

the increased hazard, although alleged and denied, and not particularly described, are unimportant as regards the questions of right between these litigants.

By the Act of 1827, ch. 72, s. 15, the plaintiffs are authorized, for the purpose of making their railroad, to agree with the owner of any land for the purchase, or use and occupation of the same, "and if they cannot agree, and if the owner or owners, or any of them, be a *feme covert*, under age, *non compos mentis*, or out of the county in which the property wanted may lie," application may be made to a justice of the peace, and proceedings had to have it condemned to their use. Upon which it was urged, that although the defendants may have an unlimited power to contract or agree, in any manner, with the owner for any land they may want for their road; yet the power to take the lands of others from them, against * their consent, by this process of condemnation, is expressly limited to the case where they, the defendants, **448** cannot agree, and the owner is a *feme covert*, &c.; or, in other words, that the defendants must be unable to agree with the owner, and the owner must also be a *feme covert*, &c. Because as this provision authorizes these defendants to take from a citizen his property, against his will, it must be construed strictly; and therefore the word *and* cannot, in this instance, be construed to mean *or*; and consequently, that concurrence of circumstances has not been shewn to exist, which is indispensably necessary, according to the positive requisitions of this law, to enable these defendants to have the land of the plaintiffs taken from them without their consent.

I admit, that this section of the Act, by which the defendants have been incorporated, is of such a character as to require to be construed strictly. But the whole must be so taken together as to carry into effect the chief and manifest purpose of the law; unless the sense of the expressions used be such as to forbid their being interpreted in any but one way; and when so taken, that the mode of proceeding prescribed cannot be so executed as to attain the object.

It was manifestly the intention of the Legislature to authorize the defendants to acquire any land they might want for their railroad in one of two modes; first, by an agreement with the owner of it; or if it could not be obtained in that way, either because of the absence of the owner, or because of his refusal to agree; or because of his incapacity to contract, then the defendants should have the power to cause it to be condemned to their use at a fair valuation. This latter mode of acquisition was intended to be given to them in all cases where an agreement could not be effected. In case of the refusal of the owner; and in the case of his absence; and in the case of his inability to contract. In all the similar sections found in other Acts of incorporation, the word