

FOURTEENTH ANNUAL REPORT

OF THE

BOARD OF RAILROAD COMMISSIONERS

FOR THE

YEAR ENDING JUNE 30, 1891.

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STATE OF IOWA.

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DES MOINES:  
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1891.

JACOB KORNS, HARTWICK, IOWA,

VS.

CHICAGO & NORTHWESTERN RAILWAY CO.

} *Undercrossing damage to stock.*

Complaint filed December 2, 1890.

The petitioner, Jacob Korn, is the owner of S.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$  section 3, township 80, range 18, west, near Hartwick, Poweshiek county, Iowa. The road of respondent runs through his place, cutting off a large part of his pasture lands from his home, yards, water, etc. He has a farm crossing with gates, and an undercrossing for stock. The latter is in a ravine, southeast of his home, and connects his pasture lands. He complains that the respondent has failed to keep the undercrossing in repair; that in wet seasons it becomes very muddy and almost impassable for stock; that he has repeatedly notified respondent of the unsafe condition of said pass, and requests the company to repair the same, which it has neglected to do; that by reason of such neglect to repair the same, complainant "has been damaged in the sum of five hundred dollars in loss of stock by death and damage to the same, caused by being compelled to wade through the deep mud at said pass, upon the right of way of the railway." Complainant submits the affidavits of various persons substantiating his averments as above.

After months of delay, General-Manager Whitman answers, April 9th, (saying delay was caused by sickness), denying that the crossing under the bridge was constructed as a cattle pass; that complainant never had any right to use it as such. That the company was compelled to put up a bridge at this point, some twelve feet high, and that the slough under it is, and always has been, wet and miry, and unsuitable as a crossing; that at the time this branch of the road was constructed through said farm in 1885, respondent purchased the right of way and paid for the same; that the owner at that time (from whom petitioner subsequently purchased) designated the place for his farm crossing, which was put in and still remains for the use of complainant; that there is no other crossing on said farm, and that the undercrossing is not fit for use and complainant has no right to use it as such, and that respondent is not in any way liable, by reason of the use of the same by said complainant.

August 6, 1891, the Commissioners visited Hartwick and met complainant, respondents being represented by Superintendent Hopkins and other officials of the road. They found the situation at the crossing in controversy about as set forth in petition; that it had been impassable and unsafe in wet weather; that complainant had lost some valuable blooded stock; that the crossing is very valuable as a stock pass between the pastures of complainant; that the same has been lately tiled by complainant and is in a tolerably passable condition at present. They found further that said pass is entirely on the right of way and owned and controlled by respondent; that it has never been recognized by it as a crossing, but that the crossing to which complainant is entitled under the statute has been placed by respondent at the point designated by the owner of the land. The commissioners, however, do not find that said crossing fills the legal requirement, and so inform respondent.

From the investigation made by the commissioners they do not find the circumstances such as to require them to make any order in the premises, and the case is therefore dismissed.

*Des Moines, Iowa, August 19, 1891.*