

No. 12848

# Supreme Court of Illinois

Johnson.

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vs.

Joliet & Chicago R. R. Co.

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James A Johnson

vs

The Joliet & Chicago  
Rail Road Company

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359  
Prepared



1 page

State of Illinois )  
Cook County . . . }

Shews before the Honorable John M. Wilson, Judge of the Cook County Court of Common Pleas within and for the County and State aforesaid, at a Special Term of said Cook County Court of Common Pleas begun and held at the Court House in the City of Chicago on the fifth Monday being the twenty ninth day of November, in the year of our Lord one thousand eight hundred and fifty eight due notice of the time and place of holding said term of Court having been printed and published in the "Daily Democrat" the Corporation Newspaper of the City of Chicago, said notice having been printed and published twenty days previous to the holding of said Court, in accordance with the Statute in such case made and provided, and in pursuance of an order made by the Judge of said Court on the Sixth day of November in the year of our Lord one thousand eight hundred and fifty eight.

Present

Hon: John M. Wilson . . . Judge  
Carlos Haven . . . Prosecuting Attorney  
John Gray . . . Sheriff Cook County.

Attest

Walter Kimball, Clerk.



Be it remembered that heretofore to wit on the fifteenth day of June A. D. Eighteen hundred and fifty eight there was issued out of the Office of the Clerk of said Court, under the seal thereof, Process Writ of Summons: Which said Summons with Sheriffs return thereon endorsed is in the words and figures following, to wit,



3.

And thereafter also on the said fifteenth day of June A. D. Eighteen hundred and fifty eight the said Plaintiff by his Attorneys, filed in the Office of the Clerk of said Court his Declaration in said Suit, Which said Declaration is in the words and figures following, to wit:

"State of Illinois, Cook County, Court of Common Pleas  
Cook County, vs July Term 1858.

James A. Johnson . . . }  
vs } Trespass.

The Great & Chicago R.R. Company }

James A. Johnson, Plaintiff complains of 'The Great and Chicago R. R. Company' Defendant who have been summoned &c of a Plea of Trespass For this that the said Defendant on the 1<sup>st</sup> day of March 1855 and on divers other days and times at the said County of Cook with force and arms, broke and entered a certain close, of the Plaintiff situated and being in the said County of Cook and described as follows, to wit, Lot Number six (6) in the Subdivision of the Trustees of the Trustees of the "Illinois and Michigan Canal" of the East half of Section Thirty one (31) Township Thirty nine (39) North range fourteen (14) When and there Ejected, Expelled, put out and removed the Plaintiff from the possession use and occupation of said lot of land and premises & kept him so Expelled and Ejected for a long space of time to wit from thence hitherto, and also then and there with and by itself & with & by its agents, servants, officers,



4.

labourers and employees, dug up and ploughed large ditches, trenches & sloughs through said lot of land, and threw up and erected thereon large mounds of earth and causeways and piled up and deposited thereon & over large quantities of stone, iron, earth, wood and timber and then and there erected laid down and built a rail road through & on the said lot of land and run and caused to be run thereon & across the said lot of land divers and sundry railroad cars & locomotives on divers and sundry times, to wit, daily and hourly trains of cars & locomotives from thence hitherto and from thence hitherto back and doth continue to keep and maintain the said railroad earth stones, lumber & iron & the said ditches, trenches, & causeways on through and across the said lot of land whereby and by reason of the premises the plaintiff saith that he hath been wholly deprived of the use and enjoyment of the said lot of land and that the same hath been by reason of said trespasses rendered wholly useless and valueless to him.

And other wrongs to the said Plaintiff then and there did to the damage of the Plaintiff \$10,000 and therefore he sues.

Morris, McComas & Blackburn  
for Plffs."

And thereafter to wit on the fourteenth day of July A.D. Eighteen hundred and fifty eight, the said Defendant by its Attorney filed in the Office of the Clerk



5.

of said Court his Plea to said Declaration, Which said  
Plea is in the words and figures following, to wit,

"James A. Johnson . . .

(vs)

The Joint Chicago R. R. Co

Withdrawn.

The said Defendant by Beckwith,  
Merrick Hapin its attorneys Comes and defends the wrong  
and injury when &c and says that it is not guilty of the  
said supposed trespasses above laid to its charge or any  
or either of them in manner and form as the said  
Plaintiff hath above thereof complained against it, and  
of this it puts itself upon the Country &c

Beckwith, Merrick Hapin

Attys for Deft."

' And the Plaintiff doth the like

Mc Comas & Blackburn,

for Plffs."

And afterwards to wit on the seventeenth day of  
December (being one of the days of the November Special  
term of said Court) in the year of our Lord one thousand  
Eight hundred and fifty eight, the following proceedings  
were had in said Cause and Entered of record  
in said Court, to wit,



James A. Johnson

(22)

The Ioliet and Chicago Trestle.  
Railroad Company . . )

This day comes the said Plaintiff  
by Morris, McConna & Blackburn his Attorneys and  
the said Defendant by Beckwith, Merriek & Chapin their  
Attorneys also come and on their Motion leave is given  
said Defendant to file Special Pleas herein, which is  
accordingly done and leave thereupon given them to  
withdraw plea of general issue and first Special Plea  
which is also done and Counsel being heard on the  
Demurrer of said Plaintiff to the §



7.

And thereupon on the said seventeenth day of December A.D. Eighteen hundred and fifty eight the said Defendant accordingly filed in the Office of the Clerk of said Court, additional pleas to said Declaration which said Pleas are in the words and figures following to wit.

" James A. Johnson

vs

Idist & Chicago Rail  
road Co., . . . . .

Cook County Court of  
Common Pleas.

Additional Pleas

Plea.

Withdrawn

1st And for a further Plea in this behalf, the said Defendant says that as to the breaking and entering said piece or parcel of land in said declaration described and ejecting said Plaintiff therefrom and then and there with and by itself, and with and by its agents servants officers, labourers, employees, digging up and ploughing large ditches, trenches and ploughs through said lot of land and throwing up and erecting thereon large mounds of Earth and caseway and filling up and depositing thereon and over, large quantities of Stone, iron, Earth wood and timber and then and there erecting laying down and building a railroad through and on the said lot of land and running and causing to be run thereon and across the said lot of land divers and sundry rail road cars and locomotive or engines and sundry times to wit, daily and hourly trains of cars, the said



Defendant by leave of the Court says that said Plaintiff  
ought not to have and maintain his aforesaid action there-  
against it because it says That before and at the several  
times when it was and still is a Corporation under  
and by virtue of an Act of the Legislature of the State  
of Illinois approved February 15: 1855 Entitled "An  
Act to construct a railroad from Joliet to Chicago  
Whereby said Defendant was authorized and empowered to  
locate, make, construct, and finally complete and operate  
a railroad from the Depot of the Chicago & Mississippi  
Railroad Company at the City of Joliet in Will County to  
the City of Chicago in Cook County and for this purpose  
the said Company are authorized upon the most eligible  
and proper route, and as above directed to lay out their  
said Railroad, wide enough for a single or double track  
through the whole length and for the purpose of cuttings,  
embankments, stone and gravel, may take as much land  
as may be necessary for the proper construction of and  
security of said Railroad. And this Defendant says  
that by Section 3<sup>rd</sup> of said Act it is further provided  
That it shall be lawful for said Company to enter upon  
and take possession of and use all such lands and real  
estate as may be necessary for the construction of and  
maintenance of the said railroad Provided that all lands  
or Real Estate entered upon and taken possession of and  
used by said Corporation for the purposes and  
accommodation of said Railroad, or upon which the site  
for said Railroad shall have been located and determined

W. H. Brown



by the said Corporation shall be paid for by the said Company in Damages, if any be sustained by the owner or owners thereof by the use of the same for the purposes of said Railroad, and all lands taken and entered upon for the use of said Corporation which are not donated to said Company shall be paid for by said Corporation at such prices as may be mutually agreed upon by said Corporation and the owner or owners of such land, and in case of disagreement, the price shall be estimated fairly and recovered in the manner provided for taking lands for the construction of Public roads, Canals, or other public works as prescribed by the Act concerning right of way. Approved March 3<sup>d</sup> 1845.

Withdrew

And this Defendant says that it organized under said Act and entered upon the construction of said road and that it broke and entered the close &c for the purpose of causing such examinations & surveys to be made as might be necessary to ascertain & determine the most advantageous right & for the proper line course and way, whereon to construct its said railroad, and for the purpose of taking possession of and using so much of the said close or piece or parcel of land as might be necessary for the construction maintenance & security of its said Railroad & the accommodations requisite and appertaining thereto & did then and there take possession of and use so much of the said piece or parcel of Land and of the earth and soil thereof as was indispensable for the purpose aforesaid and did



Wilkeson

then and there proceed to construct its said road and lay the track thereof across and upon the said piece or parcel of land as it lawfully might, which are the said several supposed trespasses in the introductory part of this Plea mentioned and whereof the said Plaintiff hath above thereof complained against the said Defendant, And this said Defendant is ready to verify Therefore it prays judgment if the said Plaintiff ought to have or maintain his aforesaid action against it.

2<sup>nd</sup> Special Plea. And The said Defendant by Beckwith, Morrick and Cassin its Attorney comes and defends the force and injury, when &c and says that as to the breaking and entering said piece or parcel of land in said Declaration described and ejecting said Plaintiff therefrom and then and there with and by its self and with and by its Agents, Servants, Officers, labourers, Employees, digging up and ploughing large ditches, trenches & troughs through said lot of land & throwing up and erecting thereon large mounds of Earth and causeway and piling up and depositing thereon and over large Quantities of Stone, iron Earth, wood and timber and then and there erecting laying down and building a Railroad through and on the said lot of land and running and causing to be run thereon and across the said lot of land driers and sundry railroad cars and Locomotives on driers and sundry, kins to wit, daily and hourly trains of cars, the said Defendant by leave of the Court says that said Plaintiff ought not to have and maintain its aforesaid action thereby



9.

against it because it says that before and at the several times when it was and still is a Corporation under and by virtue of an Act of the Legislature of the State of Illinois, approved February 15: 1855, Entitled An Act to Construct a Railroad from Joliet to Chicago, whereby said Defendant was authorized and empowered to locate, make, construct and finally complete and operate a Railroad from the Depot of the Chicago & Mississippi Railroad Company at the City of Joliet in Will County to the City of Chicago in Cook County And for this purpose the said Company are authorized upon the most Eligible and proper route and as above directed, to lay out their said Railroad wide enough for a single or double track, through the whole length and for the purpose of Cuttings Embankments, stone and gravel may take as much land as may be necessary for the proper Construction of and Security of said Railroad.

And the Defendant says that by Section 3<sup>rd</sup> of said act it is further provided that it shall be lawful for said Company to enter upon and take possession of and use all such lands and Real Estate as may be necessary for the Construction of, and maintenance of their said Railroad. Provided that all lands or Real Estate entered upon and taken possession of and used by said Corporation for the purposes and accommodation of said Railroad or upon which the site for said Railroad shall have been located and determined by the said Corporation shall be paid for by the said Company as damages, if any be sustained, by the owner or owners thereof by the use of the same



for the purposes of said Railroad, and all lands taken and entered upon for the use of said Corporation, which are not donated to said Company, shall be paid for by said Corporation, at such prices as may be mutually agreed upon by said Corporation and the owner or owners of such land, and in case of disagreement the price shall be estimated fixed and recovered in the manner provided for taking lands for the construction of public roads, canals, or other public works as prescribed by the acts concerning right of way approved March 3<sup>rd</sup> 1845.

And the Defendant says that by Section 12 of said Act it is further provided as follows,

That when the lands of any free Court, person under age, non compos mentis, or out this State, shall be taken in the construction of this <sup>new</sup> railroad as is provided by this act, the said Corporation shall pay the amount that shall be awarded as due to the said last mentioned owners respectively, whenever the same shall be lawfully demanded together with six per cent per annum; that to ascertain the amount to be paid to the person named in this Section, for lands taken for the use of said Corporation, it shall be the duty of the Governor of the State, upon notice given to him by the said Corporation, to appoint three Commissioners, to be persons not interested in the matter, to be determined by them, to determine the damages which the owner or owners of the land or Real Estate so entered upon by said Corporation, has or have sustained by the occupation of the same, and it shall be the duty of the said Commissioners, or a Majority of them to deliver



to said Corporation a written statement of the award or awards they shall make with a description of the land or Real Estate appraised, to be recorded by the said Corporation in the Clerk's Office of the County in which the land or Real Estate so appraised shall lie, and then the said Corporation shall be deemed to be seized and possessed of the fee simple of all such lands or real Estate as shall have been appraised by the said Commissioners.

And this Defendant further says that said Plaintiff was at the said several times of committing the said supposed Trespasses not a resident of this State, and that this Defendant having organized under said act of the Legislature entered upon the construction of the said road, and by a Petition to the Governor of this State obtained the appointment of three disinterested persons to wit on the 6<sup>th</sup> day of November A.D. 1857, to condemn the said piece or parcel of Land of the said Plaintiff in his said Declaration described to determine the damages thereof to the said Plaintiff, and the said Defendant says that said Commissioners to wit, Charles D. Farwell, Alexander Wallcott, & Eli S. Prescott, did to wit on the 11<sup>th</sup> day of November A.D. 1857 under and by virtue of said appointment proceed to condemn the same and assess the damages therefor at the sum of One dollar said piece or parcel of land or part thereof, to wit, Sixty feet in width that is thirty feet on each side of the Centre line of said Railroad as located and Established, assess said lot &c, and assess the damages of said Plaintiff therefor and did condemn the same and assess the damages therefor at the sum of One



dollar, which said sum this Defendant was at the date of said agreement to wit that time has been ready willing and able to pay to said Plaintiff when the same should be demanded, and which said sum with interest thereon to wit the sum of Two dollars said Defendant now brings here into Court and deposits the same for said Plaintiff.

And this defendant further says that said appraisers or Commissioners having delivered a Copy of their award in the premises to said Defendant with a description of the land appraised the said Defendant caused the same to be recorded in the Clerks Office of Cook County, where said piece or parcel of land is situated to wit on the 29<sup>th</sup> day of June 1858.

And this Defendant says that it broke and entered the said Close &c. for the purpose of causing such ~~to~~ Examinations & surveys to be made as might be necessary to ascertain and determine the most advantageous route &c. for the proper line course and way wherein to construct its said Railroad & for the purpose of taking possession of & using so much of the said close or piece and parcel of land as might be necessary for the construction maintenance and security of its said Railroad & the accommodations requisite and appertaining thereto and did then and there take possession of two so much of the said piece or parcel of land and of the earth and soil thereof as was indispensable for the purpose aforesaid to wit sixty feet in width that is thirty feet on each side of the center line of said Railroad as located and established across said block



Said and did then and there proceed to construct its said road and lay the track thereof across and upon said piece or parcel of land and from thence hitherto hath continued to keep & maintain its said Railroad thereon & to run and cause to be run over the same at divers and sundry times its engines and trains of Cars <sup>as is lawfully might</sup> which are the said several supposed trespasses in the introductory part of this plea alleged and mentioned and whereof the said Plaintiff hath above thereof complained against the said Defendant And this said Defendant is ready to verify Wherefore it prays judgment if the said Plaintiff ought to have or maintain its aforesaid action against it.

Beckwith, Merrick & Caplin  
Attys for Deft."

And thereafter to wit on the said seventeenth day of December A. D. Eighteen hundred and fifty eight said Plaintiff filed in the Office of the Clerk of said Court his Demurrer to said <sup>said and</sup> Third Plea which said Demurrer is in the words and figures following to wit.

"James A. Johnson	}	Com: Pleas Court Trespass
(as)		
The Great Chicago		
Railroad Co. . . . .		

And the said Plaintiffs for demurrer to the Third Plea of said Defendant says precludi non because he says that the <sup>said and</sup> said Third Plea of the said



Defendant and the matters therein <sup>severally</sup> contained in manner  
 and form by it above pleaded, is not sufficient in the law  
 to bar or preclude the said Plaintiff from having and  
 maintaining his said action against the said defendants  
 and that he is not bound by law to answer the same  
 and therefore he prays judgment to for his damages &c.  
 by Morris, McComas & Co  
 his Atty."

And afterwards upon the said seventeenth day of  
 December A.D. Eighteen hundred and fifty eight (being  
 one of the days of the November Special term of said Court)  
 the following proceedings were had in said cause  
 and entered of record in said Court, to wit:

"James A. Johnson  
 vs  
 The Great Chicago  
 Railroad Company } Trespass.

This day comes the said Plaintiff by  
 Morris, McComas & Blackburn his Attorneys and the  
 said Defendant by Beckwith, Merrick & Chapin his Attorneys  
 also come and on their Motion leave is given said  
 Defendants to file Special Pleas herein, which is accordingly  
 done and leave thereupon given them to withdraw plea  
 of general issue and first Special Plea, which is also  
 done and leave given said Defendants to amend said second Special Plea  
 and counsel being heard on the Demurrer of the  
 said Plaintiff to the second <sup>Special</sup> Plea of the said defendants



to the Plaintiffs declaration in this cause, the Court takes  
the matter under advisement

15.

And hereafter on the twenty second day of December  
(said defendant on leave amended second Plea),  
A. D. eighteen hundred and fifty eight, said Plaintiff filed  
further Demurrer to <sup>amended</sup> Plea of said Defendant, which said  
Demurrer is in the words and figures following, to wit:

"James C. Johnson } Cook County Court of Common  
vs } Pleas. Nov 7, 1858.

The Lakes & Chicago R.R. } Trespass.

And the said Plaintiff as to the Plea  
of the said Defendant by it above pleaded saith that  
the same and the matters and things therein contained  
in manner and form as the same are above pleaded  
and set forth are not sufficient in law to bar or preclude  
him the said Plaintiff from having or maintaining his  
aforesaid action thereof against the said defendant, and that  
the said Plaintiff is not bound by law to answer the  
same & this the said Plaintiff is ready to verify. Wherefore  
he prays judgment and his damages by him sustained  
on occasion of the committing of the said trespasses, to  
be adjudged to him &c

Thomas Blackburn  
for the Plff."

And afterwards on the twenty second day of  
December (being yet of the said November Special Term



of said Court in the year of our Lord one thousand eight hundred and fifty eight, the following, further proceedings were had in said Cause and Entered of record in said Court, to wit:

" James A. Johnson

(12)

The Solist and Chicago }  
Railroad Company . . . } Trespass.

And now as well come the said Plaintiff by Morris McComas & Blackburn their Attorneys as the said Defendant by Beckwith, Merrick & Cassin their Attorneys, and the Court having had under advisement the Demurrer of the said Plaintiff to Defendants second plea herein and after mature deliberation thereupon had and the premises fully understood it appears to the Court that the <sup>second</sup> ~~plea~~ <sup>Special</sup> plea of the said Defendant by it is bar to the said Plaintiffs Declaration herein pleaded is sufficient in law to bar the said Plaintiff from having and maintaining his said action against the said demurrer defendant, the Demurrer is therefore overruled, and the said Plaintiff Electing to stand by his said Demurrer enters his Exceptions herein to the ruling of the Court.

Therefore it is considered said Defendants do have and recover of the said Plaintiff its costs and charges by it about its suit defense in this behalf expended and have Execution therefor.

And thereupon comes the said Plaintiff and



prays an Appeal in this cause to the Supreme Court of the State of Illinois which is allowed to him upon his filing Appeal Bond in the sum of Two hundred dollars with security to be approved by Judge of this Court and that he have ten days time within which to file his said Appeal Bond.

State of Illinois }  
Cook County } b

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for the County and State aforesaid do hereby Certify the foregoing to be a true and correct Transcript of all papers now on file in my Office together with all Orders Entered of record in said Court in a certain Suit therein, wherein James A. Johnson <sup>is Plaintiff</sup> and The Great and Chicago Railroad Company is defendant.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Chicago in said County this seventeenth day of March A. D. 1859.

Walter Kimball Clk



James A. Johnson

vs.

The Solist & Chicago Rail Road Company

} Error to Cook Com: Pleas.

The said James A Johnson assigns for  
Error to his prejudice in the foregoing and  
annexed Record as follows, to wit,

- 1<sup>st</sup> The Court below erred in over ruling the  
plaintiffs demurrer to the second special plea, and  
in giving Judgment thereon for the Defendants.
- 2<sup>d</sup> The said Court erred in its Judgment, over ruling  
the ~~plaintiffs~~ demurrer to the Defendants amended  
plea and in every member branch & part thereof  
wherefore he prays ~~judgment~~ a writ of Error  
and that said Judgment may  
be reversed with costs.

by Motion his atty.

And the said Solist & Chicago Rail Road  
Co. says there is no error in the ruling  
of the Court in the foregoing record.

Beckwith Menick & Cassin  
Atty for Def'ts.



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State of Illinois  
Cook County  
Court of Common Pleas

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James A. Johnson

(vs)

The Lake & Chicago  
R.R. Co. . . . .

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Record

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Filed April 13, 1859  
L. Leland  
Clerk

Trans. . \$5.60  
Cost here 50  
\$6.10



# ILLINOIS SUPREME COURT.

## THIRD DIVISION.

APRIL TERM, A. D. 1859.

JAMES A. JOHNSON,  
vs.  
THE JOLIET & CHICAGO R. R. CO. } Error to Cook Co. Com. Pleas Court.

- RECORD.
- 3 The plaintiff filed his declaration *June* 15, 1858, alleging the defendant on March 1, 1855, and on divers other days and times, etc., with force, etc., broke and entered his close (describing it) and did the injuries stated.
- 5, 14 General issue filed and *withdrawn*.
- 14 First special plea filed and *withdrawn* after demurrer to first and second special pleas.
- 14 Demurrer to both pleas sustained. Leave to amend second plea.
- 15-16 Second demurrer to second special plea overruled. Judgment on demurrer for the defendant.

The assignment of errors are, that the court erred in overruling the demurrer to the second special plea. 1. That said plea is bad and offers no defense to the action. 2. The act authorizing the proceeding which the plea attempts to set up in its defense, is in *conflict* with the *Constitution* of this State, therefore void. 3. It is a land stealing statute, if allowed to stand as a law of this State.

Second plea. Says, as to the breaking, entering the land and ejecting plaintiff therefrom, and then and there itself, agents and servants, dug up and plowed large ditches, branches and sloughs through said lot of land, and throwing up and erecting thereon large mounds of earth and causeways, and filling up and depositing thereon and over it large quantities of stone, iron, earth, wood and timber, then and there erecting, laying down and building a railroad through and on the lot of land, and running and causing to be run thereon and across said lot of land, divers and sundry railroad cars and locomotives on divers and sundry times, to wit, daily and hourly trains of cars. Said defendant, by leave, says *actio non*, because it says, that before and at the several times when, etc., it was and still is a corporation, under and by virtue of its charter, approved 15th February, 1855, entitled, etc., whereby the defendant was authorized and empowered to locate, make, construct, complete and operate a railroad from the depot of the Chicago and Mississippi R. R. Co., at Joliet, in Will county, to Chicago, in Cook county. And for this purpose said company are authorized, upon the most eligible and proper route, and, as above directed, to lay out their said railroad, wide enough for a single or double track, through the whole length, and for the purpose of cuttings, embankments, stone and gravel, may take as much land as may be necessary for the proper construction and security of said railroad.



And it says, that by section 3rd of said act it is provided, (setting it out,) with the manner of locating and acquiring title to lands for its track, and in case of disagreement the *price* to be "fixed and recovered in the *manner* provided for taking lands for the construction of public roads, canals, etc., as prescribed by the acts concerning the right of way, approved March 3, 1845."

And it says, that by section 12 of said act it is further provided as follows: "That when the lands of any *femme covert*, person under age, *non compos mentis*, or out *this State*, shall be taken, in the construction of said railroad, *as is provided by this act*, said corporation shall pay the amount that shall be *awarded as due* to said last mentioned owners, respectively, whenever the same shall be *lawfully demanded*, together with six per cent. interest per annum. That to ascertain the amount to be paid to the persons named in this section, for lands taken for the uses of said corporation, it shall be the duty of the Governor of this State, upon notice given to him by said corporation, to appoint three commissioners, to be persons not *interested in the matter to be determined by them*, to determine the *damages* which the owner or owners of the land shall, so entered upon by said corporation, *has or have* sustained by the occupation of the same, and *it* shall be the duty of the commissioners, or a majority of them, to deliver to said corporation a written statement of the award or awards they shall make, *with a description* of the land appraised, *to be recorded by the corporation*, in the clerk's office of the county in which the land so appraised shall be, and then the said corporation shall be *deemed* to be seized and possessed of the fee simple of all such lands as shall have been appraised by the said commissioners."

And it says, the plaintiff "was at the several times of committing the supposed trespasses *not a resident* of this State, and the defendant having organized under said act of the legislature, entered on the construction of the said road, and by a *petition* to the Governor of this State, obtained the appointment of three disinterested persons, to wit, on 6th Nov. 1847, to condemn the said *piece* or parcel of land of said plaintiff, in his said declaration described, and to determine the damages thereof to the said plaintiff, and the defendant says that the commissioners, to wit, C. B. Farwell, Alexander Wolcott and Eli S. Prescott, did, on 11th Nov. 1857, under and by virtue of said appointment [~~he~~ not averred they were *sworn*] proceed to condemn said piece or parcel of land or part thereof, to wit, sixty feet wide, that is, thirty feet on each side of the centre line of said railroad as located and established, assess said lot six and assess the damages of said plaintiff therefor, and did condemn the same and assess the damages therefor at the sum of one dollar, which sum this defendant was, at the *date of said assessment*, and *since that time has been ready and willing and able* to pay to said plaintiff when the same should be demanded, and which said sum with interest, to wit, two dollars, said defendant now brings here into court and deposits the same for plaintiff.

And it further says, said appraisers having delivered a copy of their award in the premises to said defendant, with a description of the land appraised, the said defendant caused the same to be recorded in the clerk's office of Cook county, where said piece or parcel of land is situated, to wit, on 29th June, 1858. And it says it broke and entered said close, etc., for the purpose of causing such examination and surveys to be made as might be necessary to ascertain and determine the most advantageous route, etc., for the proper line, course and way whereon to construct its railroad, and for the purpose of taking possession of and *using* so much of said close or piece of land as might be necessary for the construction, maintenance and security of its said railroad and the accommodations requisite and appertaining thereto, and did then and there take possession of and use so much of said land, and of the earth and soil thereof, as was indispensable for the purpose aforesaid, to wit, sixty feet in width, that is, thirty feet on each side of the centre line of said railroad, as located and established across said block six, and did then and there proceed to construct its said road and lay the track thereof across and upon said piece of land, and from thence hitherto hath continued to keep and maintain its said railroad thereon, and to run and cause to be run over the same, at divers times, its engines and trains of cars, as it lawfully might; which are the said several supposed trespasses, in the introductory part of this plea alleged, and whereof plaintiff complains against said defendant, and this it is ready to verify, wherefore it prays judgment, etc."



Johnson assigns for error, the overruling his demurrer to the second special plea as amended, and the judgment thereon against him.

1st. Because the plea is insufficient, in not averring *notice* to him of their intended proceeding to condemn the land, so that he might be heard thereon. Laws of 1852, p. 146, sec. 3. Laws 1845.

2nd. In not averring the commissioners were *sworn*. (ib.)

3rd. Their award was not filed in *time*, or in compliance with law.

4th. Neither the report or plea describes the quantity of land taken, or its boundary.

1. The owner must have *notice*. Pierce on R. R. Law, 213. Smith's Com. 427.

When special laws fail to give full directions, must comply with the general statute on the *same subject*.

The owner stands afar off and unprotected; is stripped of his property without his consent, without a hearing, and without *notice*, without the intervention of a jury, and without a fair equivalent for his property. Is this the *sacred, constitutional right* of property? In what does it differ from the mandate of an *Asiatic prince*?

Proceedings must strictly *pursue* the power given, or they are void. 1 Scam. 323; 4 Wheat. 77.

Here the award was not filed till *after suit*; as the pleadings show in the record. Never heard of till just before plea filed.

Private property cannot be taken without *notice* to the owners, whether the law directs it or not. 15 Wend. R. 374; 15 John. R. 537.

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15 Wendell  
374 - Private  
property not to be  
taken without notice  
the form of notice  
can be prescribed by  
the legislature  
to 14 Mass. 222  
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\* Matter of  
Practice vs  
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B. S. MORRIS,

For Plaintiff in Error.



167-69

Mr A. Johnson

Per

Chicago R.R. Co.

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Abstract &

Brief

Dated April 27, 1859

L. Leland

Clerk



Chicago May 10/59

Hon. J. D. Catton

Dr. Sir,

Be so kind as to excuse this note of enquiring, as I feel anxious to <sup>know</sup> the grounds of the affirmance of the judgment in the case of Jas. A. Johnson against the Solist & Chicago Rail Road Co. No. 167. or has not the newspaper erred in saying the Judgment <sup>below</sup> is affirmed?

All the bar here who heard the arguments here (in the Court: Pleas) had no doubt of the law being unconstitutional, also, that they (the Co.) had not complied with statute in filing the record or affidavit, for months after it was made by which it was void. Johnson's agent was living here & had notified the Co. if they located the track over Johnson's land to give him one days notice & he would attend with proof to show his damages before the Court, and they gave him no notice whatever, either in express or implied.

In the case of Barney McKinny the owner of a 5 acre block (this being 10) in which



the value is the same <sup>per acre</sup> - the Blocks  
being not far apart - the Justice of  
the peace appointed the Comr. who appraised  
Barney's damages at \$2,000. and  
Barney appealed to the Circuit Court  
and this Co. compromised by paying  
him \$3,100.00 in cash <sup>for his damages</sup>. In this case  
the <sup>R.R.</sup> track runs squin through Barney's  
block (unimproved) while the <sup>R.R.</sup> track  
trikes Johnson's block near one corner  
splitting the block into two triangle  
parts, utterly destroying the value  
of the whole block estimated to be  
worth \$3,000 per acre, taking nearly  
an acre. A greater fraud <sup>& imposition</sup> was never  
perpetrated by man; And this too, was  
founded upon the mere fact, that Johnson  
was non-resident and the company could  
procure the appointment of three friends of  
the road to make an appsement without  
seeing the property, & secretly deprive  
the owner of the property for nothing  
thus to appropriate property worth



\$2000 at least and damage the rest  
\$3000 - making a total loss to him  
under such a proceeding of \$5000.  
and <sup>offer to</sup> gave him one dollar for it.

The Com. Pleas Judge said he believed  
<sup>(255 of the</sup> the act was unconstitutional, ~~and~~ that  
~~that~~ he would sustain the plea <sup>so</sup> that the  
appellate Court might decide the  
fact - as either party would take the  
case up - and it made no difference how he  
decided. If the judgment is affirmed, then  
there is a case of gross injury without a remedy  
against a party without notice. Without having  
a day in court therefore.

I am unwilling to believe this judgment  
is affirmed, therefore ask for information.

I have never seen the points  
or authorities relied by the Dept in error.  
It may be they have found some thing  
new since the argument in the courts  
below. May I ask a brief statement  
of the grounds of affirmance, if it has been  
affirmed. & you will much oblige



your friend B. S. Morris

P.S.

I can not get it out of my mind that there is some mistake or misapprehension in the matter. The Plea was certainly not for not showing the record was filed at the time it was made with the county clerk.

It was not filed I think for six months or more & not until after sent was brought. This fact the authorities <sup>could</sup> show, rendering the proceedings void. So that the proceeding offend us defenses. Norris

☞ I presume the Court will remand the case back with leave to withdraw the demurrer & reply to the plea or dismiss their case as the plaintiff may think best.

Prrese

I have written him that you have the record and will assign the reasons for the decision in the written opinion of the court.

B. S. C.



# ILLINOIS SUPREME COURT.

## THIRD DIVISION.

APRIL TERM, A. D. 1859.

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JAMES A. JOHNSON,  
vs.  
THE JOLIET & CHICAGO R. R. CO. } *Error to Cook Co. Com. Pleas Court.*

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RECORD.  
3. The plaintiff filed his declaration *June* 15, 1858, alleging the defendant on March 1, 1855, and on divers other days and times, etc., with force, etc., broke and entered his close (describing it) and did the injuries stated.

5, 14 General issue filed and *withdrawn*.

14 First special plea filed and *withdrawn* after demurrer to first and second special pleas.

14 Demurrer to both pleas sustained. Leave to amend second plea.

15-16 Second demurrer to second special plea overruled. Judgment on demurrer for the defendant.

The assignment of errors are, that the court erred in overruling the demurrer to the second special plea. 1. That said plea is bad and offers no defense to the action. 2. The act authorizing the proceeding which the plea attempts to set up in its defense, is in *conflict* with the *Constitution* of this State, therefore void. 3. It is a land stealing statute, if allowed to stand as a law of this State.

Second plea. Says, as to the breaking, entering the land and ejecting plaintiff therefrom, and then and there itself, agents and servants, dug up and plowed large ditches, branches and sloughs through said lot of land, and throwing up and erecting thereon large mounds of earth and causeways, and filling up and depositing thereon and over it large quantities of stone, iron, earth, wood and timber, then and there erecting, laying down and building a railroad through and on the lot of land, and running and causing to be run thereon and across said lot of land, divers and sundry railroad cars and locomotives on divers and sundry times, to wit, daily and hourly trains of cars. Said defendant, by leave, says *actio non*, because it says, that before and at the several times when, etc., it was and still is a corporation, under and by virtue of its charter, approved 15th February, 1855, entitled, etc., whereby the defendant was authorized and empowered to locate, make, construct, complete and operate a railroad from the depot of the Chicago and Mississippi R. R. Co., at Joliet, in Will county, to Chicago, in Cook county. And for this purpose said company are authorized, upon the most eligible and proper route, and, as above directed, to lay out their said railroad, wide enough for a single or double track, through the whole length, and for the purpose of cuttings, embankments, stone and gravel, may take as much land as may be necessary for the proper construction and security of said railroad.



And it says, that by section 3rd of said act it is provided, (setting it out,) with the manner of locating and acquiring title to lands for its track, and in case of disagreement the *price* to be "fixed and recovered in the *manner* provided for taking lands for the construction of public roads, canals, etc., as prescribed by the acts concerning the right of way, approved March 3, 1845."

And it says, that by section 12 of said act it is further provided as follows: "That when the lands of any *femme covert*, person under age, *non compos mentis*, or out this State, shall be taken, in the construction of said railroad, as is provided by this act, said corporation shall pay the amount that shall be awarded as due to said last mentioned owners, respectively, whenever the same shall be lawfully demanded, together with six per cent. interest per annum. That to ascertain the amount to be paid to the persons named in this section, for lands taken for the uses of said corporation, it shall be the duty of the Governor of this State, upon notice given to him by said corporation, to appoint three commissioners, to be persons not interested in the matter to be determined by them, to determine the damages which the owner or owners of the land shall, so entered upon by said corporation, *has* or *have* sustained by the occupation of the same, and it shall be the duty of the commissioners, or a majority of them, to deliver to said corporation a written statement of the award or awards they shall make, with a description of the land appraised, to be recorded by the corporation, in the clerk's office of the county in which the land so appraised shall be, and then the said corporation shall be deemed to be seized and possessed of the fee simple of all such lands as shall have been appraised by the said commissioners."

And it says, the plaintiff "was at the several times of committing the supposed trespasses *not a resident* of this State, and the defendant having organized under said act of the legislature, entered on the construction of the said road, and by a petition to the Governor of this State, obtained the appointment of three disinterested persons, to wit, on 6th Nov. 1847, to condemn the said piece or parcel of land of said plaintiff, in his said declaration described, and to determine the damages thereof to the said plaintiff, and the defendant says that the commissioners, to wit, C. B. Farwell, Alexander Wolcott and Eli S. Prescott, did, on 11th Nov. 1857, under and by virtue of said appointment [~~not~~ not averred they were sworn] proceed to condemn said piece or parcel of land or part thereof, to wit, sixty feet wide, that is, thirty feet on each side of the centre line of said railroad as located and established, assess said lot six and assess the damages of said plaintiff therefor, and did condemn the same and assess the damages therefor at the sum of one dollar, which sum this defendant was, at the date of said assessment, and since that time has been ready and willing and able to pay to said plaintiff when the same should be demanded, and which said sum with interest, to wit, two dollars, said defendant now brings here into court and deposits the same for plaintiff.

And it further says, said appraisers having delivered a copy of their award in the premises to said defendant, with a description of the land appraised, the said defendant caused the same to be recorded in the clerk's office of Cook county, where said piece or parcel of land is situated, to wit, on 29th June, 1858. And it says it broke and entered said close, etc., for the purpose of causing such examination and surveys to be made as might be necessary to ascertain and determine the most advantageous route, etc., for the proper line, course and way whereon to construct its railroad, and for the purpose of taking possession of and using so much of said close or piece of land as might be necessary for the construction, maintenance and security of its said railroad and the accommodations requisite and appertaining thereto, and did then and there take possession of and use so much of said land, and of the earth and soil thereof, as was indispensable for the purpose aforesaid, to wit, sixty feet in width, that is, thirty feet on each side of the centre line of said railroad, as located and established across said block six, and did then and there proceed to construct its said road and lay the track thereof across and upon said piece of land, and from thence hitherto hath continued to keep and maintain its said railroad thereon, and to run and cause to be run over the same, at divers times, its engines and trains of cars, as it lawfully might; which are the said several supposed trespasses, in the introductory part of this plea alleged, and whereof plaintiff complains against said defendant, and this it is ready to verify, wherefore it prays judgment, etc."



Johnson assigns for error, the overruling his demurrer to the second special plea as amended, and the judgment thereon against him.

1st. Because the plea is insufficient, in not averring *notice* to him of their intended proceeding to condemn the land, so that he might be heard therein. Laws of 1852, p. 146, sec. 3. Laws 1845.

2nd. In not averring the commissioners were *sworn*. (ib.)

3rd. Their award was not filed in *time*, or in compliance with law.

4th. Neither the report or plea describes the quantity of land taken, or its boundary.

1. The owner must have *notice*. Pierce on R. R. Law, 213. Smith's Com. 427.

When special laws fail to give full directions, must comply with the general statute on the *same subject*.

The owner stands afar off and unprotected; is stripped of his property without his consent, without a hearing, and without *notice*, without the intervention of a jury, and without a fair equivalent for his property. Is this the *sacred, constitutional right* of property? In what does it differ from the mandate of an *Asiatic prince*?

Proceedings must strictly *pursue* the power given, or they are void. 1 Scam. 323; 4 Wheat. 77.

Here the award was not filed till *after suit*; as the pleadings show in the record. Never heard of till just before plea filed.

Private property cannot be taken without *notice* to the owners, whether the law *directs it or not*. 15 Wend. R. 374; 15 John. R. 537.

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Brief Abstract &