NINETEENTH ANNUAL REPORT

OF THE

Railroad and Warehouse Commission

OF ILLINOIS.

RAILROADS, FOR THE YEAR ENDING JUNE 30, 1889.
GRAIN INSPECTION, OCTOBER 31, 1889.
OFFICE, DECEMBER 1, 1889.

COMMISSIONERS:

JOHN R. WHEELER, CHICAGO, *Chairman.*

ISAAC N. PHILLIPS, BLOOMINGTON. W. L. CRIM, FRANKFORT.

J. H. PADDOCK, *Secretary.*

SPRINGFIELD, ILL.:
SPRINGFIELD PRINTING CO., STATE PRINTERS.
1890.

No. 3.

PETITION TO DETERMINE MODE OF CROSSING.

The Chicago & Calumet Terminal Railway Co., Petitioner.

vs.

The Chicago, Burlington & Quincy Railroad Co., Respondent.

OPINION OF THE COMMISSION.

The petitioning company, the Chicago & Calumet Terminal Railway Company, seeks by this proceeding a decision of this Commission under the act in force July 1, 1889, compelling respondent, the Chicago, Burlington & Quincy Railroad Company, to permit petitioner to cross respondent's tracks at a point in the village of La Grange, Cook county, Illinois, on grade. The point of proposed crossing is near fourteen miles out from respondent's Chicago depot. The prayer of the petition is resisted on the ground that a grade crossing at the point in question would "unnecessarily impede and endanger the travel and transportation" upon respondent's road.

The petition alleges, among other things, the following: That petitioner is a corporation organized and existing under and by virtue of the laws of the State of Illinois; that it has laid out its route and partially constructed its tracks from Lake Michigan to near the Des Plaines river, and reached a point near the right of way and railroad tracks of respondent, and is desirous of building its road and constructing its tracks across the right of way and tracks of said respondent near where they cross the west line of section three (3), town thirty-eight (38) north, range twelve (12) east, in Cook county, Illinois; that it, the petitioner, desires to cross said tracks upon a level with its own tracks, and offers to be at the entire expense of constructing said crossing, introducing and maintaining a system of inter-locking signals, paying all salaries and expenses of the same, and to give all the trains of re-

spondent preference and precedence at said crossing; that petitioner has demanded of respondent that it be permitted to cross at grade, but permission to do so has been refused; that respondent insists that petititioner cross said tracks and right of way at an elevation of not less than twenty-one feet clear above the top of the rails of petitioner's track, which will make an elevation of from twenty-five to thirty feet; that the point at which petitioner desires so to cross is part of a level plain extending miles each way; that a crossing upon grade with proper signals and appliances will not unnecessarily impede or endanger the travel or transportation of the respondent company; that an overhead crossing is more dangerous to foot and carriage passengers seeking to cross the tracks of the road running under an elevated crossing than a crossing on its grade; that the property owners in that vicinity are opposed to such overhead crossing, and threaten to bring suit for damages to enjoin the same; that the trustees of the town of La Grange wherein said proposed crossing is located are taking measures to enjoin the erection of an overhead crossing for the reason that such a crossing is unnecessary and will create a perpetual nuisance, and will injure and depreciate the value of property in its immediate vicinity. The petition prays for a decision of the Commission prescribing the place where and the manner in which said crossing shall be made.

In answer to this petition the respondent company admits that petitioner has laid out its route and partially constructed its tracks as alleged; that demand was made upon it by petitioner for a grade crossing, and that respondent, believing that a grade crossing would unnecessarily impede both the travel and transportation upon its railway, refused said demand. Respondent denies the averment that said proposed grade crossing will not unnecessarily impede or endanger the travel or transportation upon its railway, and alleges the contrary to be the fact; and says that respondent owns and operates 6,000 miles of railroad converging at Chicago, which is its eastern terminus, and has traffic arrangements with other companies, connecting with responsdent's lines; that all traffic over respondent's road destined to or from Chicago, or east by way thereof, passes over said tracks proposed to be crossed; that in the regular course of respondent's business, fifty trains in each direction, or one hundred trains in all each day pass over respondent's tracks at the point of the proposed crossing, about half being freight trains and the other half passenger trains; that respondent has now three tracks at the point in question and the increase of its business will soon require the building of a fourth, and that the increase in population and development of business are likely to cause the necessity for double the number of trains upon respondent's tracks within ten years; that respondent in addition to its general passenger and freight trains is now doing a very large suburban business, nearly all of which originates west of said proposed crossing; that about 2,500 suburban passengers pass over respondent's road each

day at the point of said proposed crossing, which suburban traffic is constantly increasing at the rate of 25 or 30 per cent. per year; that the point of said proposed crossing is at the foot of a maximum grade, and that trains at said point both ways run at a maximum speed; that west bound trains are obliged to run at high speed at said point for the purpose of making the ascending grade; that if the proposed grade crossing is made all trains of respondent will be compelled to reduce speed at the point of crossing to a very low rate; that in addition to the delay which will thus be caused, many trains will be compelled to stop and wait for trains on petitioner's road to pass the crossing; that on account of the necessity of running at a low rate of speed and making possible stops at this point, respondent's west bound trains could not run for the grade at this point as heretofore, and respondent would be compelled for this reason to reduce the length of many of its west bound freight trains; that it is entirely practicable for petitioner to cross respondent's railway either by an overhead or an under crossing; that the trustees and citizens of the town of La Grange where said crossing is located are opposed to a crossing at grade as unnecessarily impeding and endangering public travel.

At the hearing, respondent, having abandoned its previous alleged contention for an overhead crossing, presented to the Commission a proposition and estimate for an under crossing, which proposition and estimate contemplated the raising of respondent's roadbed by petitioner, at the point of the crossing to an elevation eight feet above its present position, being in all nearly twelve feet above the natural surface, and that the petitioner should make a cut twelve feet below the natural surface at the point of crossing, so as to admit of its trains passing under the tracks of respondent.

Upon proof being made, however, to the effect that the stage of high water in Salt creek, about one mile distant, which would form the only outlet for drainage of the proposed cut, would not admit of the cut being drained, if extended to the depth of twelve feet as proposed, the respondent company presented modifications of its proposition and estimate to meet such proofs. Respondent's amended proposition contemplates the raising of the Burlington tracks about eleven feet instead of eight as before proposed, and a corresponding reduction of the depth of the cut to be made for petitioner's road so as to admit of what respondent contends would be complete drainage to Salt creek during high water, all the work to be done of course by the petitioning company. In addition to this, respondent's counsel at the close of the hearing made an oral offer that respondent would pay one-third of the increased cost of constructing the crossing in accordance with their amended proposition over and above what such cost would be if the crossing were made at grade; also one-third of all damages adjudged against petitioner and in favor of adjacent property owners on account of the construction of the crossing in the manner proposed; also one-third of the increased cost of all switch connections. It may

be said in passing that these propositions of respondent to permit its tracks to be raised and to pay part of the expenses of the crossing are not within the power or jurisdiction of the Commission to be ordered or enforced, and would depend entirely upon respondent's own voluntary stipulation.

There is little real conflict in the evidence heard by the Commission except upon a few subsidiary questions. It is conceded that these roads approach each other upon a level plain which offers no natural facilities for any crossing other than at grade; nor can this be avoided by any change in the place of crossing proposed; the adjacent country is all flat. It is also a fact not controverted that petitioner had obtained its charter and begun construction of its road before this law was passed; that its road is to be chiefly for the carriage of freight, its object being, as its name indicates, to form connections with the various lines of road out from Chicago, including of course the lines of respondent, so as to distribute among these lines the products of the large factories in the vicinity of Calumet Lake. So the allegations of the answer touching the extent of respondent's passenger and freight traffic, the number of its trains, the state of its grade at the crossing point, and the resultant necessity of speed being made by its trains are practically uncontroverted. It is conceded that to make a non-grade crossing a clear passage way of twenty feet from top of rail to lowest point of superstructure above is necessary; and that, to obtain this twenty foot clearing, there would be a necessity for a considerable additional distance taken up by rails, ties, ballast and side ditches, for drainage of the servient roadbed.

In the course of the hearing memorials and petitions were presented from the municipal authorities and residents of several towns on the line of respondent's road, including La Grange, favoring an under crossing. Before the proposition for such an under crossing had been made, however, a petition had been numerously signed by adjacent property owners in La Grange strongly favoring a grade crossing as against the overhead crossing then contemplated. It may therefore be taken that public sentiment among residents in the vicinity generally favors, first an under crossing by petitioner if that can be had, and if not then a grade crossing; and that an overhead crossing is more objectionable than any other. Such is the import of the public expressions before the Commission, which, though perhaps not in strictness legal evidence, the Commission felt constrained to hear and consider for whatever they might be worth. Many persons owning property immediately adjoining the roads naturally oppose the unsightliness and inconvenience of either a high embankment or a deep cut, insisting that the value of such adjacent property would be thereby greatly lessened, a conclusion not easily to be resisted.

One question upon which there is some conflict in the evidence is, whether or not a reduction of speed is necessary at crossings where the latest improved interlocking signals and devices are in use. Upon this question we think the evidence preponderates in number

and certainly in credibility that it would not be perfectly safe (at least so long as no device for a continuous rail at crossings is brought into use) for trains to pass crossings otherwise than "under control." The Commission has not so far, at any rate, seen its way to issue permits to railroads to pass crossings having interlocking devices, without the train being at the time under "control." As to what is "control" it appears from the evidence that for an ordinary passenger train "control" would be a speed of about fifteen miles per hour, and this would, of course, vary inversely with weight and consequent momentum of train.

There is also some conflict upon the question as to whether improved crossing devices have entirely eliminated the element of danger at railroad crossings, where the same are in use. That they have great efficacy in preventing accidents is conceded. Where the latest interlocking devices are used there is, indeed, very little probability of a collision between trains. A derailment of one train may occur if the engineer is not attentive to signals, but a collision would be possible only in the event that the derailed train were heavy enough or moving with sufficient momentum, to pass over the ground or ties from the derailing point up to the crossing proper, a distance usually of about three hundred feet.

Under the evidence before us as to danger and delay our view constrains us to consider this case upon the basis, *first*, that wherever two trains are liable even by possibility to pass through the same space there must necessarily be some danger to those who ride, and, *second*, that a reduction of speed of trains down to the point of "control" would be necessary, or at least prudent, at all grade crossings however equipped. We see, therefore, that there must be some delay to travel and transportation, and also a small liability to danger in the case of all grade crossings. Whether or not such delay and such danger would be "unnecessary" within the meaning of that term as used in the statute, all circumstances and surroundings of the proposed crossing duly considered is the question for our decision.

Most of the evidence before us has been addressed to the question of fixing the point of high water in Salt creek. The high water point is important to be arrived at with reasonble certainty as it bears directly upon the question of drainage, and drainage is an essential element of respondent's plan. If the point fixed by some of petitioner's witnesses be taken as the ordinary high water point, an under crossing by the petitioning road would be entirely impracticable, as only a very shallow cut could be drained in time of high water, and an under crossing on that basis would really mean the raising of respondent's road to such height as would make the crossing in fact an *over* crossing by that road, subject to the many and grave objections such a structure naturally raises. Upon the other hand if we should assume the lowest point fixed by some of the witnesses of respondent as being high water mark, feasible drainage could be obtained for a twelve-foot cut as contemplated by the first proposition of respondent. With-

out discussing the evidence in detail, which is deemed unnecessary, the Commission have arrived at the conclusion from consideration of all the testimony touching the question, that in order to insure drainage it would be necessary, in case an under crossing should be adopted, for the Burlington tracks to be raised at least twelve feet above their present position, and the tracks of the petitioning road to be depressed below the surface sufficiently after providing for side ditches, ballast, ties and rails, to leave twenty feet in the clear between the top of rail and the lowest point of the girder.

In addition to the above question there has been placed before us some general expert testimony as to the merits and demerits of grade crossings, with reference to the safety and convenience of the traveling public. The weight of this testimony is against the general policy of grade crossings, a view in which no doubt all will concur, wherever conditions are at all favorable to crossings of some other kind.

This case derives its chief importance from the fact that it is the first one arising under the act conferring jurisdiction upon the Commission, and a conspicuous position is therefore likely to be assigned to this ruling as a precedent. We think it proper, however, to observe that a ruling of the Commission in any individual case, arising under this statute, can not be taken as necessarily controlling other cases except where, in the opinion of the Commission, the same conditions obtain; and since the conditions can rarely be the same in any two cases, it follows that in the application of this statute each crossing must be considered essentially by itself.

The act under which this proceeding is had is short and may be quoted in full. It is as follows:

(LAWS OF 1889, PAGE 223.)

"*An Act in relation to the crossing of one railway by another, and to prevent danger to life and property from grade crossings.*"

"SECTION 1. *Be it enacted by the People be the State of Illinois, represented in the General Assembly:* That hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the crossing at such place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed. If in any case objection is made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railway and Warehouse Commissioners, and it shall be their duty to view the ground, and give all parties interested an opportunity to be heard. After full investigation, and with due regard to safety of life and property, said Board shall give a decision, prescribing the place where and the manner in which said crossing shall be made, but in all cases the compensation to be paid for property actually required for the crossing, and all damages resulting therefrom shall be determined in the manner provided by law in case the parties fail to agree."

"SECTION 2. The railroad company seeking the crossing shall, in all cases, bear the entire expense of the construction thereof, including all costs and incidental expenses incurred in the investigation by the Board of Railroad and Warehouse Commissioners."

"Approved May 27, 1889."

From the terms of the above act, what, if anything, may we deduce as to the general policy of the State touching this question of crossings? Certainly we cannot from it infer that the law makers intended to abolish grade crossings. Had that been their object it was competent for them to have said so in plain terms.

This was not done; but a tribunal was instead designated to pass upon cases as they arise, From this we must infer that the legislature believed there would be some cases where grade crossings would be proper, and others where over or under crossings would be proper. Each case was left by the legislature to be decided upon its merits. This Commission would have no more right under the statute to set up a general unvarying standard for all future crossings in Illinois than it would have to enact a law which the legislators did not think proper to enact for themselves.

In the exercise of the discretion so vested in the Commission, a strong, and in many cases, controlling consideration would be the natural configuration of the ground at and near the place of crossing. The fact that the statute authorizes the Commission to pass not only upon the *mode* but also upon the *place* of crossing seems to imply, that it might be proper in some cases to vary the place of crossing with the view of striking the road to be crossed at a more favorable point for a non-grade crossing. It will not be questioned for a moment that wherever the lay of the ground is favorable to a crossing over or under without great additional expense, or the erection of unsightly embankments to the great injury of property, a non-grade crossing should be under this law preferred. We have seen, however, that the topography of the country does not in the case before us favor a non-grade crossing; and if the locality were remote from a large center of population and the road proposed to be crossed were not one over which a large traffic daily passes, the case would be quite easy of solution. But the contrary is the fact. The point is near a rapidly growing city, having already a population of twelve hundred thousand; nearly one hundred trains, passenger and freight, pass this point daily and the number is likely to steadily increase. Already three tracks are in use upon respondent's road, and there will soon be need for a fourth. Several suburban stations of importance lie beyond this crossing. Under such circumstances are the delay and the danger from a grade crossing such as to warrant the Commission in ordering the under crossing proposed?

The increased cost of the proposed under crossing, over that of a grade crossing, is not fixed by the evidence with certainty, there being disagreement among the engineers of the companies. This increased cost may be safely placed within the limits of from $125,000 to $150,000, with a large additional sum for increased cost of switch connections, sidings, turn-outs, etc., incidental to the non-grading status; and while the commission is exceedingly loth to weigh even the possibility of the destruction of human life against a mere matter of dollars, yet the serious financial hardship under which an order for an under crossing would lay petitioner can not be ignored. The petitioning company obtained its charter at a time when the law permitted the road seeking a crossing such as this to select for itself the place and mode of crossing. It could, under the former state of the law, have itself designated the character and conditions of the use sought here,

and, under the eminent domain act, could have had damages assessed on the basis of its own proposition, whether for a grade crossing or otherwise (113 Ill., 156). Having begun the construction of its road, petitioner is met with this new statute, and asked to make an increased outlay of over $100,000 in this single crossing, exclusive of the one-third respondent offers to pay; and, if compelled to do this in the present instance, it is, to say the least, not improbable it may be required to do the same with the many other lines of road across which its route is projected. To do this would, perhaps, cripple, if it would not entirely forbid, the enterprise.

Considering further the subject of switch connections above alluded to, it should be remembered the very object of the petitioning company is to form these connections with the several roads leading from Chicago across which its survey runs.

Under paragraph 6, Sec. 19, act of 1872, for the incorporation of railroad companies, petitioner has the right

> "To cross, intersect, join and unite its railways with any other railway before constructed, at any point in its route, and upon the grounds of such other railway company, with the necessary turn-outs, sidings and switches and other conveniences in furtherance of the business of its connections; and every corporation whose railway is or shall be hereafter intersected by any new railway, shall unite with the corporation owning such new railway in forming such intersections and connections, and grant the facilities aforesaid, etc."

This section is as much a part of the law of Illinois as that conferring the jurisdiction now to be exercised. Under it petitioner will want switch connections with each of the lines where the mode remains yet to be determined, nine or ten in number. Indeed, as we have said, the very object and purpose of petitioner is the forming of these connections; and, in their formation, the statute enjoins it as a duty upon the roads crossed to "unite" with petitioner. The inconvenience, expense and unsightliness which such switch connections, turn-outs, etc., must occasion in each instance, if a non-grade basis is adopted on this level plain, will be realized upon a moment's reflection. Either a separate track would need to be built on the natural surface alongside the Terminal road's excavation, starting at the head of the cut, or else a switch-track would have to be taken out from the cut a considerable distance back from the crossing point, and gain the surface by a sharp grade; and this would be less than half the difficulty. Respondent's tracks would, on the basis of the proposition submitted, be about fifteen feet high, which elevation would have to be overcome by an embankment for switch-track, describing a curve long enough in distance to make the ascent practicable for engines with loaded cars. Stated another way, whether a non-grade crossing be got by depressing one road or by elevating the other, there would be at best a distance of about twenty-two feet from rail to rail to be overcome by a feasible track and roadbed for switches, turnouts and sidings. That it could be done is not disputed; but to do it would certainly require a long track, a high embankment, a probable cut, and consequently a much more extensive right of way than if a grade crossing were used. All this

would tend to disfigure the neighborhood of the crossings so constructed, inflicting, perhaps, a damage upon property in a growing village which would never be adequately measured by a judgment in condemnation or for damages.

Besides these considerations, the Commission is satisfied from previous personal investigation, as well as from the evidence heard, that interlocking devices which are fully recognized by statute in Illinois, the most approved patterns of which petitioner stipulates, at its own expense, to put in and maintain, giving all trains of respondent the right of way, are so efficient, as demonstrated by actual use, that they reduce both the delay and the danger to a very small limit. With the watchman in the signal tower instructed to give the Burlington trains precedence, it must be very rare indeed, that one of that company's trains need come to a full stop. So far as its freight trains are concerned, the delay would be unimportant; and the mere matter of lowering the speed of passenger trains to fifteen miles per hour to conform with permit, and good usage, need not occasion, as the Commission believe, a delay to any given train exceeding two minutes, and with a light train even less, which is not a very great matter.

If the danger and delay to result from a grade crossing at this point are regarded as so important, it would seem a wide field is open for the management of the respondent company to reduce both delay and danger at some of its present grade crossings where no interlocking devices are in use; and the same remark well applies to other managements of old companies, members of which have testified before us in this case urging no more grade crossings. Certain it is, that when no interlocking devices had been recognized by law, or were in use, and both danger and delay were confessedly much greater, it was the practice of nearly all companies in this State to build crossings on grade.

The greater solicitude, arising now when the occasion is less, might suggest to some, (though the Commission certainly does not take that view) that these old established lines, now that they no longer have occasion to build extensions, are not averse to imposing upon new candidates conditions which rest largely upon specious but unpracticed precepts.

Nothing here said is, however, to be understood as committing us to any general policy favoring grade crossings, as such. On the contrary, wherever circumstances favor, or even permit, we should much prefer to separate the tracks of crossing roads. We have hesitated long before seeing our way to order a grade crossing even in the present case. If respondent's tracks were already elevated to a point which would render an under crossing with good drainage feasible, we should perhaps be inclined to put the petitioning road under. With the circumstances and conditions as they now in fact confront us, we are unable to do so.

DECISION.

It is therefore decided and ordered that petitioner have leave to cross with its tracks, the tracks of respondent at the point designated in its petition on grade and level with the tracks of respondent; but only upon condition that before its road is used at said crossing point for the passage of trains, it will, at its own expense set up and fully equip ready for use at said crossing, the latest, best and safest interlocking appliances, signals and devices, together with electric annunciators to announce the approach of trains, and also upon condition that before proceeding to construct such crossing, petitioner give bond in the penal sum of $20,000, with securities to be approved by respondent, or the Commission, conditioned, that it will perpetually maintain such interlocking system in good order and condition, and pay all salaries of men needed to efficiently maintain and operate the same.

Inasmuch as no general rules of practice for proceedings under this act have been heretofore promulgated, it is ordered that ten days be allowed from the date of filing this opinion in which either party may file petition for re-hearing, first giving notice to the opposite party, in analogy with the rule of the Supreme Court of Illinois touching re-hearings; and the operation of the above decision and order will be suspended until any petition which may be so filed is heard and disposed of.

SPRINGFIELD, ILL., November 30, 1889.

Respondent filed within the time specified, a petition for a re-hearing, which was granted by the Commission, and is still pending.

No. 7.

PETITION TO DETERMINE PLACE OF CROSSING.

The Chicago, Madison and Northern Railroad Co., Petitioner.

vs.

The Belt Railway Co. of Chicago, and the Chicago and Western Indiana Railroad Co., Respondents.

OPINION OF THE COMMISSION.

The petitioning company was incorporated August 3, 1886, with authority to construct a line of road extending from Chicago to a point in Stephenson county on the Wisconsin State line. It now seeks to cross with its tracks the line of the Chicago and Western Indiana road, (which road is now operated under a lease by the Belt Railway Co. of Chicago, co-respondent) at a point near the center of the northwest quarter of section thirty-four (34) in the town of Cicero, Cook county, Illinois, through the west half of which section the road of respondents runs in nearly a due north and south direction. Objection made by respondents to the place of crossing proposed gives rise to the present inquiry. The mode of crossing is not in controversy, it being conceded the crossing wherever made may be at grade.

The place of proposed crossing is within the corporate limits of the town of Cicero, which town has power under the general act of incorporation "to provide for and change the location, grade and crossings of any railroad." The trustees of the town, on December 4, 1888, granted by ordinance the right of way to petitioner through the town, providing among other things as follows:

"At the west line of section thirty-three (33) the northerly line of the right of way of said railroad company shall be the south line of 33d street, as laid out by T. F. Baldwin in his subdivision of the northwest quarter of section thirty-three (33), township thirty-nine (39) north, range thirteen (13) east of the third principal meridian, said south line of 33d street, being 1,360 and $\frac{33}{100}$ feet south of the northwest corner of said section thirty-three (33); thence the track or tracks of said railroad eastward through said section thirty-three (33), shall be laid south of 33d street; and through section thirty-four (34), township thirty-nine (39) north, range thirteen (13) east of the 3d principal meridian, shall be laid south of the north half of the north half of said section.

"Said tracks to be laid upon any ground now owned or that may hereafter be acquired by said railroad company upon the line of said route, and across all streets and alleys along said route, but nothing in this ordinance shall be construed so as to authorize the said company to occupy any streets or alleys lengthwise.

"*Provided*, That when the railroad tracks of the said company shall cross any street, alley or other line of railroad, such crossing shall not be on any trestle work or viaduct; and when the tracks of said company shall cross the tracks of any other railroad company, such crossing shall be at grade."

This right of way was granted upon several conditions expressly named in the ordinance covering the questions of rates of fare to be charged to and from Chicago, the location of certain stations in the town and the payment of $10,000 by the company into the town treasury. The company promptly accepted the conditions, paid the $10,000, acquired a right of way through sections thirty-three (33) and thirty-four (34), near the northerly limit fixed by the ordinance, and proceeded with the construction of the road, 80 per cent. of the work being done by May 1, 1889, as testified by the engineers of petitioner.

As the work progressed, negotiations were in progress between the general managers and engineers of the companies concerned, with regard to the terms on which the new road should cross the tracks and right of way of respondents at the point which had been selected. These negotiations have been proven before the Commission at great length, it being claimed by petitioner that its officers had the full consent and agreement of respondents to make the crossing at the point now proposed. This claim respondents deny, and assert that while many conferences were had, no agreement was ever finally made, and that the question whether or not any such agreement was made is for the courts and not for the Commission. In the negotiations it was assumed upon both sides that petitioner had the right to select itself the place of crossing; and up to July 1, 1889, when the statute went into effect conferring jurisdiction upon the Railroad Commission in such cases, this assumption was entirely correct.

Respondents insist that the place proposed by petitioner for crossing is peculiarly disadvantageous to them. The proposed crossing place is a little less than one mile south of the place where respondents' tracks cross the C., B. & Q. R. R. by means of a viaduct, which viaduct is approached from the south by a sharp ascending grade; while a little less than a mile south from the proposed crossing, the tracks of respondents' road cross the Atchison, Topeka & Santa Fe Railroad, which at that place runs north of and parallel with the canal. South of the canal and parallel with it is the Chicago & Alton Railroad. Respondents insist the place selected is dangerous on account of the liability of the long and heavy trains of the Belt Line Company to become stalled on the grade ascending to the Burlington viaduct, and the

further liability of such trains to break their couplings upon the viaduct and precipitate loose, unmanageable cars down the grade upon this crossing. It is also claimed that the entire distance northward between the Atchison tracks to the Burlington viaduct is needed as an uninterrupted running ground for heavy trains to acquire necessary momentum to make the grade at the viaduct; also that heavy trains coming southward over the viaduct are liable to be uncontrollable at the point of crossing, and that no interlocking appliance has been suggested or can be devised, which will render a crossing at this point safe.

Respondents ask that petitioner be compelled to vary the course of its line to the southward from its present location, beginning such deviation in the northeast quarter of section thirty-two (32), proceeding thence southeasterly through section thirty-three (33), emerging from the latter section near the southeast corner thereof, crossing respondents' tracks near the point where the same are crossed by the Atchison road, and south of the south line of section thirty-four (34); that from such point of crossing petitioner's road should proceed parallel with the Atchison to a point in section thirty-six (36), where it would again reach the line of its present location. The advantage claimed for such a change in petitioner's course and place of crossing is, that it would enable the crossings of the Atchison, the Alton and that of petitioner's road to be interlocked by a single system, and would leave respondents the distance of about a mile and three-quarters southward from the Burlington viaduct free of obstruction over which northward trains could run for the grade.

It is proved before us that the additional distance which would be traversed by such a diverted line would be a little over 2,100 feet, and the additional cost to petitioner of such a change of location would be $153,000. Petitioner insists that the crossing as now proposed can be safely interlocked, and by placing electric annunciators at the Burlington viaduct on the north, and at or near the Atchison crossing on the south to notify the man in the tower of the approach of respondents' trains at these distant points, this crossing if equipped with a Saxby & Farmer machine would not materially obstruct or endanger the business of respondents, consisting as it does entirely of freight.

We have not attempted to state all the facts and contentions in detail, but only sufficient to show the nature and scope of the controverted questions. It will be seen three questions have been the subjects of controversy before us:

First—Have the parties by private agreement settled the point of crossing for themselves?

Second—Will a crossing at this point equipped with the interlocking and signaling device proposed, result in "unnecessary" delay or danger, or both, to transportation and travel upon the road of respondents?

Third—Had the action of the town authorities of Cicero, providing for the location of petitioner's line, and the subsequent acts done and expenditures made by petitioner in pursuance of such action, before the statute of 1889 was passed, or took effect, so far settled the location of petitioner's road and consequently the place of this crossing that this Commission can not now legally change it?

There is undoubtedly some force in the objection urged against this place of crossing; but the liability to delay and danger, has, we think, been much exaggerated by some of respondents' witnesses. It is not proposed, however, to discuss the evidence in detail upon this branch of the case; nor is it proposed to discuss in detail the question whether or not the parties reached a binding agreement in their negotiations during the summer of 1889. In the view taken of the case by the Commission an answer to the last of the three questions stated above effectually disposes of the case. To that question we shall now devote a few concluding words.

The act conferring jurisdiction upon the Commission in these crossing cases was approved May 27, 1889, and took effect July 1, thereafter. Under the law existing prior to the taking effect of this act, it was the right of the company seeking a crossing to propose its own place and mode, and proceed accordingly under the eminent domain act; provided the place of crossing were outside the corporate limits of any city, town or village. If the place were within such a municipality, then while the railroad to be crossed had itself no more power of objection against the place or mode than though the place were outside, yet the power of the road proposing the crossing was in that case to be exercised in accordance with the power of such municipality expressed in the statute "to provide for and change the location, grade and crossings of any railroad," a power the general act for the incorporation of railroads expressly preserves to the municipal authorities. The power to locate conferred in the petitioner's charter had to be exercised in accordance with the provisions made by the municipality. (Dunbar's case, 100 Ill., 110.)

We have seen the town of Cicero did act by ordinance in this matter December 4, 1888. True a definite line for petitioner's road was not fixed at the particular point of crossing, but a definite point was named at the west line of section thirty-three (33) to which the road should run, and it was further provided that "thence the track or tracks of said railroad eastward through said section thirty-three (33) shall be laid south of 33d street, and through section thirty-four (34.) * * * shall be laid south of the north half of the north half of said section." The point to which respondents insist this crossing should be moved, is entirely south of the south line of section thirty-four (34), and would not for that reason comply with the ordinance.

The question now presented is whether by acquiring its right of way and locating and grading its road upon the present line at a time when it had a perfect legal right to exercise its own discretion in the premises, subject only to the direction of the town of Cicero, which then had unquestionable jurisdiction to provide for the location of railroads, petitioner has not acquired substantial rights which cannot be disturbed by any order of this Commission. The question is not precisely whether the act of 1889, under which we proceed, has repealed the statute conferring upon cities, towns and villages power over this subject, but is rather this: Assuming that the act of 1889 is by implication a repeal of the former power of towns and villages, has there not been acts done and rights acquired under an existing state of law which could not be affected by such a repeal, and by the conferring of a new jurisdiction upon this Commission?

Section 4 of the act to revise the law in relation to the construction of statutes, approved March 5, 1874 (omitting immaterial words) provides as follows:

> "No new law shall be construed to repeal a former law whether such former law is expressly repealed or not as to any * * act done * * or any right accrued or claim arising under the former law, or in any way whatever to affect any such * * act so committed or done * * or any right accrued or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform so far as practicable to the law in force at the time of such proceeding. * * * This section shall extend to all repeals either by express words or by implication whether the repeal is in the act making any new provisions upon the same subject or in any other act."

The petitioning company at a time when under the law it might judge of the propriety of the location of its line and the place of crossing other roads, subject only to the discretion vested in the town board of Cicero, acquired its right of way, constructed eighty per cent. of its road, paid $10,000 into the treasury of the town of Cicero, all in pursuance of existing law. The town council set certain limits for the location through section thirty-four (34), that is to say: That the road should proceed south of a certain line. The discretion thus left to petitioner's officers by the municipal authorities of Cicero has been exercised by the location of the road definitely upon a certain line, which line was then known to the officers of respondents, and large expenditures of money were made in the construction of a road upon the line so fixed before the act conferring jurisdiction upon this Commission had been passed. Can it be said that the "new law" repealed the "former law" as to all these "acts done" and "rights accrued" and "claims arising under the former law," or that the new law can "in any way whatever affect any such act so done or rights accrued before such new law took effect?" It seems to the Commission that to so hold would be a violation of the letter and spirit of the section of the statute above quoted.

To say petitioner had lawfully acquired a right of way and built a line over all the distance in question, except the hundred feet in width of respondents' right of way, but that because no pecuniary right had been acquired in *that particular spot* before the new law went into force, that, therefore, the whole question

of the location of this road is an open one for the Commission, would not, we think, be consonant either with the statute or with justice.

DECISION.

It is therefore ordered that petitioner have leave to cross with its track or tracks the tracks of respondents' road at grade at the point proposed by it, and designated in its petition; but in accordance with petitioner's stipulation before the Commission, it is further ordered that petitioner shall put in and maintain at said crossing a system of interlocking signals and devices, with electric annunciators, and a Fontaine crossing of the character proposed and presented by its counsel upon the hearing, the same to be subject to examination and approval by the consulting engineer of the Commission.

SPRINGFIELD, ILLINOIS, February 13, 1890.

The respondent afterwards filed a petition for a rehearing, which was denied, the Commission rendering the following opinion therein:

OPINION ON PETITION FOR REHEARING.

While recognizing fully the force and ingenuity of the reasons urged by the learned counsel of respondents in their petition for rehearing, we are unable to assent to the conclusions arrived at. It is, in substance, insisted:

First—That the Commission should have made a formal finding upon the question whether the proposed point is a "proper" place for a crossing, having due regard to the effect thereof upon travel and transportation on respondents' road; that said question *was the only one properly before the Commission for decision*, and that this vital question has been ignored.

Secondly—That the Commission is widely wrong in the opinion expressed to the effect, that petitioner had acquired such a right in the proposed line of location through sections thirty-three (33) and thirty-four (34), by virtue of "acts done" and expenditures made prior to the passage of the statute of 1889, as would carry with it the right to cross upon such line, and such a right as would, in the opinion of the Commission, be saved to petitioner by section 4 of the act on construction of statutes.

Thirdly—That if such a right as would be saved out of the operation of the act of 1889, was so acquired by petitioner, then the only proper order to be made by the Commission on that hypothesis would be one dismissing the petition for want of jurisdiction.

Such the Commissioners understand to be the substantial grounds of the petition; and we remark:

1. That even if the only question before the Commission were, as contended, whether the proposed place of crossing is under the the circumstances "proper," the consideration of its "propriety" (using that term in the broad sense it must take in such a connection), would involve all the matters discussed in the Commission's former opinion. All those matters would come in as reasons for the *propriety* of the crossing if the matter of vested legal rights were entirely waived. It might be "proper" to order a crossing in a place where the company seeking it could allege no legal right, but only a right to be made out by considerations of reason and equity based upon circumstances and addressed entirely to the discretion of the Commission. But if such moral considerations were reinforced by antecedently acquired legal rights in the company seeking the crossing, the "propriety" would certainly be only increased by that circumstance. Counsel are in error in saying the real question involved has not been decided. The statute does not require that reasons be given for the order made. The language is, "Said board shall give a decision, *prescribing the place where and the manner in which said crossing shall be made.*" The naked ruling fixing place and manner would fully comply with the law. It is not incumbent on the Commission, nor would it add the least force, formally to say, "We hold the proposed crossing will not unnecessarily impede or endanger travel or transportation; and is, under all the circumstances, a 'proper' crossing; therefore it is 'with due regard to the safety of life and property' decided," etc. Facts are more important than forms. The fact that a crossing is ordered is evidence the Commission hold it under all circumstances proper, however unfortunate the reasons may be. Grounds are stated, and reasons given, largely out of deference to counsel who have been heard at length upon the case, and may care to know the views of the Commission upon the subjects discussed. They are in law no part of the decision proper. If a right decision is arrived at, the fact, if it be such, that no reason, or even a wrong reason is given, certainly does not invalidate the decision. We freely admit the policy of giving reasons at all is questionable. The party who succeeds is never much concerned about the court's mental operations, and reasons can rarely be cogent enough to convince or satisfy the party defeated.

2. We see no reason to modify what was before said touching the antecedently acquired rights of petitioner, or the expressed view that section 4 of the act on construction of statutes is broad enough to save those rights. We are aware the line where police power ends and vested property rights begin has ever been a battle-line of litigation. But "vested rights," in the constitutional sense, were not meant to be discussed in the former opinion. We thought section 4 which, among other things, says, no new law shall "in any manner affect" any "act done" or any "right accrued" or any "claim arising" under the former law, was broad enough to save to petitioner its substantial property right in a line of road

nearly completed when the new law was passed, and which had cost many thousands of dollars that would be a total loss if a crossing elsewhere were ordered. If, now, it was fully established that no such "saved" or "vested" rights as are legally conclusive have been shown by petitioner, the undisputed fact would still remain that a large expense (stated in the evidence at $153,000), would be inflicted on petitioner if compelled to adopt the new route suggested. The further fact would remain that property values along the road as built, and near the crossing as proposed, have adjusted themselves on the basis of the present status. The further fact would exist that the town of Cicero had for a consideration of $10,000, exercised an undisputed power by ordinance in directing within fixed limits the location of petitioner's road through Cicero, and petitioner had acted under the ordinance. All this had taken place without the fault of petitioner or the public who are to be affected. These acts were done and rights, if any, accrued, before any law existed under which the right to cross as proposed could be questioned. True, the right of way over the particular strip of ground belonging to respondents had not been acquired; but acquiring right of way and constructing a road are acts which can not take place simultaneously at all points. The work must begin somewhere, and end somewhere. Acts done at other points are not deprived of force because the right to a particular one hundred feet was not acquired before this law was passed. Petitioner was not bound to first acquire the right of way at that particular place in anticipation of some exercise of police power by the legislature. As well say it could only build its road through Stephenson, Winnebago, Boone, DeKalb, Kane and DuPage counties at its peril, lest its right to enter Cook county might be revoked. We say, waiving the question of any conclusive legal right, all the above considerations and facts would still remain and be powerfully persuasive to the same conclusion at which the Commission arrived, only reaching it by a different process of reasoning. The law under which we act says crossings must be made in such places and in such manner as will not "unnecessarily impede or endanger, etc." In a philosophical sense nothing is "necessary" except that which cannot possibly be avoided—that which is inevitable. No certain place of crossing or manner of crossing could ever be regarded as "necessary," using the term in this rigid sense; for there would in every case be a possibility of changing it to avoid even the slightest danger or delay. The statute uses the term, however, in a different sense; and under the term "unnecessarily" we deem the Commission authorized to consider all the facts and circumstances of each case, among which in the case at bar would certainly be the facts of petitioner's expenditures and other acts done and arrangements made before the law of 1889 was passed, the fact that the public have acquired interests to be injuriously affected by the proposed change, the fact that such change would cost petitioner an additional $153,000, the fact that appliances are proposed to be used and maintained by petitioner at the proposed crossing which will, the Commission believe, ren-

der the much exaggerated danger and delay to respondents' trains very small, and many other facts we shall not now stop to name. In view of all these matters we could say, independently of the question of regal right, that a crossing in the place proposed will not, all facts and circumstances duly considered, "unnecessarily impede or endanger the travel or transportation upon the railway crossed." The same result precisely would thus be reached by a slightly different process.

3. The question of jurisdiction does not trouble the Commission in view of the fact that both parties have in effect invoked its action in the premises. On one question, and only one, both parties have been agreed from the first, namely: That a place for this crossing may be designated by this Commission. The disagreement is entirely as to where that place shall be. Indeed, the jurisdiction which petitioner expressly invokes, could only be objected to by respondents upon grounds entirely fatal to their case. If the Commission has not jurisdiction, then petitioner can cross as proposed. But let us see whether a legal right to cross, and a right to ask the Commission for an order be really so incompatible as counsel suppose. In these cases the Commission sits as a court of very limited jurisdiction. If it assumes to act in any case of the subject matter of which it has no jurisdiction, its order will be of no more legal force than a sheet of blank paper. Notwithstanding any order made in such a case, all parties would still retain and could still assert, through the proper courts, any legal rights they had before. So that a wrong assumption of jurisdiction would in no case be a great matter. According to the statute the existence of just one fact gives the Commission jurisdiction to proceed, and that is the fact that "objection be made." The full language is, "If in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, and it shall be their duty, etc." Cannot "objection be made" as well in a case where a legal right exists, as where the right asserted is only moral? There has certainly been "objection" enough made in the case at bar to bring it within the language of the statute, if taken literally, and we have seen no harm can come from so construing the statute. The counsel seem to suppose our expressed opinion that petitioner has a legal right is a judicial determination of the fact. It is not at all, but is simply a reason given for our order. If this Commission had power to judicially determine that question in this proceeding in a manner binding upon the parties, and could by some proper writ execute the order, it might with some consistency be said nothing further would be required. But we cannot judicially determine the fact, and what was said in our opinion binds nobody. The order which it is conceded we have power to make, does not execute itself, but remains to be enforced through the courts. The learned counsel of respondents disagree with us as to the existence of any legal right in petitioner. We have much respect for their opinion while not assenting to it. For aught we know they might

succeed, in a forum having jurisdiction, in securing a judgment upon that question contrary to our poorly expressed reasons. Then the parties would be, at the end of such litigation, just where they now are, and would still be under the necessity of calling on the Commission for an order. It may be freely conceded that if petitioner could show no ground except a cold legal right without equity or justice—a case where all the equities were against the crossing proposed, and where we would not act but for the legal right shown—then the action suggested might be proper. The petition could perhaps properly in such a case be dismissed, and the parties relegated to their legal rights and judicial remedies. Such is not this case; and under all circumstances, and particularly in view of the strong equities made out by petitioner in addition to what we have deemed its legal rights, we must decline to grant a rehearing upon the grounds assigned.

Rehearing denied.

SPRINGFIELD, ILL., March 20, 1890.

No. 10.

INTERLOCKING AND DERAILING DEVICES.

Rules Adopted by Commission December 5, 1889.

The plan and construction of interlocking and derailing devices to be used at grade crossings of intersecting lines of railroads in Illinois must be arranged to conform to the following

GENERAL RULES.

1. The normal position of all signals must indicate danger—derail points open—and the interlocking so arranged that it will be impossible for operator to give safety signal for train to proceed without first closing derail and giving clear track to approaching train.

2. On level track, the derail points in high-speed tracks must be placed three hundred (300) feet from intersection of crossing tracks.

3. On descending grades, the derail points on high-speed tracks must be so located as to give the measure of safety equal to three hundred (300) feet on level track.

4. The minimum distance for derail points on high-speed tracks is three hundred (300) feet from crossing, and no less distance from crossing will be approved on account of ascending grade toward crossing.

5. On switching, storage and slow-speed tracks, the position of derail points may be located to best accommodate the traffic and provide the same measure of safety indicated in foregoing rules.

6. On single track railroads, derail points, when practicable, should be on inside of curve, and when double track is used, the derail points should be in outside rail of both tracks.

7. Home signal posts must be fifty (50) feet beyond point of derail. Distance between home and distance signal must not be less than twelve hundred (1,200) feet. Signal post should be placed on engineman's side of track it governs.

8. Guard rails should be laid on inside of rail opposite derail, and commence at least six (6) feet toward home signal from point of derail, extending from thence toward crossing, parallel with and eight inches distant from traffic rail, total length two hundred (200) feet, unless otherwise ordered.

9. In considering the device offered for approval, the speed of passenger or high-speed trains will be estimated at twelve (12) miles per hour, and that of freight or low-speed trains at eight (8) miles per hour. No greater speed should be permitted while passing over the crossing.

10. Plans of the system of inter-locking which is proposed to be constructed, if submitted to this office, will be examined and returned, with any suggestions of changes or additions that is deemed necessary to make.

All plans should indicate grade on tracks, direction and kind of traffic, and all dimensions in plain letters and figures.

It is intended in this circular to state general rules, which will govern the construction of any proposed system of interlocking. The business to be handled, relative position and operation of intersecting lines may require safeguards not mentioned herein.

The system of interlocking and derailing must be complete in each particular before it will be reported upon or approved.