

12475

No. _____

Supreme Court of Illinois

Chicago & Milwaukee R.R.Co.

vs.

Bull

Supreme Court of the State of Illinois Third Grand Division
Chicago & Milwaukee Rail Road Company } Error from Lake Co. Cir. Court.
vs. }
Schabod Bull }

Now Comes the said Chicago & Milwaukee Rail Road Company by H. W. Bryant its Attorney And moves the Court for a writ of Error in the above entitled Cause for the manifest errors appearing upon the Record in said Cause

1st ~~The Circuit Court was~~ The Judge of the Lake County Circuit Court erred in Awarding Costs to the Defendant Bull in said Cause

2^d Said Judge erred in Awarding said Costs after he had modified the Commissioner's Report.

3^d Said Judge erred in ordering a writ of Execution to issue in said Cause.

4th The said Judgment is otherwise erroneous And Contrary to law as against the party making this Motion

Wherefore said party prays a writ of Error & that the same be made a Supersedeas.

H. W. Bryant
Atty for C. & M. R.R. Co.

2^d Supreme Court of Illinois
3^d Grand Division

Chicago & Milwaukee
Rail Road Company

vs
Abraham Bull

The defendant in error
now comes and says that there is no
error in said proceedings, and prays to
be allowed his costs herein

Forager & Clarke
attys for deft.

1
United States of America }
State of Illinois, Lake County } ss

Pleas before the
Honorable Buckner S. Morris Judge of the Seventh
Judicial Circuit of the State of Illinois.

At a term of a Circuit Court for the County of
Lake in said Circuit, began and held at Waukegan
in said County, on the fifth day of June in the year
of Our Lord One thousand eight hundred and fifty
four, and of the independence of the United States
the seventy eighth

Present the Honorable Buckner S. Morris
Judge aforesaid, Daniel McBray States Attorney
Augustus Granger Sheriff of Lake County.

Attest, A. B. Cotes clerk

Be it remembered that on the fifth day of June in
the year of Our Lord One thousand eight hundred and
fifty four, said day being one of the days of the June
term of the Lake County Circuit Court for the year last
aforesaid, a paper writing was filed with the Clerk
of said Court, which is in the words and figures follow-
ing to wit:

Chicago and Milwaukee R. R. Report of Commissioners

To the Honorable The Circuit Court in and for the
County of Lake in the State of Illinois.

The Undersigned Commissioners named in
the Order of appointment, of which the following is a
Copy.

The Judge of Lake County Court in the State of

Illinois, to Chester Butterfield, George Ela and William C. Tiffany. Greeting. Whereas, The Chicago and Milwaukee Rail Road Company did on the thirteenth day of May A.D., 1854, apply by petition to the undersigned (after having first given to the parties interested due notice of such application) for the appointment of Commissioners to assess the compensation or damages to be paid by said Company to the owners and parties interested in, The half of the South West quarter of section twenty seven (27) in Town forty six (46) north of range twelve (12) East of the third principal Meridian situate in said County of Lake & State of Illinois by reason of the location and construction of the Rail road of said Company over and across the same, and the taking or appropriation of the following portion thereof for the purpose of constructing said Rail Road viz. A Strip of Land Six (6) rods wide, running across said tract and lying on both sides of the track for the Rail Road of said Company as the same is staked out and located across said tract, and being fifty five (55) feet in width on the east side of said Centre line and ~~forty~~ forty four (44) feet in width on the west side of said Centre line, said Centre line being a straight line produced through said tract from point seven hundred and seventy one & one half (771.5) feet west of the North East Corner of the north West quarter of section twenty seven (27) in township forty six (46) north of range twelve (12) East of a point ten hundred and fifty two & three quarters (1052.75) feet West from the south East Corner of said South West quarter containing three (3) acres more or less, which said above described lands or some interest therein is claimed by Schabod Bull

And having heard the proofs, allegations and arguments touching the said application, It is hereby Ordered and considered that the said Chester Butterfield George Ela

and William C. Tiffany who are respectively disinterested free holders and residents of said County, be and they are hereby appointed by the undersigned Judge of said Commissioners to assess the Compensation or damages, to be paid by said Company to the Owners of and parties interested in said lands by reason of the Construction and maintenance of said Rail Road over and across the same. And the taking of said portion thereof for the use of said Rail Road. And you the said Chester Butterfield, George Elw and William C. Tiffany are hereby required to proceed without unnecessary delay, to assess said Compensation or damages and make report thereof in writing to the Circuit Court of said County.

Witness my hand and the Seal of said County Court this 13th day of May A.D. 1854.

{ Seal { Attest, (Signed) James C. Biddlecom Clerk

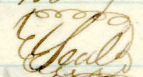
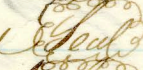
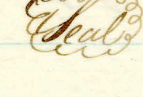
John L. Turner Judge of Lake Co. Court,

Would respectfully report

That, after being duly sworn before an Officer authorized to administer Oaths, honestly and impartially to assess said damages we proceeded, by viewing said lands and the hearing and examination of such other evidence as was produced before us by the parties to ascertain and assess the damage which the Owners of and parties interested in said land in said order described, will sustain by the appropriation of the portion thereof in said order described, for the purposes of said Rail Road over and above the benefit and advantages which we adjudge will accrue to said Owners and parties in interest, by the Construction of said Rail Road, And that we have ascertained and assessed said Compensation and damages as follows, Compensation for land taken fifty four (54) dollars damages for

4 land injuriously affected twenty (\$20) dollars Making
in all the sum of Seventy four (\$74) dollars to be paid
by said Chicago and Milwaukee Rail Road Company
to said Owners and parties in interest in full for said
Compensation and damages. And we would further
report that, from the record of Land titles in said County
and the evidence adduced before us Ichabod Bull is the
Owner of said land. And we would further report that
the lands, in respect to which this assessment is made are
correctly described in the above recited Order

In Testimony whereof we have hereunto set our
hands and seals this 23^d day of May A.D. 1854.

Geo. Elw 
Chester Butterfield 
Wm C. Tiffany 

And afterwards to wit on the seventh day of June in in the
year of Our Lord One thousand eight hundred and fifty four
said day being one of the days of the June term of said
Court the following ^{in said Court} ~~any~~ other proceedings were had
and entered of record, to wit.

Ordered that all matters
Motions and Causes civil Criminal and Chancery
now pending and undetermined, Except those
that may be heard and decided in vacation
be continued until the next term of this Court.

Ordered that Court adjourn till next term
in course

United States of America
State of Illinois Lake County J. F.
Plea before the

5

Honorable Buckner S. Morris Judge of the seventh
judicial Circuit of the State of Illinois

At a term of a Circuit Court for the County of Lake
in said circuit began and held at Waukegan
in said County on the eighth day of January
in the year of Our Lord One thousand eight hun-
-dred and fifty five and of the independence
of the United States the seventy ninth

Present the Honorable Buckner S. Morris
Judge, aforesaid John H. Styles Sheriff of Lake
County,

Attest M. B. Cotes Clerk.

Be it remembered that on the fifteenth day of
January in the year aforesaid said day being
one of the days of the January term of said
Court for the year aforesaid a paper writing was
filed with the Clerk of said Court which is in
the words and figures following to wit;

The Circuit Court for the County of Lake
The Chicago & Milwaukee
Rail Road Company

vs. ^{or}
Isaac Bull

The above named
defendant comes into Court & shows the following
reasons why the damages assessed by the Commis-
sioners should not be confirmed by said Court,

1st, The Chicago & Milwaukee Rail Road
Company have no legal & lawful charter,

2nd The Chicago & Milwaukee Rail Road
Company is not now & never has been properly

Organized under their Charter

3rd The notice in this case is not sufficient to give the County Judge of the County Court of Lake County Ill. authority to appoint the Commissioners in this case appointed

4th The Judge of the County Court of Lake County Ill. had no power or authority to appoint the Commissioners in this case appointed

5th It was not absolutely necessary for said Company in constructing their Road to take and use the land in question for the construction of the same

6th The law under which the Commissioners in this case was appointed is unconstitutional & void

7th The present acting Judge of the County Court of Lake Co. Ill. & before whom the said Commissioners were appointed is not now & was not at that time a legal & lawful Judge of said County Court

8th The damages awarded by the Commissioners to defendant are too low

United States of America }
State of Illinois Lake County }

Plas before the Honorable
Ruehner. V. Morris Judge of the Seventh judicial Circuit
of the state of Illinois
At a Special Term of a Circuit Court for the County

7

of Lake in said County Circuit began and held at Waukegan in said County on the fifth day of March in the year of Our Lord one thousand eight hundred and fifty-five and of the independence of the United States the seventy-ninth.

Said term of Court being held, pursuant to a Special Order of the Honorable Buckner S. Morris Judge of the seventh judicial Circuit of said State, and presiding Judge of the Circuit Court of Lake County aforesaid, bearing date the twelfth day of February A.D. 1855, and calling said special term to commence on the fifth day of March A.D. 1855, for the trial hearing and determination of all pleas that may be depending in said Court Civil, Criminal, and Chancery, due notice of said special term having been given by the Sheriff of said County according to the Statute in such case made and provided.

Present the Honorable Buckner S. Morris
Judge, John T. Cuyler Sheriff of Lake County

Attest, A. B. Cotes, Clerk,

Be it remembered that on the seventeenth day of March in the year of Our Lord one thousand eight hundred and fifty-five said day being one of the days of the March Sp. term of said Circuit Court for the year last aforesaid the following among other proceedings were had and entered of record in said Court to wit:

The Chicago and Milwaukee
Rail Road Company

" 87" vs. ^{vs.} Schabod Bull

} Petition for right of way

Now comes W. M. Blodgett

8 attorney for said Rail Road Company and enters a motion for said Company that the report of the Commissioners heretofore filed herein be confirmed

United States of America }
State of Illinois Lake County }

Pleas before the Honorable
Gegge Maniere Judge of the seventh judicial Circuit of the
State of Illinois

At a Term of a circuit Court for the County
of Lake began and held at Waukegan in said County
on the eighth day of October in the year of Our Lord
One thousand eight hundred and fifty five and of
the independence of the United States the seventy
ninth Eightieth

Present the Honorable Gegge Maniere
Judge John T Curles Sheriff of Lake County
Daniel McElroy States attorney
Attest A. B. Cotes, Clerk,

53. The Chicago and Milwaukee } Application to the Judge
Rail Road Company } of this Court to confirm
vs. } the report of Commissioners
Schabod Bull

Now comes the Chicago
and Milwaukee Rail Road company by Blodgett its
attorney, and asks that the motion heretofore made
by and in behalf of said Company, to the Judge of this
Court to accept and make a record of the report of Chester
Butterfield, George Cla and William C Tiffany Commis-
sioners heretofore appointed by the County Judge of said

County to assess the damages which the Owners of and parties interested in the tract of land, in said report described, would sustain by reason of the location of and construction of the rail road of said Company over and across said tract and the taking of a portion of said tract for the purposes of said Rail Road, be taken up and acted upon by the Judge of this Court pursuant to the provisions of the act of the General Assembly of this State entitled "an act to incorporate the Chicago and Milwaukee Rail Road Company" approved February 17th 1851, and thereupon comes the said Chabod Bull, who appears by said report to be the sole owner of said tract of land, and in his own proper person and by Searls his Attorney, objects to the acceptance of said report for the following cause:

First. The Chicago and Milwaukee Rail Road Company have no legal and lawful Charter.

Second. The Chicago and Milwaukee Rail Road Company is not now and never have been legally and properly organized under their Charter.

Third. The notice in this case is not sufficient to give the County Judge of the County Court of Lake County Illinois, authority to appoint the Commissioners in this case appointed.

Fourth. The Judge of the County Court of Lake County Illinois had no power or authority to appoint the Commissioners in this case appointed.

Fifth. It was not absolutely necessary for said Company in constructing their road to take and use the land in question for the construction of the road.

Sixth. The Law under which the Commissioners in this case was appointed is unconstitutional and void.

Seventh. The present acting Judge of the County Court of Lake County Illinois and before whom the said

Commissioner was appointed is not now and was not at that time a legal and lawful Judge of said County Court.

Eighth The damages awarded by the Commissioners are too low.

Which said Objections were overruled by said Judge, and thereupon said Bull in person and by his said attorney makes known to said Judge that he is dissatisfied with said report, and requests said Judge to modify said report, as shall seem to him just, and also requests that a jury shall be called to assess his damages in this behalf. Whereupon said Judge overruled so much of said request as related to trial by jury and proceeded to hear the evidence and arguments of Counsel touching the said request to modify said report, and said evidence, and arguments of Counsel being concluded. Said Judge by consent of parties takes the said matters so submitted to him under advisement. It being stipulated and agreed between said parties that the decision of said Judge upon the matters so submitted to him may be entered of record in vacation and deemed and taken, as done at the present Term of this Court, and that in such case, either party shall have twenty days, after the filing of said decision with the clerk of this Court, in which to prepare and present to said Judge a bill of exceptions in said cause.

United States of America }
State of Illinois Lake County }

Filed before the
Honorable George Manwire Judge of the seventh judicial

Circuit of the State of Illinois

At a term of the Circuit Court for the County of Lake in said Circuit began and held at Waukegan in said County on the fourteenth day of January in the year of Our Lord One thousand eight hundred and fifty Six and of the independence of the United States the Eightieth. Present the Honorable George Manierre Judge John T. Smiles Sheriff of Lake County

Attest A. B. Cotes, Clerk,

Be it remembered that on the second day of February in the year of Our Lord One thousand eight hundred and fifty six said day being one of the days of the January term of said Circuit Court for the year last aforesaid the following among other proceedings were had and entered of record in said Court to wit;

The Chicago and Milwaukee
Rail Road Company

vs.
Schabod Bull

} Application to the
Judge of this Court to
confirm the report of
Commissioners

The Judge of this Court being now fully advised as to the motion heretofore made on the part of said Company that he accept and make a record of the report of Charles Butterfield, George Cla and William C. Tiffany, Commissioners and also as to the request of said Schabod Bull for a modification of said report which is in the words and figures following to wit;

The Honorable the Circuit Court in and for the County of Lake in the State of Illinois

The Undersigned Commissioners named in the Order of appointment of which the following is a copy
"The Judge of Lake County Court in the State of Illinois
to Chester Butterfield George Cla and William C. Tiffany

Greeting. Whereas the Chicago and Milwaukee Rail Road Company did on the thirteenth day of May A.D. 1854 apply by petition to the undersigned (after having first given to the parties interested due notice of such application for the appointment of Commissioners to assess the compensation or damages to be paid by said Company, to the owners and parties interested in

The South half of the South West quarter of section twenty seven (27) in town forty six (46) north of range twelve (12) East of the third principal Meridian Situate in said County of Lake State of Illinois by reason of the Location and Construction of the Rail Road of said Company over and across the same and the taking or appropriation of the following portion thereof for the purpose of constructing said Rail Road viz. a strip of land six (6) rods wide running across said tract, and lying on both sides of the track for the Rail Road of said Company, as the same is staked out and located across the said tract, and being fifty five (55) feet in width on the east side of said centre line and forty four (44) feet in width on the west side of said centre line

Said Centre line being a straight line produced through said tract from a point seven hundred and seventy One & One half (771.5) feet West of the north east corner of the north west quarter of section twenty seven (27) in township forty six (46) north of range twelve (12) east to a point ten hundred and fifty two & three quarters (1052.75) feet west from the south east corner of said south west quarter, containing three (3) acres more or less which said above described lands or some interest therein is claimed or owned by Scherrod Bull and having heard the proofs, allegations and arguments touching the said application. It is hereby Ordered and considered

that the said Chester Butterfield, George Cla and William C. Tiffany, who are respectively disinterested free holders, and residents of said County, be and they are hereby appointed, by the undersigned Judge as aforesaid, Commissioners to assess the compensation or damages to be paid by said Company to the Owners of and parties interested in said lands, by reason of the Construction and maintainance of said Rail Road over and across the same. And the taking of said portion thereof for the use of Rail Road. And you the said Chester Butterfield George Cla and William C. Tiffany are hereby required to proceed without unnecessary delay, to assess said Compensation or damages, and make report thereof, in writing to the Circuit Court of said County. Witness my hand and the Seal of said County Court this 13th day of May A.D. 1854.

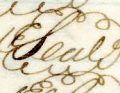
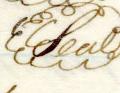
Seal & Test, (Signed) James C. Biddlecom Clerk John L. Turner
Judge of Lake Co. Court

Would respectfully report,

That after being duly sworn before an Officer authorized to administer Oaths, honestly and impartially to assess said damages, we proceeded by viewing said lands and the hearing and examination of such other evidence or was produced before us by the parties, to ascertain and assess the damage which the Owners of and parties interested in said land, in said order described will sustain by the appropriation of the portion thereof in said Order described, for the purposes of said Rail Road, were above the benefit and advantages which we adjudge will accrue to said Owners and parties in interest, by the construction of said Rail Road, and that we have ascertained and assessed said compensation and damages as follows. Compensation for land taken fifty four (\$54) dollars damage for land injuriously affected twenty (\$20) dollars. Making in all the sum of seventy four (\$74)

dollars to be paid by the Chicago and Milwaukee Rail Road Company to said Owners and parties in interest in full for said Compensation, and damages. And we would further report that from the record of land titles in said County, and the evidence adduced before us, Ichabod Bull is the Owner of said land, and we would further report that the lands in respect to which this assessment is made are correctly described in the above recited Order

Our Testimony whereof we have hereto set our hands and seals this 23^d day of May A.D. 1837

Geo. Cla 
 Chester Butterfield 
 Wm. C. Tiffany 

he and is hereby accepted by the Judge of this Court, and a record thereof is hereby made, but that said report shall be and is hereby so ^{far} modified that said Rail Road Company shall pay to the Owners of and parties interested in the tract of land in said report described the sum of fifty four dollars as Compensation for the land actually taken from said tract for the purposes of said Rail Road, and the further sum of seventy seven dollars as damages for injuriously affecting said tract, making in all the sum of One hundred and thirty one dollars to be paid by said Company, to the Owners of and parties interested in said tract of Land in full for Compensation and damages by reason of the location and construction of the Rail Road of said Company over and across said tract, and the taking therefrom for the purposes of said Road of the portion in said report described. And it is further Ordered that upon payment by said Company to said Owners and parties in interest of the said Compensation and damages and the expenses of said assessment said Company, its successors or assigns shall become seized and possessed of the said portion of said tract in said report described as

required for the purposes of said Company, and entitled to the use of the same for the purposes of a right of way for its Rail Road.

And afterwards to wit on the sixth day of February said day being as yet of the January Term of said Court for the year last aforesaid the following among other proceedings were had in said in said Court and entered of record to wit

The Chicago and Milwaukee Rail Road Company vs. Isabod Bull	} Application to the Judge of this Court to confirm the report of Commissioners
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Now comes said Bull by Pearl his attorney and said Chicago and Milwaukee Rail Road Company by Blodgett its attorney, also comes and on motion of the said attorney for the said Bull it is ordered by the Judge of this Court, that the fees of the officers of this Court for issuing and subpoenaing witnesses, and the fees of witnesses, attending on the part of said Bull upon the hearing of the ^{motion} of said Bull for the modification of said report be taxed by the clerk of this Court against the said Rail Road Company to which said Order of said Judge the said Chicago and Milwaukee Rail Road Company by its attorney accepts.

(United States of America)
(State of Illinois Lake County) }

Pleas. before the Honorable George Mannes Judge of the ~~Circuit Court~~ Seventh Judicial Circuit of the State of Illinois, at a Special term of a Circuit Court for the County of Lake in said Circuit began and held at Waukegan in said County

on the twenty first day of April in the year of Our Lord one thousand eight hundred and fifty six and of the independence of the United States the eightieth, said term of Court being held pursuant to an order of the said Honorable George Manierre, Judge as aforesaid, and presiding Judge of the Circuit Court of Lake County aforesaid which was made and entered of at the last January Term of the said Circuit Court, the said term being a regular term thereof, and which appointed the said twenty first day of April in the year of Our Lord one thousand eight hundred and fifty six as a time for holding a special term of the said Circuit Court for hearing and deciding Chancery Cases and also for the trial of civil and criminal Causes,

Present the Honorable George Manierre Judge
John T. Guyles Sheriff of Lake County
Attest A. B. Cotes, Clerk

United States of America }
State of Illinois Lake County }

Plea before the Honorable George Manierre Judge of the seventh judicial Circuit of the State of Illinois. At a Circuit Court for the County of Lake in said Circuit, began and held at Waukegan in said County, on the second day of June in the year of Our Lord one thousand eight hundred and fifty six and of the independence of the United States the eightieth

Present the Honorable George Manierre Judge
aforesaid. John T. Guyles Sheriff of Lake County
Attest A. B. Cotes, Clerk

United States of America }
 State of Illinois Lake County }

Pleas before the Honorable George Manierre Judge of the seventh judicial Circuit of the State of Illinois

At a circuit Court for the County of Lake in said Circuit, began and held, at Waukegan, in said County on the thirteenth day of October in the year of Our Lord one thousand Eight hundred and fifty six and of the independence of the United States the Eighty first

Present the Honorable George Manierre Judge
 Aforesaid John F. Gyles Sheriff of Lake County
 Attest, N. B. Cotes clerk,

Be it remembered that on the twenty fifth day of October in the year of Our Lord one thousand eight hundred and fifty six said day being one of the days of the October term of the Lake County Circuit Court for the year last aforesaid the following among other proceedings were had and entered of record in said Court to wit,

The Chicago & Milwaukee
 Rail Road Company

vs.
 Ichabod Bull

} Application to the Judge
 of this Court to confirm the
 report of Commissioners

Now come the said parties
 the said Rail Road Company by Blodgett its attorney

and the ~~_____~~ Said Bull by Pearl his attorney, and thereupon on motion of the said attorney for the said Bull, it is ordered by the Judge of this Court that the said Bull have execution against the said rail road Company for the fees of the Officers of this Court for issuing and Subpoenaing witnesses on the part of said Bull and also for the fees of witnesses who attended on the part of said Bull upon the hearing of the motion of said Bull for the Modification of said report, to which Order and decision the said attorney for the said Rail Road Company. Excepts

The United States of America }
 State of Illinois Lake County } of

Pleas before the
 Honorable George Manierre Judge of the seventh judicial
 Circuit of the State of Illinois

At a term of a circuit Court for the County of Lake in said Circuit began and held at Waukegan in said County on the second day of February in the year of our Lord one thousand eight hundred and fifty seven and of the independence of the United States the eighty first

Present the Honorable George Manierre Judge
 Carlos Waven States attorney, Parnell
 Munroe Sheriff of Lake County
 Attest A. B. Cotes, Clerk,

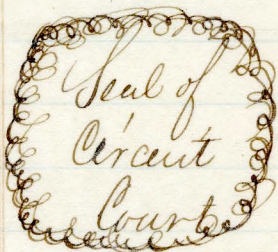
Be it remembered that on the ninth day of February in the year of our Lord one thousand eight hundred and fifty seven an execution was issued out of our said Circuit Court which

execution is in the words and figure following
to wit.

State of Illinois }
Lake County } The People of the State of
Illinois to the Sheriff of said County Greeting

We command you that of the goods and Chattels
Sunds and tenements of the Chicago and Milwaukee
Rail Road Company plaintiff which shall be found
in your County you cause to be made the sum of sixty
five dollars and seventy five cents which Schabod
Bull defendant lately in the Circuit Court of said
County recovered against said Company for his costs
and charges expended in a certain Suit lately pending
in our said Circuit Court wherein the Chicago and
Milwaukee Rail Road Company was plaintiff and
Schabod Bull defendant, whereof the said Company
is convicted, as appears to us of record, and have you
these moneys ready to render to the said Bull for his
costs aforesaid, and make return of this writ with an
endorsement thereon of the manner in which you
shall have executed the same in ninety days from
the date hereof.

Witness Augustus B. Cotes Clerk of our
said Court and the seal thereof at Waukegan
in said County this 9th day of February
A.D. 1857



A. B. Cotes clerk
By J. W. Winans Deputy Clerk

Which said execution is endorsed as follows to wit
33. } The Chicago and Milwaukee
October Term 1855, } Rail Road Company
} Schabod Bull

Exⁿ Defts Costs

\$65.75-

Collect int from Oct 26th 1856,

6518 Exⁿ D^t B172,

State of Illinois,
County of Lake } ss

Augustus B. Cates
Clerk of the Circuit Court in and for said
County of Lake do hereby certify the foregoing
to be a full true and correct transcript
from the Records of said Court of the Record
of proceedings, had before the Judge of said
Court, and also copies of the papers filed by
the parties in said proceedings; in relation
to the Confirmation of the Report of the Com-
missioners appointed by the County Court
of said County upon a Motion to confirm
said Report on behalf of the Chicago and Mil-
waukee Rail Road Company vs Schabod Bull,
being the same matter referred to in the forego-
ing transcript - and also a copy of the
Execution issued in said Matter.

In Witness whereof I have here-
unto set my hand and affixed the
Seal of said Court at Waukegan
in said County this 21st day of
March A.D. 1857

A. B. Cates Clerk
By J. C. Windsor Deputy

172 63

The Chicago Milwaukee & Co

vs

Schabod Bull

Transcript of Record &c

Filed April 28, 1857

S. J. Lane

Clerk

The Company agrees for
a stay location on the water
until disposition of the matter
is made by the Court.

H. W. B. [Signature]

In Supreme Court,
THIRD GRAND DIVISION,

CHICAGO & MILWAUKEE
RAIL ROAD COMPANY,

PLAINTIFF IN ERROR.
VS.

ICHABOD BULL,

DEFENDANT IN ERROR.

ERROR TO LAKE.

This was a proceeding commenced by said Company under its special charter. See Private Laws for Session of 1851, page 266, to ascertain the compensation to be paid by said company to defendant in error, by reason of the location and construction of its Rail Road over and across a certain tract of land in Lake County, owned by Defendant.

The report of the commissioners fixing said compensation and damages was made and filed with the Clerk of the Circuit Court, of said county, and a motion made in behalf of said company for the acceptance and approval of said report by the Judge of said court. The defendant objected to the acceptance and confirmation of said report, and claiming that he was dissatisfied with the amount awarded, moved that said Judge should modify said report as should to him seem just.

At the October term of said court, for the year 1855, said motion of defendant was tried by the Judge of said court, and the amount of compensation and damages increased from \$74, to \$131. See pages 9 and 14 of Record.

At the January term, 1856, of said court the final order accepting and modifying said report was made, in which the court orders as follows:

14 "It is further ordered, that upon payment by said company to said owners and parties in interest of the said compensation and damages, and the expenses of said assessment, said company and its successors shall become seized of said portion of said tract of land, and entitled to the use thereof for Right of Way for its Rail Road."

15 On a subsequent day of said term, on motion of defendant's attorney, said court ordered: "That the fees of the officers of said court for issuing and subpoenaing witnesses, and the fees of witnesses, attending on the part of said Bull, upon the hearing of the motion of said Bull for the modification of said report be taxed by the Clerk of this court against said Rail Road Company." To which plaintiff, by its attorney excepted.

At the October term of said court, for the year 1856, (two terms having intervened after the entry of the last preceding order,) it was, on motion of 18 defendant's attorney, ordered by the court, that execution issue for the amount of said fees. To which order an exception was taken by the plaintiff in error.

ASSIGNMENT OF ERRORS.

The Plaintiff assigns for errors.

1st. The order of said court directing the clerk to tax said fees and costs against said Rail Road Company.

2d. The order of said court, directing that Execution should issue in favor of Bull, for said costs and fees.

BLODGETT & UPTON.

FOR PLAINTIFF IN ERROR.

FRAZER & CLARKE,

FOR DEFENDANT IN ERROR.

63-170

The Chicago & Milwaukee
S.R. Company

v3

Isabel Bull

✓

Filed May 18. 1888

Leland
Clerk

RECEIVED BY THE COURT

sealing said Seal said Company.

74 The order of said court, directing that Execution should issue in
favor of Bull, for said cash and fees.

For DEEDMAN is James
MAYNARD & CLARKE

For PLAINIFF is James
BLODGETT & UNTON

Chicago & Milwaukee Rail Road
Company

Plff. in Error

Supreme Court

April Term 1858

vs
Ischabod Bull

Def't. in Error

This was a proceeding on the part of said Rail Road Company to condemn, under its special act of Incorporation, certain lands owned by said the Def't. in Error for the use of its Rail Road. The Section of said act of Incorporation under which the proceedings now had is as follows - (See Private Laws of 1851 pages 268-9)

"Wherever any lands, real estate, or materials shall be taken
"and appropriated by said Corporation for the location or construction
"of said Rail Road, or its appendages, or any work appertaining
"thereto, And the same shall not be given or granted to said
"Corporation, or the proprietors or proprietors do not agree with
"the said Corporation, as to the amount of damage or compensation
"which ought to be allowed, and paid, therefor, or shall not
"mutually agree on some person or persons to appraise the
"same, the damages shall be estimated and ascertained in the
"manner following - The said Corporation, or the owner
"or owners of said lands, may on giving notice of their
"intended application, And the time & place of making the
"same, apply by petition to the judge of the Circuit Court
"in the County in which said lands may lie, or in the absence
"of said judge from the said County, then to the senior
"County Commissioner of said County, or the County Judge
"of said County, particularly describing in said petition the

"lands to be appraised; And upon proof that reasonable
"notice has been given as directed, the said Judge, or
"in his absence as aforesaid, the said Senior County
"Commissioner, shall on hearing the said petition appoint
"three disinterested persons freeholders and residents of ^{the} said
"County in which said lands may be situated, as Commissioners
"for the purpose of appraising such damages; And the order in
"which they are appointed shall specify the lands proposed to
"be appropriated and occupied by said Corporation for the purposes
"aforesaid. The said appraisers after being duly sworn
"before ^{an} ~~an~~ officer legally authorized to administer oaths,
"honestly and impartially to appraise such damages, shall proceed,
"by viewing said lands, and by such other evidence as the
"parties may produce before them, to ascertain and appraise
"the damages which each owner will sustain by the appropriation
"of his land for the purposes aforesaid, over and above the benefit
"and advantage which said Commissioners shall adjudge will
"accrue to such owner or owners by the construction of said
"Rail Road. The said appraisers shall make report in
"writing to the said Judge of this Circuit Court, reciting
"the order of their appointment and specifying the several
"parcels of land ^{described} therein, the names of the owner or owners
"of the respective parcels, if known, and if not known ~~stating~~
"stating that fact, and specifying also the damages which
"the owner of the respective parcels will sustain by reason of the
"appropriation of the same for the purposes aforesaid; which said
"report shall be filed in the office of the Clerk of the Circuit

" Court of the County in which said land may lie. In
" Case either party is dissatisfied with said appraisement the
" said Judge may at the next term of the Circuit Court
" in said County on hearing the parties in interest, or if both
" should not appear, on ^{of notice} proof bring given to the opposite
" party, modify the said appraisement as to him shall appear
" just. At the said term of said Court holden next
" after the filing of said report, ^{as aforesaid} a record shall be made
" of the said report with the order of said Court thereon
" accepting or modifying the same. On the payment of
" the damages, if any, thus ascertained, and the expenses of the
" appraisement, the said Corporation shall immediately become
" seized and possessed of said land and property and
" entitled to the use of the same for the purposes aforesaid.

Commissioners were appointed to assess the damages
which would accrue to Bull by reason of the location &
construction of the Rail Road of said Company over & across a
tract of land owned by Bull, and reported their
appraisement to the Judge of the Circuit Court of Lake
County. Bull being "dissatisfied" with the appraisement
applied to the Judge of the Circuit Court of said County
for a modification of said report. The parties
were heard upon said application for the modification
of the report at the October term 1855, and the
matter thus submitted to him the Judge was taken
under advisement by him.

Jan 10. of }
Term

212475-187

At the ensuing February term of said Court the said
Pps 11, 12, 13, 14 }
of Term

Pages 14 & 15
of Record

Motion for modification was determined by the Judge. The report of the Commissioners accepted, and made a Record; but the same was modified by increasing the amount of damages from \$74. as fixed by the Commissioners to \$101.; and upon the payment of said amount and expenses said Company was to become seized of said land for the purposes of Right of Way &c. This order was entered on

Page 11. of
Record

the 2^d day of February 1856

On the sixth day of February 1856 (See page 15 of Record) the Judge of the Court on the motion of Bull's Attorney ordered that the fees of the officers of said Court for the issuing and subpoenaing witnesses and the fees of witnesses attending on the part of said Bull upon the hearing of the motion of said Bull for the modification of said Report should be taxed by the Clerk of said Court against the Rail Road Company. To which order an exception was taken on behalf of the Rail Road Company.

Page 15. of
Record

At the October term of said Court 1856, ^{when} after two terms had elapsed after the entry of the final order of the Judge modifying said Report, another order was entered by the Judge, on motion of the Attorney for Bull, directing that execution should issue against the Rail Road Company for the assessment fees of the officers of said Court for issuing and subpoenaing witnesses on the part of Bull; and also for the fees of witnesses who attended on the part of Bull upon the hearing of the motion for modification of said Report. To which

Pages 18 & 19
of Record

order the Rail Road Company & captioned.

The Case is brought to this Court by writ of Error by the Rail Road Company And the following errors appear

First The order of said Judge directing the Clerk of said Court to tax the Costs and fees of witnesses who ~~attended~~ attended on behalf of said Bull on the motion for said modification of the report of the Commissioners against the Rail Road Company.

Second - The order of said Court directing that execution should issue in favor of Bull against the Rail Road Company for the amount of said Costs & fees.

It is assumed on the part of the Aff. in Error that upon the hearing of the motion before the Judge of the Circuit Court for the modification of the report of the Commissioners no Costs or fees can be allowed to either party against the other. The Charter itself is entirely silent upon the subject. It gives neither the Commissioners ~~nor~~ in the performance of their duties nor the Judge of the Circuit Court on accepting or modifying the report any right to award costs to either party.

Costs are entirely a matter of statutory right. They are not recoverable ex officio at Common law.

See 2^d Arch. Practice 281. Hall on Costs. 2.

In Clinton v. Strong & Johnson 876 The Court says "Costs are the consequence of some default of the party against whom they

"are awarded and are given, at least in the Common Law
"Courts, applied against an innocent party not chargeable
with any default" See Booth vs. M^r Queen 1st Douglass
Mich. Reports 411 The Court says - "Costs are in
"consequence of some default and are not awarded at
"Common Law - They depend entirely upon Statutory
"provision and when no authority is given by the Statute
"there can be no taxation." See also Fidds Practice 945.
This question however has been fully decided in our own
State - See Morris vs. City of Chicago 11th Ill. 650.
This was a proceeding under the Act of Incorporation of said
City to take & appropriate a portion of certain Lots for the purpose
of widening Madison Street. The provision of the Act required
that the Commissioners should report the value of the Lots
"or part of Lot so taken and the injury to the owner or
"owners thereof in consequence of such appropriation and
at the same time apportion the said Damages &
"the expenses of said improvement upon real estate deemed to
"be benefited thereby." The Commrs. reported that they
"had apportioned the Damages to the owners of the Lots at \$8740.17
"and to this amount had added the sum of \$96 as
"compensation to the City Attorney, printer, Surveyor, Clerk of
"the Court, and the Commissioners for their services in connection
"with the proceeding - the Commissioners considering this amount
as part of the necessary expenses of the proceeding." The
Aggregate of these items amounting to \$8836.17 was then
apportioned and applied against the Lots deemed to be benefited.
(In this case the Costs are applied against the Rail Road Company
whose position is deemed to be precisely analogous to that of the owners
of Lots benefited by a public improvement who are apportioned for the
value of the property taken but cannot be charged with the Costs of
the improvement.)

The Court says - "There is a fatal objection to the
"proceedings of the Commissioners - In addition to the
"damages awarded to the owners of the ground appropriated
"they have added the costs of the proceeding - The whole
"of which is ~~applied~~ embraced in the assessment against the
"proprietors of the Lots benefited by the widening of the street.
"Costs are not given by the Statute regulating this proceeding
"and they cannot be ^{reasonably} ~~justly~~ imputed to the Corporation".

In the case of the Hampshire Canal Co. vs. Ashley
15th Pickering 498 - The Court says - "By the Stat. 1822
"Chap. 54, Sec. 8 it is enacted that if the party injured (by the
"closing out of the Canal) in his her or their estate apply for a Jury
"and fail to obtain increased damages such party shall be liable
"for all legal costs arising after the entering of such application
"for a Jury - But there is no provision for taxing costs against
"the other party when the petition succeeds in obtaining an
"increase of damages - So there is no provision for costs for
"either party on the assessment of damages in the first instance
"by the Commissioners; And doubtless it was considered unreasonable
"by the Legislature that the party not being satisfied with the assessment
"by the Commissioners should be mulct in costs for any mistake
"in judgment of theirs - But whatever may be the reason
"why no provision was made for the allowance of costs in a case
"like this, it is sufficient for the present that no such provision
"has been made - The Statute entitling the prevailing party to
"recover costs, is confined to Civil actions and cannot by any
"reasonable construction be extended to cases like the present."

See also - Commonwealth v. Carpenter 3^d Mass 268
Commonwealth v. Boston & Maine R.R. 3^d Cushing 54, Harvard
Branch Railway Co. v. Rand. 8th Cushing 218.

The proceedings under the Charter of this Company to
condemn lands for the use of its Rail Road are not ~~suits~~
suits And the general provisions of law in our State
giving Costs to the prevailing party in suits at law do not
apply - Costs are given in the nature of a penalty
against a party who has been guilty of some default.
But here neither party had been guilty ^{of a breach} of any express or
implied undertaking or obligation - The sole question was as
to the amount which should be paid the land owner by reason
of appropriating a portion of his land for the purposes of a public
improvement - Men might naturally differ as to that
amount, and ought either party to be mulcted in Costs by
reason of an error in judgment on the part of the persons
to whom the question was submitted - But suppose the
finding of the Judge upon modification of the Report had been
in favor of a reduction of the damages - Could he have
mulcted the Land owner in the Costs attendant upon
the hearing or trial upon which the modification was made?
This reduction or increase of the award might have been
made without reference to which party brought the question
before him, and thereby a ^{Land owner} party satisfied with the award
might have the amount of his award reduced and yet be
compelled to pay the Costs of doing so. Further, as this
is not a Case within the general laws of the State

regulating the recovery & payment of Costs, there is no
limit to the number of distributors who may be sworn by
the respective parties; And no limit to the Amount of Costs
which may be swelled up against the Rail Road
Company to secure a Modification of a report with
which the Company was entirely satisfied. The Case of
Phil. Germantown & Norristown R.R. Co. vs. Johnson & Wharton 275, is
directly in point as to the power of the Court to Award Costs in this Case
Also *Wheeler vs. Phil. & Reading R.R. Co.* 9 Watts 272; 28 Mass 112; *

Second

But even if the Judge of the Circuit Court had
authority to Award Costs against the Rail Road Company
he could only do so as a part and parcel of his
"Modification of the report". The Judge of the
Circuit Court was acting as a special tribunal of
limited jurisdiction. Deriving all his powers from
the Company's Act of Incorporation, and as soon as he
had acted in the matter he became at once functus
officio. His mantle of power fell the moment
he had acted, and he could not afterwards revise,
review, or correct his action. In *Stofford vs. Mayor*
of Albany 7 Johnson 546 Spencer Justice says "In all that
"Class of Cases when the proceeding is conducted in Court and the
"Judges act as Commissioners their acts once done are irrevocable
"by themselves." The power granted by the Legislature to Mayors Court
in the present instance may not properly be compared to the power given
to a Court of Common Pleas to discharge an Insolvent from
his debts. In both Cases the Court act as quasi Commissioners
Should the Court of Common Pleas discharge a person as insolvent

"Can it be pretended they would have a revisory
power and might annul the discharge?"

"The Authority under which this Mayor's Comt acted was
specifically derived from the Legislature and must be
strictly pursued; when therefore the appointment was
confirmed the Comt had no further powers they were
functus officio."

In Matter of Canal St. 11 Wendell 154-156 a case arising
upon the Corporate powers of the City of New York, under its
Charter, in taking property for streets & Sewage Justice says
"It has been decided that we cannot review our own decisions"
but beyond that our power as a Comt has not been questioned.
Again in the same case - Justice says - "It is
said that this Comt act as Commissioners, and when they
have once done an act they become functus officio and have
no further power over the subject. When we are reviewing
the proceedings of the Commissioners of Estimate and Apportionment
this is true, and when once their report is confirmed by this
Comt, it cannot be opened and reviewed again in the
same Comt; we cannot set aside those proceedings on the
merits any more than arbitrators can do so after having
signed and published their award." As to the limited ~~power~~ ^{authority}
In this case the Judge of Lake Co. Cir. Comt after having
modified the said report and confirmed and accepted
the same; and after the lapse of a number of
days resumes jurisdiction of the subject matter
and revises his former finding by adding thereto

Comt in this case of Canal St. 6th Canon 571 - Chapter in Kelly
7th Will 148 When case in County Court 2d Canon 323.
of the Judge of the Circuit

the Costs of the Disturbances. If he could resume
such power five days after final action he
could do so four years, or at any time, after
with the same propriety.

But the order for taxing said Costs is further objectionable
in this. The power to act in the matter of modifying
the Report of said Commissioners is only given to the
^{It is an officer from delegated to the Judge of the Court as appellate Commissioner}
Judge of said Court. This order delegates the
power of taxing said Costs to "the Clerk of said Court."

Whence does the ^{Judge} Court derive Authority to delegate
any of the powers thus vested in him? Even if he
while he had the whole Subject Matter under
Consideration could have awarded Costs he could
not have empowered the Clerk or any other person
to act in the premises any more than the Commissioners could appoint a
^{clerk to perform their duties.}

In the Matter of Mt. Morris Square & Hill 14. Cowen Justice

Says. The application to set aside the rule for Confirmation
must be denied. It was held in the Matter of Beckman
St. 20 Johns. 269. that in revising or confirming or setting
aside the reports of Commissioners in New York Street Cases, this
Court derived its powers entirely from the Statute, under which
we act not as a Court but as Commissioners. Our powers
are likened to those of a Court under the insolvent acts.
Our Award is therefore like that of any inferior Court
having limited jurisdiction; And we have no power to open
it on Motion any more than a Justice would have to
open a Summary Conviction before him."

The practical effect of the order in relation to costs
of Bill witnesses
made by the Judge in this case is to open the case
and add the amount of those costs to the amount
before that time added by the Judge to the appointment
of the Commissioners together with the expenses of the
appointment.

It will undoubtedly be contended by the Deft. in
error that the term expenses used by in the act
of incorporation means costs or in other words; that
the witness fees and the fees of the officers in subpoenaing
witnesses could be properly included as part of the
expenses of the appointment. To this I reply - That
the term evidently intended to include only the compensation
to the Commissioners ~~and the Clerk~~ in performing their
duties and the Clerk of the Court in making a Record of
the award. These are expenses which might be
incurred by the land owner as well as the Company;
inasmuch as the Charter gave "either party" the right to
apply for the appointment of Commissioners. The act is
entirely silent as to any provision for obtaining the attendance
or taking the testimony of witnesses. There is no power to
administer oaths. And it is suggested that even if
witnesses could be sworn & heard the "Clerk" has no
power to issue subpoenas and the Sheriff no right to serve
them. * If the ^{testimony} attendance of witnesses was anticipated
it must have been accomplished by a voluntary arrangement
with the witness himself and not by the process of the

* For there is nothing by any means as a necessary conclusion that because a party
may have witnesses heard when in the presence of them before a tribunal that he can secure from
that tribunal parties the right of each witnesses as the Court of hearing them attendance. There is
many expenses to which parties are subjected as if a witness or parties of the Court itself what the
do not become from the other party under any circumstances. Even for witnesses or witnesses from the
party own time & expenses &c.

Circuit Court; for the Court as such under its general
powers, and through its Ministerial officers has no
authority to act. Again - Suppose costs for
to be allowed and fees to the Clerk & Sheriff for attending
them, by what standard are those fees to be fixed?
The general provisions of the Statute regulating
"Fees" do not apply in this case; and by what
standard is the Clerk to be governed in taxing
the same? Is he to make up the Cost Bill as
"to him shall seem just" after the manner in
which the Judge modifies the Commissioner's Report?
By Analogy that would seem the only course.
At all events the power delegated to the Clerk was
clearly judicial and there is no shadow of authority
in the Act under which the Judge was proceeding to
~~act~~ which will sustain this order.

Third.

All the suggestions in reference to want of power
in the Judge or Court to resume jurisdiction of the matter
two terms after the final order modifying the appointment
had been made only illustrate the absurdity of the
assumption that such jurisdiction can be resumed at all,
and when in the Statute giving jurisdiction of the
matter does the Court find its authority for issuing
an execution? The proceeding which in its essential
characteristics judicial within limit of the Statute does not
call into question either the power or powers of the
Court, as a Court of law, - The award is not a

judgment to be enforced by final process; But if not paid Debt or Acknowledgment might perhaps be brought on it. The title did not vest in the Company until payment; And that Condition was probably deemed a sufficient guaranty that the debt would be paid.

It is objected on the part of Drift. in Error that a writ of Error will not lie in this Case unless the Circuit Judge acted as a Court under the general powers. I may admit for the purposes of this argument that while acting within the scope of Authority vested in him by the Act the Judge acts as a Commissioner and Arbitrator must be inserted to if we would review his decisions. But if an Entry is made upon the Records of a Circuit Court in term term by direction of the presiding Judge, who is the Court to all intents, which has the force and effect of a judgment, or decree or final order, then Error will lie; if for no other purpose than to purge the ~~Record~~ Record. In this Case an order ~~to tax~~ that Costs be taxed against a party by the Clerk of the Court and that Execution issue for the Collection of those Costs is made by the Court and entered upon its Records by the Clerk. The two orders (the one for taxing Costs and the one for issuing Execution) when taken together amount to a judgment for Costs And Error will certainly lie to set aside a judgment rendered when the

Record shows that the Court had no jurisdiction of the subject matter, or of the parties. We do not claim, at this time, that Error ~~would~~ would lie to review the acts of the Judge while acting as Commissioner; but after he has exhausted his powers in that capacity if the ^{Court} proceeds to render judgment ^{upon the Records of the Court} against parties not properly before him ^{it} in relation to a subject matter over which it has lost Control such judgment is clearly erroneous.

If the Judge of the Circuit Court had awarded Costs for witnesses at the time of making his modification of the report and Certified to the amount of those Costs or left the matter in any way unambiguous so that the amount of those Costs could be clearly ascertained it may be that it would have been a discretionary act of which neither party could complain; ^{although this is by no means admitted} But it is clear that if after he has acted the Court renders judgment the party aggrieved may bring his writ of Error.

A. W. T. Plagitt
for Aff. in Error

63.

April Term 1838

C. & M. R. R. Company

vs.

Schabod Bull

Prints for Plff. in error.

Filed May 21. 1838

L. Leland
clerk

H. W. Plowden

Chicago & Milw. R.R. Co. v. In Sup. Ct. 3rd Division

20
Isabell Bell

1 As to the first error assigned - the taxing of the defendants costs against the plaintiff - the action was but the doing of what the Law had done, and could not at any rate prejudice the plaintiff. It would perhaps be safe to grant, that the court below had no authority to direct the taxation, if the Law itself imposes the same liability, for then the plaintiff, not being injured by the order complained of, cannot avail himself of it as error.

Schleuter v. Pishy 3 Scam 483
12 Ohio 210. 112

The statute does so fix the plaintiffs liability.
See Special Laws 1851 p.p. 268-9. Sec 7.

The appraisers are to view the lands, and to hear "such evidence as the parties may produce", in order to ascertain the damages. The Judge, after the appraisers have reported, on "hearing the parties" may "modify the assessment," made by the appraisers and "on payment of the damages thus assessed" (i.e. the amount of this final assessment by the Judge) and the expenses of the assessment" (i.e. all the costs thereof from beginning to end) the corporation becomes seized of the land &c. Here

the legislature has recognized the fact that the production of evidence may aid the appraisers in coming to correct conclusions. Evidence may be adduced from the lips of witnesses and this involves "expenses." Then the parties are to be heard before the judge upon the question of confirming or modifying the appraisers' report. What is this hearing? Is the judge who has not seen the premises, to revise the action of the appraisers, without evidence, simply on argument? That would be absurd. This "hearing" requires evidence also it becomes mockery. It must be the expenses of procuring this evidence, with the other expenses of the proceedings which the statute requires the corporation to pay. This construction comports with the language used by the legislature, and is entirely just to all parties.

22 Penn. 356

2 The order for execution.

If this is error, it is so on strictly technical grounds only, and this court would very reluctantly, if at all, reverse the case in consequence of it. If the corporation is by its own charter made liable for these costs, there is surely little conscience in its payment.

effort to avoid this payment. We do not
urge this consideration as controlling, but
only as fit, on a doubtful question, to effect
the inclination of the court.

The charter itself is unfortunately
silent as to any power to enforce the payment
of the costs. But it seems to us that
other general enactments are sufficient in
this case to support the order complained
of. It will be seen that the judge acted
as the ^{Circuit} ~~court~~ ^{but under special statutory authority} charter supra. It was a
cause before him, with parties plaintiff
& defendant, to be proceeded with in given
time, and requiring ^{also} duty to be performed by
not only the judge but ^{at least one} ministerial officer of the court
the clerk. Adversary proceedings are expressly
allowed by the charter, for the parties are
to have a "hearing." Then Sections 9, 10, 40
of Chap. 83 R. S. 1845. States Stats. pp 365-6
it seems to us are applicable. Also see 28
Chap 41 R. S. 41. States Stats. 508. The Fee bill
provided for in the last section to be
issued on the request of an officer in-
terested is but an Execution under an-
other name.

If however it is thought that
the judge in this case, did not act as
a "Circuit court" but simply as judge

then the exercise of a special authority
then we have to submit, that this case
is not now properly before this court - for
the writ of Error will not lie - petitioners
must be heard.

The cases cited by the
plaintiff in error it will be seen are
in no respect in conflict with the foregoing
view. So far as they exposed statutes of
other states, essentially variant from ours
in their enactments, they afford no light
for guidance in this case.

The cases in 3 Wheat. & 9 Wall. were
made upon a statute providing that the
corporation should pay "the cost of the
jury". In the present case the plaintiff's
charter requires it to pay "the expenses of
of the assessment."

Forayer & Clarke attys
for defts in error

No 63

Chicago & Miller, R.R. Co.

vs

Seaham Bull.

Mem.

Arguments for defendant
in error

Filed May 24 1838
L. Leland
clerk

Forayer & Clarke

Know all Men by These Presents, That *the Chicago and Milwaukee Rail Road Company*

as principal, and *Henry M. Blodgett*
as security, are held and firmly bound unto *Shabod Bull*

penal sum of *three hundred dollars* in the good and lawful money of the United States, for the payment of which, well and truly to be made, the said *Chicago & Milwaukee Rail Road Company and said Henry M. Blodgett* bind themselves their successors heirs, executors, and administrators, jointly, severally, and firmly by these Presents.

Witness, the Corporate seal of said *Chicago & Milwaukee Rail Road Company* and the hand & seal of said *Blodgett*
this *first* day of *May* A. D. 185*7*

The Condition of the above Obligation is such, That, whereas, the above named *Shabod Bull* did, at the *January* Term of the *Lake County Circuit* Court, held in and for the County of *Lake* in the State of Illinois, A. D. 185*6* recover an award ~~judgment~~ and order judgment against the above bounden *Chicago & Milwaukee Rail Road Company* for the sum of *Dollars for compensation and damages by reason of the taking certain lands for the use of said Rail Road Company together with costs which said costs are taxed by the clerk of said Court at the sum of Fifty five Dollars & seventy five Cents* for the sum of *to reverse which said judgment, the said Chicago & Milwaukee Rail Road Company* has sued out a Writ of Error from the Supreme Court, within and for the Third Grand Division of said State. Now if the said *Chicago & Milwaukee Rail Road Company* shall duly prosecute said Writ of Error, and pay, or cause to be paid, all judgments, costs, interest and damages which the said Supreme Court shall adjudge against *said Chicago & Milwaukee Rail Road Company* and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

H. M. Blodgett [SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]



Attest
A. S. Domb
Clerk
21247537
Attest
C. M. Plouffe

Bond

Chicago & Milwaukee
Rail Road Company
Off. in error

Isaboda Bull
Deft. in error

Filed May 7. 1857
J. Leland
Clerk



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[2nd]
[2nd]
[2nd]
[2nd]

Supreme Court in this regard, then this obligation is to be paid to the said
Isaboda Bull, Deft. in error, the said
Chicago & Milwaukee
Rail Road Company, Off. in error

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STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Lake* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Lake* County, before the Judge thereof, between *The Chicago and Milwaukee Rail Road Company*

plaintiff, and

Ischabad Bull

defendant it is said manifest error hath intervened, to the injury of the aforesaid

plaintiff as we are informed by *the* complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaintiff aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the *first Tuesday after the third Monday in April* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *7th* day of *May* — in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Seven*

L. Leland
Clerk of the Supreme Court.

By J. B. Rice Deputy

Chicago 112
The Milwaukee R.R. Co

by
Lehabod Bull
Writ of Error

This writ of error is to
operate as a supersedeas
and as such is to be
obeyed by all concerned

L. Seland
Clerk

By J. B. Rice Deputy

Filed May 2, 1857

L. Seland
Clerk

of Our Lord One Thousand Eight Hundred and Fifty-
four, this day of May in the Year
Justice of our said Court, and the Seal thereof, at O:
WALTER P. SCATES, Clerk

Clerk of the Supreme Court

the Judge thereof, between
of a plea which was in the Circuit Court of
COUNTY, before
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF
SUPREME COURT.
GREETING:
STATE OF ILLINOIS. The People of the State of Illinois,

In Supreme Court,
THIRD GRAND DIVISION,

CHICAGO & MILWAUKEE
RAIL ROAD COMPANY,

PLAINTIFF IN ERROR.

VS.

ICHABOD BULL,

DEFENDANT IN ERROR.

ERROR TO LAKE.

This was a proceeding commenced by said Company under its special charter. See Private Laws for Session of 1851, page 266, to ascertain the compensation to be paid by said company to defendant in error, by reason of the location and construction of its Rail Road over and across a certain tract of land in Lake County, owned by Defendant.

The report of the commissioners fixing said compensation and damages was made and filed with the Clerk of the Circuit Court, of said county, and a motion made in behalf of said company for the acceptance and approval of said report by the Judge of said court. The defendant objected to the acceptance and confirmation of said report, and claiming that he was dissatisfied with the amount awarded, moved that said Judge should modify said report as should to him seem just.

At the October term of said court, for the year 1855, said motion of defendant was tried by the Judge of said court, and the amount of compensation and damages increased from \$74, to \$131. See pages 9 and 14 of Record.

At the January term, 1856, of said court the final order accepting and modifying said report was made, in which the court orders as follows:

14 "It is further ordered, that upon payment by said company to said owners and parties in interest of the said compensation and damages, and the expenses of said assessment, said company and its successors shall become seized of said portion of said tract of land, and entitled to the use thereof for Right of Way for its Rail Road."

15 On a subsequent day of said term, on motion of defendant's attorney, said court ordered: "That the fees of the officers of said court for issuing and subpoenaing witnesses, and the fees of witnesses, attending on the part of said Bull, upon the hearing of the motion of said Bull for the modification of said report be taxed by the Clerk of this court against said Rail Road Company." To which plaintiff, by its attorney excepted.

At the October term of said court, for the year 1856, (two terms having intervened after the entry of the last preceding order,) it was, on motion of
18 defendant's attorney, ordered by the court, that execution issue for the amount of said fees. To which order an exception was taken by the plaintiff in error.

ASSIGNMENT OF ERRORS.

The Plaintiff assigns for errors.

1st. The order of said court directing the clerk to tax said fees and costs against said Rail Road Company.

2d. The order of said court, directing that Execution should issue in favor of Bull, for said costs and fees.

BLODGETT & UPTON.

FOR PLAINTIFF IN ERROR.

FRAZER & CLARKE,

FOR DEFENDANT IN ERROR.

63-130

The Chicago & Milwaukee
RR Company

vs

Isabell Bull

The Plaintiff, against the Defendant.

1st. The order of said court directing the clerk to tax said fees and costs against said Isabell Bull.

2nd. The order of said court directing the clerk to tax said fees and costs against said Isabell Bull.

For Plaintiff in Person.

For Defendant in Person.

Filed May 18, 1838

A. Leland
Clerk

ARGUMENT OF ERRORS.

172 63.

The Chicago & Milwaukee
ns

Ichabod Bull

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