellies John Holling.

John Mobile States

Lead & Chapter or Chapter or Chapter or States or S De Myrum Broken