Pacific Railroad Co. vs. Brown, Martha H. 1854 Franklin 333/4
heir of Brown, John B.

567/26

no opinion found
eminent domain
Brown resided on property

State of Missouri } ss.
County of Franklin } Be it remembered that at a Circuit Court begun and held within and for the County aforesaid on the third monday (19th) of September 1853 and on the seventh day of the term of said Court being the 26th day of September there was filed in said Court a petition in words and figures as follows and the record of said filing on said days is also as follows ——

Record —— "The Pacific Rail Road Company vs Martha F Brown et al heirs of John B Brown dec^d. Petition filed by plaintiff." ——

Petition —— The Pacific Rail Road Plaintiff agt Martha F Brown Joseph E Brown minors represented by their guardian William H Brown and John F Brown and Allen E Brown minors represented by their guardian James R Brown minor heirs of John B Brown dec^d Defendants ——

Petition under the general Railway Law to condemn land for Rail Road purposes. In the Circuit Court of Franklin County September Term 1853 ——

—— Plaintiff states that the Pacific Railroad is a body politic and corporate created by Act of the Legislature of Missouri Approved March 12th 1849. Its charter has been amended by an act approved March 1st 1851 and another approved December 25. 1853. By the said several acts of the Legislature aforesaid it professes power to mark out locate and construct a Railroad from St Louis via Jefferson city to any point in Jackson County — to construct lateral or branch roads not exceeding fifty miles from the main line and special authority is given to construct a line of railway from some point on their main trunk line east of the Osage river to the western boundary of the State South of the Osage river and called the "The Southwestern Branch" and authority is also given to ~~construct~~ construct the Iron Mountain Branch. No particular amount of money is required to be subscribed by the Charter or its amendments before commencing to survey locate and construct their road, but

but it is required that the Company commence the construction of their ~~main~~ trunk line within seven years from the date of the original charter. The Company have surveyed the main trunk line and the South western branch line, and definitely located the greater part of each. Plaintiff further states that said Company is composed of counties towns cities merchants farmers mechanics laborers lawyers doctors and men of all occupations, and the Board of Directors are nowusing every exertion and expending enormous sums of money in order to push forward the enterprise and build up the State, and it is their intention in good faith to finish and construct the said main trunk and Southwest lines at the earliest day possible

The survey of the main trunk of their Railroad in the County of Franklin and which has been located, passes through a tract of lands described as follows: The tract of land lying in township forty four range one east in Boles township in Franklin County being the same tract of land on which John B Brown resided at the time of his death. The claimants of said land are James R Brown and William H Brown who are of age and have relinquished to plaintiffs and John P & Allen E Brown both minors under the age of fourteen years represented by their guardian James R Brown and Martha H & Joseph E Brown both minors under the age of 14 years represented by their guardian William H Brown, the said minors being each entitled to one undivided sixth part of said real estate ~~~~~~

The Company require for the purpose of constructing their road and road bed and operating their road a strip or piece from the aforesaid tract of land described as follows on the plans of the Pacific Railroad as commencing at station No 556 and terminating at station No 570.55 as follows ~~~~

Width on each side of center line going west		At Nation of Railroad	Course to next Nation	Distance in feet
Left	Right			
160	160	556	856,20 ft	
"	"	558	" 58.50 "	200
"	"	559	" 57.50 "	100
"	"	560	" 58.50	100
"	"	561	" 59.50 "	100
"	"	562	" 60.50 "	100
"	"	563	" 61,50 "	100
"	"	564	" 62.50 "	100
"	"	565	" 63.50 "	100
"	"	566	" 64.50 "	100
"	"	567	" 65.50 "	100
"	"	568	" 66,50 "	100
"	"	569	" 67 50 "	100
"	"	570	" 68 36 "	100
"	"	570.55	" 69.06 "	55
		Total Distance		1455 feet

Making an area of 10.6887 acres — more or less —

Plaintiff states that defendants are unable to relinquish the aforesaid strip or piece of land being minors under age as aforesaid nor are they able to agree for the purchase of the same. Wherefore said plaintiff prays your Honor to appoint Commissioners of appraisal who shall proceed without delay to ascertain and appraise the compensation of any to be made to the owners and Claimants of said land — to direct said commissioners as the law requires in forming their estimate to make due allowance or deduction for any advantages or benefits which the parties in interest will derive from the construction of the proposed Railroad but not allowing them the benefits of any rise in land in consequence of the survey and that a final order may be granted fully vesting the plaintiff with the title to the aforesaid land and for all such other and further relief as the justice and equity of the case requires John D Stevenson

Attorney for Pacific Railroad

County of Franklin ss John D Stevenson on his oath says that the foregoing petition and the matters therein as stated he believes to be true John D Stevenson

Sworn to and Subscribed before me this 7 day of September 1853 H. R. Sweet J. P.

To William H Brown and James R Brown guardian of the minor heirs of John B Brown decd. You are hereby notified that on the 26th day of September 1853 or so soon as counsel

can be heard at the Court house in the County of Franklin I shall present to the Judge of the Circuit Court of said County a petition of which the foregoing is a copy and ask for the necessary order in the Case When and where you may attend if you see proper Given under my hand this 8th day of September 1853 John D Stevenson —

On which petition is endorsed the following return —

Served the within notice & petition on Martha F Brown & Joseph E Brown minors represented by their guardian William A Brown by delivering to the said William A Brown a true copy of the petition and notice on the 9th day of September 1853 and served the within notice and petition on John P Brown and Allen E Brown minors represented by their guardian James R Brown by delivering to the said James R Brown a true copy of the notice and petition on the 9th day of September 1853. A R Sweet

Sworn to & subscribed before me the 26 day of September 1853 C. D. Jeffries Clk by E. B. Jeffries DC

And afterwards on the 12 day of the term of the Court aforesaid the following further appears of record. The Pacific Railroad Company vs Martha F Brown & others, Heirs of John B Brown decd. The defendants by their counsel file herein a demurrer to the petition of plaintiff which being seen and by the Court considered the said demurrer is sustained, and the plaintiff by counsel excepts to the opinion of the Court in sustaining said demurrer and presents to the Court a bill of exceptions and prays that the same may be signed sealed and made a part of the record which is accordingly done." The demurrer to plaintiffs petition is as follows The Pacific Rail road Plaintiff agt The Heirs of John B Brown defendants In the Franklin Circuit Court Septr Term 1853 —

Defendants demur to the petition of plaintiff because the same is inconsistent with Charter of the Pacific Rail

Road. Because the petition claims more land than the charter grants & does not specify for what purpose the increased quantity is required. There are no surveys maps plats profiles certificates of location filed in the Clerk's office as required by law and also for this be cause the Court has no power to grant the prayer of petitioner in this "The prayer that the Court will direct the commissioners in forming their estimate of compensation" to make due allowance or deduction for any advantages or benefits the parties in interest will derive from the construction of the proposed railroad" and that portion of the law is unconstitutional & the Court has no power or jurisdiction to grant the same Gale & Halligan Attys for Deft

The Bill of Exceptions is as follows: Pacific Railroad vs Heirs of John B Brown Petition to condemn land

And now at this day come the said parties by their respective attorneys and the defendant here in Court files his demurrer to the plaintiffs petition which being seen and understood it is ordered that said demurrer be sustained and thereupon the plaintiff excepts to the decision herein and presents this his bill of which is signed as a part of the record John H Stone Trial

And afterwards on the day and year last aforesaid the following further appears of record to wit: ——

The Pacific Railroad Company vs Martha H Brown and others heirs of John B Brown Petition

Now at this day comes the plaintiff and presents to the Court his bond for an appeal of this cause to the Supreme Court of this State, which bond is by the Court approved and ordered that the Clerk of this Court make out and send certified to said Supreme Court a full and perfect transcript of the record and proceedings had in this cause in this Court" Which bond is as follows

The Pacific Rail Road Co vs John B Browns heirs

Know all men by these presents that we John D Stevenson and Green B Wade bind ourselves our executors administrators & heirs to the defendants in the above entitled case in the sum of fifty dollars to be well and truly paid on the following conditions. Whereas the said Pacific Railroad Company have this day appealed to the Supreme Court of the State of Missouri in the above entitled cause. Now if the said appellant shall well and truly pay all costs and damages which may be awarded against them then this obligation to be void otherwise to remain in full force and effect. As witness our hands and seals this 1st day of October 1853

John D Stevenson (Seal)
G. B. Wade

State of Missouri } ss
County of Franklin } I C. S. Jeffries Clerk of the Circuit Court of the County aforesaid hereby certify that the foregoing is a full and perfect transcript of the record and proceedings had in said cause in said Court as the same is of record. Witness my hand and Seal of said Circuit Court at Office in Union this 4 October 1853.

C. S. Jeffries Clk
By E. P. Jeffries D C

13

26

March. T. 1854

Pacific Rail Road Company
appellant
vs
Heirs of John B Brown
respondent

Transcript from
— Franklin County —

J. D. Stevenson — p

Filed 6th October 1853
Wm. S. Glanville
Clerk.

Postage 10

587

Pacific Rail Road
appellants

vs

Martha F Brown
& others
Respondents

In the Supreme Court of Missouri

The appellants by their attorneys Glover & Richardson come and say in the record & proceedings in this case there is error as follows to wit

1. The petition of the appellants showed a valid cause of action
2. The demurrer was improperly sustained.
3. The judgement was for the wrong party

Glover & Richardson
with John D Stevenson
for the appellants

The Appellees by Ray their Attorney come & say there is no error in the record & proceedings in this case whereon they pray judgment &c

Ray
for Appellees

B

Pacific Rail Road
vs
Martha F. Brown
& others

assignment of
errors — by Glover
& Richardson for
appellants,

& Joinder
Bay

Filed 21st October 1853
Wm. S. Glanville
Clerk

The Pacific Rail Road
vs appellant

Martha A Brown
& others
Respdts

In Supreme Court of Missouri

[Statement of the Case]
[By Glover & Richards vs]
Wm D Stevenson

The Pacific Railroad filed their petition in the Circuit Court of Franklin County in September 1853 stating that Martha A Brown Joseph E Brown John P Brown and Allen E Brown infant heirs of John Brown deceased owned 4/6 of a strip of land which the pltffs required for the purpose of constructing their road & road-bed and operating their road that said strip of land extended 150 feet on either side of the center line of the said railroad as located by the plaintiffs, that it commenced at the station as known in said location No 556 and terminated at station No 570.55 – that defendants were unable to relinquish, prayed that said strip might be condemned and the title thereto fully vested in the Company and that Commissioners might be appointed to ascertain the compensation to be made to the owners and that

the Court direct the said commissioners to estimate the advantages and disadvantages of constructing said road to the land but not to estimate anything in favor of defts on account of the use of the land in consequence of the survey. The notice required by the statute was duly served on the guardians of said defendants

[101]

The defendants appeared and filed their demurrer to the plaintiffs petition by their attorneys and assigned the following causes of demurrer –

1 The petition is inconsistent with the Charter

2 It claims more land than the charter grants; and does not specify for what

3 purposes the increased quantity is required.

3 No surveys plats maps profiles or Certificates filed in the Clerks office as required by law.

4 The court has no power to grant the prayer of the petition

5 That part of the petition which asks the Court to make allowance for

the benefits derived from the construction of the road is unconstitutional The demurrer was sustained; & the Pacific Rail Road appealed,

B

Pacific Rail Road
vs appellant

The Heirs of Geo
Brown Dec'd

Statement by
Glover & Richardson
attys for appell
ant

Filed 27th October 1853.
Wm. L. Garrison
Clerk

B27

The Pacific Rail Road
vs
Brown et al

The Appellees in this case contend

1st That the court below very properly sustained the demurrer to plaintiffs petition inasmuch as said petition did not present a state of facts that would warrant the court in granting the relief prayed for

The 7th Sec of the act incorporating the Pacific Rail Road provides that the company "shall have power to survey, mark, locate and construct a Rail Road from the City of St Louis to the City of Jefferson and thence to some point in the Western line of Van Buren County in this State with a view that the same may be hereafter continued westwardly to the Pacific Ocean; and for that purpose may hold a strip of land not exceeding one hundred feet wide, and may also hold sufficient land for the construction of depots, warehouses, and water stations; and may select such route as may be deemed most advantageous, and may extend

branch Rail Roads to any point in any of the Counties in which said road may be located - See Acts of 1849 p 220 -

By an act approved March 1st 1851 amendatory of the act above mentioned, it is provided that said Company may hold a strip of land not exceeding one hundred feet wide except when it may be necessary for turn outs, embankments or excavations in which case they may hold a sufficient width for the preservation of their road, and may also hold sufficient land for the erection and maintenance of depots landing places or wharves, engine houses, offices, machine shops, warehouses, and wood and water stations - See Sep Acts of 1851 p 272 -

The petition in this case claims three hundred and twenty feet of land being one hundred and sixty feet on each side of the road through the lands of Defendants without assigning in any part of the same that it is wanted or required for any of the purposes enumerated in the acts above recited

The petition should distinctly aver that the 320 feet asked for is required for one of the purposes enumerated in the act, and should state for what purpose; in other words it should state such facts which if true would entitle the company to the number of feet asked for.

If it is not necessary to aver in the petition for what purpose so large a quantity of land is required then it is not necessary to show or prove it, and the company have only to demand whatever amount they want in order to obtain it.

In limiting the company to 100 feet (except in certain specified cases) the Legislature undoubtedly had in view the protection of the landholder: but they have totally failed in their object if the company are at liberty to take any amount they may desire without averring and showing the purpose and object to which it is to be applied.

By the 14th sec of an act entitled "An act to authorize the formation of Rail Road Associations approved Feb. 24th 1853" (see sep acts of 1853 p 128) it is provided

That the petition presented to the Circuit Court shall contain a description of the real estate which the Company seeks to acquire and shall state that the Company has surveyed the line or route of its proposed road, and made a map or survey thereof by which said route or line is designated, and that they have located their said road according to such survey and filed certificates of such location signed by a majority of the Directors of the Company, in the Clerks office of the several counties through or into which the said road is to be constructed -

The provisions of this act are made applicable to all existing rail road corporations when not inconsistant with the provisions of their charter. (see sec 56 of last named act)

The petition in this case contains no definite description of the land

but merely alledges that it is in Boales Township Franklin Co, and in Township 44 Range one East
Nor does it aver that the company have located their road according to their survey, or that they have made a map thereof by which said route or line is designated, or that they have filed certificates of locations in the Clerks Office signed by a majority of the Directors of the company

It is admitted that the Legislature have the power to authorize the taking of private property for public purposes upon making just compensation to the owner; but it is insisted that the increased value of the adjoining property belonging to the same person cannot be set off against the loss or damage sustained by him and be considered as a just compensation for the property so taken.

That the constitutional guarantee of a just compensation to every person whose property shall be appropriated to public use without his consent entitles the owner of the property so appropriated to the money value thereof, and he cannot be paid off in "benefits or advantages which are forced upon him against his consent. It becomes a debt against those who take his property and must be paid like other debts.

9 Iowa 114 - 5 Iowa 28
7 " 81

See also case of Woodfolk vs The Nashville and Chattanooga Rail Road Co recently decided by the Supreme Court of Tennessee & published in the last July Number of the American Law Register

The petition prays for the appointment of commissioners to ascertain and appraise the compensation if any, to be made to the owners and claimants of said land and to direct said commissioners in forming their estimate to make due allowance or deduction for any advantages or benefit which the parties in interest will derive from the construction of the proposed Rail Road and not to allow them the benefit of any rise in land in consequence of the survey of said Road

It is respectfully submitted that the act of the Legislature authorizing the commissioners in assessing damages to take into consideration the advantages of the Road to the land, is in conflict with that provision of our State Constitution which declares

"That no private property ought to be taken or applied to public use without just compensation"

(see State Constitution Sec 7 Art. 13

and is therefore null and void

The taking of a man's property without his consent is a dangerous and oppressive power and although recognised by the constitution should be used with extreme caution —

The proper parties appeared in the court below, notice was served on the Guardians of the infants heirs and they appeared by Guardian —

Bay
Atty for Appellees

Sup Court
Oct Term 1853

Pacific Rail Road
vs
Brown et al

Points & Authorities
of Appellees

Bay Atl
for Appellees

Minor heir of
John B Brown dec.

[26]